



## **The Emerging Policy Landscape for Marine Spatial Planning in Europe: overview of key policies, directives and regulations, and their interactions**

**Working Paper (Version 2)**

**December 2011**

### **Abstract**

This working paper provides an overview of the emerging policy landscape for marine spatial planning (MSP) in Europe, which consists of various policies, directives and regulations related to MSP in the EU. For the development of this emerging policy landscape, the entry into force of the Lisbon Treaty in 2009 represents an important context, in which principles related to environmental sustainability are given fundamental importance in guiding decision-making in the EU, and co-decision (with shared legislative power between the European Council and Parliament) is established as the 'ordinary legislative procedure'. As in other parts of the world, environmental protection and management of different activities in the marine environment in Europe were, and still are to some extent, fragmented into different laws and policies. In recent years, with the passage of the Marine Strategy Framework Directive and the Integrated Maritime Policy, there is a clear trend towards integrated planning and management in marine waters, underpinned by an ecosystem-based approach to achieve sustainability. This paper explores the interactions, both in terms of potential synergies and tensions, between different policies and directives, and discusses the main challenges for their integration. The paper concludes with six key issues that may have major implications for MSP in Europe: 1) the integration of environmental protection and economic development objectives; 2) the prospects for reforming the CFP in order to deliver such integration; 3) the relationship between the MSFD and the IMP; 4) the necessity of and potential roles of an MSP Directive; 5) the implications of co-decision making; 6) power, displacement and justice issues in the 'race for space' in Europe's seas.

**Citation:** Qiu W and Jones PJS (2011) The Emerging Policy Landscape for Marine Spatial Planning in Europe: overview of key policies, directives and regulations, and their interactions. UCL Department of Geography Working Paper (Version 2) as part of the MESMA project. <http://www.homepages.ucl.ac.uk/~ucfwpej/pdf/EPLMSPEU.pdf>

A journal manuscript is being prepared based on this working paper and on-going research through the MESMA project (<http://www.mesma.org/>). The authors welcome any comments on and discussion about the topics in this working paper. Please send your comments and feedback to [w.qiu@ucl.ac.uk](mailto:w.qiu@ucl.ac.uk) and [p.j.jones@ucl.ac.uk](mailto:p.j.jones@ucl.ac.uk)

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## Introduction

Marine spatial planning (MSP) is defined as “a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process” (Ehler and Douvère 2007). Developing systems of MSP is often seen as a practical strategy to implement the ecosystem approach to the conservation and management of ocean resources (Douvère 2008; Maes 2008).

At the international level, there has been a clear evolutionary trend in the development of policies and laws in support of MSP (see Maes 2008). Since the early 1990s international policies and agreements began introducing the ecosystem approach to the conservation of oceans and other ecosystems, which was endorsed by the 1992 Rio Declaration, the 1992 Convention on Biological Diversity (CBD) and the 2002 World Summit on Sustainable Development (WSSD). The most important driver for an ecosystem-based MSP at the international level comes from the CBD (Maes 2008). Decisions adopted by the Conference of Parties (COP) to the CBD support and advocate the main principles underlining an ecosystem-based MSP, such as integrated marine and coastal area management, the application of environmental impact assessments for individual projects and strategic environmental assessments for the planning of different activities, and the necessity to establish ecologically representative networks of MPAs.

In Europe, one of the most important drivers for MSP is the European legislation on conservation, as part of the EU’s obligation to implement the 1992 CBD and the 2002 WSSD (Douvère 2008). The most significant drivers include the Birds Directive (first adopted in 1979, revised in 2009) and Habitats Directive (1992), which require EU Member States to designate Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), which together form a network of protected areas across the Europe, known as *Natura 2000*. In addition, Directive 85/337/EEC (EIA Directive) and Directive 2001/42/EC (SEA Directive) require Member States to conduct environmental impact assessments for individual projects or plans and programmes, which are very valuable for MSP, as they require environmental considerations to be incorporated into decision-making in authorising individual projects or development plans (Maes 2008). Furthermore, the environmental obligations under the Birds, Habitats, EIA and SEA Directives are reinforced and supplemented by the Water Framework Directive (2000), which requires Member States to achieve ‘good quality status’ in coastal waters, and the Marine Strategy Framework Directive (2008), which requires Member States to achieve ‘good environmental status’ in marine waters. From the Birds Directive to the SEA Directive and the Marine Strategy Framework Directive, there is a clear trend of mainstreaming environmental concerns into planning systems and development programmes in wider European environmental legislation.

