



## EU Marine Strategy Framework Directive RSPB and BirdLife International<sup>1</sup> Briefing, July 2008

In December 2007, the European Parliament and the Council agreed the consolidated text of the Marine Strategy Framework Directive (MSFD), establishing a framework for Community action in the field of Marine Environmental Policy. The final version<sup>2</sup> was published in the Official Journal of the European Union on the 25<sup>th</sup> of June 2008, entering into force on the 15<sup>th</sup> July 2008 (i.e. the 20<sup>th</sup> day following publication). Member States will need to transpose the MSFD into national law by the 15<sup>th</sup> July 2010, at the latest.

The main aim of the Marine Strategy Framework Directive (MSFD) is to ensure **'good environmental status' (GES)** of Europe's seas by 2020, and to do this by implementing national marine strategies, including targeted programmes of measures (POMs) within Marine (Sub-)Regions<sup>3</sup>. Member States have to cooperate to ensure coordinated development of the marine strategies. This requires individual Member States to implement national Marine Strategies and POMs that combined with those from other Member States will result in GES of the Marine (Sub-)Region.

The development of the MSFD involved a number of years of intensive lobbying from an NGO coalition based in Brussels, led by Greenpeace, and which BirdLife International was a member. The MSFD evolved from an initial Commission idea for a European Marine Strategy<sup>4</sup> which was published in October 2005 together with the announcement on a directive.

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<sup>1</sup> The RSPB is the UK Partner of BirdLife International, the global partnership of bird conservation organisations.

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:164:0019:0040:EN:PDF>

<sup>3</sup> Marine Regions and Sub-Regions are determined as follows [Art4]:

- i) the Baltic,
- ii) the North-East Atlantic Ocean, possibly divided into the Greater North Sea (including the Kattegat and English Channel), the Celtic Seas, the Bay of Biscay and the Iberian Coast, and in the Atlantic Ocean, the Macaronesian bio-geographic region, being the waters surrounding the Azores, Madeira and the Canary Islands;
- iii) the Mediterranean Sea, possibly divided into the Western Mediterranean Sea, the Adriatic Sea, the Ionian Sea and the Central Mediterranean Sea, and the Aegean-Levantine Sea; and
- iv) the Black Sea.

<sup>4</sup> [http://ec.europa.eu/environment/water/marine/pdf/eumarinestrategy\\_storybook.pdf](http://ec.europa.eu/environment/water/marine/pdf/eumarinestrategy_storybook.pdf)



## **So what benefits does the MSFD deliver?**

The Directive “establishes a framework within which **Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment**” [Art1(1)].

To deliver this, Member States are required to develop and implement Marine Strategies in order to:

1. **“protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems in areas where they have been adversely affected”**; [Art1(2)(a)]
2. **“prevent and reduce inputs in the marine environment, with a view to phasing out pollution as defined in Article 3(8), so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea”**; [Art1(2)(b)]
3. **“Marine Strategies shall 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 good environmental status 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”**. [Art1(3)]

In addition, the MSFD is to **“contribute to coherence between, and aim to ensure the integration of environmental concerns into, the different policies, agreements and legislative measures which have an impact on the marine environment”** [Art1(4)]. Such policies would include, inter alia the Common Fisheries Policy (CFP) and the Integrated Maritime Policy. The MSFD is the ‘environmental pillar’ of the European Integrated Maritime Policy.

- **“Where a Member State identifies an issue which has an impact on the environmental status of its marine waters and which cannot be tackled by measures adopted at national level, or which is linked to another Community policy [e.g. CFP] or international agreement, it shall inform the Commission accordingly and provide a justification to substantiate its view”** [Art15(1)]. The Commission is required to respond within 6 months. [Art13(1) & 14(1)]

In other words, Member States will still rely on the adoption of an EU Regulation to prohibit fisheries where they are a damaging activity [Recital 39], but there is now an implicit acknowledgement of the need for the Commission to act and it is required to respond within a relatively short period of time. While Recital 40 requires that the CFP and any future reform of it, **“should take into account the environmental impacts of fishing and the objectives of this Directive”**.

The MSFD also makes special mention of marine protected area mechanisms:

- Programmes of measures “**shall include spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems**, such as **special areas of conservation pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive**, and **marine protected areas** as agreed by the Community or Member States concerned **in the framework of international or regional agreements** to which they are parties”. [Art13(4)]
- And the Commission will produce a progress report on protected areas by 2014, based on information submitted by the Member States. [Art21]

Finally, the MSFD overlaps with the Water Framework Directive (WFD) at the coast, but duplication has been avoided. The MSFD states that coastal waters, including their seabed and subsoil, are an integral part of the marine environment, and as such should be covered by the MSFD [Art3(1)(b)]. However, where the environmental status of coastal waters is already addressed under the WFD, it will continue to do so, and the MSFD will only consider other factors (outside the remit or scope of the WFD) “to ensure complementarity while avoiding unnecessary overlaps”. The aim is to achieve the obligations under both Directives through a cooperative approach (either those described in the MSFD or the WFD) at the regional scale.

