

# 'Simply' Article 11 of the Common Fisheries Policy

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Previously, laws regulating fishing in Union waters have been unclear on the process to be followed when a Member State needs to restrict fishing activities to implement EU environmental legislation. Member States have been, and still are, obligated to fulfill their environmental conservation obligations under the Habitats Directive,<sup>1</sup> the Birds Directive,<sup>2</sup> and the Marine Strategy Framework Directive<sup>3</sup> in their sovereign waters. Article 11 of the reformed Common Fisheries Policy<sup>4</sup> (CFP) now provides greater clarity for Member States by specifying the procedural steps to be followed to adopt such conservation measures. This briefing summarises the purpose of Article 11 and the processes it contains.<sup>5</sup>

## Meeting Union environmental requirements through fisheries management

Article 11 relates to Article 6 of the Habitats Directive, Article 4 of the Birds Directive, and Article 13(4) of the Marine Strategy Framework Directive. Each of those provisions relate to conservation of EU marine protected areas and each of those laws are about environmental conservation. Therefore, the purpose of Article 11 is environmental management and conservation, and not management of fisheries (although this is the tool).

All measures passed under Article 11 need to be sufficiently robust as to meet the Member States' EU environmental law obligations and the objectives of the CFP. These include (amongst others):

- ensuring that fishing activities are environmentally sustainable (CFP, Article 2(1));
- applying the precautionary approach (CFP, Article 2(2));
- establishing “necessary conservation measures” that will meet the ecological requirements of the protected habitats or species in a Special Area of Conservation (Habitats Directive, Article 6(1));
- taking “appropriate steps to avoid... the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated” (Habitats Directive, Article 6(2));

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<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p.7) (Habitats Directive).

<sup>2</sup> Directive 2009/147/EC of the European Parliament and of the Council of 20 November 2009 on the conservation of wild birds (OJ L 20 26.1.2010 p.7).

<sup>3</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (OJ L 164 25.6.2008, p.19) (Marine Strategy Framework Directive).

<sup>4</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354 28.12.2013 p.22).

<sup>5</sup> For a more detailed analysis of Article 11, including remaining uncertainties, see 'Article 11 of the Common Fisheries Policy' available at [www.clientearth.org/biodiversity/publications](http://www.clientearth.org/biodiversity/publications)

- complying with the series of procedural and substantive safeguards governing plans or projects likely to have a significant effect on a Natura 2000 site set out in Article 6(3) of the Habitats Directive;
- establishing Special Protection Areas for the conservation of protected bird species, in order to ensure their survival and reproduction in their area of distribution (Birds Directive, Article 4(1));
- taking “appropriate steps to avoid pollution or deterioration of habitats or any disturbance affecting birds” protected within Special Protection Areas (Birds Directive, Article 4(4));
- establishing “spatial protection measures” that will contribute to a “coherent and representative network of marine protected areas” (Marine Strategy Framework Directive, Article 13(4)).

## An overview of the procedures laid out in Article 11

Article 11 of the CFP sets out three possible scenarios. The first deals with Member State conservation measures that will not affect other Member States’ fishing vessels (Article 11(1)). The second scenario relates to when the conservation measures will affect other Member States’ fishing vessels. In this case, the European Commission may produce delegated acts (or proposals for EU legislation) based on the initiating Member State’s proposal and, possibly, joint recommendations developed with the Member States whose fishing interests are affected (Article 11(2)-(3)). The third scenario deals with cases of urgency where the achievement of the relevant conservation objective is at risk (Article 11(4)-(5)).

### Conservation measures that will not affect other Member States’ vessels

This is, in theory, the most straightforward procedure in Article 11. It provides for Member States to themselves adopt the conservation measures necessary to comply with the specified provisions in EU environmental law. The only further requirements are that the measure are compatible with the objectives set out in Article 2 of the CFP, meet the objectives of the Union legislation they are implementing, and are at least as stringent as measures under Union law. In effect, this is the same process as in the 2002 CFP.

### Conservation measures that may affect other Member States’ vessels

If another Member State has a “direct management interest” in the fishery to be affected by a proposed conservation measure, the initiating Member State must provide the European Commission and the Member States with a direct management interest with “relevant” information on the measures. This includes the rationale behind the proposed measures, scientific evidence in support of them, and details on practical implementation and enforcement (Article 11(3)). Presumably, other information could be included as well.

The initiating Member State and the Member States with a direct management interest may decide to pursue a joint recommendation regarding the proposed measures. If they choose to do so, the Member States have 6 months from when the initiating Member State provides “sufficient information” regarding the proposed measures to submit their joint recommendation to the Commission. In this case Member States must cooperate with one another in formulating joint recommendations and the initiating Member State must consult with the relevant Advisory Councils (Article 11(2) and 18(2)).

If the Member States agree on a joint recommendation during this time, or if one isn't pursued and the initiating Member State submits a proposal on its own, then the Commission is empowered to adopt the measure through a delegated act within three months (Article 11(2)-(3)).

If, however, a joint recommendation is not agreed in time, or is submitted within the 6 month time period but is deemed not to be compatible with the objectives of the CFP or of the relevant EU environmental law, then the European Commission may submit a proposal in accordance with the Treaty (Article 11(3), 2nd paragraph), i.e. under the ordinary legislative procedure.

### In cases of urgency

The third procedure described in Article 11(4) can be invoked if **not** implementing the proposed conservation measures would place the achievement of the objectives of the Habitats, Birds, or Marine Strategy Framework Directives (and the initiating Member State's intentions) in jeopardy. In these cases, the European Commission has a duty to adopt the relevant conservation measures – presumably by a Commission Decision. These measures would then apply for a maximum of 12 months, extendable for another 12 months where justified (Article 11(5)).

### Governance at the EU level

The Commission should help facilitate cooperation between Member States in relation to implementation and enforcement of the measures adopted under Article 11(2-4) (Article 11(6)).

Since this article relates to Member States meeting their obligations under Union environmental laws, it should be DG Environment – as the DG with the relevant expertise and responsibility for ensuring that these laws are complied with – that has the primary responsibility for overseeing the processes described in Article 11.

Liane Veitch  
Science and Policy Advisor  
274 Richmond Road  
London, E8 3QW  
0203 030 5956  
lveitch@clientearth.org  
www.clientearth.org

Sarah Gregerson  
Lawyer (Australian qualified)  
274 Richmond Road  
London, E8 3QW  
0203 030 5987  
sgregerson@clientearth.org  
www.clientearth.org

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#### Brussels

4ème Etage  
36 Avenue de Tervueren  
1040 Bruxelles  
Belgium

#### London

274 Richmond Road  
London  
E8 3QW  
UK

#### Warsaw

Aleje Ujazdowskie 39/4  
00-540 Warszawa  
Poland