It is also important to note that although various environmental legislations provide important impetus, MSP in Europe is also heavily influenced by policies and directives that regulate economic activities in marine waters, particularly the Common Fisheries Policy (basic regulation adopted in 2002), the Renewable Energy Directive (2009) and the Integrated Maritime Policy (2007). The first two regulate two of the most important sectors in marine waters – fisheries and marine renewable energy development, and the Integrated Maritime Policy (2007) aims to maximize sustainable use of oceans, while ensuring integrated planning and management across different countries and sectors. In the move towards integrated and ecosystem-based MSP, the interactions between different policies, particularly between those promoting economic development and environmental protection, are likely to have significant influence over the final outcomes of MSP.

Against this background, this working paper aims to

- 1) review the principle of environmental sustainability and legislative procedure in policy making in the EU
- 2) provide an overview of the various policy drivers for MSP in Europe,

- 3) examine the interactions between different policies and directives, in terms of both synergies or potential tensions, and to
- 4) identify the key issues that may have major implications for MSP in this young and emerging policy landscape

The report is divided into three parts. In the first part, the main principles and legislative procedure in policy making in the EU are introduced, which are recurring themes in subsequent discussion. In the second part, the main provisions of individual policies and directives are summarised, together with discussions on the interactions with other policies and directives. Finally, the key issues in the emerging policy landscape for marine spatial planning in the EU are identified and discussed, with a particular focus on the interactions between the different policies.

**The ‘Discussion’ section (page 32) is the section that many readers may find of particular interest and relevance, the previous two sections providing the detail on which this final discussion is based.**

## **Environmental sustainability and co-decision in the making of EU policies**

### *Underpinning importance of environmental sustainability in EU policies*

The 6<sup>th</sup> Environmental Action Programme<sup>1</sup> defines sustainable development in the following terms:-

*“A prudent use of natural resources and the protection of the global eco-system together with economic prosperity and a balanced social development are a condition for sustainable development”*

This emphasis on the underpinning importance of the environmental pillar of sustainability is argued (Client Earth 2011) to be reinforced by Article 3 of the TEU, which states that:-

*The Union.... shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment [emphasis added]*

The fundamental importance of environmental sustainability to wider EU policies is argued to be reinforced by:-

(a) the integration principle, which “allows the EU the ability, and may even require it, to prioritise between the three pillars [environmental, economic and social sustainability] where this is necessary to meet environmental objectives”; *i.e.* “an approach based on true sustainable development must have the environmental pillar at the core of the approach”

(b) the precautionary principle, which is laid down by Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) as a fundamental objective of EU environmental law, several cases demonstrating “that, in the context of Member States deciding whether to apply the precautionary principle in the event of scientific uncertainty, environmental interests take precedence over social and economic ones” (Client Earth 2011).

The implications of the underpinning importance of environmental sustainability will be discussed in relation to specific EC policies in subsequent sections. It is important to note, however, that in reality the economic pillar has been favoured over the environmental pillar, despite the provisions which

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<sup>1</sup> Decision No 1600/2002/EC, Preamble (6),  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:242:0001:0001:EN:PDF>

emphasise the underpinning importance of the environment pillar (Eurostat report cited in Client Earth 2011). This is why the EC tends to focus on Directives that promote environmental protection rather than economic development, it being safe to assume that Member States need no encouragement to engage in the latter, including in their maritime territories.

### ***Decision-making in the EU and the Lisbon Treaty***

EU law consists of ‘primary’ and ‘secondary’ legislation. The treaties (*i.e.* primary legislation) establish ground rules that govern all EU decisions and actions. Secondary legislation, including regulations, directives and decisions, is based on the principles and objectives established in the treaties.<sup>2</sup>

