

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2363

of 2 December 2022

extending a derogation from Council Regulation (EC) No 1967/2006 as regards the prohibition to fish above protected habitats, the minimum distance from the coast and the minimum sea depth for the 'gangui' trawlers fishing in certain territorial waters of France (Provence-Alpes-Côte d'Azur)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 ⁽¹⁾, and in particular Article 4(5) and Article 13(5) and (10) thereof,

Whereas:

- (1) On 2 June 2014, the Commission adopted Implementing Regulation (EU) No 586/2014 ⁽²⁾ establishing for the first time a derogation from Articles 4(1) and 13(1) and (2) of Regulation (EC) No 1967/2006 for the use of 'gangui' trawlers in certain territorial waters of France (Provence-Alpes-Côte d'Azur) until 6 June 2017. An extension of that derogation was granted by Commission Implementing Regulation (EU) 2018/693 ⁽³⁾, which expired on 11 May 2020. A further extension of that derogation was granted by Commission Implementing Regulation (EU) 2021/141 ⁽⁴⁾, which expired on 11 May 2022.
- (2) On 17 March 2022 the Commission received from France a request to extend the derogation. France provided up-to-date scientific and technical justifications for the renewal of the derogation, including an implementation report of the management plan adopted by France on 13 May 2014 ⁽⁵⁾ in accordance with Article 19 of Regulation (EC) No 1967/2006, an estimation of the 'gangui' footprint in 2021 using the data transmitted by the VMS transponders ('VMS data') as well as a risk assessment of the environmental impact of the fishery. The analysis of the 'gangui' footprint shows that the 'gangui' fishery affect 21 % of the area covered by beds of *Posidonia oceanica* within the area covered by the French management plan and 7,6 % of the *Posidonia oceanica* beds in the territorial waters of France.
- (3) During its 69th plenary session held in March 2022, the Scientific, Technical and Economic Committee for Fisheries (STECF) ⁽⁶⁾ assessed the request for extending the derogation, including the supporting data and the implementation report. STECF acknowledged the efforts made by the French administration to manage 'gangui' fishery and concluded that the French request complies with the relevant provisions of Regulation (EC) No 1967/2006. STECF however noted that 'gangui' with heavy doors have been assessed as being potentially damaging to *Posidonia oceanica* beds.

⁽¹⁾ OJ L 36, 8.2.2007, p. 6.

⁽²⁾ Commission Implementing Regulation (EU) No 586/2014 of 2 June 2014 derogation from Council Regulation (EC) No 1967/2006 as regards the prohibition to fish above protected habitats and the minimum distance from the coast and depth for the 'gangui' trawlers fishing in certain territorial waters of France (Provence-Alpes-Côte d'Azur) (OJ L 164, 3.6.2014, p. 10).

⁽³⁾ Commission Implementing Regulation (EU) 2018/693 of 7 May 2018 establishing the derogation from Council Regulation (EC) No 1967/2006 as regards the prohibition to fish above protected habitats, the minimum distance from the coast and the minimum sea depth for the 'gangui' trawlers fishing in certain territorial waters of France (Provence-Alpes-Côte d'Azur) (OJ L 117, 8.5.2018, p. 13).

⁽⁴⁾ Commission Implementing Regulation (EU) 2021/141 of 5 February 2021 extending a derogation from Council Regulation (EC) No 1967/2006 as regards the prohibition to fish above protected habitats, the minimum distance from the coast and the minimum sea depth for the 'gangui' trawlers fishing in certain territorial waters of France (Provence-Alpes-Côte d'Azur) (OJ L 43, 8.2.2021, p. 10).

⁽⁵⁾ Arrêté du 13 mai 2014 portant adoption de plans de gestion pour les activités de pêche professionnelle à la senne tournante coulissante, à la drague, à la senne de plage et au gangui en mer Méditerranée par les navires battant pavillon français (JORF n° 122, 27.5.2014, p. 8669).

⁽⁶⁾ https://stecf.jrc.ec.europa.eu/reports/plenary/-/asset_publisher/os6k/document/id/26714623

