



Defra MSFD Team
Department for Food, Environment and Rural Affairs (Defra)
Millbank 8A, 17 Smith Square,
London SW1P 3JR

24th April 2015

Dear Sir/Madam,

MARINE STRATEGY FRAMEWORK DIRECTIVE (MSFD) MEASURES CONSULTATION- RSPB RESPONSE

Thank you for giving the RSPB the opportunity to respond to this consultation on the UK Government and Devolved Administrations' proposed Programme of Measures to reach and maintain Good Environmental Status under the requirements of the Marine Strategy Framework Directive. The RSPB champions the cause of biodiversity conservation within the wider debate on sustainable development. We are the largest wildlife conservation organisation in Europe with over one million members and we own and manage 200 nature reserves, where wildlife can thrive and people can be inspired. We are active across the UK at national, regional and local levels and play an active part in MSFD discussions at a European level through BirdLife International.

In addition to our interest in the protection and conservation of the marine environment, its sealife and seabirds, the RSPB is also interested in the MSFD measures from the perspective of coastal landowner, land manager and practitioner in several projects designed to restore seabird populations, which are supporting or would support the achievement of GES.

The RSPB strongly supports the aims of the MSFD as arguably the most significant and wide ranging piece of environmental legislation to emerge from the European Union since the Birds and Habitats Directives, and the explicit environmental pillar of the EU Integrated Maritime Policy. Its very existence recognises that the current status of our marine environment needs to be significantly improved to support not only biodiverse ecosystems but also long term sustainable use.

The development of the Programme of Measures represents the most tangible and practical stage yet, establishing the MSFD as the defining framework for implementing the ecosystem-

based approach, both in bringing existing actions under an integrated approach and also as the basis to develop new ideas, thinking, and actions.

We therefore welcome this consultation and support the use of existing and planned measures as a basis for the Programme of Measures, and the integration where possible of monitoring and reporting timelines with ongoing processes. However, there is very little detail on *how* these measures will achieve GES beyond simply namechecking them, with often a passive reliance by the MSFD on these mechanisms to deliver GES. In particular, we have strong concerns that:

- The existing measures are often not being effectively implemented or achieving their own aims and objectives
- Several existing measures are far from complete, such as marine planning and a well-managed network of Marine Protected Areas
- Existing measures will be insufficient to restore the marine environment in order to reach GES for biodiversity, and very few new measures have been proposed in this consultation.

Where these relate to individual Descriptors, we have responded to the specific consultation questions. For Descriptors not covered by this response, we refer you to, and support, the response made by the Joint Links group of organizations.¹

Furthermore, we have concerns that sufficient precaution is not being applied throughout the Directive to allow for environmental restoration, given that by the Government's own reflection in its 2012 consultation on MSFD targets and indicators, which stated "*GES is probably not being achieved for these [biodiversity] Descriptors at the present time*".² For a number of Descriptors, measures have not been proposed due to a perceived lack of knowledge or the need to collect more evidence before taking action. However, the Precautionary Principle clearly states that scientific uncertainty should not delay taking appropriate action to prevent harm. This is particularly evident for Descriptors for non-indigenous species, litter and noise, which have almost no tangible actions proposed or exclusively voluntary measures, such as guidance documents.

We recognise, however, that the MSFD is an ongoing cyclical process and that the development of new ideas and the implementation of planned measures require further discussion over the next two to three years. For seabirds particularly, the development of a UK Seabird Bycatch Action Plan and a prioritised Programme of Island Restoration offer particularly exciting opportunities for direct interventions that have clearly been shown to help seabird populations. The RSPB has extensive experience in both these issues and would be keen to

¹ Wildlife and Countryside Link, Scottish Environment Link, Wales Environment Link and Northern Ireland Marine Task Force.

² This consultation has been subsequently removed from the Internet.

continue discussions with Defra, the Devolved Administrations and the Statutory Nature Conservation Bodies (SNCBs) around the UK to implement them.

We therefore look forward to working with all UK Governments to help implement the MSFD, both in implementing existing measures and identifying what more needs to be done to restore the health of UK seas, which hold globally important but hugely pressurised species and habitats.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alec Taylor', written in a cursive style.

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The RSPB is the country's largest nature conservation charity, inspiring everyone to give nature a home. Together with our partners, we protect threatened birds and wildlife so our towns, coast and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations.

The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales no. 207076, Scotland no. SC037654

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Cross-cutting measures

1. *Are the proposed measures for the Descriptor sufficient to meet the requirements of the Directive, bearing in mind the current limitations in our knowledge base?*

We support the identified cross-cutting measures that apply across all Descriptors, such as marine planning, Marine Protected Areas (MPAs), EIA and SEA regimes and marine licensing systems. However, with the exception of MPAs, there is no detail on how several of these will contribute to meeting each of the Descriptor targets and little mention of them in proposed measures for Descriptors 1, 4 and 6. In particular, the development of marine plans is still at an early stage, with the first marine plans around the UK providing limited spatial prescription or certainty. It is therefore unclear how much of a contribution marine planning can make in this cycle of the MSFD, and that much more explicit links must be made between marine planning and the MSFD, ideally at a Descriptor level.