One of the most important treaties in the EU is the Lisbon Treaty (Treaty on the European Union-TEU and Treaty on the Functioning of the European Union -TFEU), which entered into force in 2009. Article 294 of the Lisbon Treaty sets out co-decision making as the ‘ordinary legislative procedure’, which means that co-decision will become the common procedure for decision making in most policy areas in the EU. It is based on the principle of parity, which means that neither institution (European Parliament or Council) may adopt legislation without the other’s assent.<sup>3</sup> As established in the Lisbon Treaty, the co-decision procedure applies to 83 policy areas, including the Common Fisheries Policy, environment (except for certain measures as listed below) and energy (except for fiscal measures). For some council acts on the environment, including provisions of a fiscal nature, town and country planning, management of water resources, land use and the supply and diversification of energy resources, special legislative procedure applies. Decisions in these areas are adopted by Council acting unanimously after consulting the European Parliament (EP), Economic and Social Committee (ESC) and Committee of the Regions (CoR).<sup>4</sup>

Under the new co-decision procedure, the Commission drafts proposals for adoption of new legislative acts, in consultation with national parliaments and other interested parties. The proposal is then sent to the European Parliament and the European Council for a first reading and to propose amendments. If the Parliament and Council cannot agree on the amendments, a second reading will take place. In the second reading, the Parliament and Council can revise or propose new amendments. The Parliament has the power to block the new legislation if it cannot agree with the Council. If the Council and Parliament reaches an agreement on amendments, the proposed legislation can be adopted. If they cannot agree, a conciliation committee will be set up to find a solution. Either the Council or the Parliament can block the legislative proposal at this final reading.<sup>5</sup>

The co-decision procedure is summarised in the flow chart below and detailed step-by-step guidance can be found at the Commission’s website.<sup>6</sup> Main changes introduced by the procedure include:

- **The Lisbon Treaty strengthens the influence of national parliaments in early decision making stage under the subsidiarity principle.** The proposal drafted by the Commission is forwarded to the national Parliaments at the same time as they are sent to the Council and Parliament. If a draft legislative act’s compliance with the subsidiarity principle is contested by a third of the votes allocated to national Parliaments, the Commission has to review the proposal and to decide to maintain, amend or withdraw the act, also motivating its decisions.<sup>7</sup>
- **The Lisbon Treaty strengthens the power of the European Parliament.** The co-decision procedure puts Parliament on an equal footing with the Council and the Parliament’s role as

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<sup>2</sup> [http://europa.eu/about-eu/basic-information/decision-making/procedures/index\\_en.htm](http://europa.eu/about-eu/basic-information/decision-making/procedures/index_en.htm)

<sup>3</sup> [http://ec.europa.eu/codecision/procedure/index\\_en.htm](http://ec.europa.eu/codecision/procedure/index_en.htm)

<sup>4</sup> Treaty on the European Union - Treaty on the Functioning of the European Union List of decision-making procedures by article [http://ec.europa.eu/codecision/docs/legal\\_bases\\_en.pdf](http://ec.europa.eu/codecision/docs/legal_bases_en.pdf)

