

Mr Calleja Crespo
Director-General,
Directorate-General for Environment
European Commission

Mr Aguiar Machado
Director-General,
Directorate-General for Maritime Affairs & Fisheries
European Commission

Subject: complaint against the inadequacy of fisheries management measures in the Dogger Bank Natura 2000 sites

Brussels, 24 June 2019

Dear Mr Calleja Crespo
Dear Mr Aguiar Machado,

WWF, ClientEarth, Seas At Risk, Birdlife Europe, Oceana, Royal Society for the Protection of Birds, Marine Conservation Society, Blue Foundation, Vogelbescherming Nederland and the Dutch Elasmobranch Society, hereby submit a complaint against the governments of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands and the Federal Republic of Germany (hereafter called 'the governments') regarding their breaches of Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), also regarding the Joint Recommendation by which, under the process required by Article 11 of the Regulation (EU) 1380/2013 (the CFP) the governments are proposing the authorisation of a project by a Commission Regulation that would breach the requirements of Article 6(3) of the Habitats Directive.

The governments have systematically failed to implement fisheries management measures that correspond to the ecological requirements of the Natura 2000 sites UK0030352, NL2008001 and DE1003301 and, despite being in agreement that the Dogger Bank and its biodiversity are in unfavourable conservation status after centuries of degradation caused by mobile, bottom-contacting fishing gear – to which the designated habitat is particularly sensitive – have also failed to comply with their duty under the Habitats Directive to adopt preventative measures to avoid the deterioration of the Sites of Community Importance (SCIs) and later Special Areas of Conservation (SACs) in the Dogger Bank.

While the breach of the Habitats Directive has been ongoing, our complaint is also in reaction to the Joint Recommendation regarding fisheries management measures that was recently submitted by the Member States.¹

- The Joint Recommendation's proposal fails to protect the Dogger Bank Natura 2000 sites against destructive bottom-impacting fisheries and impedes the restoration of the Dogger Bank habitat² to a favourable conservation status as required by Article 6 of the Habitats Directive.

¹ Joint recommendation by Germany, the Netherlands and the United Kingdom regarding fisheries management measures under Article 11 and 18 of Regulation (EU) No 1380/2013 of The European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (the Basic Regulation) for protection of sandbanks in three Natura 2000 sites designated under the Habitats Directive 92/43 EEC of 21 May 1992.

² Habitat H1110, 'sandbanks which are slightly covered by sea water all the time'.

- Further, with the Joint Recommendation, the governments have failed to carry out an adequate appropriate assessment of the effect that the fishing activities that would be allowed in the sites and thus are recommending, under the process required by Article 11 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (the CFP), the authorisation of a project by a Commission regulation that would breach the requirements of Article 6(3) of the Habitats Directive.

As the Dutch Marine Strategy Framework Benthic Monitoring Programme recently reported, the quality of the benthic habitat of the Dogger Bank, which had already suffered critical levels of degradation following more than a century of overexploitation and habitat destruction, continues to decline dangerously - and this trend has been worse since 2006, due to the increased disturbance caused by bottom-impacting fisheries.³ Since their declaration as SCIs and later as SACs, the governments of these Member States have allowed fishing with bottom-towed gear on an industrial scale to continue to take place in the Dogger Bank Natura 2000 sites, regardless of the deterioration that these fishing methods have on the integrity of the sites and the deterioration they cause to the natural habitat H1110 and its associated features. This is a direct violation of national obligations under Article 6(2) of the Habitats Directive. By failing to establish the necessary conservation measures that correspond to the ecological requirements of the sites (protection of the habitat H1110 and its typical species against the disturbance and deterioration caused by bottom-towed fishing), the Member States have additionally breached Article 6(1) of the Habitats Directive.

If adopted, the measures proposed in the Joint Recommendation submitted to the Commission will impede the ability of the Dogger Bank Natura 2000 sites to achieve favourable conservation status, as they:

- (1) propose to protect only 4.7% of the sites to all types of bottom-towed fishing gear, including flyshoot and Danish seines. Trawling and all seine fishing gear are causing disturbance to and abrasion of the seafloor. In addition, they are causing the bycatch of typical species within Dogger Bank habitat H1110 and of endangered species such as sharks, cold water coral and other benthic species. A review of all available scientific information to date showed that adverse effects caused by both flyshoot and Danish seines to the site's integrity are 'highly likely'.⁴ Until now, no single scientific study has been provided by any party to prove the absence of impacts by either flyshoot or Danish seining. The measures would also breach Art 6(1) of the Habitats Directive because they would not correspond to the ecological requirements of the habitat H1110 and the species in Annex II of the Directive present on the sites.
- (2) limit the closures to flyshoot and Danish seines to only three years and on an experimental basis. This runs against the obligations under Articles 6(2) and 6(3) of the Habitats Directive, which underpin the precautionary principle. Article 6(3) requires that plans or projects are authorised only when there is no reasonable scientific doubt as to the absence of adverse effects on the integrity of the site in question. Article 6(2) is designed to ensure the same level of protection as Article 6(3) and requires Member States to take preventative measures to guarantee the sites will not suffer deterioration. The approach proposed by the Member States should therefore not

³ Van Wijnhoven, S., Rapportage TO beoordeling kwaliteitstoestand NCP op basis van BISI, 2018. The full report is available (in Dutch) at: <http://ecoauthor.net/> and in powerpoint a summary at: and <http://ecoauthor.net/wp-content/uploads/2018/06/6-Benthos-NZ-SWijnhoven-22-05-2018.pdf>.