### Where is the Directive weak?

During the Council discussion a clause referring to the costs of action to achieve GES was introduced and strongly defended by a number of Member States:

- “Member States shall develop and implement all the elements of Marine Strategies referred to in Article 5(2), but **shall not be required**, except in respect of the initial assessment described in Article 8, **to take specific steps** where there is no significant risk to the marine environment, or **where the costs would be disproportionate** taking account of the risks to the marine environment, and provided that there is no further deterioration.” [Art13(1) & 14(4)]

This provision has created a significant potential loophole in the Directive but at the same time some safeguards have been put in place ensuring limited use of the article:

- (a) it was moved from Article 1 into Article 14 on ‘Exceptions’, thus placing it in a more moderate context and less prominent place in the Directive;
- (b) the initial assessment of the state of the marine environment is exempt, meaning that at least the first time, a complete assessment has to be performed;
- (c) the text explicitly requires Member States to avoid further deterioration; and
- (d) Member States wanting to exploit the loophole must provide the Commission with the necessary justification to substantiate their decision and must avoid permanently compromising the achievement of good environmental status.

## Timetable of MSFD Milestones

Date	Action
2010 15 July	<ul style="list-style-type: none"> <li>▪ Transposed into national legislation (at the latest) [Art26]</li> <li>▪ Member States to designate Competent Authorities [Art7(1)]</li> <li>▪ The Commission need to consult on and agree any additions regarding criteria, methodologies or standards in Annexes I or III [Art9(3)]</li> </ul>
2011 15 July	<ul style="list-style-type: none"> <li>▪ Member States to provide the Commission with a list of Competent Authorities and the required items of information listed in Annex II [Art7(1)]</li> <li>▪ Member States to provide the Commission with a list of Competent Authorities who participate in the international bodies relevant to the implementation of the MSFD [Art7(1)]</li> </ul>
2012 15 July	<ul style="list-style-type: none"> <li>▪ Initial assessment of the environmental status of the marine (sub-)region and the environmental impact of human activities [Art5(2)(a)(i)]</li> <li>▪ GES to be determined for the marine region [Art5(2)(a)(ii)]</li> <li>▪ Establish a comprehensive set of environmental targets and associated indicators for the marine region [Art5(2)(a)(iii)] (with reference to Annexes III &amp; IV [Art10])</li> <li>▪ The Commission to report on the contribution of the MSFD to the implementation of existing marine environmental objectives (national, EU and international) [Art20(2)]</li> </ul>
2013	<ul style="list-style-type: none"> <li>▪ Member States to make publicly available any spatial protection measures contributing to coherent and representative networks of marine protected areas, including marine SPAs and SACs; and information about any measures adopted or may need to be adopted in order to achieve the objectives of this Directive (i.e. GES) [Art13(6)]</li> </ul>
2014 15 July	<ul style="list-style-type: none"> <li>▪ Establish and implement a monitoring programme for the ongoing assessment and regular updating of the targets [Art5(2)(a)(iv)] (that is coordinated and compatible within marine regions [Art11])</li> </ul>
2015	<ul style="list-style-type: none"> <li>▪ Develop a programme of measures (POMs) to achieve or maintain GES (at the latest) [Art5(2)(b)(i)]</li> <li>▪ The Commission to report on progress in establishing MPAs, with particular regard to EU or international commitments on MPAs [Art21]</li> </ul>
2016	<ul style="list-style-type: none"> <li>▪ Entry into operation of the POMs (at the latest) [Art5(2)(b)(ii)]</li> <li>▪ Where the status of the marine region is critical and urgent action is required earlier entry into operation of the POMs and stricter protection measures are supported [Art5(3)]</li> </ul>
2019	<ul style="list-style-type: none"> <li>▪ The Commission to publish the first evaluation report on the implementation of the MSFD within 2 years of receiving all POMs (at the latest)</li> </ul>
2020 15 July	<ul style="list-style-type: none"> <li>▪ Achieve or maintain GES in the marine environment [Art1(1)]</li> </ul>

2023 15 July	<ul style="list-style-type: none"> <li>▪ The Commission to review the MSFD and propose any necessary amendments [Art23]</li> </ul>
<b>Review periods</b>	
Every 3 years	<ul style="list-style-type: none"> <li>▪ Member States submit an interim report on POMs implementation progress [Art18]</li> </ul>
Every 6 years	<ul style="list-style-type: none"> <li>▪ Initial assessment [Art17]</li> <li>▪ Environmental targets [Art17]</li> <li>▪ Monitoring programmes [Art17]</li> <li>▪ POMs [Art17]</li> <li>▪ Implementation evaluation reports [Art20]</li> </ul>