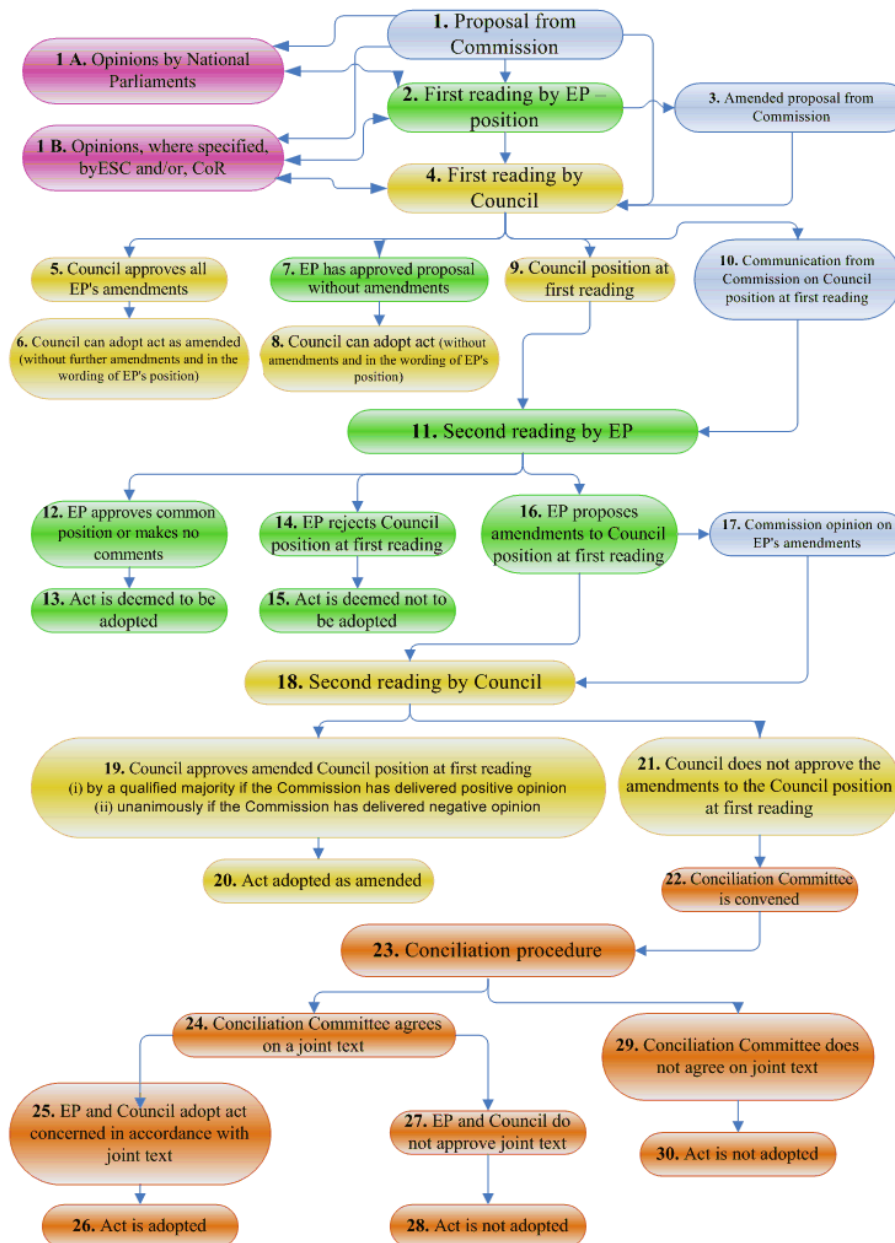
<sup>5</sup> [http://europa.eu/about-eu/basic-information/decision-making/procedures/index\\_en.htm](http://europa.eu/about-eu/basic-information/decision-making/procedures/index_en.htm)

<sup>6</sup> [http://ec.europa.eu/codecision/stepbystep/text/index\\_en.htm](http://ec.europa.eu/codecision/stepbystep/text/index_en.htm)

<sup>7</sup> [http://ec.europa.eu/codecision/stepbystep/text/index2\\_en.htm](http://ec.europa.eu/codecision/stepbystep/text/index2_en.htm)

co-legislator is firmly established.<sup>8</sup> The Treaty also allows the Parliament to adopt a position after the first reading, not an opinion as in previous treaties. This process takes on average 15 months if a first reading agreement is reached and longer if a 2nd reading is required. The Parliament can also request withdrawal of the Commission's proposal if it fails to gain majority vote in the Parliament. The Treaty also empowers the Parliament to reject the Council's position at first reading.<sup>9</sup> This is significant as it means that Members of the European Parliament (MEPs) will have a much stronger influence over EU policies, including the reform of the Common Fisheries Policy.

**Flow chart for the co-decision procedure.<sup>10</sup>**



EP - European Parliament; ESC - Economic and Social Committee; CoR: Committee of the Regions.

<sup>8</sup> <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&id=46&pageRank=2>

<sup>9</sup> [http://ec.europa.eu/codecision/stepbystep/text/index\\_en.htm](http://ec.europa.eu/codecision/stepbystep/text/index_en.htm)

<sup>10</sup> [http://ec.europa.eu/codecision/images/codecision-flowchart\\_en.gif](http://ec.europa.eu/codecision/images/codecision-flowchart_en.gif)

## Overview of policies, directives and regulations related to MSP in Europe

### *Council Directive (85/337/EEC) on the assessment of the effects of certain public and private projects on the environment (EIA Directive)*