⁴ *Impact of demersal seine fisheries in the Natura 2000 area Dogger Bank, A review of literature and available data*; Report nr 16-224, Bureau Waardenburg, March 2017. Study commissioned by WWF and based on field experiments, observations and predictive studies regarding the impacts of demersal seining fisheries on the Dogger Bank habitat type H1110 and its typical species. Available at <https://www.buwa.nl/demersal-seining-doggersbank.html>

be to close a small area to investigate whether its conservation status improves, but rather to only allow fishing activities guaranteed to not have adverse effects on the integrity of the sites.

For the Natura 2000 network to be effective in ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies, it is necessary that the designated sites be actually managed in compliance with the protections established in the Habitats and Birds Directives.

Research published in Science magazine showed that, of the 727 European MPAs they investigated, 59% are commercially trawled, and average trawling intensity across MPAs is 1.4 times higher compared with non-protected areas. The same report explains that commercial trawling is the strongest predictor of biodiversity loss inside European MPAs, and the abundance of indicator species like skates, rays and sharks decreases by up to 69% with increased trawling intensity.⁵

So far, for EU waters at large, the European Commission has systematically approved the Joint Recommendations submitted by Member States under Article 11 of the CFP Basic Regulation without any critical assessment of the effectiveness of the measures to achieve the conservation objectives of the protected sites, even in cases where Joint Recommendations did not include sufficient measures and were against the recommendations provided by scientific advice.

We believe that a rubber stamp by the European Commission of the current Joint Recommendation for the Dogger Bank will jeopardise the Commission's own objective to drastically improve the implementation of the Habitats Directive, as stated in its 2017 Plan for Nature, People and the Economy.

In order for the process under Article 11 of the CFP Basic Regulation to be successful in the future, it is necessary for the Commission to set the standard of compliance with the Habitats Directive by example, ensuring that offshore Natura 2000 sites do not become 'paper parks', where areas are marked as protected on a map and in legislation, but where no implementation of this protection or effective management of these areas is enforced.

We request the European Commission to make use of the powers conferred by Article 11(2) to 11(4) of the CFP Basic Regulation and protect the Dogger Bank Natura 2000 sites by ensuring that fisheries management measures are adopted, that these measures correspond to the ecological requirements of the sites and their typical species, that deterioration of the sites and significant disturbance of the species for which the protected area was designated are prevented, and that fishing activities are only allowed insofar it is certain that they will not have an adverse effect on the integrity of the sites.

As a result, we submit this complaint and urgently ask you to:

- a. Reject the management measures proposed for the Dogger Bank Natura 2000 sites UK0030352, NL2008001 and DE1003301 in the Joint Recommendation submitted by the governments of the United Kingdom, the Netherlands, and Germany.**
- b. Submit a proposal for the conservation measures necessary for the purpose of complying with the obligations under Article 6 of the Habitats Directive in relation to the UK, German and Dutch SACs in the Dogger Bank, as is contemplated in Article 11(3) of the CFP Basic Regulation.**

⁵ *Elevated trawling inside protected areas undermines conservation outcomes in a global fishing hot spot*, Dureuil, M. et al. Science 362 (6421), 1403-1407. DOI: 10.1126/science.aau0561.

- c. Intervene to ensure the protection of the Dutch, UK and German SACs on the Dogger Bank in compliance with the Habitats Directive by prescribing the measures necessary in cases of urgency contemplated by Article 11(4) of the CFP Basic Regulation. We consider the suspension of all fishing activities with bottom-contacting gears, including seine fishing, at least in all the areas with proposed closures for fishing activities in the SACs in the Dogger Bank, vital for the achievement of the objectives associated with the establishment of the conservation measures in accordance with the Habitats Directive.
- d. Take infringement action against the UK, the Netherlands and Germany for failure to comply with their obligations under Article 6(1) and 6(2) Habitats Directive in relation to the SACs in the Dogger Bank.
- e. Request the Court of Justice of the European Union to prescribe the necessary interim measures under Article 279 TFEU to preventing irreparable harm to the integrity of the Special Areas of Conservation and the conservation of the benthic communities that are protected features of the Dogger Bank, when, by that time, the measures possibly adopted by the Commission under Article 11(4) CFP, have expired. We consider the suspension of all fishing activities with bottom-towed gears, including seine fishing, at least in all the areas with proposed closures for fishing activities in the SACs in the Dogger Bank, vital for preventing irreparable harm to the integrity of these Special Areas of Conservation and to the conservation of the benthic communities that are protected features of the sites.

We kindly request you to provide us with a written response to our complaint.

For further information regarding the complaint, your services can contact Thomas Rammelt (trammelt@wwf.nl) and/or Tatiana Lujan (tlujan@clientearth.org).

Yours sincerely,



Kirsten Schuijt
Executive Director
WWF Netherlands



James Thornton
CEO
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On behalf of:

Ester Asin, Director, WWF European Policy Office
Monica Verbeek, Executive Director, Seas At Risk
Pascale Moehrle, Executive Director, Oceana Europe
Ariel Brunner, Senior Head of Policy, Birdlife Europe and Central Asia
Martin Harper, Director Global Conservation, Royal Society for the Protection of Birds
Sandy Luk, Executive Director, Marine Conservation Society
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Fred Wouters, Director, Vogelbescherming Nederland
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