In this regard, the Joint Links partnership (Wildlife and Countryside Link, Wales Environment Link, Scottish Environment Link and Northern Ireland Environment Link) have commissioned the report, *“Effective UK Marine Planning: Delivery of Good Environmental Status by 2020”*³ It sets out broad recommendations for how marine planning can support the implementation of the MSFD, as well as specific recommendations for each Descriptor. A worrying conclusion of emerging UK marine plans is that, based on a review of current UK marine planning, *“the majority of emerging Marine Plans have not been developed using an ecosystem-based approach as required by the Marine Strategy Framework Directive”* (Paragraph 12). Furthermore:

“The strategic nature of existing marine plan policies, which often repeat existing international & national policy, are not spatially prescriptive meaning that they are unlikely to effectively progress GES descriptor targets and indicators or inform lower tier planning including decision making, such

³ [http://www.wcl.org.uk/docs/Effective UK Marine Planning April 2015.pdf](http://www.wcl.org.uk/docs/Effective%20UK%20Marine%20Planning%20April%202015.pdf)

as marine licensing decisions. Generally, the plans considered do not provide any clear spatial guidance in terms of the location of potential activities/developments or set out any detailed actions or proposals to address issues that are specific to their Marine Plan, which means that there is a lack of detail in terms of implementation and delivery.” (Paragraph 11)

It is therefore important that the MSFD can place positive and constructive pressure on marine plan authorities to ensure that links to the MSFD are as clear as possible, and that the ecosystem-based approach (as defined by the MSFD itself and in the UK Marine Policy Statement) is fully implemented.

With regards to MPAs, it is acknowledged that the ecologically coherent and well-managed network of MPAs around the UK is not yet complete and far from effectively managed, and that there is a high risk of failing to meet the 2016 deadline under the MSFD for this measure to be fully implemented (as well as the specific deadline – itself extended – for such a network to be in place under the framework of the OSPAR Convention).

Reports have been commissioned by the group of Joint Links NGOs, which have assessed ecological coherence at a range of geographic scales, including Lieberknecht et al. (2014)⁴ for the UK as a whole (excluding Northern Ireland) and Barnard et al. (2014) for Northern Ireland specifically.⁵ These reveal that gaps currently exist for a range of habitats and species, particularly mobile species and offshore areas. We welcome, therefore the support for further MPAs, including for seabirds specifically, as “planned measures” in this consultation.

Furthermore, the importance of the European Nature Directives in delivering the objectives of the MSFD cannot be overstated. Indeed, spatial and representative networks of MPAs under European and national legislation are the only measure explicitly identified in the MSFD itself (Article 14[4])⁶, the UK Government must press for their underlying legal bases to be unaffected by European political motivations. Yet, at this time, the current status of the Habitats and Birds Directives is unclear, given their current review as part of the EU’s Fitness Check of the EU Nature Directives. The RSPB, along with its Link partners, strongly opposes any attempts to open up the Directives at the present time, and believes that reaching and maintaining GES of EU marine waters under the MSFD would be at best jeopardised, and at worst prevented, by any modification or weakening of this legislation.

⁴ Lieberknecht, L. M., Mullier, T. W., and Ardron, J. A. (2014) Assessment of the ecological coherence of the UK’s marine protected area network. A report prepared for the Joint Links.

⁵ Barnard, S., Burdon, D., Strong, J. & Atkins, J. (2014) *The ecological coherence and economic & social benefits of the Northern Ireland MPA network*. Report to the Northern Ireland Marine Task Force (YBB238-F-2014). Institute of Estuarine and Coastal Studies (IECS), University of Hull, Hull, UK, HU6 7RX.

⁶ Article 13(4) which states “Programmes of measures established pursuant to this Article 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.”

Descriptor-specific measures

Non-commercial fish (Descriptors 1, 4 and 6)

1. *Are the proposed measures for the Descriptor sufficient to meet the requirements of the Directive, bearing in mind the current limitations in our knowledge base?*

We broadly support the set of measures identified for fish under Descriptor 1, including the reformed CFP, Scottish Conservation Credits Scheme and other fisheries management systems, such as closures. We also welcome measures specifically for sharks and rays.