<b>Scope</b>	This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment. (Article 1(1))
<b>Overarching aim(s)</b>	To ensure that plans, programmes and projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation. <sup>11</sup>
<b>Targets</b>	No specific targets
<b>Strategies and measures for implementation</b>	<p>Subject to Article 2 (3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10 (Article 4(1)).</p> <p>Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:-</p> <p>(a) a case-by-case examination, or (b) thresholds or criteria set by the Member State</p> <p>:-whether the project shall be made subject to an assessment (Article 4(2)). Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV (Article 5(1)).</p> <p>The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken (Article 6(4)).</p> <p>Where a project may likely have <b>transboundary environmental impacts</b>, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible a description of the project and the nature of decisions that may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision making procedures (Article 7(1)).</p> <p>When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the information on the decisions, on how public concerns are addressed in the decisions and the a description of measures to reduce or offset major environmental effects (Article 9(1)).</p> <p>Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:-</p>

<sup>11</sup> <http://ec.europa.eu/environment/eia/home.htm>

	<p>(a) having a sufficient interest, or alternatively,  (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,</p> <p>: -have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions (Article 10a).</p>
<b>Assessment criteria</b>	No specific criteria
<b>Exceptions</b>	<p>Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.</p> <p>In this event, the Member States shall:</p> <p>(a) consider whether another form of assessment would be appropriate;  (b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it;  (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.</p> <p>The Commission shall immediately forward the documents received to the other Member States.</p> <p>The Commission shall report annually to the Council on the application of this paragraph (Article 2(3))<sup>12</sup>.</p>

A number of types of marine projects are subject to mandatory EIAs under the EIA Directive (*i.e.* Annex I projects), these include

- Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.
- Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 m<sup>3</sup>/day in the case of gas.
- Pipelines with a diameter of more than 800 mm and a length of more than 40 km: for the transport of gas, oil, chemicals, and, for the transport of carbon dioxide streams for the purposes of geological storage, including associated booster stations.

Annex I projects are required to undertake a scoping exercise to identify the content and extent of the Environmental Information to be submitted to the Competent Authority under the EIA procedure.

In addition, for the following types of marine projects, Member States should determine by a case-to-case basis, or according to established criteria or thresholds, whether a EIA is required (*i.e.* Annex II projects):

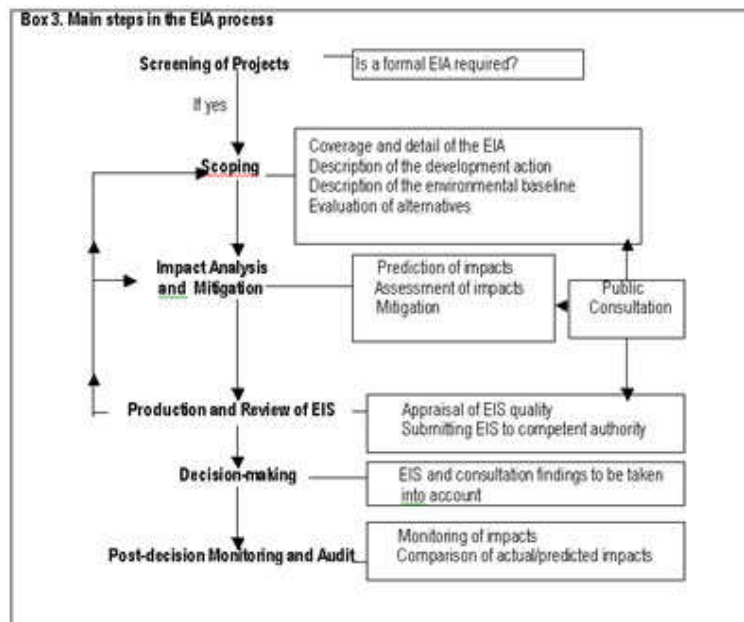
- Intensive fish farming;
- Reclamation of land from the sea.
- Extraction of minerals by marine or fluvial dredging;

<sup>12</sup> The Commission has published a document CLARIFICATION OF THE APPLICATION OF ARTICLE 2(3) OF THE EIA DIRECTIVE, which aims to further clarify whether and how exemptions can be applied. The document is not legally binding. [http://ec.europa.eu/environment/eia/pdf/eia\\_art2\\_3.pdf](http://ec.europa.eu/environment/eia/pdf/eia_art2_3.pdf)

- Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.
- Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);
- Installations for the harnessing of wind power for energy production (wind farms);
- Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- Marinas

For Annex II projects, whether or not an EIA should be carried out for a particular project is subject to the discretion of the Member State concerned. Such projects are required to undertake a 'screening' assessment to determine whether an EIA is requirement for a particular project.

