

Complaint to the Commission concerning alleged breach of Union legislation

Failure to comply with Article 6(1), 6(2) and 6 (3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna - the Habitats Directive, in relation to the fisheries management measures for the Dutch and UK Special Areas of Conservation (SACs) in the Dogger Bank in the North Sea

24 June 2019

1. Identity and contact details
2. Infringement of EU Law
3. Request for action from the Commission
4. Previous action taken to solve the problem
5. Previous correspondence with EU institutions
6. List any supporting documents/evidence which you could – if requested – send to the Commission
7. Personal data
8. Signatures

Annex 1A	Dogger Bank H1110 listed typical species reported as bycatch in demersal seining
Annex 1B	Dogger Bank H1110 listed typical species considered sensitive to bottom disturbance
Annex 1C	Vulnerable, near threatened, threatened, endangered and critically endangered species known to occur or to have occurred on Dogger Bank (not listed as H1110 typical species by the governments) and observed as bycatch in demersal seining
Annex 1D	Dogger Bank species known to be typically occurring on the Dogger Bank (however not listed as H1110 typical species by the governments) and reported bycatch
Annex 1E	Dogger Bank species known to occur or to have typically occurred (however not listed as H1110 typical species by the governments) and considered sensitive to demersal seining
Annex 2	Inability to control and enforce with recommended VMS frequency and minimum transit speed
Annex 3	The process leading to the proposed management measures of fisheries activities in the Dogger Bank Natura 2000 sites
Annex 4	The fisheries industry and nature conservation organisations' proposals of 2012
Annex 5	Pictures and URLs of demersal seining rope, gear, fisheries, bycatch

1. Identity and contact details

Lead complainants

Name: Stichting Wereld Natuur Fonds Nederland
Sector/field of activity and location(s) where active: Environmental NGO
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Name: ClientEarth
Sector/field of activity and location(s) where active: Environmental NGO
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Supporting complainants:

Brussels

Name: WWF European Policy Office
Sector/field of activity and location(s) where active: Environmental NGO, Europe
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Name: Seas At Risk
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Name: Oceana
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Name: Stichting BirdLife Europe
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United Kingdom

Name: Royal Society for the Protection of Birds

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Sector/field of activity and location(s) where active: Environmental NGO, United Kingdom

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Name: WWF UK

Sector/field of activity and location(s) where active: Environmental NGO

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The Netherlands

Name: Vogelbescherming Nederland

Sector/field of activity and location(s) where active: Environmental NGO, The Netherlands

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Germany

Name: WWF Deutschland

Sector/field of activity and location(s) where active: Environmental NGO, Germany

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Denmark

Name: WWF Verdensnaturfonden Denmark

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2. Infringement of EU Law

2.1 Authority you are complaining about

Governments of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands and Germany.

2.2 Which national measures are in breach of EU law and why?

Abstract

The governments of the United Kingdom, the Netherlands and Germany (hereafter called 'the governments') have each designated Natura 2000 sites under the Habitats Directive (Special Areas of Conservation UK0030352, NL2008001 and DE1003301) in their respective waters, creating a complex of adjoining Marine Protected Areas (MPAs) unique in the North Sea for habitat H1110 (sandbanks which are slightly covered by sea water all the time); the area where these sites are located is called the Dogger Bank.

The governments are in breach of Articles 6(1) and 6(2) 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), as follows.

- By failing to adopt and implement conservation measures which correspond to the ecological requirements of the natural habitats for which the Dogger Bank SAC is designated, the governments are in breach of Article 6(1) of the Habitats Directive.
- By failing to exclude on the basis of the best scientific knowledge that the fishing activities that are allowed in the sites will not cause any disturbance likely significantly to affect the sites' conservation objectives, by allowing bottom-towed fishing activities in most of the area of the Dogger bank SACs, and by failing to adopt preventative measures to avoid deterioration of the SACs, the governments are in breach of their obligations under Article 6(2) of the Habitats Directive.

Further, the governments have also failed to carry out an adequate appropriate assessment, in light of Article 6(3) of the Habitats Directive, such that they are recommending under the process required by Article 11 of Common Fisheries Policy Basic Regulation 1380/2013 (the CFP) the authorisation of a project by a Commission regulation that would breach the requirements of Article 6(3) of the Habitats Directive.

Breach of Article 6(2) of the Habitats Directive

The governments are in agreement that the Dogger Bank and its biodiversity are in unfavourable conservation status after centuries of degradation caused by mobile, bottom-towed fishing gear, to which the habitat for whose protection the sites were designated is particularly sensitive.

Since their declaration as Sites of Community Importance (SCIs) and later as Special Areas of Conservation (SACs), the governments have allowed fishing with bottom-towed fishing gears on an industrial scale to take place in the designated sites, regardless of the clear deterioration that these fishing methods have on the integrity of the sites

and the deterioration they have caused to the notified features. This constitutes a breach of Article 6(2) of the Habitats Directive.

In addition, the CJEU has consistently recognised that Articles 6(2) and 6(3) of the Habitats Directive are designed to ensure the same level of protection.^{1,2}In consequence, the Court has explained that when a project has been carried out in a Natura 2000 site without having been subject to an appropriate assessment under Article 6(3) of the Habitats Directive and there is a probability of risk to the site, the obligation under Article 6(2) to take appropriate steps to prevent the deterioration of the site and the significant disturbance of the species for which the site was designated entails an obligation to review the effects of the plan or project on the basis of the best scientific knowledge to the same standard as would be required by Article 6(3).³

By failing to exclude, on the basis of the best scientific knowledge, that the fishing activities that are allowed in the sites will not cause any disturbance likely significantly to affect the sites' conservation objectives, the governments, again, are in breach of Article 6(2) of the Habitats Directive.

Breach of Article 6(1) of the Habitats Directive

Article 6(1) of the Habitats Directive establishes that Member States shall establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

Despite their unfavourable conservation status, the governments have, for an exceptionally long time, failed to establish any conservation measures for the sites. Therefore, the governments are in breach of Article 6(1) of the Habitats Directive.

A joint recommendation was officially submitted 19 June 2019 by the governments under the process of Article 11 of the CFP. The measures in the Joint Recommendation⁴ propose to keep 66,2% of the total area of the sites open to fishing on an industrial scale with all types of bottom-towed fishing gear, including trawling and a specific type of mobile bottom-towed fishing gear called seine fishing.

The remaining 33,8% of the total area of the sites, indicated as 'management zones', are alleged to be protected from damaging bottom-towed fishing gears. However, since in the Joint Recommendation it is also proposed to keep 95,3% of the total area of the sites open to seine fishing, the proposed measures only protect a mere 4,7% of the Dogger Banks SACs from mobile bottom-towed gear on an experimental basis and for only 3 years.

As is explained below, scientific evidence clearly shows that bottom-towed fishing, including seine fishing, causes deterioration of the Dogger Bank SACs and is known to catch species which are key to the restoration and biotic equilibrium of the sites, including Habitat 1110 typical species, threatened and endangered species.

¹ Case C-258/11 *Peter Sweetman and Others v An Bord Pleanála*, para 24

² Case C-521/12 *Briels and Others v Minister van Infrastructuur en Milieu*, para. 19

³ Case C-399/14, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen* para. 42-4s

⁴ 16 April, 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.

The proposed measures in the Joint Recommendation do not correspond to the ecologic requirements of the sites, as they are insufficient to ensure the favourable conservation status of habitat H1110 in the protected sites. Therefore, the Joint Recommendation also contravenes Article 6(1) of the Habitats Directive.

Article 6(3) of the Habitats Directive and Article 11 of the CFP Regulation

The inadequate 'appropriate assessment'

As the CJEU explained in *Waddenzee*,⁵ fishing activities can be considered projects for the purposes of Article 6(3) of the Habitats Directive. This Article mandates that in sites protected under the Directive, Member States can only authorise plans or projects not directly connected with or necessary for the management of a Natura 2000 site but which are likely to significantly affect the site where it is scientifically certain after an appropriate assessment that they will not adversely affect the integrity of the site concerned, in view of the site's conservation objectives.

Article 11 of the CFP precludes a Member State from adopting unilaterally, with respect to the waters under their sovereignty or jurisdiction, the necessary measures to meet its obligations under Article 6 of the Habitats Directive, when other Member States have a direct management interest in the fishery to be affected by such measures. In those instances, the measures should be adopted by the Commission, upon the submission of a Joint Recommendation by the initiating Member State and the other Member States having a direct management interest.

Notwithstanding this specific process, since their declaration as SCIs and later as SACs, compliance with the duties in Article 6(3) requires carrying out the test of likely significant effect and an appropriate assessment of the fishing activities that are to be allowed in the site.

The 'appropriate assessment' carried out by the UK, The Netherlands and Germany as the basis of the Joint Recommendation was deficient. It did not consider the full list of typical species for assessing the impacts of the fishing activities that will be allowed in the sites under the Joint Recommendation and therefore failed to identify the sensitive interaction between at least 32 typical species of the sites and demersal seine fishing.

The 'appropriate assessment' also failed to consider the results of prominent studies regarding the interaction of demersal seine fishing and benthic species typical of the habitat H1110 (please see section 2.3.2.2).

Lastly, the Background Document to the Joint Recommendation (the Background Document) recognises that the 'appropriate assessment' has substantial lacunae and that there is still uncertainty regarding the impact of seine fishing on the integrity of the sites.⁶ This Appropriate assessment does not meet the requirements of Article 6(3) of the Habitats Directive.

Under the process of Article 11 CFP, the Member States shall provide the Commission the relevant information on the measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement. The Commission needs to satisfy itself in regard to whether the Member States have provided all the relevant information, as it shall adopt the measures upon *receipt of a complete request*.

⁵ Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*. Para. 24

⁶ Background Document Annex 1 to the Joint Recommendation for Offshore Fisheries Management on the International Dogger Bank under the Common Fisheries Policy, The Hague, Bonn, London, 26 March 2019, p. 53-54.

Since the final responsibility of adopting the measures under Article 11 of the CFP lies with the Commission, the Commission is being put in a position by the UK, the Netherland and Germany where it is being asked to approve measures which breach Article 6(3) of the Habitats Directive.

By failing to provide an adequate 'appropriate assessment', the governments have failed to submit to the Commission all the relevant information and the Joint Recommendation cannot be deemed a 'complete' request. The Commission should reject it.

The experimental approach

The only closure to all bottom-towed fishing activities in the Joint Recommendation (for a zone inside of the German SAC which encompasses just 4,7% of the area of Dogger Bank sites) is proposed on an experimental basis and for only 3 years, after which it will be automatically lifted. Compliance with Article 6 of the Habitats Directive is incompatible with this experimental approach, as this Article requires that activities inside protected sites are only allowed when the competent authorities "have made certain that it will not adversely affect the integrity of the protected site. This is so when there is no reasonable doubt from a scientific point of view as to the absence of such adverse effects."⁷

It is all the more egregious that the closure to bottom-towed fishing is proposed on an experimental basis, as if it were the possibility of adverse effects resulting from the closure that the governments were uncertain about, instead of uncertainty of the effects of the bottom towed fishing that would continue to be allowed in 95.3% of the area of the sites. This approach is also contradicting the text of the Background Document, which explicitly acknowledges that "taking into account the above mentioned scientific results Germany regards it as very likely that the favourable conservation status of habitat 1110 and its typical species in the Natura 2000-site of the Dogger Bank cannot be achieved with on-going fishing activities with demersal seines."⁸

Additional concerns

In addition, it is worrisome, considering the inadequate 'appropriate assessment' carried out for the current proposal, that the governments' Joint Recommendation announces the possibility of future derogations that allow new and/or modified techniques, e.g. possibly electric pulse fisheries. We note the complaint submitted by Blue Marine Foundation on 29 September 2018 regarding the governments who, in breach of Article 6 Habitats Directive, have already permitted their vessels to undertake electric pulse trawling inside of the Dogger Bank sites.

We also question the effectiveness of the proposed control and monitoring regime for the management zones, consisting of transmitting the Vessel Monitoring System data every 30 minutes. Given the relatively small area covered by the management zones, the periods between reports are sufficiently long to make effective control not feasible. The map in Annex 2 to this complaint shows the measurements in kilometers of certain cross-sections, highlighting the narrowness of some of the management zones of the Dogger Bank SACs, while in the table under the map in Annex 2 the distances a fishing vessel covers (in kilometers) between two VMS positions at 30 minutes intervals are compared at different fishing speeds. This map illustrates that the relatively small size of a considerable number of management zones and the low VMS frequency combined, allow fishing vessels sailing at

⁷ Case C-142/16, *Commission v Germany* p. 33.

⁸ Background Document, p. 53-54.

a speeds up to 8 knots to fish through the Dogger Bank management zones without being detected. An additional and essential control/enforcement issue is the concept of a minimum speed for vessels transiting the restricted area carrying prohibited gears, where a minimum of 6 knots is not a high enough threshold. Towing speeds for beam trawls can be up to 8 knots and of flyshoot can be up to 6 knots, as acknowledged in the report referred to in Annex 4 to the Background Document.⁹ Further, according to one STECF report on closed areas, optimal use of VMS requires that no vessel enters a closed area unless it is transiting at a ground speed of >8 knots.¹⁰ Annex 2 to this complaint further shows that a frequency of transmitting VMS data once every 10 minutes would provide for control that can detect and record the presence of fishing vessels carrying prohibited gears while sailing in management zones.

Effect of Bottom-towed fishing in the SACs UK0030352, NL2008001 and DE1003301

The natural habitat type under Annex I of the Habitats Directive for which the sites were designated is habitat H1110 (sandbanks which are slightly covered by sea water all the time). This type of habitat is highly sensitive to bottom-towed fishing, as the gear used for this activity causes abrasion to the sea bed and injures or kills a multitude of the habitat's typical species. This has resulted in a shift of balance within biotic communities towards short-living and opportunistic deposit feeders at the expense of vulnerable, long-lived species like the thornback ray.¹¹ This is explained with more detail in section 2.3.2 of this complaint.

As a recent report published in Science Magazine explained, "much of the EU's spatially impressive MPA network is being affected more heavily than non protected areas by industrial fishing and, as such, provides a false sense of security about positive conservation actions being taken."¹² 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.

A review of various studies found that at least half of the Dogger Bank Habitat listed 1110 typical species, i.e. 24 out of 50 typical species, are caught by demersal seine fishing.¹³ These species, which include coral, ray, ocean quahog, other species of shellfish, and starfish, are listed and depicted in Annex 1A of this complaint.

Furthermore, an additional 27 Dogger Bank species (of which 8 are Habitat 1110 listed typical species), including 'bio-engineers' such as horse mussels, sand-mason worms and flat oysters,¹⁴ as well as sharks, critically

⁹ See p. 8 in Hamon, K. G., N. T. Hintzen, J. A. E. van Oostenbrugge, 2017. *Overview of the international fishing activities on the Dogger Bank; Update with Dutch, British, Danish, German, Belgian, Swedish and French data for 2010-2015*. Wageningen, Wageningen Economic Research, Memorandum 2017-050. Available at <http://edepot.wur.nl/416465> (also Annex 4 to the Background Document).

¹⁰ See p. 34 in: https://stecf.jrc.ec.europa.eu/documents/43805/122927/07-06_SG-MOS+07-02+-+Evaluation+of+Closed+Areas.pdf

¹¹ Background Document, p. 21, 22.

See also Van Moorsel, G.W.N.M. (2011), 'Species and habitats of the international Dogger Bank', Ecosub, Doorn, p. 21.

¹² Dureuil, M. et al. Elevated trawling inside protected areas undermines conservation outcomes in a global fishing hot spot. *Science* 362 (6421), 1403-1407. DOI: 10.1126/science.aau0561.

¹³ Bureau Waardenburg, March 2017, Noack, T. 2017. Danish seine – Ecosystem effects of fishing. Technical University of Denmark, National Institute of Aquatic Resources.