However, we do not see any measures specifically for other sensitive and non-commercial species. We also remain concerned that the approach taken to achieve GES for fish under Descriptor 1 will exclude several species, particularly deep water species, that are slow growing and particularly sensitive to human pressures. Page 31 states that *“the species to be included in the assessment for these targets are chosen by identifying the most sensitive 33% of species caught in existing research surveys and then excluding any for which data is too poor to allow robust statistical analysis”*. The lack of data should not be used as an exception to exclude species from GES assessment, and we seek clarity on which, and how many, species will be included in this assessment.

2. *Are there any existing or planned measures for this Descriptor we have not identified that might also contribute to the achievement of the relevant targets and the achievement or maintenance of GES?*

The planned CFP measures should include the implementation of Article 17, which requires the allocation of fishing opportunities by economic, social and environmental criteria. To this end, the RSPB commissioned a report, “Practical Implementation of Article 17 of the CFP”⁷, which contains several specific recommendations, building on existing schemes, for developing environmental criteria, as follows:

- Underpinning agreements on quota for a greater number of low-impact fisheries than those currently subject to such underpinning
- Reallocation of quota to low impact fisheries, based on agreement between Member States and taking into account predictions of potential (a) under-utilisation of quota; (b) cumulative impacts of resulting higher numbers of low-impact fishing vessels
- A system of conservation credits applied to quota shares, such as a “quota bonus” according to environmental performance
- Industry collaboration and incentives linked to MSC-certification, or a suitable proxy

⁷ http://www.rspb.org.uk/Images/IEEP_2014_Practical_implementation_of_CFP_Art_17_tcm9-385886.pdf

- Area-based measures to meet environmental criteria, in line with the implementation of the ecosystem-based approach under the MSFD
- A dedicated funding stream under Articles 36, 38 and 39 of the European Maritime and Fisheries Fund (EMFF)

3. *Are there any new measures that are needed? If so please provide details and evidence to show how they would contribute towards the achievement or maintenance of GES or the environmental targets as set out in the Marine Strategy Part One*

Greater clarity is needed on how the proposed measures will meet the objectives for age/size distribution.

4. *Are there any measures proposed that you think are not justified or that will not contribute towards the achievement or maintenance of GES or the environmental targets as set out in the Marine Strategy Part One?*

5. *Do you agree with the justifications provided for the use of exceptions under Article 14?*

We note the exception for natural change on Page 43, but disagree with the aggregated nature of the exception that would, as worded, apply to all fish species being assessed under Descriptor 1. Given the requirement under the CFP to achieve Maximum Sustainable Yield (MSY) for all stocks by 2015 where possible, and by 2020 at the latest, we feel a more targeted set of exceptions is needed for individual species whose life history clearly prevents the achievement of GES by 2020.

6. *Are there any significant human-related pressures that are not addressed by the proposed measures?*

Birds (Descriptors 1, 4 and 6)

1. *Are the proposed measures for the Descriptor sufficient to meet the requirements of the Directive, bearing in mind the current limitations in our knowledge base?*

No. While the majority of existing measures have been identified, we do not believe that the proposed measures will be sufficient to meet the requirements of the Directive. As previously stated, we support the use of existing and planned measures as a basis for the Programme of Measures identified in the consultation, and the integration where possible of monitoring and reporting timelines with ongoing processes. However, we have concerns that:

- The existing measures are often not being effectively implemented or achieving their own aims and objectives

- Several existing measures are far from complete, such as marine planning and a well-managed network of Marine Protected Areas
- Existing measures will be insufficient to restore the marine environment in order to reach GES for biodiversity, and no new measures have been proposed at all in this consultation.

For birds, the relevant requirements of the Directive as set out in the UK Marine Strategy Part One state that the distribution and abundance should not be significantly affected by human activities. For the majority of bird groups, the historical baseline used implies a requirement to improve populations from the current situation. However, despite the implementation of several of the existing measures identified, the Seabird Monitoring Programme (SMP) has shown a significant decline in the abundance of several seabird species, particularly since 2000, including black-legged kittiwake (-61%), European shag (-41%), common tern (-17%), lesser black-backed gull (-48%) and Arctic skua (-74%).⁸ While this is likely to have been in part due to impacts from climate change, which are outside the scope of this Directive, the increasing demand for marine space and cumulative impacts of human activities such as fisheries, energy and recreation have also clearly played a large part, and measures to address these pressures have to date either not been sufficient nor succeeded.

