



Marine Strategy Framework Directive: Putting in place the legal framework for implementation in the UK

A joint response from Wildlife and Countryside Link, Scottish Environment LINK, Wales Environment Link and the Northern Ireland Marine Task Force

January 2010

Introduction

The Wildlife and Countryside Link Marine Legislation Working Group, the Scottish Environment LINK Marine Task Force, the Wales Environment Link Marine Working Group and the Northern Ireland Marine Task Force work together to achieve better protection for marine wildlife and effective management of all UK seas. Each is a coalition of environmental voluntary organisations, united by their common interest in the conservation and enjoyment of wildlife, the countryside and the marine environment. A list of the constituent members of each coalition is provided in the Appendix to this response.

We welcome the Marine Strategy Framework Directive (MSFD) and its UK-wide transposition, which will help ensure a consistent and coordinated approach to implementation throughout UK seas. We are pleased that the UK Government, Northern Ireland Executive, Scottish Government and Welsh Assembly Government have issued this consultation jointly and we welcome the opportunity to provide comments.

While the bulk of the Regulation text transposes the Directive word for word, which reduces the scope for deviation or errors, we are concerned that there are a number of specific and serious omissions that must be rectified if transposition is to be considered complete and accurate. We are also concerned by the tone and emphasis of the consultation document and supporting information, which suggest a very unambitious approach to delivering positive change in the marine environment. The tone used is in contrast to the level of ambition which the UK Government and Devolved Administrations have stated in relation to protection of the marine environment under the Marine & Coastal Access Act, the Marine (Scotland) Bill and the proposed Northern Ireland Marine Bill and the level of ambition in the MSFD.

If the UK is to meet its requirements under the MSFD it is important that the Regulations and associated information reflect the true ambition of the Directive. The MSFD will help deliver a healthier marine environment across Europe's seas, which in turn will benefit the UK's marine environment and support delivery of our aims under our national marine legislation. We therefore believe that the UK Government and Devolved Administrations should be much more positive about the benefits associated with the Directive.

General comments

Interpretation of the Directive: GES – target vs. driver

We are particularly concerned that on a number of occasions during the MSFD consultation, GES has been referred to as a driver rather than a target. Viewing it in this way could result in implementation of measures being deferred and only small steps being taken, meaning there would be little progress towards achieving GES.

The Directive clearly states that GES has to be achieved or maintained by 2020 at the latest (Article 1(1)) and only where the criteria under the exceptions are met should Member States be allowed to not achieve or maintain GES (Article 8). Even then, the exceptions state that GES must not be permanently compromised (Article 14(4)).

In our view, GES is therefore a target which must be met and it should be treated as such by the UK Government and Devolved Administrations.

Emphasis on cost

We are very disappointed that the consultation document and supporting information focus so heavily on the potential costs and economic impacts of the Regulations, with very little mention of the benefits that the Directive is intended to deliver for the marine environment.

We are also concerned that the terminology used most frequently throughout the document is cost-effectiveness, which in the Directive is only used in relation to the Programme of Measures. In other places, the Directive refers to action not being required where the '*costs would be disproportionate*'. Cost-effectiveness and disproportionate costs are very different concepts which should not be used interchangeably in reference to this Directive and the Regulations.

Furthermore, the statement that measures only need to be implemented where their costs are justified by their benefits (paragraph 3.20) is disingenuous. The Directive in fact states that where costs do result in inaction by Member States, a number of caveats must be met, including *inter alia* that there is no significant risk to the marine environment; there is no further deterioration; and the achievement of good environmental status is not permanently compromised.

There must not be a repeat of the delays that have occurred in implementing similar Directives such as the Water Framework Directive (WFD). Implementation of WFD measures has been deferred due to the interpretation of what is considered to be 'cost effective' - the costs are currently considered to be disproportionate to the benefits.

While we acknowledge that the delivery of GES should not be prohibitively expensive, we believe that by focussing on minimising the costs and not including the full set of caveats, the Regulations do not fully transpose the Directive and the consultation document is misleading, which indicates a very unambitious approach to implementation of the Directive.

Marine Strategies

We believe that a single UK Marine Strategy is acceptable. However, biogeographical regions must not be ignored and therefore, as a minimum, distinction must be made between the two marine sub-regions (Celtic Seas and the Greater North Sea). The UK Marine Strategy should differentiate between each marine sub-region in terms of the information used, the initial and subsequent assessment of the status of the marine environment, the determination of GES targets, the indicators and Programmes of Measures required to achieve GES and the administrations/bodies responsible for delivery in different areas, etc. We also believe that clear differentiation and detail will also be needed to consider further sub-divisions, as identified by JNCC, such as the Irish Sea, SW approaches and northern North Sea. This is vital if the UK is to deliver a truly biogeographical and ecosystem-based approach to the management of UK seas.

Regional Cooperation

We are disappointed that the provisions of the Directive that relate to Regional Cooperation (Article 6) have not been transposed into the Regulations. It is essential that the UK Marine Strategy is co-ordinated with other Member States for the North East Atlantic region in order to achieve GES. The Directive includes provisions for monitoring programmes and methodologies to be coordinated throughout the EU and for transboundary impacts and features to be taken into account for the assessment, targets and indicators, and monitoring programmes. We believe provisions should be included in the body of the Regulations to encourage competent authorities, public authorities and/or statutory undertakers (as appropriate) to ensure the necessary cooperation and coordination with other Member States and third countries to achieve the objectives of the MSFD.