¹⁴ Bio-engineer species – including horse mussels, flat oysters, sandmason worms – are key contributors to the restoration of habitat H1110 due to their ability to create reef-structures, which stabilize the seabed, increase biodiversity and strengthen the structure, functioning and resilience of the habitat type.

endangered common skate, and endangered Atlantic halibut have either been observed as catch or are considered sensitive to demersal seining (Annex 1B-1E).¹⁵

All types of bottom-towed fishing, including trawling and demersal seining (such as flyshoot - also called Scottish seine fishing - and Danish seining) will have a detrimental effect on the Dogger Bank SACs realising their restoration potential.

2.3 Describe the problem, providing facts and reasons for your complaint

2.3.1 Description of the sites affected.

The Dogger Bank is often referred to as the ecological heart of the North Sea. The Dogger Bank is the largest sandbank of the North Sea and spreads across the offshore waters of Germany, The Netherlands, the United Kingdom and Denmark and has unique seabed structures. It covers an area of approximately 25,000 km² and rises more than 20 m higher than the surrounding sea floor, reaching only 15 m depth below sea level at its shallowest point. This submerged sandbank lies in the central North Sea and spreads across the offshore waters of the UK, the Netherlands, Germany and Denmark. It is a highly productive sandbank that supports a diversity of marine wildlife, from soft coral dead man's finger to the thornback ray. It once formed the centre of the common skate population, which is now critically endangered. It serves as a spawning ground for sharks and rays, whiting, plaice, cod and sandeel, it is a hotspot and major feeding ground for seabirds such as gannets and puffins, and important to many species of cetaceans including the harbour porpoise, white beaked dolphins and minke whales who come to the Dogger Bank to forage.¹⁶

Since the start of bottom trawling between 1865 and 1875, the seabed of the Dogger Bank has shifted towards a composition of predominantly fine sand and mud with short-living and opportunistic deposit feeders.¹⁷ The conditions created by bottom trawling create a habitat for "a variety of bioturbators, predators and grazers, [...] such as polychaete worms (*Spiophanes bombyx*), brittle stars (*Amphiura filiformis*), sea urchins, gastropods (Family *Buccinidae*), hermit crabs and other unidentified crustaceans."¹⁸ Of the 25.000 km² Dogger Bank surface area, the UK, the Netherlands and Germany designated 18.765 km² as Natura 2000 sites in their EEZ for the protection of habitat H1110- Sandbanks which are slightly covered by sea water all the time, as follows:

¹⁵ We listed Dogger Bank H1110 typical species considered sensitive to bottom disturbance (number 25-32) in Annex 1B. These species include for example sea chervil, sand mason worm and various species of shellfish. Annex 1C reports species (number 33-38) caught by demersal seining, which -although not listed by the governments as Dogger Bank H1110 typical species- are nevertheless considered 'vulnerable', '(near-)threatened', 'endangered', and 'critically endangered' according to the IUCN Red List of threatened species. Annex 1D reports Dogger Bank species (number 39-49) known to be typically occurring on the Dogger Bank, which have not been listed as H1110 typical species by the governments, and which have been reported as catch in demersal seining. In Annex 1E we list Dogger Bank species (number 50-51) known to occur or have typically occurred, which although not listed as H1110 typical species by the governments, are considered sensitive to demersal seining.

¹⁶ Van Moorsel (2011), p. 21. and Bureau Waardenburg (March 2017), p 28.

¹⁷ Kröncke, I., Knust, R., 1995. The Dogger Bank: a special ecological region in the central North Sea. Helgoländer Meeresun. 49 (1-4), 335-353. Plumeridge, A. & Roberts, C.M. 2017. Conservation targets in marine protected area management suffer from shifting baseline syndrome: A case study on the Dogger Bank, Marine Pollution Bulletin, Volume 116, Issues 1-2, 2017, Pages 395-404.

¹⁸ JNCC, 2018 Supplementary Advice on Conservation Objectives for Dogger Bank Special Area of Conservation. Available at http://jncc.defra.gov.uk/pdf/DoggerBank_SACO_v1_0.pdf accessed on 3 April 2018.

	UK - 'Dogger Bank' UK0030352	The Netherlands - 'Doggersbank' NL2008001	Germany - 'Doggerbank' DE1003301
Standard Data Form (Last update)	November 2017	November 2016	June 2015
Year listed as SCI	Proposed: 2011 Confirmed: 2012 ¹⁹	Proposed: 2008 Confirmed: 2009 ²⁰	Proposed: 2004 Confirmed: 2007 ²¹
Year designated as SAC	2017 ²²	2016 ²³	2017 ²⁴
Natura 2000 site area (ha)	1.233.115 ²⁵	473.500 ²⁶	169.895 ²⁷
Principal Habitats Directive Annex I habitat types directly affected	H1110 - Sandbanks which are slightly covered by sea water all the time	H1110 - Sandbanks which are slightly covered by sea water all the time	H1110 - Sandbanks which are slightly covered by sea water all the time
H1110 area in SAC (ha)	1.233.115	440.333	162.370
Site coverage by H1110 ²⁸	100%	100%	96%
Conservation condition	B: unfavourable-	B: unfavourable-	C: unfavourable-bad

¹⁹ Commission Decision 2013/26/EU of 16 November 2012.

²⁰ Commission Decision 2010/43/EU of 22 December 2009.

²¹ Commission Decision 2008/23/EC of 12 November 2007.

²² Joint Nature Conservation Committee, 2018. *Dogger Bank MPA*. Retrieved from: <http://jncc.defra.gov.uk/page-6508>

²³ <https://www.synbiosys.alterra.nl/natura2000/gebiedendatabase.aspx?subj=n2k&groep=13&id=n2k164&topic=introductie> (in Dutch). While the Standard Data Form mentions a surface area for the Dutch Dogger Bank Natura 2000 site of 4.735 km² (473.500 ha), the designation decree of 27 May 2016 indicates a slightly smaller surface area of 473.477 ha.

²⁴ Federal Agency for Nature Conservation. Dogger Bank SAC. Retrieved from <https://www.bfn.de/en/activities/marine-nature-conservation/national-marine-protected-areas/north-sea-eez/dogger-bank-sac.html>. While the Standard Data Form mentions a surface area for the German Dogger Bank Natura 2000 site of 1.699 km² (169.895 ha), the designation decree of 29 September 2017 indicates a surface area of 1.692 km². The German draft management plan (for measures other than commercial fisheries) was put forward for public consultation in January 2018 and is likely to come into operation in 2018.

²⁵ Standard Data Form (<http://jncc.defra.gov.uk/protectedsites/sacselection/n2kforms/UK0030352.pdf>) and JNCC (2018) Dogger Bank MPA. Available at: <http://jncc.defra.gov.uk/page-6508>

²⁶ This is the surface area as included in the Standard Data Form which mentions a last update of November 2016. Surface area of the site area and H1110 area differ substantially in the Dutch SDF. Further, the Dutch designation decree for the Dogger Bank Natura 2000 site of 27 May 2016 provides data for site and H1110 surface area, that are different from those in the SDF. However, the Dutch designation decree mentions a similar surface area for both site and H1110 area.

²⁷ This is the surface area as included in the Standard Data Form which mentions a last update of June 2015. However, the German designation decree of 29 September 2017 mentions a site surface area of 1.692 km².

²⁸ These data were extracted from the German, Dutch and UK Standard Data Forms, which were updated in, respectively June 2015, November 2016 and November 2017.

	inadequate condition	inadequate condition	status
Conservation objectives	<p>For the feature to be in favourable condition thus ensuring site integrity in the long term and contribution to Favourable Conservation Status of Annex I Sandbanks which are slightly covered by seawater all the time. This contribution would be achieved by maintaining or restoring, subject to natural change:</p> <ul style="list-style-type: none"> • The extent and distribution of the qualifying habitat in the site; • The structure and function of the qualifying habitat in the site; and • The supporting processes on which the qualifying habitat relies. 	<ul style="list-style-type: none"> • Maintenance of the surface and improvement of the quality of habitat H1110 permanent submerged sandbanks Dogger Bank. • In order to maintain the population of the Habitats Directive species Harbour porpoise, common seal and grey seal: maintenance of surface and quality of their natural habitat. 	<ul style="list-style-type: none"> • Maintenance and restoration of the site's specific ecological functions, biological diversity and natural hydrodynamics and morphodynamics. • Maintenance and restoration at favourable conservation status of habitat type code: 1110 (sandbanks which are slightly covered by sea water all the time) together with its characteristic and endangered ecological communities and species. • Maintenance and restoration at favourable conservation status of the following Habitats Directive species and their natural habitats: Harbour porpoise and common seal.

Bearing in mind the purpose of the fisheries measures for the Dogger Bank SACs as stated in the Background Document to the Joint Recommendation:²⁹

“The purpose of fisheries measures is to reduce the pressure on the benthic habitat from bottom contacting fishing gear with a view to ensuring a key contribution to achieving the conservation objectives and to ascertain that the integrity of the site will not be adversely affected, in keeping with Article 6.3 of the Habitats Directive. The approach for the three Member States entails the following elements:

- *The conservation status of habitat type 1110 is currently assessed as unfavourable, due mainly to the quality of the habitat and disturbance of the biological community which result from impacts to sediments;*

²⁹ Background Document, Section 7.2, p. 26-27.

- *These assessments mention significant habitat disturbance as a result of (mobile bottom-towed) fishing, and that fishing has distorted the species composition – towards smaller and short-lived species;*
- *Therefore the Member States want to decrease human pressure on the habitat as a result of mobile bottom-towed fishing gear, with the aim to improve the quality of the habitat (NL); restore the habitat to favourable condition (UK); conservation and restoration of a favourable conservation status of the habitat type (1110) including its typical and threatened communities and species (GER);*
- *In doing so, they want to establish a more natural situation in which conditions will allow the*
 - *physical structure (the shape, form and composition of the habitat and its substrata),*
 - *diversity (the number of different biological communities or number of species within a given community),*
 - *community structure (e.g. age classes, sex ratios, distribution of species, abundance, biomass, reproductive capacity, recruitment, range and mobility) and*
 - *typical species to be restored.*
- *UK, GER and NL want to maintain the surface area and the extent of the habitat, improve the abiotic preconditions and the physical structure, reduce the disturbance of the benthic communities including infauna and epibenthic species, and improve the habitat quality by natural processes so that the benthic communities will be characterized by long-lived species in natural proportions of size and age. It is agreed that the requirements of a good structure and function can be applied to both benthic communities and typical fish species. If possible, individuals of all typical occurring species (fish, benthos) should be present in natural proportions of sizes and ages. Typical species include: *Lanice conchilega*, *Acrocnida brachiata*, *Arctica islandica*, *Buccinum undatum* (common whelk), *Mactra corralina*, *Ammodytes marinus* (sandeel), *Echiichthys vipera* (lesser weever), *Raja clavata* (thornback ray), *Pleuronectes platessa* (plaice).*

As restoration objectives are distinguished:

- 1) For abiotic and biotic factors in the area to achieve a state which enables benthic communities to reach and maintain a good state of preservation;*
- 2) Benthic communities should be characterized by, in particular, long-lived species. Of all typical occurring species, individuals should be present in natural proportions of sizes and ages;*
- 3) Characteristic fish species should be present in characteristic population structures and of all typical species in natural proportion of sizes and ages.”*



Figure 1, Dogger Bank UK, Dutch and German SACs. Source: WWF, 2018

Denmark has not designated its area of the Dogger Bank as a marine protected area.

As of 1 March 2019, the Dogger Bank Natura 2000 sites still offer unrestricted access to any fishing gear.

The governments of the UK, the Netherlands and Germany are in agreement that the Dogger Bank habitat H1110 and its biological communities are in unfavourable condition after more than a century of degradation, and their assessments of the sites point out that mobile bottom-towed fishing gear causes a significant habitat disturbance to the habitats.³⁰ “These assessments mention significant habitat disturbance as a result of (mobile bottom-contacting) fishing, and that fishing has distorted the species composition – towards smaller and short-lived species.”³¹

“Centuries of trawling have reduced benthic habitat complexity and resulted in macro-faunal communities with low diversity and increased dominance of opportunistic, fast-growing species that can recover from frequent disturbances (Krönke et al., 2011). Today many predatory species such as Angelshark (*Squatina squatina*), and several skate and ray species including the Common skate (*Dipturus batis*) are classified as ‘critically endangered’ in European waters (Neito et al., 2015). Atlantic halibut (*Hippoglossus hippoglossus*) remains endangered. These predator species have been reduced so significantly that they can no longer exert their former ecological roles

³⁰ E.g., the conclusion of the UK assessment of the Dogger Bank Natura 2000 area (JNCC, updated January 2018) concluded that it is in unfavourable condition, and that ‘demersal fishing’ is one of the pressures that needs to be ‘reduced or removed’. see: http://jncc.defra.gov.uk/pdf/DoggerBank_Statements_v1_0.pdf

³¹ Background Document, p. 26. See also Van Moorsel (2011), p. 53.

(Friedlander and DeMartini, 2002).”³² The present condition of the Bank is considered one of ecological degradation and impoverishment as a consequence of over nearly two centuries of intensifying and increasingly destructive fisheries.³³

In 2018, the Dutch Marine Strategy Framework Benthic Monitoring Programme, measuring the status and development of the quality of the benthic habitats in the Dutch part of the North Sea, concluded that the quality of the benthic habitat of the Dogger Bank is decreasing and that this decrease represents a consistent deviation of the reference since 2006 (when it had already been degraded by overexploitation and habitat destruction). The research further concludes that, although ecological disturbance (e.g. influence of nutrients and pollution) affects the benthic quality, **the downward trend is being determined by the increase of bottom disturbance by bottom-impacting fisheries.**³⁴

Denmark, Belgium, France, Sweden and Ireland also have current fishing interests in the Dogger Bank.

2.3.2 Effect of demersal seine fishing on habitat H1110, its typical species and the Dogger Bank Natura 2000 sites

2.3.2.1 Description of demersal seine fishing

Danish seine fishing

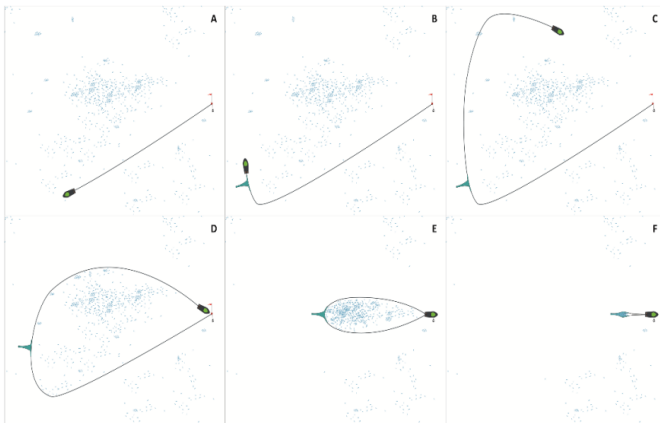


Figure 1: Process description of Danish seining (unmodified from **Paper 1**). A-C: Setting phase. D and E: Fish collecting phase. F: Closing phase.

Figure 2, Danish seine fishing method explained. Source: Noack, T. (2017).³⁵ Danish seine – Ecosystem effects of fishing. Technical University of Denmark, National Institute of Aquatic Resources

³² Plumeridge, & Roberts. (2017). Conservation targets in marine protected area management suffer from shifting baseline syndrome: A case study on the Dogger Bank. *Marine Pollution Bulletin*, 116(1-2), 395-404

³³ Ibid.

³⁴ Van Wijnhoven, S., Rapportage TO beoordeling kwaliteitstoestand NCP op basis van BISI, 2018. See for the power point presentation of the research report: <http://ecoauthor.net/wp-content/uploads/2018/06/6-Benthos-NZ-SWijnhoven-22-05-2018.pdf>. The full report in Dutch, however, an English translation is foreseen, is available at: <http://ecoauthor.net/> and also: <http://ecoauthor.net/wp-content/uploads/2018/09/Eindrapport-T0-kwaliteit-benthische-habitats-KRM-Noordzee.pdf>

³⁵ Noack, T. 2017. Danish seine – Ecosystem effects of fishing. Technical University of Denmark, National Institute of Aquatic Resources.