Furthermore, ICES assessments of the Ecological Quality Objective for seabird abundance (which corresponds to the UK MSFD target) concludes that throughout the period 2000-2012 this objective was not met, with particular declines in the North Sea since 2003 and in the Celtic Seas since 2005.⁹ This is a clear “cause for concern” for ICES

Page 64 of the consultation states that “*Bird abundance and distribution can be affected by both changes in prevailing conditions (e.g. climate change and changes in prey distribution) and human-related pressures so it is considered consistent with GES that some species may decline in UK waters. However, if continual declines are observed for a species action will be taken to establish the cause so that management measures can be taken where appropriate*”. However, this statement contradicts the ambition of the MSFD to improve seabird populations, and take the necessary measures to achieve this, rather than wait for further declines before taking measures “where appropriate”. It is already recognised that bird populations are currently neither in GES nor in Favourable Conservation Status under the EU Birds Directive. To overlook and delay addressing this deficit is a considerable weakening of the requirements of both Directives. We would also argue that prey distribution changes as much due to human pressures (in particular historical overfishing and benthic destruction) in the heavily degraded North and Celtic Seas subregions, as due to prevailing natural conditions.

⁸ <http://jncc.defra.gov.uk/page-3201>

⁹ http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2013/Special%20requests/OSPAR_EcoQO_on_Seabird_Population_Trends.pdf

Climate change must not, in this context, be used as a “get-out clause” to delay or prevent action being taken to restore the UK’s bird populations, for which the UK Government has an international responsibility. Seabirds, for example, are the only group identified for which an explicit target has been set that refers to productivity against prevailing climatic conditions (kittiwakes).

We support the existing measures that have been identified for birds, such that they apply to breeding seabirds and non-breeding waterbirds in this cycle. This includes the as-yet-unfinished suite of Special Protection Areas (SPAs) under the Birds Directive, as well as national MPAs in all parts of the UK. The RSPB has made a formal complaint to the European Commission regarding the failure of the UK Government to implement the Birds Directive, for the lack of designating offshore SPAs, other conservation measures and the lack of a systematic programme of data and survey collection.

In this regard, it is asserted (p. 42) that “*A programme of work is underway to complete the identification of SPAs by end 2015*”. However, while the Government has indeed committed to this target, the programme of work underway is not commensurate with achieving this target and there is no chance that it will be met by the end of this year. Moreover, the mere designation of MPAs does not guarantee that they “*will contribute to the achievement of the targets for Descriptors 1 and 4*” (p. 35). Management, including control and enforcement, is also needed.

National MPA designations are particularly relevant for species not covered by the Birds Directive (black guillemot), areas adjacent to breeding Sites of Special Scientific Interest (SSSIs) and sites for supporting habitats and prey, such as sandeels and other forage fish species. As such, other national marine legislation (the Marine and Coastal Access Act 2009 and Northern Ireland Marine Act 2013) should be included as measures with the inclusion of mobile species within the set of Marine Conservation Zones (MCZs) in these areas, following Scotland’s precedent, and we are pleased to see future MCZs in England identified as a planned measure for seabirds, as well as one site for black guillemot in Northern Ireland (Rathlin Island pMCZ).

We welcome, however, the statement from JNCC at Defra’s MSFD stakeholder workshop in February 2015 that the effects of the landing obligation have been taken into account as much as feasible in the setting of baselines for species likely to have benefited from discards in the past, and that “*discard bans should not affect the achievement of GES*”. We fully support the implementation of the landing obligation as a key pillar in the delivery of sustainable fisheries, which will have consequential long-term benefits for seabirds. While we also recognize that there may be short-term negative effects of the landing obligation (especially for demersal species) on some seabird species, much has already been done to reduce discards in many fisheries (by up to as much as 90% for the North Sea roundfish fishery, for example¹⁰). We

¹⁰ <http://nffo.org.uk/news/the-proof-fishermen-had-already-reduced-discards-by-90.html>

therefore support the statement that *“It will be useful to monitor the effects of the ban so that it can be distinguished from other drivers”* (Page 66) and request further detail on how this will be done.

Page 67 states that *“Across the devolved administrations, there are a number of relevant byelaws and statutory controls, such as the sandeel fishing closure off north-east England and east Scotland since 2000 as a direct measure for seabird conservation”*. We seek more information on these relevant measures as they relate to seabirds. It should also be noted that closed areas for fisheries are currently being reviewed in the revision of the Technical Measures Framework under the Common Fisheries Policy. It is important that the UK argues for retention of the North Sea 'sandeel fishing closure' in particular, especially given that *“there is evidence that the sandeel fishing closure off north-east England and east Scotland has had a positive impact on the breeding success of kittiwake colonies adjacent to the closed area.”* (Page 69)

Connected to this, we note the absence of specific measures relating to kittiwake productivity under MSFD Criteria 1.3 and 4.1, a key target and one of the few UK MSFD targets to explicitly link to wider food web pressures, bringing in Descriptor 4. We have previously been told in meetings with Defra and JNCC that this kittiwake target could be delivered by measures for commercial fisheries under Descriptor 3 to address prey species. However, this would only be acceptable if key prey species (sandeel, sprat, herring) are explicitly picked up in Descriptor 3, and we call for these species to be included as part of any measures in this Descriptor.