Spatial Protection Measures

We are pleased that the Directive specifically mentions spatial protection measures i.e. Marine Protected Areas (MPAs). We welcome that the consultation document references Marine Conservation Zones (MCZs) that will be created under the UK Marine & Coastal Access Act and MPAs under the Marine (Scotland) Bill. We also welcome the references to the contribution that sites designated under the EU Habitats and Birds Directives will also make towards achieving GES under this measure. The ecologically coherent network of MPAs in the UK will include sites designated under both national and European legislation.

There is concern that due to the timing currently proposed for the Northern Ireland Marine Bill, it is highly unlikely that the DOE will have established an ecologically coherent network of MPAs consisting of European and nationally important sites within the timescale required by the Directive (2013).

Infrastructure Planning Commission

The Regulations state that all competent authorities must exercise their functions so as to secure compliance with the MSFD. Further, public authorities must have regard to the marine strategy and can receive Ministerial directions for the purpose of implementing the Directive. However, we are very concerned that the role of the Infrastructure Planning Commission (IPC) in implementing the Directive is unclear and may lead to the IPC making decisions which are not consistent with the UK's obligation to achieve GES. It is stated the IPC is a public authority which must 'have regard' to the Directive and the marine strategy, yet Regulation 19(6) excludes it from being compelled to secure compliance through Ministerial directions. Firstly, we are not certain that the definitions used to define 'public authority' properly include the IPC and we seek confirmation of which part of the definition the IPC falls under.

We are also slightly concerned about the implications that the exception under Regulation 19(6) may have in ensuring IPC decisions are consistent with the objectives of the MSFD, the marine strategy, and achieving GES in UK waters. We acknowledge the reasons for providing the exception, but query how Defra intend to ensure that IPC decisions do not adversely impact on successfully achieving GES in UK waters. We suggest that the powers for the Secretary of State to give guidance on the practical implementation of the MSFD (Regulation 20) could be strengthened to ensure the IPC is an explicit recipient of such guidance to enable it to be fully aware of how it is expected to take into account the MSFD's requirements, the marine strategy and the UK's measures for achieving GES. In addition, it may be useful to strengthen the relationship between the IPC and the MMO, particularly if the MMO is to be the competent authority under delegation for the purpose of the Regulations, such that the MMO can give the

IPC advice on the application of the MSFD and how it is to be considered by the IPC in examining applications.

Detailed comments on the Regulations

In addition to the comments above, we have some specific concerns relating to the drafting of the Regulations, which also must be addressed if the Directive is to be completely and effectively transposed.

Regulation 5

Article 1(3) contains a number of important concepts that are currently omitted from this Regulation. The Article states that marine strategies must apply an '**ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of GES and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations**'. These important requirements need to be covered by the Regulations.

Regulation 16 and Schedule 3

We are particularly concerned by the omission from this Regulation and associated Schedule of the full range of caveats that the MSFD puts on the exceptions in Article 14.

Regulation 16(5) must be redrafted taking account of the following:

- The Regulation states that "The duty under these Regulations, including under regulations 4 and 5, to develop or (as the case may be) implement any element of the marine strategy, other than the assessment of marine waters, **does not require the taking of any steps**" whereas the Directive (Article 14(4)) states that Member States "**shall not be required ... to take specific steps**". The latter is more restrictive. The Directive does not state that Member States do not have to take any steps, in fact there are further references to meeting the caveats and *ad hoc* measures that have to be taken instead.
- Article 14(1) states that Member State have to "**take appropriate ad-hoc measures aiming to continue pursuing the environmental targets, to prevent further deterioration in the status of the marine waters affected ... and to mitigate the adverse impact**". Furthermore, Article 14(3) states that these *ad hoc* measures have to be integrated as far as practicable into the Programme of Measures. Regulation 16 does not refer to *ad hoc* measures at all or the need to mitigate negative impacts.
- Article 14(2) states that Member States shall ensure that the **modifications or alterations** do not permanently **preclude or** compromise the achievement of GES. Therefore, the Directive covers a wider range of options than the Regulations.

January 2010

Appendix

COALITION MEMBERS SUBMITTING THIS RESPONSE

This response is supported by the following members of the Wildlife and Countryside Link Marine Legislation Working Group:

- Buglife – The Invertebrate Conservation Trust
- Greenpeace UK
- International Fund for Animal Welfare
- Marine Conservation Society
- Royal Society for the Protection of Birds
- Whale and Dolphin Conservation Society
- The Wildlife Trusts
- WWF UK
- Zoological Society of London

Scottish Environment Link Marine Task Force includes the following member organisations:

- Buglife – The Invertebrate Conservation Trust
- Hebridean Whale and Dolphin Trust
- Marine Conservation Society
- RSPB Scotland
- Scottish Wildlife Trust
- National Trust for Scotland
- Whale and Dolphin Conservation Society
- WWF Scotland.

Wales Environment Link Marine Working Group includes the following member organisations:

- Marine Conservation Society
- RSPB Cymru
- Wildlife Trusts Wales
- WWF Cymru.

Northern Ireland Marine Task Force includes the following member organisations:

- Friends of the Earth Northern Ireland
- Irish Whale and Dolphin Group
- Northern Ireland Environment Link
- Royal Society for the Protection of Birds
- The National Trust
- Ulster Wildlife Trust
- Wildfowl and Wetlands Trust
- WWF Northern Ireland