The vessel drops the anchor, which is attached to a set of marker buoys. The vessel encircles the fishing area by laying out the first leaded rope (1A), which can be up to 4000 m long. The end of the first rope is attached to one wing tip of the seine net. A second leaded rope is then connected to the other wing tip of the seine and laid out (Figure 1B) towards the starting point in a shape that ends up in a triangle (Figure 1C). The vessel then drags the ropes over the seabed and fish are herded in front of the seine net (Figure 1D, Figure 1E) to finally collect them (Figure 1F).

Fishing can take place from very shallow water down to around 180 m depth. The length of the seine ropes deployed in Danish seining typically varies between 4000 and 7920 m depending mainly on vessel size. Winch speed typically ranges from 1.5 to 3.5 knots and seine speed over ground gradually increases during the operation from 1.5 to up to 4.6 knots. Rope thickness varies between 20-30 mm diameter and speed usually starts at 1.5 knots increasing up to 4.6 knots. For Danish Seine, no penetration depth studies have been conducted, and for both Danish and Scottish seining, the assumption is made that the seine rope has a penetration depth equal to that of otter trawl sweeps and that the ground gear has an impact similar to otter trawl ground gear of the same type. Danish seines vary greatly in weight and impact. Danish seines of the type employed in the Dogger Bank are heavier duty with heavy ropes, while others used by one-man vessels in coastal zones are the traditional type with lighter ropes.³⁶

Flyshooting (also 'Scottish seine fishing')

Flyshooting can be considered a hybrid between anchored seining and demersal otter trawling, where the vessel moves forward while at the same time winching in the seine ropes.

"Fishing can take place at depths down to around 220 m. Typically the gear is set out from a buoy in roughly a triangular area on the seabed and then winched in as the vessel moves forwards, mostly at speeds between 0.5 and 2.0 knots. (...) Consequently, the seine will move forward at speeds above vessel speed, and this is also true for the seine ropes, but with large variation depending on the individual section of the rope. From literature results and interviews, the speed of the seine over ground was identified to gradually increase from 0 knots to typically between 2.5 and 3.0 knots at the end of the operation (...). The total seine rope lengths in flyshooting (4000–6000 m) are typically shorter than in Danish seining but the diameter typically larger, enabling the flyshooters to fish on rougher grounds."³⁷ Rope thickness is estimated at 43.4 mm (± 6.0) diameter,³⁸ but a diameter of 60 mm combination rope (polyethylene with a steel core) weighing more than 2 kg/m has also been reported³⁹ and commercial operators deliver combination rope to flyshooters up to 70 mm in diameter.⁴⁰ The ropes used in seining are known as combination rope or combi-rope and consist of steel cables covered in rope. Usually they contain a number of twisted strands of (galvanized) steel wire cable. They need to be replaced periodically (every couple of months). Annex 4 shows images of the seine ropes and flyshoot or Scottish seining gear.

³⁶ Jager, Z., Witbaard, R., and Kroes, M. *Impact of demersal & seine fisheries in the Natura 2000-area Cleaver Bank. A review of literature and available data*. Texel: NIOZ Royal Netherlands Institute for Sea Research, February 2018, p. 32. Available at: <http://imis.nioz.nl/imis.php?module=ref&refid=300074>;

Eigaard, O.R. et. al. (2015);

Noack, T. (2017). Danish seine – Ecosystem effects of fishing. Technical University of Denmark, National Institute of Aquatic Resources.

³⁷ Eigaard, O.R. et. al. (2015).

³⁸ Ibid.

³⁹ Madsen NAH, Aarsæther KG, Herrmann B (2017) Predicting the effect of seine rope layout pattern and haul-in procedure on the effectiveness of demersal seine fishing: A Computer simulation based approach. PLoS ONE 12(8): e0182609.

⁴⁰ <https://www.vcu.nl/nl/flyshoot>

2.3.2.2 Impacts of demersal seine fishing

Mobile bottom contacting fishing gears are known to have ecosystem impacts, including:

- Physical impact to seabed, penetration of the seabed⁴¹
- Impacts on benthic ecosystems⁴²
- Mortality of benthic invertebrates⁴³
- Physical disturbance of biogenic habitats⁴⁴
- Resuspension of sediments and subsequent change to geochemical processes as a result of nutrient and/or contaminant release⁴⁵
- Changes to species composition⁴⁶
- Reduction in habitat complexity⁴⁷

Bottom contacting fishing gears have degraded the Dogger Bank ecosystem. Its present condition is considered one of ecological degradation and impoverishment as a consequence of over two centuries of intensifying and increasingly destructive fisheries.⁴⁸

With regard to the specific impact of demersal seining on the favourable conservation status of the Dogger Bank SACs, we refer to the following assessments:

- In 2007 ICES already acknowledged that demersal seine fishing would be expected to reduce the abundance of long-lived, low-fecundity species in sandbank communities, and to change the community towards one more dominated by species that are less vulnerable to the mortality imposed by mobile, bottom-towed fishing gears.⁴⁹

⁴¹ Eigaard, O.R. et al. (2015).

⁴² Jennings, S., Dinmore, T. A., Duplisea, D. E., Warr, K. J., and Lancaster, J. E. 2001. Trawling disturbance can modify benthic production processes. *Journal of Animal Ecology*, 70: 459–475.

Kaiser, M. J., Collie, J. S., Hall, S. J., Jennings, S., and Poiner, I. R. 2002. Modification of marine habitats by trawling activities: prognosis and solutions. *Fish and Fisheries*, 3: 114–136

⁴³ Kaiser, M. J., Clarke, K. R., Hinz, H., Austen, M. C. V., Somerfield, P. J., and Karakassis, I. 2006. Global analysis of response and recovery of benthic biota to fishing. *Marine Ecology Progress Series*, 311: 1–14.

⁴⁴ Ibid.; and,

Cook, R., Farinas-Franco, J. M., Gell, F. R., Holt, R. H. F., Holt, T., Lindenbaum, C., Porter, J. S., et al. 2013. The substantial first impact of bottom fishing on rare biodiversity hotspots: a dilemma for evidence-based conservation. *PLoS One*, 8: e69904.

⁴⁵ O'Neill, F. G., and Summerbell, K. 2011. The mobilisation of sediment by demersal otter trawls. *Marine Pollution Bulletin*, 62: 1088–1097.

Bradshaw, C., Tjensvoll, I., Skoold, M., Allan, I. J., Molvaer, J., Magnusson, J., Naes, K., et al. 2012. Bottom trawling resuspends sediment and releases bioavailable contaminants in a polluted fjord. *Environmental Pollution*, 170: 232–241.

Martin, J., Puig, P., Palanques, A., and Ribo, M. 2014. Trawling-induced daily sediment resuspension in the flank of a Mediterranean submarine canyon. (J. D. Veerle Huvenne, Ed.). *Deep Sea Research II: Topical Studies in Oceanography*, 104: 174–183. doi:10.1016/j.dsr2.2013.05.036.

⁴⁶ Kaiser, M. J. et al. (2006).

⁴⁷ Kaiser, M. J. et al (2002).

⁴⁸ Plumeridge A.A., Roberts C.M. (2017) Conservation targets in marine protected area management suffer from shifting baseline syndrome: A case study on the Dogger Bank. *Mar Pollut Bull* 116:395-404.

⁴⁹ Interim Report 2007 for the ICES/BfN-project: *Environmentally Sound Fisheries Management in Protected Areas (EMPAS)*. ICES, 2008, p. 1.

- In 2012 an assessment by Lart et al. concluded that the sweeping, ploughing and hydrodynamic effect of both flyshoot and Danish seining produce changes in the seabed structure and have lethal and sublethal effects on the epifauna and infauna of the protected areas in the Dogger Bank.⁵⁰
- Van Rijnsdorp et al. in 2015 mentioned the vulnerability of the long lived and suspension feeding taxa of the Dogger Bank, such as sponges and soft corals, to the passage of flyshoot gear.⁵¹ However, in this study, used for the assessment in the Background Document, the full list of Dogger Bank H1110 typical species was not analysed.
- Predictive studies of Eigaard et al. in 2015 showed that the subsurface and surface impact of flyshoot fishery was similar to several other types of otter trawling and that the subsurface and surface footprint is larger than four types of otter trawling. Following the BENTHIS (Benthic Ecosystem Fisheries Impact Study) report, 2017, Flyshoot has the largest footprint of 1.6 km² of which 0.08 km² has an impact at the subsurface level (sediment penetration ≥ 2 cm)⁵²
- Bureau Waardenburg has reviewed all available scientific information up to March 2017 (including the before-mentioned field experiments, observational and predictive studies) about the impacts of demersal seining fisheries on the typical species of Dogger Bank habitat type H1110. The main conclusions regarding the impacts of demersal seining are that adverse effects caused by both flyshoot *and* Danish seines on the site integrity of the Dogger Bank Natura 2000 sites cannot be ruled out. The Bureau Waardenburg report found that ‘These observational and predictive studies suggest that the total number of typical H1110 species sensitive to demersal seining is substantial and counting to 28 typical species (at least 19 to bycatch and an additional 9 possibly sensitive to bottom disturbance), including both benthic species and fish’. This is a substantially larger number than was presented in the impact assessment used for the Background Document, which concluded an impact on only 2 typical species. In addition, fly-shoot and Danish seining combined caught five species of rays (4) and shark (1) including vulnerable, near-threatened, endangered and critically endangered species according to IUCN criteria.
- After the observational studies analysed by Bureau Waardenburg,⁵² Noack (2017)⁵³ reported five additional typical species as well as one additional species of shark as observed catch in Danish seining, which had not previously been reported as catch. The observational studies between 2013 and 2017 in the North Sea, including in the Dogger Bank, analysed by Bureau Waardenburg (2017) together with the observations by Noack (2017) showed that at least 24 of the 50 typical species of the Dogger Bank are regularly caught by demersal seines. In addition to these 24 species, 27 Dogger Bank species (of which 8 typical species), including ‘bio-engineers’ such as horse mussels, sand-mason worms and flat oysters, as

⁵⁰ Lart, W. *Fishing spatial-temporal pressures and sensitivities analysis for MPA Fishing Industry Collaboration Pilot FES 252: Report on Seafish workshop on the physical effects of fishing activities on the Dogger Bank*. 2012. Available at <http://nffo.org.uk/uploads/attachment/108/report-on-seafish-workshop-on-the-physical-effects-of-fishing-activities-on-the-dogger-bank.pdf>

⁵¹ Rijnsdorp, A.D., Bos, O.G., Slijkerman, D. *Impact Assessment of the Flyshoot fishery in Natura 2000 and MSFD areas on the Dutch continental shelf*. Wageningen: IMARES Wageningen UR. C162/15 C162/15, 2015.

⁵² Van der Reijden, K.J., Verkempynck, R., Nijman, R.R., Uhlmann, S.S., van Helmond, A.T.M., Coers, A. *Discard self-sampling of Dutch bottom-trawl and seine fisheries in 2013*. CVO report 14.007, IJmuiden, CVO, 2014; Verkempynck R, van der Reijden, K. *Overview Flyshoot data*. In: UR IW, editor. Wageningen: Kenniskring Flyshoot, 2015. Verschueren, B. *Kenniskring Flyshoot - ILVO@UK153*, in: (ILVO) IvLeV, editor, Oostende: ILVO, 2015;

⁵³ Noack, T. 2017. Danish seine – Ecosystem effects of fishing. Technical University of Denmark, National Institute of Aquatic Resources.

well as critically endangered common skate, and endangered Atlantic halibut have either been observed as catch or are considered sensitive to demersal seining (Annex 1B-1E; see table below for an overview).⁵⁴ Flyshoot and Danish seining combined caught 6 species of rays (4) and sharks (2), including vulnerable, near-threatened, endangered and critically endangered species according to IUCN criteria. It should be noted that the total list of 51 species, of which 32 are typical species, is not exhaustive.

51 species in total	Dogger Bank H1110 Listed typical species	Occurring species or species known to have occurred on the Dogger Bank	Dogger Bank occurring or known to have occurred vulnerable, threatened, endangered, critically endangered species
(by)catch in demersal seining	24 (Annex 1A)* *includes cod and thornback ray that could also fall within Annex 1C	11 (Annex 1D)	6 (Annex 1C)** **8 when you include cod and thornback ray from Annex 1A
Sensitive to bottom disturbance	8 (Annex 1B)	2 (Annex 1E)	
Total	32	13	6

Figure 3, overview of Dogger Bank UK, Dutch and German SAC's typical and other species impacted by flyshoot and Danish seines. Source: WWF, 2019

- In its conservation advice for the UK protected area in the Dogger Bank of January 2018 (JNCC, Dogger Bank Advice on Operations Guidance, 2018) the JNCC identifies demersal seine fishing as an activity with a direct and sensitive interaction with the site, introducing pressures to the habitat such as abrasion/disturbance of the substrate both on and below the surface of the seabed, and removal of non-target species. It also identified other interactions where there was insufficient evidence to assess what the impact of seine fishing would be on the habitat. The JNCC further recognises a) that the discarding of fish specimens from demersal seine net fisheries can be significant, b) that there are few studies of the non-fish bycatch composition of demersal seine fishing, c) that the non-fish bycatch composition of demersal seine fishing is “probably similar to that of demersal trawls”. The JNCC also established in its conservation advice for the UK site (JNCC, Dogger Bank Statements, 2018) that ‘demersal fishing’ (including demersal seine fishing) is one of the pressures that needs to be ‘reduced or removed’.
- A research report (Jager et al., 2018) on the impacts of mobile bottom impacting gears - including Flyshoot and Danish seines - on habitat H1170 of the Dutch Cleaver Bank showed that all mobile bottom contacting gears have a significant negative effect on the substratum and turbidity and thus on the vulnerable sessile epifauna and conservation objectives for habitat H1170. The report further concludes that “this is especially the case for gears with a large surface impacts like demersal seines”, and that “surface disturbance over a large area is more damaging to the characteristic epifauna than a deeper sub-surface

⁵⁴ We listed Dogger Bank H1110 typical species considered sensitive to bottom disturbance (number 25-32) in Annex 1B. These species include for example sea chervil, sand mason worm and various species of shellfish. Annex 1C reports species (number 33-38) caught by demersal seining, which -although not listed by the governments as Dogger Bank H1110 typical species- are nevertheless considered ‘vulnerable’, ‘(near-)threatened’, ‘endangered’, and ‘critically endangered’ according to the IUCN Red List of threatened species. Annex 1D reports Dogger Bank species (number 38-49) known to be typically occurring on the Dogger Bank, which have not been listed as H1110 typical species by the governments, and which have been reported as catch in demersal seining. In Annex 1E we list Dogger Bank species (number 50-51) known to occur or have typically occurred, which although not listed as H1110 typical species by the governments, are considered sensitive to demersal seining.

disturbance over a small area". Another report by Jager et al. (2018) on the impacts of mobile bottom impacting gears on the silt habitat of Dutch MSFD areas of the Frisian Front and the Central Oyster Grounds provides similar conclusions with respect to demersal seines.