- (4) On 18 August 2022, following STECF's comments, France revised its Ministerial Order ⁽⁷⁾ laying down technical regulations for professional fishing in the Mediterranean sea amending the weight of the doors in 'gangui' fishery accordingly so as to prohibit heavy doors.
- (5) STECF also concluded that the information provided by France does not allow for an assessment of the status of the exploited stocks. The Commission however considers that the impact of this fishery on the stocks should be assessed in light of the actual magnitude of this fishery. In 2022 only 9 fishing vessels were authorized, of which 7 are active. In addition, the fishing effort and catches gradually decreased together with the diminishing number of boats (75 % reduction since 2014), and this to correspond to a similar reduction of the impact of the fishery on the stocks that will continue under the current phasing out mechanism set in the French management plan.
- (6) The derogation requested concerns fishing activities by vessels of less than or equal to 12 metres overall length and engine power of less than or equal to 85 kW with bottom towed nets traditionally undertaken on *Posidonia oceanica* beds, as required by Article 4(5), first paragraph of Regulation (EC) No 1967/2006.
- (7) The fishery concerned affects less than 33 % of the area covered by seagrass beds of *Posidonia oceanica* within the area covered by the French management plan and less than 10 % of seagrass beds of *Posidonia oceanica* beds in the territorial waters of France, in line with the ceilings established under Article 4(5), first subparagraph, points (ii) and (iii) of Regulation (EC) No 1967/2006.
- (8) There are specific geographical constraints given the limited size of the continental shelf.
- (9) The fishery has no significant impact on the marine environment.
- (10) The fishery conducted with 'gangui' trawlers target a variety of species that correspond to an ecological niche. The catch composition of this fishery, in particular as regards the variety of species caught, is not reflected in any other fishing gear. Therefore, the fishery cannot be undertaken with other gears.
- (11) The request covers vessels with a track record in the fishery of more than five years, which operate under the French management plan, in accordance with Article 13(9) of Regulation (EC) No 1967/2006.
- (12) The derogation requested by France concerns a limited number of nine authorised vessels identified in the management plan, involving a total of 434 kW, of which only seven were active in 2021. This represents a 75 % reduction of fishing effort in terms of number of authorised vessels as compared to 2014, where the derogation concerned 36 authorised vessels specified in the French management plan adopted. Those vessels are included on a list communicated to the Commission in accordance with Article 13(9) of Regulation (EC) No 1967/2006.
- (13) Moreover, the management plan adopted by France guarantees no future increase in the fishing effort, as required by Article 13(9) of Regulation (EC) No 1967/2006. Fishing authorisations will only be issued to the specified nine vessels involving a total effort of 434 kw, that are already authorized to fish by France.
- (14) Moreover, the French management plan stipulates that any 'gangui' fishing authorization is to be withdrawn when the authorised vessel concerned is replaced or the vessel master sells its vessel or retires. The Commission therefore notes that the effect of this provision is to gradually phase out this fishery, which also leads to a corresponding reduction in the impact of the fishery on the stocks.

(7) Arrêté du 18 août 2022 modifiant l'arrêté du 19 décembre 1994 portant réglementation technique pour la pêche professionnelle en Méditerranée continentale (JORF n°0194 du 23 août 2022).

- (15) The requested derogation complies with the requirements of Article 8(1) and Annex IX, Part B, section I to Regulation (EU) 2019/1241 ⁽⁹⁾ of the European Parliament and of the Council regarding mesh sizes for towed gear, since it relates to trawlers operating with mesh sizes not smaller than 40 mm and square mesh below 40 mm is not used in “gangui” net rigging.
- (16) The fishing activities concerned do not interfere with the activities of vessels using gears other than trawls, seines or similar towed nets, in accordance with Article 13(9) of Regulation (EC) No 1967/2006.
- (17) The activity of the ‘gangui’ trawlers is regulated in the French management plan to ensure that catches of species mentioned in Annex IX, Part A to Regulation (EU) 2019/1241, are minimal, as required by Article 13(9) of Regulation (EC) No 1967/2006.
- (18) ‘Gangui’ trawlers do not target cephalopods, as required by Article 13(9) of Regulation (EC) No 1967/2006.
- (19) The French management plan establishes a monitoring plan including measures for the monitoring of fishing activities, as provided for in Article 4(5), fifth subparagraph of Regulation (EC) No 1967/2006 and Article 13(9), third subparagraph thereof. It also includes measures for the recording of fishing activities, thus fulfilling the conditions set out in Article 14 of Council Regulation (EU) 1224/2009 ⁽⁹⁾.
- (20) The derogation requested therefore complies with the conditions laid down in Article 4(5) and in Article 13(5) and (9) of Regulation (EC) No 1967/2006 and should be granted.
- (21) France should report to the Commission in due time and in accordance with the monitoring plan provided for in the French management plan.
- (22) The duration of the derogation should be limited in order to allow prompt corrective management measures in case the report to the Commission shows a poor conservation status of the exploited stocks, while providing scope to enhance the scientific basis for an improved management plan.
- (23) Since the derogation granted by Implementing Regulation (EU) 2021/141 expired on 11 May 2022, in order to ensure legal continuity, this Regulation should apply with effect from 12 May 2022. For reasons of legal certainty, this Regulation should enter into force as a matter of urgency.
- (24) Such retroactive application does not affect the principle of legal certainty and protection of legitimate expectations as the fishery in question has been continuously covered by the French management plan for shore seines.
- (25) This Regulation is without prejudice to the Commission’s position regarding compliance of the activity covered by this derogation with other Union legislation, in particular Council Directive 92/43/EEC ⁽¹⁰⁾.
- (26) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

⁽⁹⁾ Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 (OJ L 198, 25.7.2019, p. 105).

⁽⁹⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

⁽¹⁰⁾ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

HAS ADOPTED THIS REGULATION:

Article 1

Derogation

The first subparagraph of Article 4(1), the first subparagraph of Article 13(1) and Article 13(2) of Regulation (EC) No 1967/2006 shall not apply in the territorial waters of France adjacent to the coast of the Provence-Alpes-Côte d'Azur region to 'ganguis' trawlers fulfilling the following requirements:

- (a) bearing a registration number mentioned in the French management plan adopted by France in accordance with Article 19 of Regulation (EC) No 1967/2006;
- (b) having a track record in the fishery of more than five years and not involving any future increase in fishing effort provided;
- (c) holding a fishing authorization and operating under the management plan adopted by France in accordance with Article 19 of Regulation (EC) No 1967/2006.

Article 2

Reporting

France shall communicate to the Commission, within one year following the entry into force of this Regulation, a report drawn up in accordance with the monitoring plan established in the management plan referred to in Article 1(c).

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 12 May 2022 to 11 May 2024.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2 December 2022.

For the Commission
The President
Ursula VON DER LEYEN