We strongly support the development of a UK Seabird By-catch Plan of Action, and supporting work to assess the interactions of sensitive bird species with fisheries. We would welcome further discussion on this in coming months, including how all parts of the UK can be integrated into such a plan. The RSPB, along with other BirdLife Europe partners, has worked for many years on seabird bycatch issues, including to help secure the 2012 EU Communication COM(2012) 665¹¹ on an Action plan to ‘minimise, and where possible eliminate, the incidental catches of seabirds in fishing gears’. We are also part of BirdLife Europe’s Seabird Task Force, which is working with fishermen to reduce seabird bycatch in Europe, initially in Spain and Lithuania¹². At a practical level, the RSPB has been working with fishermen in Filey Bay, Yorkshire, to develop long-term solutions to gillnet bycatch, and we are also working with Inshore Fisheries and Conservation Authorities (IFCAs) in the English Channel to understand the risks of bycatch in fixed nets with a view to developing mitigation measures.

We also strongly support the development of a “UK-wide programme of quarantine against invasive, non-indigenous mammals for island seabird colonies and the strategically targeted removal of mammals from some islands”, and we are keen to work with all UK Governments and SNCBs to help deliver this. The RSPB has been developing a programme of island restoration and biosecurity over the last two years, as part of our drive to give seabirds the best chance to breed successfully without pressure from invasive species. We also are leading

¹¹ http://ec.europa.eu/fisheries/cfp/fishing_rules/seabirds/seabirds_communication_en.pdf

¹² <http://seabirdbycatch.com/>

two current projects to remove invasive mammals from St Agnes and Gugh in the Scilly Isles and the Shiant Isles in the Outer Hebrides, in partnership with Natural England, Scottish Natural Heritage and others.

The three main areas of work in the programme are:

- 1) the identification of priority sites for:
 - a. the eradication of invasive mammalian predators, and
 - b. the installation of sound biosecurity measures to protect existing predator-free islands; and
- 2) the development of a best practice toolkit to support the implementation of eradication and biosecurity measures;
- 3) the development and delivery of island restoration measures (eradication, biosecurity, species recovery) at key sites identified through prioritisation.

Island restoration work is an expensive and risky undertaking, which benefits from appropriate project selection and meticulous planning. In particular, eradication of invasive non-native mammalian predators tends to be a high-cost conservation intervention, but can have profound benefits for biodiversity. For example, on Lundy Island in the Bristol Channel, Manx shearwater numbers have increased ten-fold, and puffins over six-fold, in the ten years since invasive black and brown rats were eradicated from the island, with total seabird numbers doubling in the same period. These and other eradications have to date been carried out on an ad-hoc basis, and it is vital for the Government and statutory agencies to secure a long-term future for this work by providing leadership, support and funding, given legal obligations for both the MSFD and Marine Protected Area management.

2. Are there any existing or planned measures for this Descriptor we have not identified that might also contribute to the achievement of the relevant targets and the achievement or maintenance of GES?

In Wales, links should be made to the upcoming Environment Bill and Future Generations Bill, both of which will have important implications for ecosystem-based planning and management of the marine environment.

The implementation of Article 17 of the new CFP may lead to improved supporting conditions for piscivorous bird populations, through the allocation of quota according partly to environmental criteria. The RSPB commissioned a report, “Practical Implementation of Article 17 of the CFP”¹³, which contains several specific recommendations, building on existing schemes, for developing environmental criteria, as follows:

¹³ http://www.rspb.org.uk/Images/IEEP_2014_Practical_implementation_of_CFP_Art_17_tcm9-385886.pdf

- Underpinning agreements on quota for a greater number of fisheries than those currently subject to such underpinning
- Reallocation of quota to low impact fisheries, based on agreement between Member States and taking into account predictions of potential (a) under-utilisation of quota; (b) cumulative impacts of resulting higher numbers of low-impact fishing vessels
- A system of conservation credits applied to quota shares, such as a “quota bonus” according to environmental performance
- Industry collaboration and incentives linked to MSC-certification, or a suitable proxy
- Area-based measures to meet environmental criteria, in line with the implementation of the ecosystem-based approach under the MSFD
- A dedicated funding stream under Articles 36, 38 and 39 of the European Maritime and Fisheries Fund (EMFF)

As well as the management of MPAs in relation to birds, particularly SPAs, inshore fisheries measures relating to bycatch should also be identified, such as the code of practice for seabird bycatch in the Southern IFCA and relevant byelaws in Filey Bay and St Ives Bay to address gillnet bycatch. Future measures should include management of fisheries to address bycatch, based on the ongoing JNCC-led bycatch risk assessment.