- Annex 5 shows a number of pictures of demersal seining gear, the seine ropes and seine fisheries. Underwater footage of gear while in operation is available and added in Annex 5. The footage, which is publicly available and easily accessible through the internet, shows how the steel ropes that are part of seining gear drag over and at times through the seabed.
- Danish seining has been reported to catch some of the same vulnerable and sensitive species as flyshoot, some of which are also listed as Dogger Bank H1110 typical species (TS): sea anemones, common whelk (TS), red whelk (TS), crabs including hermit crabs (TS), swimming crab (TS), seamouse (TS), cockles such as prickly cockle (TS). In addition, 10 of the 12 typical fish species have been observed as catch in Danish seine: cod, dab, common dragonet, grey gurnard, lemon sole, plaice, scaldfish, solenette, thornback ray (near threatened), whiting, grey gurnard; all TS. Furthermore, Danish seining catches Atlantic halibut (endangered), monkfish, starry ray (vulnerable), common skate (critically endangered), dogfish (vulnerable), lesser spotted dogfish, bivalves including queen scallops, and horse mussels (horse mussel beds have OSPAR status threatened and/or declining).⁵⁵
- Underwater footage of Danish seines or snurrevad⁵⁶ shows that the leaded rope to which the net is attached, does in fact move through the upper layer of the seabed, particularly in uneven seabed. Danish seine catches include species living *on or above* the seabed, including crabs, sponges, anemones, scallops and many species of fish living both closer to the seabed as well as off the seabed and in the water column. Catches of Danish seine also include species that live *under* the seabed or burrowing and partially burrowing species, such as the prickly cockle, horse mussel and purple heart urchin. This is also relevant with regard to restoration of bio-engineers including horse mussels, flat oysters, sandmason worms and their ability to create reef-structures, which stabilize the seabed, increase biodiversity and strengthen the structure, functioning and resilience of habitat type H1110.
- Danish seining affects the physical structures, the diversity, the community structure and typical species. The relatively low subsurface impact of Danish seines compared to e.g. bottom trawling, does not exclude the bycatch and surface impacts of Danish seining from affecting the recovery potential of the H1110C. Eigaard et al. in 2015, and also Schückel et al. in 2017 concluded that the potential impact of Danish seining is only slightly weaker than that of Scottish seining.

In sum, all types of trawling, including demersal seines such as flyshoot and Danish seining adversely affect the integrity of the Dogger Bank sites.

Bibliographic references of recent scientific studies and reports in chronological order used under 'Impacts of seine fishing' and available to the governments at the time of drafting the measures

- Eigaard, Ole R., Francois Bastardie, Mike Breen, Grete E. Dinesen, Niels T. Hintzen, Pascal Laffargue, Lars O. Mortensen, J. Rasmus Nielsen, Hans C. Nilsson, Finbarr G. O'Neill, Hans Polet, David G. Reid, Antonello Sala, Mattias Sköld, Chris Smith, Thomas K. Sørensen, Oliver Tully, Mustafa Zengin, and Adriaan D.

⁵⁵ http://orbit.dtu.dk/files/93361677/Poster_Danish_seine_Ecosystem_effects_of_fishing_FINAL.pdf

⁵⁶ https://www.youtube.com/watch?v=tn6OKESf_Gk and <https://youtu.be/D39NuSMxWIk>

- Rijnsdorp. *Estimating Seabed Pressure from Demersal Trawls, Seines, and Dredges Based on Gear Design and Dimensions*. ICES Journal of Marine Science 73, no. Suppl1, I27-43, 2015. Available at e.g.: https://academic.oup.com/icesjms/article/73/suppl_1/i27/2573989?sid=13b80bc1-5464-4b75-a2de-1a10304eb2a0 See also <http://www.ices.dk/news-and-events/news-archive/news/Pages/IJMS-Editor's-Choice---Estimating-seafloor-pressure-from-fishing-gears-based-on-gear-design-and-dimensions.aspx>
- Noack, T., Frandsen, R.P., Krag, L.A., Mieske, B., Madsen, N.A.H. *Codend selectivity in a commercial Danish anchor seine*. Fisheries Research 186: 283-291, 2016b.
 - Bureau Waardenburg. *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. <https://www.buwa.nl/demersal-seining-doggersbank.html>.
 - Schückel, S., Günther, C., Schuchardt, B. “*Are species-rich gravel, coarse sand and shell layers*” within the Natura 2000-site “*Sylt Outer Reef*” sensitive to seine fishing? Bio Consult, April 2017. Available at <https://www.bfn.de/fileadmin/BfN/meeresundkuestenschutz/Dokumente/Bioconsult-sensitivity-epifauna-KGS-Seines-2017-04-23.pdf>
 - Rijnsdorp, A.D., Eigaard, O.R., Kenny, A., Hiddink, J.G., Hamon, K., Piet, G., Sala, A., Rasmus Nielsen, J., Polet, H., Laffargue, P., Zengin, M., Gregerson, O. *BENTHIS (Benthic Ecosystem Fisheries Impact Study)*, IMARES, IJmuiden, November 2017. Available at: https://www.benthis.eu/upload_mm/e/c/6/0d0e2a1c-53f2-48b2-84d7-d33ede63c994_BENTHIS_FinalReport_29Nov2017.pdf
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 - Jager, Z., Witbaard, R., and Kroes, M. *Impact of demersal & seine fisheries in the North Sea areas Frisian Front and Central Oyster Grounds. A review of literature and available data*. Texel: NIOZ Royal Netherlands Institute for Sea Research, July 2018. Available at: <http://imis.nioz.nl/imis.php?module=ref&refid=294528>
 - Van Wijnhoven, S., Rapportage TO beoordeling kwaliteitstoestand NCP op basis van BISI, 2018. See for the power point presentation of the research report: <http://ecoauthor.net/wp-content/uploads/2018/06/6-Benthos-NZ-SWijnhoven-22-05-2018.pdf>. The full report in Dutch, however, an English translation is foreseen, is available at: <http://ecoauthor.net/> and also: <http://ecoauthor.net/wp-content/uploads/2018/09/Eindrapport-TO-kwaliteit-benthische-habitats-KRM-Noordzee.pdf>

2.3.3.1 Stakeholder process

After years of talks and stakeholder processes guided by ICES, which involved the governments of the UK, Netherlands and Germany, environmental NGOs and the fisheries sector discussing fisheries management measures for the Dogger Bank Natura 2000 sites, the Dogger Bank Steering Group finally proposed in 2013 to close 33,8% of the Dogger Bank Natura 2000 sites to all bottom-impacting fisheries. Although this proposal was not a clear stakeholder compromise, it took into consideration important aspects of the proposals of all the stakeholders engaged in the process.

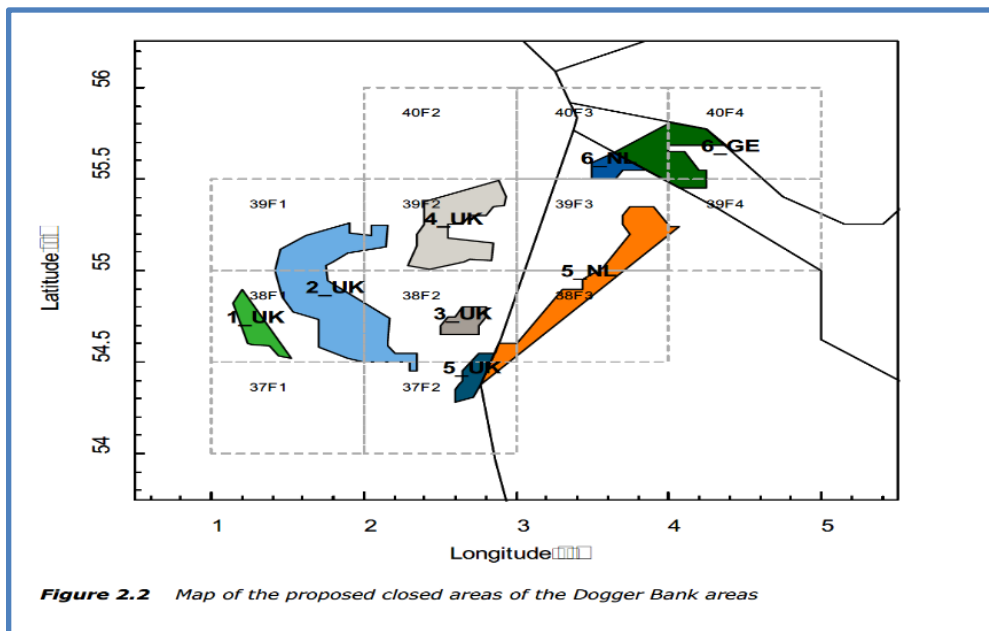
Before October 2015, several stakeholders recognised the existing uncertainties regarding the ecological effect of seine fishing. There is evidence that the governments involved had knowledge of the adverse effect of seine fishing on long-lived sensitive species.

Between the years 2015 and 2016 the Dogger Bank governments, without stakeholder consultation or scientific underpinning, decided to leave 95.3% of the area of the Natura 2000 sites in the Dogger Bank open to demersal seine fishing, a mobile bottom-impacting fishing method that causes bycatch of sharks, cold water coral and several typical species of habitat 1110 (See Annex 1A).

Full details of the process, by which the Joint Recommendation was agreed, can be found in Annex 3.

2.3.3.2 Management measures in the Joint Recommendation

The Joint Recommendation is built upon a zoning system dividing the area in six management zones and one (continuous) open zone.



Source: Hamon, K. G., N. T. Hintzen, J. A. E. van Oostenbrugge, 2017

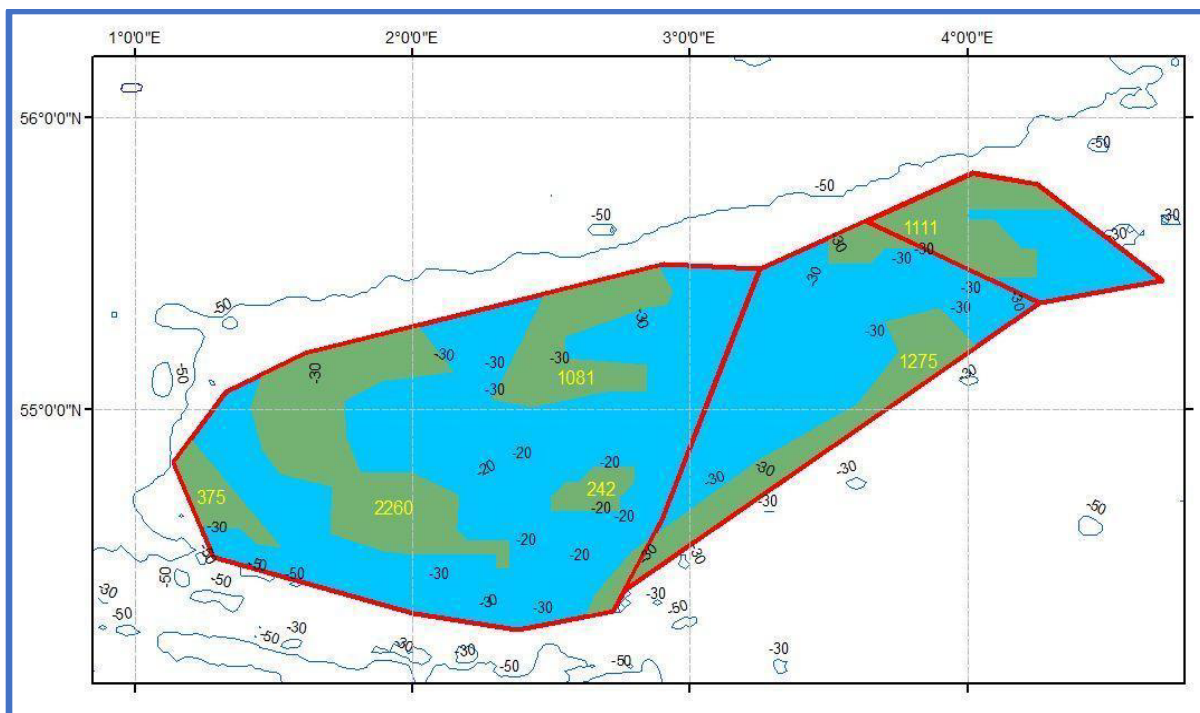


Figure 4 Map of the SAC areas on the Dogger Bank showing the DBSG proposal with a closed zone (Green) and an Open zone (Blue). Source: Background Document to the Joint Recommendation, p. 28.

The management zones chosen were based on the industry’s zoning proposal, which covers 22% of the sites, and adding areas of national concern (such as planned windfarms) and the zones recommended by the NGOs with the lowest landing value, until reaching 33,8% of the protected area of the Dogger Bank.⁵⁷

In the open zone (66,2% of the total area of the SACs), all types of mobile bottom-towed fishing gear are allowed. 33,8% of the total area of the SACs in the Dogger Bank is closed to beam trawl, bottom trawl/otter trawl, dredges and semi-pelagic trawls.

Only 4.7% of the total area of the SACs will be closed to all mobile bottom-towed fishing gear, including demersal seines. This managed zone is located in the German Dogger Bank SAC. This ‘seines impact research area’ – SIRA – of 890 km² will be closed to seining for only 3 years, “on an experimental basis”. The development of the closed area will be monitored to compare it with the other managed areas to verify the predicted impact of seines on habitat H1110.⁵⁸

New and/or modified mobile bottom contacting gears, e.g. pulse gear, can obtain a derogation from the ban of mobile bottom contacting gears “where the use of such gears will not jeopardize the delivery of the conservation objectives”.⁵⁹

2.3.3.3 Knowledge gaps in the ‘appropriate assessment’

⁵⁷ Background Document, p. 13-17.

⁵⁸ Ibid., p. 28-29.

⁵⁹ Ibid, p. 29.

The 'Background Document, Annex 1 to the Joint Recommendation for Offshore Fisheries Management on the International Dogger Bank under the Common Fisheries Policy, of 17 December 2018' submitted to the Scheveningen Group by the governments of the three initiating Member States (Germany, the Netherlands and The United Kingdom), contains the background information and the assessment of the impact of the fisheries management measures agreed in the Joint Recommendation, which allow all types of mobile bottom-towed fishing to take place in 66,2% of the total area of the site and demersal seine fishing to take place in 95.3% of the site.

As was mentioned earlier in this complaint, compliance with Article 6(3) requires carrying out the test of likely significant effect and an appropriate assessment of the fishing activities that are to be allowed in the site.

The 'appropriate assessment' presented in the Background Document and its annexes has a series of shortcomings, mainly related to the lack of an adequate appropriate assessment of the effects of seining on the Dogger Bank sites, due to the following:

- The Background Document to the Joint Recommendation states clearly that there is lack of certainty as to the effects of seine fishing on the Dogger Bank Habitat 1110: **“due to the lack of extensive in depth scientific data the impact of demersal seines on habitat 1110 and its typical species cannot be quantified in every desirable detail.** Field surveys directly analyzing the physical impact of demersal seines on benthic habitats and the mortality rates of benthic invertebrates are still lacking. Therefore an experimental study will be performed in addition to analysis of the basic monitoring data to analyse the effects of seine fisheries on the habitat type 1110 sandbanks”.⁶⁰
- The ICES advice that is cited as the scientific support for the Joint Recommendation recognizes that **further research is needed to fully understand the effect of mobile, bottom-towed fishing gears** (like demersal seines) **on sandbanks**, like the Dogger Bank.^{61, 62}
- At the end of 2015, when the joint recommendation and Background Document were created, on the basis of then recent available literature, uncertainty as to the effects of seining on benthic ecology still existed, as acknowledged by the Dutch Secretary of Economic Affairs in his letter of October that year to the Dutch House of Commons. The Secretary further mentioned that, “notwithstanding its dynamic character, on the Dogger Bank relatively many **long-lived species occur, sensitive to the impact of flyshoot**”.⁶³
- A review of literature and available data completed in March 2017 by Bureau Waardenburg demonstrated that the Background Document to the Joint Draft Recommendation failed to take account of the best scientific knowledge, by not considering several crucial previous studies.⁶⁴ Other studies published after March 2017 have also not been taken into account in the appropriate assessment.

⁶⁰ Background Document, p. 54

⁶¹ Interim Report 2007 for the ICES/BfN-project: *“Environmentally Sound Fisheries Management in Protected Areas” (EMPAS)*, ICES, 2008, p. 1.

