



ENVIRONMENT LINKS UK SUBMISSION TO EUROPEAN COMMISSION REGARDING PROPOSALS ON THE MARINE STRATEGY FRAMEWORK DIRECTIVE

Joint responses from Wildlife and Countryside Link, Scottish Environment LINK, Wales Environment Link and the Northern Ireland Marine Task Force

October 2016

Introduction

Europe's marine environment was once incredibly rich, productive and diverse. Today, whether looking at marine species or habitats, less than 20% of all biodiversity features are considered as being in Good Environmental Status (GES).¹ In United Kingdom (UK) seas alone, 28 species of mammals and fish are considered to be threatened² and it is calculated that landings of demersal fish stocks per unit of fishing power have declined by 94% since 1884.³

The Marine Strategy Framework Directive (MSFD) is the first all-encompassing piece of European legislation specifically aimed at the protection of the marine environment. Its ultimate objective is to achieve GES in all European waters by 2020 at the latest. Environment Links UK believe that the MSFD has been a welcome initiative and represents a critical pillar towards the conservation, sustainable use and recovery of our marine environment, both within the UK and across the European Union. Our views on the recent European Commission consultations on MSFD proposals are outlined below in this joint response.

Environment Links UK comprises the combined membership of Wildlife and Countryside Link, Scottish Environment LINK, Wales Environment Link and the Northern Ireland Marine Task Force and collectively represents more than 8 million supporters across the United Kingdom. These consultation responses are supported by the following organisations of the Environment Links UK:

- ClientEarth
- Environmental Investigation Agency
- Friends of the Earth England
- Greenpeace UK
- Marine Conservation Society
- Northern Ireland Marine Taskforce
- ORCA
- Scottish Environment LINK
- Wales Environment Link
- Wildlife and Countryside Link
- The Wildlife Trusts
- WWF – UK
- Zoological Society of London

Inter-service consultation on a Commission proposal for the GES Decision

Proposal: *laying down criteria and methodological standards on GES of marine waters and specifications and standardised methods for monitoring and assessment, and repealing Decision 2010/477/EU.*

¹ European Environment Agency. 2014. Marine Messages: Our seas, our future – moving towards a new understanding.

² IUCN (2011). International Union for Conservation of Nature Red List of Threatened Species. Version 2011.2.

³ Thurston, R.H., Brockington, S., Roberts, C.M. (2010). The effects of 118 years of industrial fishing on UK bottom trawl fisheries. *Nature Communications* 1:15

Response: Environment Links UK welcome initiatives to bring clarity to MSFD requirements and enable Member States to urgently undertake efforts to help achieve GES. Many aspects of this proposal are practical and will assist Member States to implement their commitments. However, there are a few points of concern in this proposal. Firstly, we are concerned that movement towards ‘comparable’ criteria and ‘coherence’ across the Union could be at the expense of the ambition and high standard intended in MSFD for GES. Efforts to create comparability and coherence should not be used to justify the setting of the lowest common denominator for criteria and methodological standards on GES.

Secondly, we are concerned that there is a proposal to reduce the number of criteria that Member States are required to assess and monitor. Whilst we recognise that this has likely been proposed in response to concerns about resource constraints, reductions in criteria can weaken the robustness of conclusions from monitoring and assessment as it creates an incomplete picture.

Thirdly, whilst we acknowledge that there needs to be some flexibility for Member States on which criteria (or elements) apply to them given their predominant pressures and local marine environment, there should be clear limitations to the application of discretion used by Member States so that they do not opt out of monitoring and assessing particular matters in order to bias their findings or reduce efforts towards achieving GES. Although the proposal references the requirement for Member States exercising their flexibility to be under ‘specified conditions’ and that opting out of criteria would need to be ‘justified’, it is not sufficiently clear when a Member State would be empowered to take a more discretionary, flexible approach to monitoring and assessing criteria. We would like to see stricter accountability for Member States when they chose not to use a ‘primary criteria’ and ‘secondary criteria’, especially because at the moment there are no accountability or explanatory requirements for ‘secondary criteria’.

Fourthly, we would like to see safeguards surrounding ‘threshold values’ such as how and when Member States establish them. We would like a stricter timeline for implementation, heightened accountability, the potential to review the values, as well as scientific assessment as to whether threshold values are appropriate for each criterion. In some instances establishing a threshold value is concerning as it is effectively sanctioning damage to the marine environment. We are particularly concerned by proposals for Member States to establish threshold values under D6C4, maximum allowable extent of habitat loss. While there could be benefits for some broadscale habitats such as sandbanks or mudflats (for example if loss were restricted to approximately 10%), for other habitats (such as saltmarsh, seagrass beds, maerl, biogenic reefs) this proposal is inconsistent with international requirements, which require “no net loss”. The practical implications of this are considerable, as it enables threatening activities to be permissible through creating an allowable proportion of damage to the habitat.

Lastly, we note that some of the matters we have raised above relate to amendments proposed in the consultation on the Commission proposal amending Annex III of MSFD (reference: Ares(2016)5303622) and seek that the feedback provided here be regarded in respect to Ares(2016)5303622 as well.

Inter-service consultation on Commission proposal amending Annex III of MSFD

Proposal: *amending Directive 2008/56/EC of the European Parliament and of the Council as regards the indicative lists of elements to be taken into account for the preparation of marine strategies.*

Response: In general, Environment Links UK are supportive of the recommended changes to Annex III of the MSFD as they help bring clarity. Enabling the MSFD to be clearer in its requirements assists Member States to effectively implement and fulfil objectives under this important Directive. The achievement of GES should be a central priority for Member States to ensure that their marine environment is healthy, sustainable and provides effective protection for marine biodiversity.

However, where the amendments in Annex III relate to concerns we raised in our response to the consultation on the Commission proposal for the GES Decision (reference: Ares(2016)5301702), we seek that our feedback provided to Ares(2016)5301702 be regarded. Specific examples are outlined below.

Secondary criteria: Unlike primary criteria, it is proposed that Member States do not need to provide justification to the Commission if they do not use one or more of the secondary criteria. Therefore a Member State is not obliged to use secondary criteria at all. This is particularly concerning as many secondary criteria are key elements of a healthy marine environment and should be treated with equal importance as primary criteria. For example, D2C2 – secondary criteria on non-indigenous species, D5C3 – secondary criteria on harmful algal blooms, D7C1 – secondary criteria on permanent alteration of hydrographical conditions, D8C2 – secondary criteria on adverse effects of contaminants on the health of species and the condition of habitats, D10C3 – secondary criteria on litter ingested by marine animals, and D10C4 – secondary criteria on litter entanglement are all vital criteria for assessing GES and should not be optional for Member States to monitor and assess. The secondary criteria outlined here should be placed as primary criteria given the significance of their contribution to monitoring and assessing GES. Furthermore, a reporting requirement should be used for secondary criteria, similar to that used under primary criteria.

Hazardous substances: Both the old and new Annex III include a provision for 'hazardous substances' as a pressure/impact. However, the old 'systematic and/or intentional release of substances' criteria (which has been removed from the new amended Annex III) could potentially cover substances that did not meet the strict criteria needed to classify a substance 'hazardous'. The current proposal creates a risk that certain polluting waste streams (that are not hazardous) will not qualify as a 'pressure' or 'impact'. This matter could be easily addressed through further amending Annex III to clarify that 'additional contaminants' accommodates other chemicals that give rise to pollution.