3. Are there any new measures that are needed? If so please provide details and evidence to show how they would contribute towards the achievement or maintenance of GES or the environmental targets as set out in the Marine Strategy Part One

We would like to see consideration of the identification and safeguarding of priority migratory corridors for marine birds, either within marine plans or as a conservation-specific measure. We would also like to see a scientific feasibility study into the potential for decommissioned energy structures to be used as artificial breeding sites for seabirds, notwithstanding wider issues around the decommissioning of oil and gas platforms.

Non-indigenous species (Descriptor 2)

4. Are the proposed measures for the Descriptor sufficient to meet the requirements of the Directive, bearing in mind the current limitations in our knowledge base?

Broadly speaking, we note that the measures for implementing Descriptor 2 largely involve the development of action plans and guidance, which while useful have traditionally failed to be implemented beyond the agreement of selected voluntary measures. Along with other partners on Wildlife and Countryside Link, we urge the implementation of the following measures:

- UK Ratification of the 2004 IMO Ballast Water Management Convention. The detailed guidelines and standards for the transfer, reception and sampling of ballast water and the production of ballast water management plans, would be of great significance to

meeting targets under D2, and the UK should champion and prepare for the Convention’s future entry into force.

- Implementation of the EU Invasive Alien Species (IAS) Regulation and the development of a list of key priority marine invasive alien species. The Regulation requires all Member States to take “all necessary steps to prevent the unintentional introduction or spread, including, where applicable, by gross negligence, of invasive alien species of Union concern”, develop national lists of key invasive species and action plans for priority pathways. The list of Species of Union Concern associated with this Regulation should include key marine species.
- Biosecurity protocols, codes of practice and training on the prevention of introduction of INNS at high-risk/vulnerable areas, including harbour agreements and training on NIS at all major ports and harbours around the UK.
- The full implementation of a revised GB Invasive Non Native Species Strategy (GBINNS), with high-level actions to address NIS in the marine environment. This should be supported by key actions for priority species and pathways.

5. *Are there any existing or planned measures for this Descriptor we have not identified that might also contribute to the achievement of the relevant targets and the achievement or maintenance of GES?*

A specific pathway action plan to address the risk of ballast and hull fouling, linked to the future implementation of the BWM Convention is recommended as a planned measure, in preparation for the BWM Convention’s future entry into force.

The prioritised programme of invasive mammal eradication from islands for high risk or highly vulnerable seabirds, combined with a best practice biosecurity toolkit, is also relevant to this Descriptor (see the RSPB’s comments on measures for birds).

Finally, we wish to see strengthened promotion and support for citizen science reporting of INNS, including through national, regional, and European networks (such as CIESM JellyWatch Program, European Alien Species Information Network,) as a means to overcome the difficulties related to tracking the onset of biological invasions. This must be linked to the GBINNS.

6. *Are there any new measures that are needed? If so please provide details and evidence to show how they would contribute towards the achievement or maintenance of GES or the environmental targets as set out in the Marine Strategy Part One*

Greater financial incentives should exist to assist with the costs of rapid response and scientific understanding of pathways, in order to reduce the risks to the UK marine environment of

marine non-indigenous species. For example, we would like to see an industry-funded emergency release fund for rapid response to NIS, designed to act as a central fund to resource the necessary emergency response in the event of NIS introduction.

A research fund should also be established for research on introduction, impact and control of NIS to support academic research to better understand, among other things, the effect of NIS on ecosystem services, improving risk assessment, predictive habitat modelling for NIS, life cycle analysis and appropriate management methods.

Finally, a central, web-based, accessible database of NIS sightings and recordings for UK marine waters, linked to IAS recording at The GB Non Native Species Secretariat¹⁴, is urgently needed, to integrate all existing reporting.

Commercial fish and shellfish (Descriptor 3)

1. *Are the proposed measures for the Descriptor sufficient to meet the requirements of the Directive, bearing in mind the current limitations in our knowledge base?*

No. We do not consider that the measures identified under Descriptor 3 are sufficient on their own to meet GES for commercial fish and shellfish. We also register concern that no further measures are envisaged over and above those planned but not yet implemented.

We propose that the D3 targets should be reconsidered within the PoM, and potentially strengthened as follows:

- D3.1: Regarding ‘the fishing mortality for all commercial stocks is at or below F_{MSY} ,’ fishing at F_{msy} should only be considered appropriate if the stock is at or above B_{msy} .
- D3.2: the spawning stock biomass of all commercial stocks should be stated as being above B_{MSY} , as opposed to B_{pa} .
- D3.3: the age and size distribution should be indicative of a healthy population. We consider that this criterion should be included in the Defra PoM as the first two indicators alone do not necessarily reflect changes to the structure and trophic function of the stock (also important for D4). As noted below, a suite of potential indicators for this criterion have been recommended to be tested for suitability to indicate GES, and it is hoped that suitable indicators and targets for this criterion can subsequently be added to Defra’s PoM.