⁶² ICES advice to the Dogger Bank Steering Group (6.3.3.9. Special request, Advice November 2012, ICES Advice 2012, Book 6, p. 5.

⁶³ Letter of the Secretary of Economic Affairs to the Dutch House of Commons (Tweede Kamer) of 15 October 2015, Tweede Kamer, vergaderjaar 2015-2016, 29 664, nr. 134. <https://zoek.officielebekendmakingen.nl/kst-29664-134.html>

⁶⁴ Bureau Waardenburg, March 2017; p 28.

- The Background Document to **the Joint Recommendation does not use the full list of typical species for H1110** Dogger Bank as listed by The Netherlands (EZ, 2014) and in the Natura 2000 Standard Data Forms of the UK (Joint Nature Conservation Committee, 2016) and Germany (Bundesamt für Naturschutz, 2010), which form the base line for the conservation objectives of the habitat type H1110 in the Natura 2000 areas on the Dogger Bank.⁶⁵ Only 13 out of 50 of the sites' typical species were taken into consideration in the Background Document.⁶⁶
- However, although not taking into account the effects of seining on the majority of Dogger Bank typical species, the Background Document still comes to the following conclusion: "in contrast to the relatively small impact on the subsurface level, **demersal seines are one of the most impacting mobile bottom-towed gears on the surface and its biological and structural features of the seabed** (sediment penetration < 2 cm). Taking into account the above-mentioned scientific results, Germany regards it as very likely that the favourable conservation status of habitat 1110 and its typical species of the Natura 2000 site of the Dogger Bank cannot be achieved with ongoing fishing activities with demersal seines."⁶⁷
- The latest conservation advice for the UK Dogger Bank SAC by the JNCC⁶⁸ acknowledges that there is sufficient evidence to suggest that there is a **direct and sensitive interaction between demersal seine fishing and the Dogger Bank protected habitat H1110**, with some of the pressures of demersal seine fishing on the habitat being "removal of non-target species" and "penetration and/or disturbance of the substrate below the surface of the seabed, including abrasion". For other activity-pressure-feature interactions, the JNCC considers that further information is required in relation to the effects of demersal seine fishing.
- The possibility that the proposed management measures could result in an increased use of seine gears, and an associated increase in negative impacts on the designated habitat and typical species of the Dogger Bank Natura 2000 sites, does not appear to have been considered. In the letter of 27 March 2013 the Dogger Bank Steering Group (DBSG) Chair considered the expected increase of seining: "*new developments (substitution of one gear by another) may lead to a level of effort of seining which will definitely lead to impeding the achievement of the conservation objectives*". See also Annex 4, "*The process leading to the proposed management measures of fisheries activities in the Dogger Bank Natura 2000 sites*". According to ICES, "In the North Sea, seiners (...) apparently avoid areas of high beam trawl effort",⁶⁹ and "the shallow areas proposed for closure to beam and otter trawls are important seine fishing grounds".⁷⁰ The closure of the management zones in the UK and Dutch Dogger Bank habitats H1110 only to beam and otter trawling is likely to result in an increase in the use of seines in the management zones.

2.3.3.4 Knowledge gaps in the 'Appropriate Assessment' exposed in the letter by the Dogger Bank Steering Group (DBSG) of 6 February 2019

⁶⁵ Bureau Waardenburg, March 2017; p. 30.

⁶⁶ Bureau Waardenburg, March 2017; p. 24, 29 and 33.

⁶⁷ Background Document, p. 53-54.

⁶⁸ JNCC, 2018 Supplementary Advice on Conservation Objectives for Dogger Bank Special Area of Conservation. Available at http://jncc.defra.gov.uk/pdf/DoggerBank_SACO_v1_0.pdf accessed on 3 Apr. 18.

⁶⁹ Interim Report 2007 for the ICES/BfN-project: "*Environmentally Sound Fisheries Management in Protected Areas*" (EMPAS), ICES, 2008, p. 30.

⁷⁰ ICES advice to the Dogger Bank Steering Group (6.3.3.9. Special request, Advice November 2012, ICES Advice 2012, Book 6, p. 5.

By email of Mr. Ton Ilstra (chair of DBSG, on behalf of the Netherlands, Germany and the United Kingdom) on 6th February 2019, the DBSG responded to the NGOs' emailed letter of 1st June 2017 by which the NGOs had submitted to the DBSG the report of Bureau Waardenburg (see section 4.1 of this complaint) in order to highlight the knowledge gaps in the assessment of the fishing activities in the Dogger Bank and to provide a scientific review of the effects of seine fishing (Danish seine and flyshoot) on the habitat of the Dogger Bank sites and their typical species .

The letter by the chair of the DBSG is further proof of the lacunae in the 'Appropriate Assessment' carried out by the governments and of a misapplication of Article 6 of the Habitats Directive. The main points of the letter are discussed below:

- In the letter of 6 February the DBSG's chair states that "there are no direct studies on physical impacts of demersal seines" as a justification for allowing seine fishing to take place in 95.3% of the area of the Dogger Bank sites.

Using this justification is contrary to the precautionary principle embedded in Article 6 of the Habitats Directive and is also contrary to the rulings of the CJEU that mandate that a plan or project can only be authorised if the competent authorities "have made certain that it will not adversely affect the integrity of the protected site. This is so when there is no reasonable doubt from a scientific point of view as to the absence of such adverse effects."⁷¹

This statement also dismisses out of hand the conclusions of reputable predictive studies (by Eigard et.al, 2015, as outlined in 2.3.2.2.) that argue that seine fishing has significant physical impacts, comparable to those of some types of trawls. The justification also ignores other types of adverse impact that can be caused by seine fishing, like bycatch of typical species and the subsequent imbalance of the ecosystem. Direct and observational studies regarding the incidental capture of the Dogger Bank typical species by demersal seines (outlined in section 2.3.2.2.) were shared with the DBSG and are not addressed in the chair's letter.

- The DBSG's chair dismisses the impacts of seine fishing on the basis that some studies find that depletion of biota is highly correlated with seabed penetration depth by trawls and seines lack the heavy gear components (e.g. otter doors, trawl shoes) of other mobile demersal gears.

However, these inferences are disproven by a review of various studies (discussed in section 2.1 and 2.3.2.2 of this complaint), which found that at least half (i.e. 24 out of 50) of the Dogger Bank Habitat 1110 typical species are caught by demersal seine fishing and that an additional 27 Dogger Bank species (of which 8 are typical species) have either been observed as catch or are considered sensitive to demersal seining. Further, the impacts of sediment penetration, especially the surface impacts of seining gears, which have been described in the above-mentioned research of Eigaard et.al., have not been rebutted in subsequent research studies.

- The DBSG's chair explains that demersal seines may impact the structure and function of sedimentary habitats and the long-term survival of their associated species, but states that sediment penetration is a

⁷¹ Case C-142/16, *Commission v Germany* p. 33

limited proxy for understanding that impact and therefore more field research is required. In the same paragraph, the DBSG's chair concludes that "the risk of not achieving the conservation objectives as a result of allowing flyshoot gears on the Dogger Bank is relatively low as a result of the interaction of the gear with the sandy habitats is relatively low."

This position violates the precautionary principle and Articles 6(2) and 6(3) of the Habitats Directive - even if seining were accepted as having a low level of risk of damage, this in itself is the key test that the law requires decision-makers to apply - even if seining were accepted as having a low level of risk of damage, this in itself is the key test that the law requires decision-makers to apply .

Further, the reference value used by the DBSG chair for determining that "the interaction of the gear with the sandy habitat is relatively low" is unclear. It is not clear from this statement whether, in using the term 'relatively low', the impact of seining gears on sandy habitats is being compared to (a) the impact of bottom-trawls, or (b) the impact on the specific habitat H1110 of the Dogger Bank or on other habitats, this assessment of risk cited in the DBSG chair's letter cannot be conclusive with respect to the *absence* of significant adverse effects. By analogy, the impact of bottom trawling may be relatively low compared to that of dynamite fishing, but this does not mean that the impact of bottom trawling per se is negligible.

- The DBSG's chair states that "Rijnsdorp et al (2015)⁷² clearly show that the intensity of seining is not such that the conservation targets would be threatened". followed by: " This conclusion is confirmed by the figure *infra* showing the average annual fishing effort in (in KW-days) for flyshooters in the period 2010-2014".

A conclusion relating seine intensity to the significance of effects was not drawn at all by Rijnsdorp et al in the report to which the DBSG chair refers. The Rijnsdorp et al report only refers to the distribution of Dutch vessels (and not to other Member States's vessels) deploying flyshoot and Danish seining in the period 2010-2014, thereby including in the report the figure which was included by the DBSG's chair in his letter as well. Rijnsdorp et al (2015), however, point at an increasing effort of seine fishing from 2010 to 2014, when "The number of fishing days increased from 170 in 2010 to 193 in 2014".

- The DBSG chair in his letter dismisses the concerns of the addressed NGOs in relation to the impact of seining by stating that "Even though the ICES advice of 2012 considers that the effect of seine fishing gear on the Dogger Bank habitats may not significantly impede the achievement of the conservation objectives, this statement applies to the situation with relatively low fishing effort" and adds "The Dogger Bank states are in agreement that adverse consequences of an extensive intensification of seining effort in the management zones should be prevented".

However, the Joint Recommendation submitted to the Commission does not significantly reduce the seine fishing effort in the Dogger Bank. And, in the Joint Recommendation, its Background Document or the DBSG chair's letter there are no threshold values establishing for fishing effort beneath which no adverse effects on site integrity occur, except that it is a given that when seining fisheries are completely absent in an area, there will be no seining effects. Further, the vulnerability assessment is based on 2012 levels of fishing effort, and fails to account for the observed (1) non-existent decrease; (2) non-existent

⁷² Rijnsdorp, A.D., Bos, O.G., Slijkerman, D. *Impact Assessment of the Flyshoot fishery in Natura 2000 and MSFD areas on the Dutch continental shelf*. Wageningen: IMARES Wageningen UR. C162/15 C162/15, 2015.

stabilization; (3) increase in Dogger Bank fishing effort, including destructive trawl fisheries (including demersal seining).

- The DBSG chair makes reference to the ICES advice, but fails to acknowledge ICES' caveat that this advice was "based on current knowledge" and in the same section of the advice, ICES specifies what is meant by 'current knowledge' by mentioning that "Little is known on the impacts of the various types of seine fishing gear on the benthic communities."⁷³

Moreover, in the same section ICES, after referring to the lack of knowledge on the impacts of seining, recommends that further studies are carried out to better understand the impacts of seining: "given the lack of information on the impact of seining in its different forms a risk analysis such as Ecological Risk Assessment for the Effects of Fishing (ERAEF) (WGECO; ICES 2012a) is a useful first step. This would provide an extended gear matrix to supplement the one carried out by FIMPAS. For example, comparisons with beam trawls in a relative framework, taking into account the efficiency of the fishery, the swept area, and the costs associated with gear change could be evaluated. Such a study could provide a semi-quantitative approach to evaluating the pressures on the benthic communities of different types of seine gears such as fly-shooters (Scottish seiners) and anchor seiners". This risk analysis recommended in 2012 by ICES as a useful first step was what later partially materialised in the predictive study by Eigaard et.al of 2015.

2.4 Breaches of the EU law in question

2.4.1 Breach of Article 6(1) of the Habitats Directive

Article 6(1) of the Habitats Directive: "For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites."

Article 6(1) of the Habitats Directive requires Member States to establish the necessary conservation measures for SACs that correspond to the ecological requirements of the natural habitat type for which the sites were designated and the species in Annex II present in the sites.

The Commission has explained that "Although the Directive does not contain any definition of the 'ecological requirements', the purpose and context of Article 6(1) indicate that these involve all the ecological needs, including **both abiotic and biotic factors**, which are deemed **necessary to ensure the conservation of the habitat types and species**, including their relations with the physical environment (air, water, soil, vegetation, etc.)."⁷⁴

⁷³ 6.3.3.9. Special request, Advice November 2012, Ecoregion North Sea (Annex 2 to the Background Document); see under 'Response to Question v) The likely impacts of seines including fly-shooting and the likely additional benefits from the prohibition of these gears...'.
⁷⁴ European Commission (2018). Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. p. 21. Available at:

http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_.nov_2018_endocx.pdf

According to Article 1(e) of the Habitats Directive, the conservation status of a natural habitat will be taken as 'favourable' when (inter alia) the conservation status of its typical species is favourable.⁷⁵

The three governments (the UK, The Netherlands and Germany) recognise in the Background Document to the Draft Joint Recommendation that in order to achieve a favourable conservation status of the Dogger Bank habitat H1110, "benthic communities should be characterized by, in particular, long-lived species. Of all typical occurring species, individuals should be present in natural proportions of sizes and ages."⁷⁶

The SACs in the Dogger Bank are already in unfavourable condition, and the quality of their benthic habitat continues to decrease due to the increase of bottom disturbance by bottom-impacting fisheries,⁷⁷ like trawling and demersal seine fishing.

A recent report published in Science Magazine explained that "much of the EU's spatially impressive MPA network is being affected more heavily than non protected areas by industrial fishing and, as such, provides a false sense of security about positive conservation actions being taken."⁷⁸ The same report explains that commercial trawling is the strongest predictor of biodiversity loss inside European Marine Protected Areas, and the abundance of indicator species like skates, rays and sharks decreases by up to 69% with increased trawling intensity.

As was explained in Section 2.3.2 of this complaint, demersal seine fishing impacts vast surface areas, causing lethal and sublethal effects to 32 of the typical species in the habitat H1110 in the SACs of the Dogger Bank.

The impact of mobile bottom-towed fishing gear has caused a shift of balance within biotic communities towards short-living and opportunistic deposit feeders at the expense of vulnerable, long-lived species like the thornback ray⁷⁹ and many "predator species have been reduced so significantly that they can no longer exert their former ecological roles."⁸⁰

The Joint Recommendation leaves 95.3% of the total area of the SACs in the Dogger Bank open to demersal seine fishing and 66,2% open to all types of mobile bottom-towed fishing gear, like beam trawls, bottom otter board trawls, dredges and semi-pelagic trawls.

There is no scientific support that demonstrates that keeping 95.3% of the total area of the SACs in the Dogger Bank open to mobile bottom-towed fishing gear will **ensure** the favourable conservation status of the habitat types and species of these SACs.

Therefore, the conservation measures do not correspond to the ecological requirements of the natural habitat types in Annex I of the Habitats Directive and breach Article 6(1) of said Directive.

2.4.2 Breach of Article 6(2) of the Habitats Directive

⁷⁵ Council Directive 92/43/EEC, article 1(e)

⁷⁶ Background Document, p. 26-27.

⁷⁷ Van Wijnhoven, S., Rapportage TO beoordeling kwaliteitstoestand NCP op basis van BISI, 2018.

⁷⁸ Dureuil, M. et al. Elevated trawling inside protected areas undermines conservation outcomes in a global fishing hot spot. *Science* 362 (6421), 1403-1407. DOI: 10.1126/science.aau0561.

⁷⁹ Background Document, p. 22. See also Van Moorsel (2011), p. 53.

⁸⁰ Plumeridge, & Roberts. (2017). Conservation targets in marine protected area management suffer from shifting baseline syndrome: A case study on the Dogger Bank. *Marine Pollution Bulletin*, 116(1-2), 395-404

Article 6(2) of the Habitats Directive: “Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive”.

The Special Areas of Conservation (SACs) in the Dogger Bank were designated as Sites of Community Importance in the following years, respectively:

- UK (UK0030352) - proposed as SCI in 2011 and confirmed as a SCI in 2012
- The Netherlands (NL2008001) - proposed as SCI in 2008 and confirmed as a SCI in 2009
- Germany (DE1003301) – proposed as SCI in 2004 and confirmed as a SCI in 2007

Article 4(5) of the Habitats Directive mandates that as soon as an area is listed as a Site of Community Importance, it shall be subject to Article 6(2), 6(3) and 6(4) of the Habitats Directive.