### The main steps in an EIA process<sup>13</sup>



EIS: Environmental Impact Statement

<sup>13</sup>

[http://ec.europa.eu/regional\\_policy/sources/docgener/evaluation/evalsed/sourcebooks/method\\_techniques/conducting\\_impact\\_assessments/environmental\\_impact/main\\_steps\\_en.htm](http://ec.europa.eu/regional_policy/sources/docgener/evaluation/evalsed/sourcebooks/method_techniques/conducting_impact_assessments/environmental_impact/main_steps_en.htm)

***Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)***

<b>Scope</b>	European territory of EU Member States (Article 2(1))
<b>Overarching aim(s)</b>	To maintain or restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of Community interest, taking account of economic, social and cultural requirements and regional and local characteristics. (Article 2(2) and(3))
<b>Targets</b>	<p>The conservation status of a habitat will be taken as ‘favourable’ when:</p> <ul style="list-style-type: none"> <li>➤ its natural range and areas it covers within that range are stable or increasing, and</li> <li>➤ the specific structures and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and</li> <li>➤ the conservation status of its typical species is favourable as defined below.</li> </ul> <p>The conservation status of a species will be taken as ‘favourable’ when:</p> <ul style="list-style-type: none"> <li>➤ population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and</li> <li>➤ the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and</li> <li>➤ there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis (Article 1(e) and (i))</li> </ul>
<b>Strategies and measures for implementation</b>	<p>A coherent European ecological network of special areas for conservation (SACs) and special protection areas (SPAs) shall be set up under the title <i>Natura 2000</i>. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, and special protection areas classified by the Member States pursuant to Directive 79/409/EEC (Birds Directive) (Article 3(1)) (See next section).</p> <p>For SACs, Member States shall establish the necessary conservation measures to ensure the protection of natural habitat types listed in Annex I and species listed in Annex II present on the sites, and to avoid the deterioration of such features within SACs (Article 6(1) and(2)). These provisions also apply to SPAs established under the Birds Directives (Article 7).</p> <p>Member States should take appropriate steps to avoid plans or projects that may potentially have negative impacts on conservation features in <i>Natura 2000</i> sites, and conduct ‘appropriate assessment’ of the implications of plans or projects that may potentially have significant effects on conservation features (Article 6(3) and(4)).</p> <p>Member States can request co-financing from the Commission for SACs containing priority habitat types and/or priority species (Article 8).</p> <p>Member States shall take the requisite measures to establish a system of strict protection for the animal and plant species listed in Annex IV throughout their natural range (Articles 12 and 13).</p>
<b>Assessment criteria</b>	<p>Annex III of the Directive sets out criteria for selecting sites eligible for consideration of Sites of Community Importance (SCIs) and designation of SPA.</p> <p>Member States shall bring into force the laws, regulations and administrative</p>

	provisions necessary to comply with this Directive within two years of its notification (Article 23(1)). Every six years from the date of expiry of the two-year period, Member States shall draw up a report on the implementation of the measures taken under this Directive (Article 17(1))
<b>Exceptions</b>	<p>If, in spite of a negative assessment of the implications for the site in the absence of alternative solutions, a plan or project must nevertheless be carried out for <b>imperative reasons of overriding public interest (IROPI)</b>, including those of a social or economic nature, the Member State concerned shall take all compensatory measures necessary to ensure that the overall coherence of <i>Natura 2000</i> is protected. The Member State shall inform the Commission of the compensatory measures adopted.</p> <p>Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from Commission, to other imperative reasons of overriding public interest. (Article 6(4)). These human health and environment benefits presumably also apply to non-priority habitats, this being significant as it potentially provides for renewables projects which could significantly impact SACs and SPAs to be approved.</p>

The Habitats Directive, together with the Birds Directive, constitutes the cornerstone of the EU's conservation policy. The Habitats Directive aims to maintain the 'favourable conservation status' of species and habitats through the establishment of the *Natura 2000* network of protected sites, as well as the protection of listed species throughout their natural range. The directive provides for the protection of over 1,000 animals and plant species and over 200 habitat types.<sup>14</sup> These include 9 marine habitat types and 18 marine species.<sup>15</sup> Marine *Natura 2000* sites now contributes to around 20% of the *Natura 2000* network, however significant gaps still exist, particularly in offshore environments.<sup>16</sup>