We draw attention to the recent European Commission (DG ENV) decision to consider a review of Descriptor 3 criteria, in particular for indicators D3.2 (reproductive capacity) and D3.3 (the age and size distribution should be indicative of a healthy population), the latter of which does

¹⁴ <http://www.nonnativespecies.org/index.cfm?sectionid=81>

not appear in the Defra PoM. See also the recommendations of ICES WKGMSFD3 in response to a request from the Commission to amend D3 indicators and targets.

We also regret on page 113 the use of the phrase ‘*setting the exploitation rate to reach F_{MSY}* ’ (likewise ‘*achievement of F_{MSY}* ’ on p. 114). F_{MSY} must be a limit, not a target, i.e. any range of allowable F values must be bound at their upper limit by F_{MSY} . We have consistently made this case in the development of targets and indicators for Descriptor 3. As indicated (above) in our comment on D3.1, we accept that if the SSB of a stock SSB is at B_{MSY} , it is appropriate to be able to fish at F_{MSY} , but up to that point it is appropriate to fish below F_{MSY} .

Regarding page 114, and given that a ‘well managed’ MPA network is implicit, we disagree that the answer is ‘No’ to whether any of the proposed measures contribute to the development of a coherent network of Marine Protected Areas. Multiannual Plans (MAPs) and Technical Measures have an indirect role in delivering, among other things, ecosystem-based management of a coherent MPA network. The review of Technical Measures must thus support continued closure of the North Sea area established in 2000 to exclude sandeel fisheries (CFP Art 29a Reg 850/98) in response to the decline of the UK’s breeding kittiwake population, and this should also be reflected in any forthcoming Multiannual Plan (MAP) for sandeel and other low trophic level fisheries.

2. *Are there any existing or planned measures for this Descriptor we have not identified that might also contribute to the achievement of the relevant targets and the achievement or maintenance of GES?*

The requirement to proactively implement Article 17 of the CFP, requiring Member States to allocate fishing opportunities based on transparent and objective criteria, including those of an environmental, social and economic nature. The RSPB considers that, with the fundamental changes in fisheries management emerging since 2014, notably the new targets for sustainable fishing (Article 2.2), the landing obligation, the emergence of MPA networks and the UK’s new approach to fisheries measures in Natura 2000 sites, traditional allocation of quota based on historic track records alone is outdated. To address Article 17 proactively, including by explicitly citing and incentivising its implementation in the UK’s EMFF Operational Programme, would be a natural response to the consultation’s question “*How will sustainable development and socio-economic impacts be considered?*”

3. *Are there any new measures that are needed? If so please provide details and evidence to show how they would contribute towards the achievement or maintenance of GES or the environmental targets as set out in the Marine Strategy Part One.*

Over and above the routine monitoring requirements of the Data Collection Framework, the UK should give due priority to comprehensive monitoring of the impacts of pulse trawls on ecosystems in the EEZ, with particular focus on, *inter alia* (a) long term ecosystem impacts at a representative spatio-temporal scale; (b) cumulative impacts (taking into account co-located

fishing gears); (c) reports by (non-pulse gear) UK fishermen of increased capture of dead fish, especially juvenile Dover sole, in areas recently fished by Dutch pulse trawlers. Close scrutiny by the UK of this fishery is all the more urgent given that the Dutch Cooperative Fisheries Organisation (CVO) has announced (26 March 2015) assessment of its pulse vessels for MSC certification.

Eutrophication (Descriptor 5)

1. *Are the proposed measures for the Descriptor sufficient to meet the requirements of the Directive, bearing in mind the current limitations in our knowledge base?*

The MSFD consultation identifies the River Basin Management Plans (RBMPs) associated with the Water Framework Directive (WFD) as the key measure to meet targets for eutrophication, yet this reliance hides the fact that a large proportion of coastal water bodies are not in Good Ecological Status (GEcS) after one cycle of the WFD. Indeed, in England particularly, 130 of 172 estuarine water bodies (76%) failed to reach GEcS in 2012¹⁵, while interim reporting by the Environment Agency suggests 83% of transitional water bodies were not GEcS or Good Ecological Potential in 2012, with 2014 results unchanged. 64% of coastal water bodies were not specifically meeting GEcS/P in 2012, increasing to 67% in 2014.

Furthermore, a number of water bodies have no commitment to reach GEcS/P, due to alternative objectives being set in the River Basin Management Plan (RBMP). Most measures identified are also voluntary in nature, and commitment to implementing regulatory mechanisms where necessary is low. There is a particular wider lack of basic measures required under Article 11 of the WFD within the current RBMP consultation to deal with diffuse pollution from agriculture, which will directly influence the UK's ability to meet GES under the MSFD. Any measures identified to address diffuse pollution are indeed voluntary in nature.