In Article 6(2) of the Habitats Directive we find the obligation for Member States to take appropriate steps to avoid “the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of [the Habitats] Directive.”

In the guidance document *Managing Natura 2000 Sites - The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, the Commission explains that the obligations under this Article apply to fishing, even when it does not require prior authorisation.⁸¹

Since 2007 for Germany, 2009 for the Netherlands, and 2012 for the UK, the governments were under the legal obligation to avoid the deterioration of the natural habitats for which the SCI were listed and later designated as SACs.

To this date, diverse types of industrial fishing activities are allowed to take place in Natura 2000 sites in the Dogger Bank. The types of fishing gear that are used in the Natura 2000 sites in the Dogger Bank – beam trawls, Danish and Scottish seines, dredges, otter boards, twin trawls and pair trawls⁸² – erode the sea bed, cause the bycatch of typical species and deteriorate the ecosystem of habitat H1110 in the Dogger Bank by distorting the species composition towards smaller and short-lived species.

2.4.2.1 The meaning of deterioration and significant disturbance

In its 2018 guidance on the interpretation of Article 6 of the Habitats Directive, the Commission explained that habitat deterioration can be assessed against a habitat’s restored condition: “Habitat deterioration occurs on a site when the area covered by the habitat type or habitat of the species in this site is reduced, or the specific structure and functions necessary for the long-term maintenance of that habitat or the status of the species which are

⁸¹ European Commission (2018), *Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC*, p. 75. Available at:

http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_.nov.2018_endocx.pdf

⁸² Hamon, K. G., N. T. Hintzen, J. A. E. van Oostenbrugge, 2017. *Overview of the international fishing activities on the Dogger Bank; Update with Dutch, British, Danish, German, Belgian, Swedish and French data for 2010-2015*. Wageningen, Wageningen Economic Research, Memorandum 2017-050. Available at <http://edepot.wur.nl/416465>.

associated with this habitat are reduced in comparison to their initial **or restored** condition. **This assessment is done according to the site's conservation objectives** and its contribution to the coherence of the network.”⁸³

If a site is designated in unfavourable condition for its potential to contribute to the Natura 2000 network, it is only logical that deterioration should be assessed in relation to the site's restoration, as that should be the site's conservation objective.

In 2018, the Dutch Marine Strategy Framework Benthic Monitoring Programme, measuring the status and development of the quality of the benthic habitats in the Dutch part of the North Sea, concluded that **the quality of the benthic habitat of the Dogger Bank is decreasing** and that this decrease represents a consistent deviation of the reference since 2006 (when it had already been degraded by overexploitation and habitat destruction). The research further concludes that, although ecological disturbance affects the benthic quality, **the downward trend is being determined by the increase of bottom disturbance by bottom-impacting fisheries.**⁸⁴

It is clear, that bottom-impacting fishing (techniques like trawling, dredging and seine fishing) are causing a deterioration of the natural habitats.

By continuing to allow seine fishing (a bottom-impacting fishing technique) in 95.3% of the total area of the Dogger Bank SACs and allowing other types of bottom-impacting fishing activities to continue in 66,2% of the sites, the governments are failing to prevent deterioration of the natural habitats in violation of Article 6(2) of the Habitats Directive.

2.4.2.2 Level of protection required from the preventive measures

According to the CJEU, “a preventive measure complies with Article 6(2) of the Habitats Directive only if it is **guaranteed** that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives”⁸⁵

The CJEU has clarified that “the provisions of Article 6 of the Habitats Directive must be construed as a coherent whole in the light of the conservation objectives pursued by the directive. Indeed, **Article 6(2) and Article 6(3) are designed to ensure the same level of protection** of natural habitats and habitats of species.”⁸⁶

The Advocate General in *Waddenzee* explained that “the substantive standard of protection provided for by subparagraphs (2) and (3) of Article 6 of the habitats directive is identical”⁸⁷ and that the measures taken by the competent authorities under Article 6(2) of the Habitats Directive “may be no less effective than the procedure under Article 6(3) of the Habitats Directive. This standard of protection would not be provided if authorisation were granted even though reasonable doubts existed as to the absence of adverse effects on the integrity of the site concerned.”⁸⁸

⁸³ Ibid 75, p. 31.

⁸⁴ Van Wijnhoven, S., Rapportage TO beoordeling kwaliteitstoestand NCP op basis van BISI, 2018.

⁸⁵ Cases C-387/15 and C-388/15, *Hilde Orleans and Others v Vlaams Gewest*, para. 40

⁸⁶ Case C-258/11 *Peter Sweetman and Others v An Bord Pleanála*, para 24

⁸⁷ Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*. Opinion of the Advocate General, para. 117

⁸⁸ Ibid, para. 118

With this in mind, the quality of the assessment submitted with the Joint Recommendation can be considered indicative of the level of the governments' efforts to equip themselves with the information to prevent deterioration in these sites. Further, the principle of equivalent protection by Articles 6(2) and 6(3) of the Habitats Directive is also important in the context of the standard of scientific certainty required in support of decision on whether and how to manage fishing activities in Natura 2000 sites.

2.4.2.3 The level of certainty required for the obligation to prevent deterioration or significant disturbance to arise

Article 6(3) of the Habitats Directive establishes that a plan or project can only be authorised if the competent authorities "have made certain that it will not adversely affect the integrity of the protected site. This is so when there is no reasonable doubt from a scientific point of view as to the absence of such adverse effects."⁸⁹

To ensure the same level of protection is achieved under Articles 6(2) and 6(3), when Member States are considering whether deterioration will occur they should be held to the same standard of proof as when they are considering if a project will cause adverse effect (and therefore whether it can be authorised).

This was explained by the Commission in its guidance document: "Article 6(2) and (3) of the Habitats Directive must be construed as a coherent whole and are designed to ensure the same level of protection of habitat types and habitats of species (C-258/11, paragraph 32; C-521/12, paragraph 19; C-387 & 388). **Therefore, the assessment of the deterioration, if necessary, should follow similar criteria and methods as those used in applying Article 6(3).**"⁹⁰

The CJEU has held that the very existence of a probability or risk that an economic activity on a protected site might cause significant disturbances for a species is capable of constituting an infringement of Article 6(2) of the Habitats Directive, without a cause and effect relationship between that activity and significant disturbance to the species having to be proved.⁹¹

The CJEU explains that when a project has been carried out in a Natura 2000 site without having been subject to an appropriate assessment under Article 6(3) of the Habitats Directive and there is a probability of risk to the site, the obligation under Article 6(2) to prevent the deterioration of the site and the significant disturbance of the species for which the site was designated entails an obligation to review the effects of the plan or project on the basis of the best scientific knowledge:

"Where such a probability or risk might appear because a subsequent review of the implications of a plan or project for the site concerned on the basis of the best scientific knowledge was not carried out — in the form of an 'appropriate step' within the meaning of Article 6(2) of the Habitats Directive — **the general obligation of protection referred to in paragraph 37 of this judgment entails an obligation to carry out that review.**"⁹²

⁸⁹ Case C-142/16, *Commission v Germany* para. 33

⁹⁰ European Commission (2018). "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC", p. 29. Available at:

http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_.nov.2018_endocx.pdf

⁹¹ Case C-404/09, *Commission v Spain* para. 142.

⁹² Case C-399/14, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen* para. 42-44

As was explained in point 2.3.3.3, the UK, the Netherlands and Germany have not reviewed the impact of the activities that are carried out in the site, particularly mobile bottom-towed fishing, in light of the best scientific knowledge, and stark scientific lacunae remain in relation to the effects of demersal seine fishing on many of the typical species of the site and the ecological balance within the biotic communities in the site.

The governments need to understand the impact that the activities they allow in the Dogger Bank will have on its habitats and species, and, importantly, understand these impacts beyond reasonable scientific doubt. This standard was established in *Waddenzee*⁹³ and upheld in subsequent cases like *Commission v Portugal*,⁹⁴ *Commission v Italy*,⁹⁵ *Orleans*,⁹⁶ and *Commission v Germany*.⁹⁷

Article 6(2) of the Habitats Directive imposes on the governments an obligation to guarantee that the activities they allow to continue taking place in the site will not cause the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive. They are required to be certain of the impacts of the activities that take place in the sites beyond reasonable scientific doubt. The governments are required to carry out a review of those activities on the basis of the best scientific knowledge. This was not done to the standard required, as is shown in section 2.3.3.3 which highlights the knowledge gaps in the assessment of the impacts of fishing activities on the site.

The UK, the Netherlands and Germany are breaching their obligations under Article 6(2) of the Habitats Directive, by allowing all types of mobile bottom-towed fishing gear to deteriorate the seabed and benthic communities of the sites since they were listed as SCIs. The governments failed to comply with their duty to adopt preventive measures to avoid the deterioration of the SCIs and later SACs in the Dogger Bank. Further, the content of the Joint Recommendation strongly suggests that they do not intend to take adequate steps to prevent further deterioration.

By failing to exclude on the basis of the best scientific knowledge that the fishing activities that have been allowed in the sites will not cause any disturbance likely significantly to affect the sites' conservation objectives, by allowing bottom-towed fishing activities in most of the area of the Dogger bank SACs, and by failing to adopt preventative measures to avoid deterioration of the SACs, the governments are in breach of their obligations under Article 6(2) of the Habitats Directive.

2.4.3 Why adopting the measures in the Joint Recommendation would breach Article 6(3) of the Habitats Directive

Article 6(3) of the Habitats Directive: "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the

⁹³ Ibid 53, para. 56.

⁹⁴ C-239/04, *Commission v Portugal*, para. 20.

⁹⁵ C-304/05, *Commission v Italy*, para. 59.

⁹⁶ C-387/15 and C-388/15, *Orleans and others v Gewest*, para. 50.

⁹⁷ C-142/16, *Commission v Germany*, para. 33.

site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

2.4.3.1 Fishing is a plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon

Article 6(3) of the Habitats Directive does not define the concept of what can be considered as a plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect on it.

The CJEU in *Waddenzee*⁹⁸ filled this void by applying the definition of ‘project’ contained in Article 1(2) of the Directive 85/337 where ‘project’ is defined as:

- ‘the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.’

The CJEU found that this definition is relevant to defining the concept of plan or project as provided for in the Habitats Directive, because it seeks to prevent activities that are likely to damage the environment from being authorised without prior assessment of their impact on the environment.⁹⁹

In *Waddenzee*, the CJEU considered that “an activity such as mechanical cockle fishing is within the concept of ‘project’ as defined in the second indent of Article 1(2) of Directive 85/337.”¹⁰⁰

If mechanical cockle fishing is within this concept of ‘project’, by analogy we must understand that other types of fishing, such as demersal seine fishing, are covered by the definition and are thus ‘projects’ under Article 6(3) of the Habitats Directive.

2.4.3.2 The test of likely significant effect

In accordance to Article 6(3) of the Habitats Directive, if the plan or project is likely to have a significant effect on the protected site, it shall be subject to an appropriate assessment of its effects of the site.

The CJEU established that to determine whether a project is **likely** to have a significant effect, “the criterion must be whether or not reasonable doubt exists as to the absence of significant adverse effects.”¹⁰¹

The criteria for determining whether the effect is likely to be **significant** was described by the Advocate General in *Sweetman*¹⁰²: “The requirement that the effect in question be ‘significant’ exists in order to lay down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded...The threshold at the

⁹⁸ Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, para. 24

⁹⁹ *Ibid* 34, para. 26

¹⁰⁰ *Ibid* 34, para. 25

¹⁰¹ *Ibid* 34, para. 73.

¹⁰² Case C-258/11 *Peter Sweetman and Others v An Bord Pleanála*. Opinion of the Advocate General, para. 48, 49.

first stage of Article 6(3) is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken of the implications of the plan or project for the conservation objectives of the site.”

As has been explained before, multiple scientific studies¹⁰³ establish that demersal seine fishing is likely to have a significant effect on the Dogger Bank H1110 sites. These effects range from changes in the typical species present in the site to disturbance of the substrate and surface of the seabed. It follows that demersal seine fishing must be subject to an appropriate assessment by a competent authority before it can be authorised to carry on.

2.4.3.3 The inadequate ‘appropriate assessment’ of the implications of the plan or project in view of the site’s conservation objectives

According to the CJEU, the appropriate assessment “cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.”¹⁰⁴

Section 2.3.3.3 of this complaint explains the main knowledge gaps in the ‘appropriate assessment’ carried out by the governments to determine the plans or projects that are to be allowed in the SACs in the Dogger Bank.

These gaps are mainly the following [please refer to the aforementioned section for further details]:

- The studies used in the ‘appropriate assessment’ did not consider the full list of typical species for evaluating the impacts that the fishing activities that will be allowed in the sites under the Joint Recommendation and therefore failed to identify the sensitive interaction between at least 30 typical species of the sites and demersal seine fishing. The CJEU has established that it cannot be held that an assessment is appropriate where information and reliable updated data concerning the habitats and species in the site are lacking.¹⁰⁵
- The ‘appropriate assessment’ also failed to consider the results of prominent studies regarding the interaction of demersal seine fishing and benthic species typical of the habitat 1110, in spite of those studies having been shared by stakeholders with the decision makers in each Member State. Thus, the governments breached their duty to consider all the aspects of the plan or project which can, either by themselves or in combination with other plans or projects, affect the conservation objectives of that site in the light of the best available scientific knowledge in the field when preparing an appropriate assessment.¹⁰⁶
- The Background Document to the Joint Recommendation recognises there are substantial lacunae regarding the impact of seine fishing on the integrity of the sites¹⁰⁷ and the ICES advice that is cited as the scientific support for the Joint Recommendation acknowledges that further research is needed to fully

¹⁰³ Please refer to those listed in section 2.3.2.2. of this complaint.

¹⁰⁴ Ibid 99, para. 44.

¹⁰⁵ Case C-43/10, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others v Ipourgos Perivallontos, Chorotaxias kai Dimosion ergon and Others*, para. 115

¹⁰⁶ Case C-441/17, *Commission v Poland*, para. 113.

¹⁰⁷ Background Document, p. 53-54.

understand the effect of mobile, bottom-towed fishing gears (like demersal seines) on sandbanks, such as the Dogger Bank.

- The 'appropriate assessment' fails to consider the effects of future intensification of the demersal seine fishing activities in the UK and Dutch management zones and after three years also in the German management zone, thus collectively in 33,8% of the sites, due to the closures to trawling and other mobile bottom-towed fishing gear in the management zones. By failing to assert the effect of the likely intensification by substitution of seine fishing in the management zones, areas where otter and beam trawling is carried out at present, the assessment made for the Joint Recommendation fails to identify all the aspects of the plan or project (seine fishing) which can affect the conservation objectives for the UK and Dutch habitat H1110 of the Dogger Bank. Further, in the Commission Staff Working Document on Article 11 CFP it is considered a good practice that "the possible displacement of the fishing effort and its impact on new areas should be evaluated and reported accordingly".