For several coastal water bodies, action is being avoided due to '*cause of adverse impact unknown*' and/or '*unfavourable balance of costs and benefits*'. Combined with a general lack of information and a reliance on expert judgment, a lack of action in these areas does not provide confidence that WFD targets for these bodies will be met, and in turn that GES for eutrophication in UK's share of the Celtic and Greater North Seas subregions will be met. Overall, it is likely that current management will fail to even maintain the status quo let alone deliver improvement, for the entire WFD and for coastal water bodies in particular.

Finally, for Natura 2000 sites, including where the WFD is explicitly identified as the driver to bring water-dependent features into Favourable Conservation Status, the ambition for achieving FCS in these sites has been further delayed; as Figure 1 shows, if the current RBMP plans for Natura 2000 sites identified in the current RBMP consultation are implemented, we

¹⁵ <http://jncc.defra.gov.uk/page-4250>

would see just 44 N2000 sites that were not meeting FCS in 2009 expected to meet the December 2015 deadline, 18 would be extended until 2021, whilst 60 sites have had their deadline extended until 2027. Notwithstanding the legality of allowing these extensions (based on a reinterpretation of Article 4.4 of the WFD) for meeting the requirement of Good Environmental Status by 2020 where these sites are in coastal waters, this is indefensible.

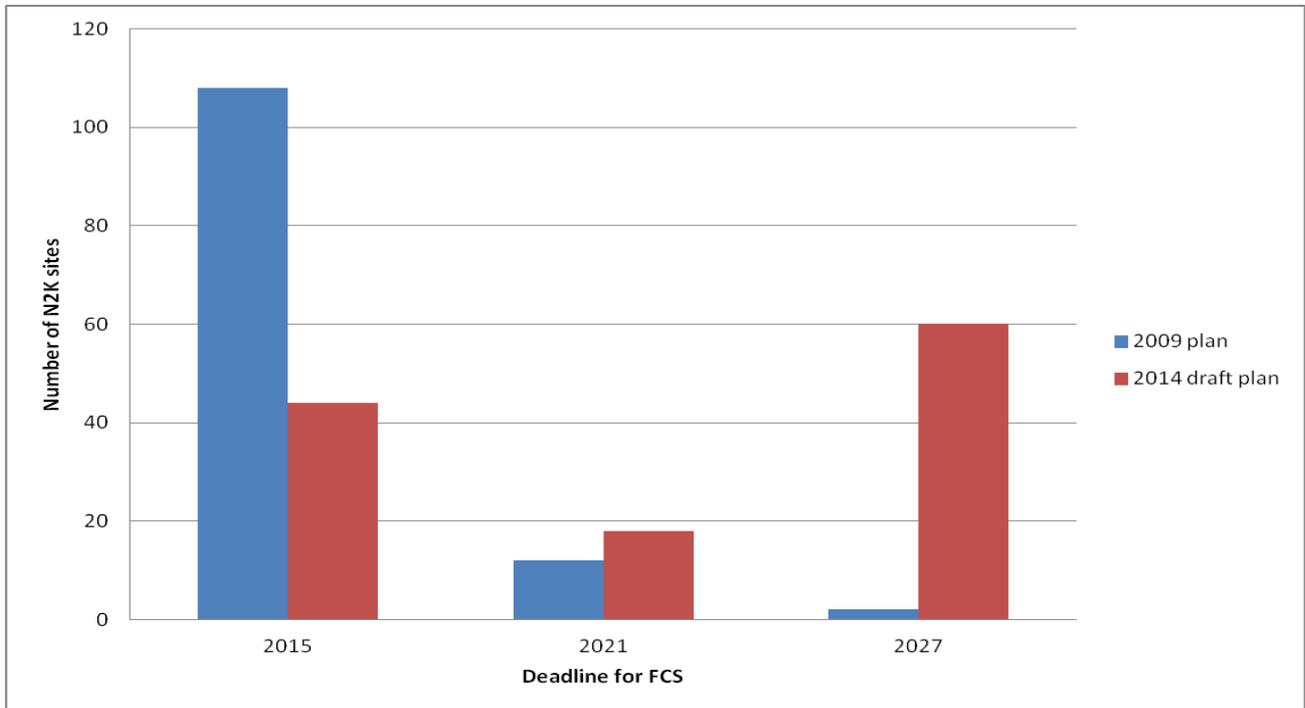


Figure 1. WFD ambitions for achieving FCS for sites that were not already meeting their objective in 2009, and current plans for Natura 2000 sites.

It is therefore imperative that the MSFD is not passively reliant on the WFD and related Directives to achieve the MSFD targets for Descriptors 5 and 8, but acts proactively as an additional legal driver to secure improvements in resources, capacity and quality in the implementation of the WFD.