The European Commission has explained that the appropriate assessment of a plan or project must evaluate its effects on all the essential elements of the protected habitats, including the typical species and those that play a **role in the food chain** of the site's target features: "Whilst the focus should be on the species and habitats of Community interest (...) that have justified the site designation, it should not be forgotten that these target features also interact with other species and habitats, as well as the physical environment in complex ways. It is therefore important to consider all the elements that are essential to the functions and the structure of the site and to the habitat types and species present. Furthermore, other species can also be relevant in determining the potential effects on protected habitats if they constitute typical species of the habitat in question or play a **role in the food chain** on which the site's target features depend."¹⁰⁸

The Background Document to the Joint Recommendation acknowledges the impact that demersal seining - a plan or project that would be allowed in 95.3% of the sites, were the Joint Recommendation to be adopted by the Commission - on typical species in the site, but fails to demonstrate how this will not constitute an adverse effect on the integrity of the sites: "According to current assessments, particularly benthic epifauna e.g. helmet crab (*Eupagurus bernhardus*), little serpent star (*Ophiura albida*), brittle star (*Ophiura ophiura*), whelk (*Buccinum undatum*) and sea-potato (*Echinocardium cordatum*) would be negatively affected by the different types of demersal seines."¹⁰⁹

In fact, the Background Document literally says that the food chain effects of the fisheries management measures proposed were not evaluated in relation to their impacts on the food chain: "Fisheries management measures will directly affect at least two different trophic levels; however, **food chain effects are not evaluated with regard to achieving favourable conservation status.**"¹¹⁰

The CJEU has also established that "Article 6(3) of the Habitats Directive must be interpreted as meaning that, **where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained , the 'appropriate assessment' must include an explicit and detailed statement of**

¹⁰⁸ European Commission (2018), *Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC*, p. 50. Available at: http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_.nov.2018_endocx.pdf

¹⁰⁹ Background Document, p. 54

¹¹⁰ *Ibid*, p. 76.

reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.”¹¹¹

For several years, NGOs have communicated to the governments that there are significant knowledge gaps in their assessment of the effects of seine fishing in the Natura 2000 sites in the Dogger Bank, even providing scientific evidence of effects that have not been taken into consideration in the governments’ assessments.

Far from dispelling all reasonable scientific doubt about the effect on the integrity of the site of the fishing activities that would be authorised were the Joint Recommendation adopted by the Commission, the governments proceeded to submit their proposal in spite of the glaring evidence of the remaining uncertainties.

In the text of the Background Document that accompanies the Joint Recommendation we can even find direct acknowledgement by the governments of the lacunae regarding the effects of seine fishing on the sites and their typical species: “due to the lack of extensive in depth scientific data the impact of demersal seines on habitat 1110 and its typical species cannot be quantified in every desirable detail. Field surveys directly analyzing the physical impact of demersal seines on benthic habitats and the mortality rates of benthic invertebrates are still lacking.”¹¹²

Further, the ‘appropriate assessment’ has another flaw: the implications of the plan or project were not assessed *in view of the site’s conservation objectives*, as prescribed by Article 6(3) of the Habitats Directive.

The effect of the plan or project on the integrity of the site cannot be assessed only in view of the present condition of the site, the assessment should also inquire whether the plans or projects that are being evaluated would allow the achievement of the conservation objectives of the site. This is particularly true of sites that were in unfavourable conservation status when designated. If the appropriate assessment only analysed the plans or projects in relation to the present conditions of sites in unfavourable conservation status, restoration objectives could never be achieved.

As Plumeridge (2017) explains, “The Dogger Bank represents a case study in the problems of shifting baselines leading to low conservation ambition and flawed management. Our research has demonstrated that the present condition of the Bank is one of ecological degradation and impoverishment as a consequence of over two centuries of intensifying and increasingly destructive fisheries”.¹¹³

The fact that there are existing fishing activities in the sites does not mean that any improvement achieved against the baseline conditions will determine that the fishing activities that are allowed to continue taking place in the Dogger Bank do not have an adverse effect on the integrity of the SACs. This would imply that existing fisheries activities are exempt from complying with Articles 6(2) and 6(3) of the Habitats Directive. The CJEU has made it clear that existing fisheries activities are not exempt.

¹¹¹ Case C-461/17, *Holohan and others v National Parks and Wildlife Service*, para. 52. In this case the European Court of Justice also ruled that as regards other habitats and/or species present on the site (for which that site has not been listed) and habitats and/or species located outside that site, Article 6(3) requires that typical habitats or species must be included in the appropriate assessment, if they are necessary to the conservation of the habitat types and species listed for the protected area. Therefore an appropriate assessment must: (i) catalogue the entirety of habitat types and species for which a site is protected; and (ii) identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitats and/or species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.

¹¹² Background Document, p. 54

¹¹³ *Ibid* 74, p.23.

In *Waddenzee*, the CJEU stated that “The fact that the activity has been carried on periodically for several years on the site concerned and that a licence has to be obtained for it every year, each new issuance of which requires an assessment both of the possibility of carrying on that activity and of the site where it may be carried on, does not in itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive.”¹¹⁴

This interpretation was reinforced in a later case, in which the CJEU stated that even ongoing maintenance works that were already authorised under national law constituted a project for the purposes of the Habitats Directive¹¹⁵ and were subject to Articles 6(3) and 6(4) of the Habitats Directive; if it were otherwise, “the objective of the conservation of natural habitats and of wild fauna and flora pursued by the Habitats Directive would be at risk of not being fully achieved”.¹¹⁶

In *Sweetman*, the CJEU explained that, “It follows that **Article 6(2) to (4)** of the Habitats Directive impose upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of the directive, to maintain, **or as the case may be restore, at a favourable conservation status** natural habitats and, in particular, special areas of conservation”¹¹⁷. Given that the Dogger Bank sites are in unfavourable conservation status, the governments a duty to restore under Article 6(2). It cannot be correct that a member state relies on its own failure to comply with Article 6(2) in order to apply a lower baseline in a test under Article 6(3) and thereby allow damaging activities to continue.¹¹⁸

The effects of allowing seine fishing to continue taking place in 95.3% of the Dogger Bank protected area and all types of trawling to continue taking place in 66,2% of the area were not assessed against the backdrop of the conservation objectives of the sites, which are in unfavourable condition and for which each Member State has a restoration conservation objective.

	UK - ‘Dogger Bank’ UK0030352 ¹¹⁹	The Netherlands - ‘Doggersbank’ NL2008001	Germany - ‘Doggerbank’ DE1003301
Conservation objectives	For the feature to be in favourable condition thus ensuring site integrity in the long term and contribution to Favourable Conservation Status of Annex I Sandbanks which are slightly covered by seawater all the	<ul style="list-style-type: none"> • Maintenance of the surface and improvement of the quality of habitat H1110 permanent submerged sandbanks Dogger Bank. • In order to maintain the population of the Habitats 	<ul style="list-style-type: none"> • Maintenance and restoration of the site’s specific ecological functions, biological diversity and natural hydrodynamics and morphodynamics. • Maintenance and restoration at favourable conservation

¹¹⁴ Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*. Para. 28

¹¹⁵ Case C-226/08 *Stadt Papenburg v Bundesrepublik Deutschland*, paras. 41 and 50.

¹¹⁶ *Ibid*, para. 43.

¹¹⁷ Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, para. 36.

¹¹⁸ In cases C-418/04, *Commission v Ireland*, and C-301/12, *Cascina Tre Pini Ss v Ministero dell’Ambiente e della Tutela del Territorio e del Mare and Others*, the CJEU explained that Member States could not use their own lack of compliance with their obligations under the Birds and Habitats Directives to declassify a Natura 2000 site.

¹¹⁹ JNCC (2018), Conservation Objectives for Dogger Bank Special Area of Conservation. p.2 Available at:

http://jncc.defra.gov.uk/pdf/DoggerBank_Conservation_Objectives_v1_0.pdf

	<p>time. This contribution would be achieved by maintaining or restoring, subject to natural change:</p> <ul style="list-style-type: none"> • The extent and distribution of the qualifying habitat in the site; • The structure and function of the qualifying habitat in the site; and • The supporting processes on which the qualifying habitat relies. 	<p>Directive species Harbour porpoise, common seal and grey seal: maintenance of surface and quality of their natural habitat.</p>	<p>status of habitat type code: 1110 (sandbanks which are slightly covered by sea water all the time) together with its characteristic and endangered ecological communities and species.</p> <ul style="list-style-type: none"> • Maintenance and restoration at favourable conservation status of the following Habitats Directive species and their natural habitats: Harbour porpoise and common seal.
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The ‘appropriate assessment’ does not answer questions about the fishing activities’ potential to impede achieving the conservation objectives of the site or to interfere with the balance, distribution and density of key species that are the indicators of the favourable conditions of the site. In the text of the Background Document that accompanies the Joint Recommendation we can even find that “taking into account the above mentioned scientific results Germany regards it as very likely that the favourable conservation status of habitat 1110 and its typical species in the Natura 2000-site of the Dogger Bank cannot be achieved with on-going fishing activities with demersal seines.”¹²⁰

The ‘appropriate assessment’ of the plan or project of demersal seine fishing in the Joint Recommendation is inadequate because it did not provide reasonable scientific certainty about the effect of the plan or project on the integrity of the sites in view of their conservation objectives.

2.4.3.4 Compliance with Article 6(3) of the Habitats Directive for the authorisation of plans or projects following the process of Article 11 of the CFP

<p><i>Article 11</i></p> <p>Conservation measures necessary for compliance with obligations under Union environmental legislation</p> <p>1. Member States are empowered to adopt conservation measures not affecting fishing vessels of other Member States that are applicable to waters under their sovereignty or jurisdiction and that are necessary for the purpose of complying with their obligations under Article 13(4) of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC or Article 6 of Directive 92/43/EEC, provided that those measures are compatible with the objectives set out in Article 2 of this Regulation, meet the objectives of the relevant Union legislation that they intend to implement, and are at least as stringent as measures under Union law.</p>

¹²⁰ Background Document, p. 53-54

2. Where a Member State ("the initiating Member State") considers that measures need to be adopted for the purpose of complying with the obligations referred to in paragraph 1 and other Member States have a direct management interest in the fishery to be affected by such measures, the Commission shall be empowered to adopt such measures, upon request, by means of delegated acts in accordance with Article 46. For this purpose, Article 18(1) to (4) and (6) shall apply mutatis mutandis.

3. The initiating Member State shall provide the Commission and the other Member States having a direct management interest with relevant information on the measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement. The initiating Member State and the other Member States having a direct management interest may submit a joint recommendation, as referred to in Article 18(1), within six months from the provision of sufficient information. The Commission shall adopt the measures, taking into account any available scientific advice, within three months from receipt of a complete request.

If not all Member States succeed in agreeing on a joint recommendation to be submitted to the Commission in accordance with the first subparagraph within the deadline set therein, or if the joint recommendation is deemed not to be compatible with the requirements referred to in paragraph 1, the Commission may submit a proposal in accordance with the Treaty.

4. By way of derogation from paragraph 3, in the absence of a joint recommendation referred to in paragraph 3, in cases of urgency, the Commission shall adopt the measures. The measures to be adopted in a case of urgency shall be limited to those in the absence of which the achievement of the objectives associated with the establishment of the conservation measures in accordance with the Directives referred to in paragraph 1 and the Member State's intentions, is in jeopardy.

5. The measures referred to in paragraph 4 shall apply for a maximum period of 12 months which may be extended for a maximum period of 12 months where the conditions provided for in that paragraph continue to exist.

6. The Commission shall facilitate cooperation between the Member State concerned and the other Member States having a direct management interest in the fishery in the process of implementation and enforcement of the measures adopted under paragraphs 2, 3 and 4.

Article 11 of the CFP precludes a Member State from adopting unilaterally, with respect to the waters under their sovereignty or jurisdiction, the necessary measures to meet its obligations under Article 6 of the Habitats Directive when other Member States have a direct management interest in the fishery to be affected by such measures. In those instances, the measures should be adopted by the Commission, upon the submission of a joint recommendation by the initiating Member State and the other Member States having a direct management interest.

Once the Commission has adopted the measures in the joint recommendation, governments are not free to unilaterally apply Article 6(3) of the Habitats Directive and deny authorisation to plans or projects that were allowed following the process of Article 11(3) of the CFP. Article 11 of this Regulation embodies the regionalisation of EU fisheries management. Carrying out a subsequent assessment of fishing activities that can take place in the site at national level would imply the unilateral revocability of Article 11 of the CFP, which is not the case.¹²¹

¹²¹ E.g., the 'Wet natuurbescherming' (Nature Protection Regulation), which is the Dutch national regulation for nature protection, does not apply to activities subject to the Common Fisheries Policy, insofar they are taking place in the EEZ (see Article 1.2(2) Wet van 16 december 2015, houdende regels ter bescherming van de natuur – Wet natuurbescherming – Staatsblad 2016, 34). Consequently, no permit under the Dutch 'Nature Protection Regulation' is required for fisheries activities

The fact that under Article 11(3) of the CFP, the Commission is required to review the compatibility of the joint recommendation with the requirements of Article 11(1) – which include compliance with Article 6 of the Habitats Directive – before adopting the measures, attests to the need to carry out the series of procedural and substantive safeguards for governing fisheries plans or projects in or near a Natura 2000 site as set out in Article 6(3) of the Habitats Directive: the test of likely significant effect and the appropriate assessment of whether the plan will have an adverse effect on the integrity of the site in view of the site’s conservation objectives. As explained earlier, Article 6(3) applies to fisheries plans or projects in a Natura 2000 site.

The legal instrument by which the Commission adopts the measures under Article 11 of the CFP also reflects that there should be no substantial modifications at Member State level of the activities that will or will not be permitted in the site, as the measures are usually adopted by way of a delegated regulation. This means that the fisheries management measures are directly applicable to the governments to which they are addressed, and that, subsequently, there is no need for those States to transpose those provisions to domestic legislation.

Under the process of Article 11 CFP, it falls on the governments to carry out the test of likely significant effect and to do an appropriate assessment of the plan or project on the integrity of the site, in view of the site’s conservation objectives, as Article 11(3) of the CFP establishes that the Member States shall provide the Commission the relevant information on the measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement. The Commission in turn needs to satisfy itself that the Member States have provided a ‘complete request’ before adopting the measures in the Joint Recommendation.

In the present case, the governments have not carried out an adequate appropriate assessment, and the Background Document to the Joint Recommendation has crucial knowledge gaps, as explained in section 2.3.3.3 of this complaint. Therefore, the governments have failed to provide the Commission with the relevant information on the measures required and as the Commission cannot satisfy itself that it has received a ‘complete request’, it should reject the Joint Recommendation.

2.4.3.5 Adopting the measures in the Joint Recommendation would constitute an authorisation of a plan or project that adversely affects the integrity of the site

The CJEU has stated clearly that “In accordance with settled case-law, it is at the date of adoption of the decision authorising implementation of the project that **there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question.**”¹²²

The concept of ‘integrity of the site’ is defined by the CJEU in *Sweetman*:¹²³ in order to have the integrity of a site not being adversely affected:

in the EEZ. Fisheries activities will also not be part of the general Dutch management plan regulating other activities in the SACs in the Dutch EEZ, therefore they will not be subject of a general appropriate assessment for this management plan.

¹²² Case C-441/17, *Commission v Poland*, para. 120.

¹²³ Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, para. 39.

- the site needs to be preserved at a favourable conservation status; and
- this entails "the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site".

The Commission further clarifies the concept, explaining that "A site can be described as having a high degree of integrity where the **inherent potential for meeting site conservation objectives is realised**, the capacity for self-repair and self-renewal under dynamic conditions is maintained, and a minimum of external management support is required".¹²⁴

The Background Document to the Joint Recommendation states clearly that there is lack of certainty as to the effects of seine fishing on the Dogger Bank Habitat 1110:

"In a comparative assessment the potential vulnerability of habitat type 1110 to all types of demersal seines has been categorized as "probably vulnerable" in the document "Overview of sensitivity, interactions and impact of commercial fishing methods on marine habitats and species protected under the EU habitats directive" requested by the European Commission (N2K group 2016), (<http://ec.europa.eu/environment/nature/natura2000/marine/docs/Fisheries%20interactions.pdf>).

However, due to the lack of extensive in depth scientific data the impact of demersal seines on habitat 1110 and its typical species cannot be quantified in every desirable detail. Field surveys directly analyzing the physical impact of demersal seines on benthic habitats and the mortality rates of benthic invertebrates are still lacking.;"¹²⁵

In fact, in 2006 ICES had identified likely effects of seine gear on benthic invertebrates in the ecosystem of the North Sea:

"Because of the direct contact of the **seine gear** coils with the seabed, and fact that the gear relies on the disturbance of the seabed sediment in order to herd fish into the path of the closing seine, **this gear in all likelihood has a direct effect on benthic invertebrates within the circle of the gear**".¹²⁶

In 2008, the ICES advice resulting from the German EMPAS project acknowledged the impact that mobile, bottom-towed fishing gears would be expected to have on long-lived, low fecundity species in sandbanks such as the Dogger Bank:

"In contrast to reefs, the physical integrity of 'sandbanks' is unlikely to be seriously affected by mobile, bottom-towed fishing gears, but **the use of such gears may have ecological effects**. ICES advises that the characteristic benthic communities of such sandbank habitats are dominated by species adapted to frequent disturbance and high energy environments. An unfished sandbank community might

¹²⁴ European Commission (2018), *Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC*, p. 49. Available at: http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_.nov.2018_endocx.pdf

¹²⁵ Background Document, p. 54.

¹²⁶ The ICES Working Group on Ecosystem Effects of Fishing Activities (WGECO, ICES, 2006b).

nonetheless include many individuals of long-lived, low-fecundity species. **Fishing would be expected to reduce the abundance of such species and to change the community towards one more dominated by species that are less vulnerable to the mortality imposed by mobile, bottom-towed fishing gears.**¹²⁷

In the ICES advice to the DBSG of November 2012, subsequent to the NSAC Focus Group position paper of 2012, ICES still concluded on a lack of knowledge with respect to the impacts of seine fishing gear on benthic communities:

“Little is known of the effects of the various types of seine fishing gear on the benthic communities”.¹²⁸

The governments lack scientific certainty about the effects of mobile bottom contacting fishing, and in particular seine fishing, on the integrity of the sites. To the contrary, the most recent scientific reports studying the interaction between this type of fishing gear and habitat H1110 and its biotic communities explain that the adverse effects on the integrity of habitat and its typical species are highly likely.

Nevertheless, the Joint Recommendation proposes allowing plan or projects consisting of carrying out fishing activities with all types of mobile bottom contacting fishing gear in 66,2% of the total area of the sites and with demersal seine fishing gear in 95.3% of the area of the SAC. Therefore, implementing the measures in the Joint Recommendation would lead to a breach of Article 6(3) of the Habitats Directive as Article 6(3) requires that plans or projects are not authorised unless there is certainty that they will not adversely affect the site’s integrity.

2.4.3.6 The experimental approach that is the basis of the closures in the German Dogger Bank SAC violates the precautionary principle

The approach by which the only closure to bottom-towed fishing – in the German part of the Dogger Bank site – would be done on an experimental basis (see comments in DSG Chair’s letter of 6 February 2019) further demonstrates that the governments have an incorrect understanding of the precautionary principle and of the obligations derived from Articles 6(2) and 6(3) of the Habitats Directive. The law, as interpreted by the CJEU, mandates that plans or projects can only be authorised to take place in Natura 2000 sites when there is no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question. The concept of experimenting in Natura 2000 sites is at odds with this requirement.

As has been shown in previous sections of this complaint, there are clear indications that allowing seine fishing and other bottom-towed fishing in the sites could deteriorate them and impede them achieving favourable conservation status.

If there is insufficient data in relation to the effects of bottom-towed fishing (including seines) on the integrity of the Dogger Bank sites, the uncertainties derived from the lack of data have to be resolved by demonstrating beyond reasonable scientific doubt¹²⁹ that such fishing activities will not have an adverse impact on the integrity of the sites before these activities can be authorised.

¹²⁷ Interim Report 2007 for the ICES/BfN-project: “Environmentally Sound Fisheries Management in Protected Areas” (EMPAS), ICES, 2008, p. 1.

¹²⁸ ICES advice to the Dogger Bank Steering Group (6.3.3.9. Special request, Advice November 2012, ICES Advice 2012, Book 6, p. 5.

¹²⁹ Case C-142/16, *Commission v Germany* p. 33

On a separate note, there are no indications that not allowing bottom-towed fishing (including seine fishing) would have a negative impact on the sites. The real experiment is taking place in 95.3% of the area of the sites, and it consists of allowing bottom-towed fishing at industrial scale, with feeble-founded hope that the site will be restored to favourable conservation status. As discussed above in section 2.4.3.5, the court has defined the concept of site integrity as intimately linked with the possibility of the site achieving favourable conservation status. Further, the approach taken flies in the face of the Habitats Directive requirement for decisions based on certainty.

It is clear that the governments have failed to carry out an adequate appropriate assessment of a project in light of Article 6(3) of the Habitats Directive. Subsequently, under the process established in Article 11 of the CFP the governments have also failed to fulfil their obligation to provide the Commission with the “relevant information” on the measures required to comply with Article 6 of the Habitats Directive, including their rationale, scientific evidence in support and details on their practical implementation and enforcement. As such, the Commission cannot satisfy itself that it has received a ‘complete request’ as required by Article 11(3), and it should reject the Joint Recommendation.

Additionally, from the information provided by the governments, it is clear that they are recommending, under the process required by Article 11 of the CFP, the authorisation of a project by a Commission regulation that would breach the requirements of Article 6(3) of the Habitats Directive. Therefore, the Commission should deem the Joint Recommendation not compatible with the requirements set in Article 11(1) of the CFP, reject the Joint Recommendation and submit its own proposal in accordance with the Treaty.

2.5 Does your complaint relate to a breach of the EU Charter of Fundamental Rights?

No

3. Request for action from the Commission

3.1 Request for Commission action

We ask that the Commission:

- Declares that the management measures proposed in the *Joint Recommendation regarding fisheries management measures under Articles 11 and 18 of Regulation (EU) No 1380/2013 of The European Parliament and of the Council of 11 December 2013 on the CFP (the Basic Regulation) for protection of sandbanks in three Natura 2000 sites designated under the Habitats Directive 92/43 EEC of 21 May 1992* by the governments of the UK, the Netherlands and Germany are not compatible with the requirements of Article 11(1) of the Regulation (EU) No 1380/2013 and Articles 6(1), 6(2) and 6(3) of the Directive 92/43/EEC.

- Submits a proposal for the conservation measures necessary for the purpose of complying with the obligations under Article 6 of the Directive 92/43/EEC in relation to the UK, German and Dutch Special Areas of Conservation in the Dogger Bank, as is contemplated in Article 11(3) of Regulation (EU) No 1380/2013.
- Intervenes to ensure the protection of the Dutch, UK and German Natura 2000 sites on the Dogger Bank in compliance with the Habitats Directive by prescribing the measures necessary in cases of urgency as contemplated by Article 11(4) of Regulation (EU) No 1380/2013. We consider the suspension of all fishing activities with bottom-towed gears, including seine fishing, at least, and as a first step, in all the areas with proposed closures for fishing activities in the Special Areas of Conservation 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.
- Takes infringement action against the UK, the Netherlands and Germany for failure to comply with their obligations under:
 - Article 6(1) of the Directive 92/43/EEC in relation to the Special Areas of Conservation in the Dogger Bank, by failing to establish a management plan that adequately manages the fishing activities that take place in these sites.
 - Article 6(2) of the Directive 92/43/EEC in relation to the Special Areas of Conservation in the Dogger Bank, by failing to take steps to adequately manage the fishing activities that take place in these sites and prevent deterioration of these sites and indicating by their submission of the Joint Recommendation that they do not intend to take adequate steps to do so.
- Requests 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 Special Areas of Conservation 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.

4. Previous action taken to solve the problem

4.1 Have you already taken any action in the Member State in question to solve the problem?

Contacts with responsible administrative authorities of our Member States concerning our case

On several occasions we have had contact with the Minister of Economic Affairs of the Netherlands, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Section N, of Germany; the Secretary of the Department for Environment, Food and Rural Affairs (DEFRA) of the UK.

Consultation of the NSAC Other Interest Groups

NGOs/NSAC Other Interest Groups (OIGs) have acted as observers to the meetings of the Informal Scheveningen Ad Hoc Group on 13 June, 3 November 2016, 17 and 31 January 2017. These meetings were organised on behalf of the Dogger Bank governments with a legal responsibility for the sites (Germany, Netherlands, and UK) to consult the governments of those Member States with a Direct Management Interest (Denmark, France, Belgium, Sweden, Ireland) on the fisheries management measures to be proposed to the Commission. The attendance by the NSAC OIGs, including the written and oral comments during these meetings constituted the consultation of the NSAC under Article 18(2) CFP. (Copies of the meeting notes and the written submissions of the NGOs/NSAC OIGs are attached to this complaint).

Correspondence with the Dogger Bank Steering Group – DBSG - and the governments of the Member States represented therein

World Wide Fund for Nature (WWF-European Policy Office), Birdlife Europe and Central Asia, and ClientEarth sent a letter including the Bureau Waardenburg report¹³⁰ to the chairman of the DBSG on 1 June 2017. At our request this letter has been shared with the governments of the initiating Member States (the Netherlands, the United Kingdom and Germany) and with the governments of the Member States with a Direct Management Interest (Denmark, Belgium, France, Sweden and Ireland).

In this letter we outlined our concerns that the Dogger Bank Draft Joint Recommendation, allowing demersal seining fisheries in the UK and Dutch management zones of the Dogger Bank Natura 2000 sites, will not deliver on the conservation objectives of these Natura 2000 sites and does not comply with the requirements of Article 6 of the Habitats Directive. We also questioned why the evidence provided by the Bureau Waardenburg report has not been considered previously, in preparing the draft Joint Recommendation, given the duty the authority is under to review and consider the best available scientific evidence when preparing an appropriate assessment.

Mr. Ton IJlstra, the chair of the DBSG confirmed receipt of the NGO letter dated 1st June 2017 and, upon request of inter alia the NSAC by email of 23 August and 12 October 2017, promised several times to answer to these questions. Subsequent requests of the NSAC to the DBSG of 13 December 2017 and 25 January 2018 were left unanswered. One year and seven months later Mr. IJlstra responded substantively (on behalf of the Netherlands, Germany and the United Kingdom) on 6th February 2019 to the NGOs' letter of 1st June 2017.

By letter of 1 May 2018 the NSAC asked the DBSG contact person within the Dutch Ministry of Agriculture, Nature and Food Quality for clarification on the timing of the submission of the Joint Recommendation to the Commission, since the 6 months formal consultation period following the provision of sufficient information ended in September 2017 and the NSAC had not been informed on the process and the timing of the procedure. (Copies of the correspondence are attached to this complaint).

By email on 18th December 2018, Mrs. Anne-Marie Svoboda of the Dutch Ministry of Agriculture, Nature and Food Quality informed participants (including the NSAC Secretariat) in the Informal Scheveningen Ad Hoc Group that formal agreement on the Dogger Bank joint recommendation was reached in October 2018.

Have national court proceedings addressing the matter been commenced or are they envisaged?

¹³⁰ Bureau Waardenburg. 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.

No. Where, under Article 11 CFP, an initiating Member State considers that conservation measures need to be adopted and other Member States have a direct management interest in the fisheries to be affected, it is not the Member States but the Commission that is empowered to adopt by delegated act the conservation measures according to Article 11 (1), (2) and (3) CFP. Therefore, the agreement of the Member States on the joint recommendation to be submitted under Article 11 CFP to the European Commission, or the submission itself, is not an administrative decision that can be subject to judicial review by a Dutch, German or UK national court.

5. Previous correspondence and other communications with EU institutions

Reports sent to the European Commission

WWF published the (EU) report 'Preventing paper parks; How to make the EU laws work', in February 2017¹³¹ and brought it to the attention of the Commission. In this report the Dogger Bank is presented as a 'site of concern', illustrating some significant failures in the implementation of the Natura Directives ('Shallow promises on the Dogger Bank', p. 41-45). WWF warned that the level of protection needs to be drastically increased in order to restore and protect marine life of and on the Dogger Bank.

Meetings with the EU Commission

WWF and Birdlife have had their most recent meetings to discuss the Dogger Bank fisheries measures proposal with both DG Mare and DG Environment on 5 May 2017 and with DG Environment on 23 May 2017.

If after examining your case, the Commission considers that SOLVIT is better placed to deal with it, do you agree to your complaint being transferred to SOLVIT?

No, we do not agree to the Commission's transferring the complaint to SOLVIT.

6. List any supporting documents/evidence which you could – if requested – send to the Commission.

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. Annex I to the Joint Recommendation for Offshore Fisheries Management on the International Dogger Bank under the Common Fisheries Policy. Background Document. The Hague, Bonn, London, 26 March 2019 (Background Document).
3. Paper of the Chair of the DBSG circulated on 27 March 2013, revised 8 May 2013, entitled 'The use of seines in the Dogger Bank management zones'

¹³¹ See for press release of 9 February 2017, summary and full report:
http://www.wwf.eu/what_we_do/biodiversity/news_biodiversity.cfm?uNewsID=291610

4. Letter from Dutch Secretary of Economic Affairs to the Dutch House of Commons of 15 October 2015
Available at: <https://zoek.officielebekendmakingen.nl/kst-29664-134.html>
5. Letter of Niels Wichmann, Chair of the NSAC Executive Committee to the Chairman of the DBSG, of 6 April 2016 giving notice of the lack of transparency on the important issue of seining between October 2015 and May 2016 and not engaging the NSAC as active observers to the process of developing the Joint Recommendation in this crucial period.
6. Copies of the meeting notes and the written submissions of the NGOs/NSAC OIGs during the Article 18(2) CFP consultation process in 2016 and 2017.
7. Letter from NGOs WWF, Birdlife and ClientEarth to DBSG of 1 June 2017 submitting the Bureau Waardenburg report of March 2017.
8. E-mail correspondence of 2017/2018 between Mr. Euan Dunn (chair of NSAC Ecosystem Working Group, formerly Spatial Planning Working Group) and Mr. Ton IJlstra (chair of DBSG) asking for a response on content with respect to joint NGO letter of 1 June 2017 (Submitted by Birdlife International, ClientEarth and WWF).
9. Response by Mr. Ton IJlstra (chair of DBSG, on behalf of NL, GER and UK) by email on 6th February 2019 to the NGOs' emailed letter of 1 June 2017.
10. Letter of Niels Wichmann, Chair of the NSAC Executive Committee of 1 May 2018 to the DBSG contact person within the Dutch Ministry of Agriculture, Nature and Food Quality, asking for clarification on the timing of the submission of the Joint Recommendation to the Commission.
11. Interim Report 2007 for the ICES/BfN-project: *Environmentally Sound Fisheries Management in Protected Areas* (EMPAS). ICES, 2008.
12. ICES advice to the Dogger Bank Steering Group (6.3.3.9. Special request, Advice November 2012, ICES Advice 2012, Book 6.
13. Joint Nature Conservation Committee. *Supplementary Advice on Conservation Objectives for Dogger Bank Special Area of Conservation*. Available at http://jncc.defra.gov.uk/pdf/DoggerBank_SACO_v1_0.pdf.
14. Joint Nature Conservation Committee. *Statements on conservation benefits, condition & conservation measures for Dogger Bank Special Area of Conservation*. January 2018, p. 3-4. Retrieved from: http://jncc.defra.gov.uk/pdf/DoggerBank_Statements_v1_0.pdf
15. Joint Nature Conservation Committee. *Dogger Bank Advice on Operation Guidance*. January 2018. Retrieved from: http://jncc.defra.gov.uk/docs/DoggerBank_AoO_Workbook_v1_0.xlsx
16. Joint Nature Conservation Committee. *Dogger Bank Conservation Advice Evaluation*. January 2018. Retrieved from: <http://jncc.defra.gov.uk/page-6508>
17. All documents referred to in this complaint

7. Personal data

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against? YES

8. Signatures

Lead complainants:

Kirsten Schuijt
Executive Director
WWF Netherlands

James Thornton
CEO
ClientEarth

Supporting complainants:

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



Debbie Tripley
Director of Advocacy
WWF-UK



Thomas Appleby
Trustee and Head of Legal Affairs
Blue Marine Foundation



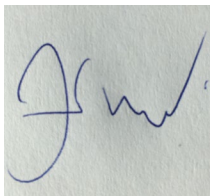
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