At the core of the Habitats Directive is Article 6, which requires sound management of *Natura 2000* sites and 'appropriate assessment' of potential plans and projects that may potentially have a negative impact on conservation features in a *Natura 2000* site. Three types of measures are provided under the Article:

- Proactive measures through the establishment of *Natura 2000* sites (Article 6(1));
- Preventive measures which either avoid plans or projects that may potentially have negative impacts on conservation features, and 'appropriate assessment' of such potential plans and projects (Article 6(2) and(3));
- Compensation measures when a plan or project has to be carried out for 'for imperative reasons of overriding public interest', despite a negative assessment on its implications for the site. In such cases Member States are required to take 'compensatory measures necessary to ensure that the overall coherence of *Natura 2000* is protected' (Article 6(4)).

A series of guidance documents have been published by the Commission on the application of Article 6 and environmental impact assessments in a *Natura 2000* sites.<sup>17</sup> The Commission has also published

<sup>14</sup> [http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm)

<sup>15</sup> Appendix 2. Lists of existing marine Habitat types and Species for different Member States. In Guidelines for the establishment of the *Natura 2000* network in the marine environment. Application of the Habitats and Birds Directives. [http://ec.europa.eu/environment/nature/Natura2000/marine/index\\_en.htm](http://ec.europa.eu/environment/nature/Natura2000/marine/index_en.htm)

<sup>16</sup> *Natura 2000* Barometer. [http://ec.europa.eu/environment/nature/Natura2000/barometer/index\\_en.htm](http://ec.europa.eu/environment/nature/Natura2000/barometer/index_en.htm)

<sup>17</sup> These guidance documents include Managing *Natura 2000* Sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC (2000), Methodological guidance on the provisions of Arts 6(3) and (4) of the Habitats Directive 92/43/EEC (November 2001), and Guidance document on Art 6(4) of the 'Habitats Directive' (January 2007). [http://ec.europa.eu/environment/nature/Natura2000/management/docs/art6/provision\\_of\\_art6\\_en.pdf](http://ec.europa.eu/environment/nature/Natura2000/management/docs/art6/provision_of_art6_en.pdf)

guidance on the application of Article 6 in specific sectors, such as [wind energy](#), [port development](#) and [non-energy mineral extraction](#). There have also been several case judgements and opinions from the European Court of Justice and the European Commission that have tested the interpretation and implementation of the Habitats Directive, most notably:-

- Lappel Bank ([C-44/95](#)): socio-economic criteria cannot be used in the selection and delineation of SPAs, only scientific criteria can be used;
- Severn Estuary ([C-371/98](#)): confirmed that socio-economic criteria also cannot be used in the selection and delineation of SACs, other than by referral to the EC;
- Wadden Sea ([C-127/02](#)): fishing operations constitute a ‘plan or project’ and should therefore be assessed under the Article 6 procedure;
- Peene Valley: ([96/15/EC](#), Commission Opinion of 18 December 1995): IROPI justified the approval of the A20 motorway linking west and east Germany, despite the valley being designated both SAC and SPA and lack of potential for compensatory measures;
- The Mühlenberger Loch development (Commission Opinion of 19 April 2000) was also notable in that the approval of an Airbus wing factory that had significant impacts on the Loch (20% of wetland area developed) was supported by the EC on the basis of IROPI, even though critical questions as to whether this development should go ahead for IROPI were brought to the attention of the EC, including that this site hosted priority habitats (SAC) and was a particularly important site for migratory birds (SPA, [Ramsar site](#)) (Kramer 2009).

The EC has also issued guidelines for managing *Natura 2000* sites in the coastal<sup>18</sup> and marine environments<sup>19</sup>, although it is clearly stated that both guidelines are not of a binding nature. The marine guideline outlines provisions under different EC directives for the management of different human activities that affect *Natura 2000* sites; in particular, the guideline outlines the linkage between the management of *Natura 2000* sites and fisheries. Fisheries restrictions for the protection of a *Natura 2000* site can be adopted through several mechanisms:

- Implementing fisheries management measures under the Common Fisheries Policy (CFP) which will apply to all fishermen from all Member States, such decisions being subject to the new requirement of co-decision making, though the special provisions discussed above will apply to some regulations;
- Article 8 of the CFP allows Member States to take emergency measures, the maximum duration of which is 3 months, if there is evidence of a serious and unforeseen threat to the marine ecosystem resulting from fishing activities. This emergency procedure was adopted in 2003 and 2004 to close bottom trawling in the area around Darwin Mounds under the Common Fisheries Policy, in anticipation of future SAC designation in order to conserve deep-water corals in the area. The closure was made permanent in 2004 (Council Regulation 602/2004).
- On the basis of Article 9 of the CFP, Member States can take non-discriminatory measures to minimise the effect of fishing on the conservation of the marine ecosystems within 12 nautical miles of their coast. If these measures are liable to affect the vessels of another Member State, which have access to waters between 6-12 nm under a ‘partial derogation’ of the CFP based on historical rights under the ‘relative stability’ principle of the CFP, a consultation procedure with the Commission, other Member States and Regional Advisory Councils concerned is necessary before the adoption of the measures, subject to approval from the Commission.
- Finally, Member States can take measures in waters under their sovereignty or jurisdiction if such measures are only applicable to their fishing vessels (Article 10 of the CFP). Such measures can be controversial, as they mean that a Member State can discriminate against its own fishermen, in that they are restricted in waters under their Member State’s national

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<sup>18</sup> <http://ec.europa.eu/environment/nature/Natura2000/management/docs/Estuaries-EN.pdf>

<sup>19</sup> Guidelines for the establishment of the Natura 2000 network in the marine environment. Application of the Habitats and Birds Directives ([http://ec.europa.eu/environment/nature/Natura2000/marine/index\\_en.htm](http://ec.europa.eu/environment/nature/Natura2000/marine/index_en.htm))

jurisdiction whilst fishermen from other Member States are not subject to such revisions unless that can be adopted under the CFP (De Santo and Jones 2007).

The Habitats Directive interacts directly with a number of other EC directives and policies, including the MSFD, the EIA Directive, SEA Directive, the Common Fisheries Policy and the Birds Directive. The requirement to protect marine habitats and species through a network of *Natura 2000* sites has been strengthened under the MSFD. Most provisions of Article 6 of the Habitats applies to Special Protected Areas (SPAs) established under the Birds Directive. However, the linkages between the CFP and management of *Natura 2000* sites under the Habitats Directive remain extremely weak.

Only two specific CFP regulations have been introduced to protect SACs: the Darwin Mounds (De Santo and Jones 2007) and the Macaronesian Isles, though two temporary measures have also been introduced for SACs in Irish waters and the El Cachucho offshore SAC, as well as one compensatory measure to better protect the Dutch Voordelta related to the expansion of Rotterdam harbour<sup>20</sup>. The closure through a CFP regulation of the ‘Wee Bankie’ sandeel fishery off the east coast of Scotland and NE England is also recognised as an ecosystem-based approach to conserving seabirds, particularly kittawakes, which are listed as requiring wider protection under the Birds Directive and are conservation features of two nearby SPAs (Frid et al 2005).

Such restrictions are very important as designation of *Natura 2000* sites does not have any immediate, direct effect on fisheries management. A number of general initiatives have been developed to establish fisheries management measures to support the management of *Natura 2000* sites. Such initiatives include an ICES Workshop on dealing with *Natura 2000* and related requests<sup>21</sup>, the project on ‘Environmentally Sound Fishery Management in Protected Areas’ (EMPAS) project initiated by the German Federal Agency for Nature Conservation, and the ‘Fisheries Measures in Protected Areas’ (FIMPAS) project led by the Dutch Minister for Agriculture to develop transboundary fisheries management in the Dogger Bank. Such initiatives will serve as early tests to see how fisheries management measures could be more widely developed to support the management of *Natura 2000* sites through the reformed Common Fisheries Policy.

The lack of measures under the CFP to protect marine *Natura 2000* sites is a stark illustration of the legal and political difficulties of integrating environmental protection measures under conservation sectoral EC policies into other sectoral EC policies, and addressing these difficulties will be a key priority for the reformation of the CFP.

### ***Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy (Water Framework Directive, WFD)***

The purpose of the Water Framework Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. *The information presented below focuses on the main provisions and targets relating to coastal water*, which coastal water is defined to be one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters, except in respect of chemical status for which it extends out to 12 nautical miles: territorial seas).

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<sup>20</sup> *The Environmental Performance of the CFP*, Chapter 8 of Commission Staff Working Document – A diagnosis of the EU fisheries sector (‘Frankenstein Report’). <http://www.cfp-reformwatch.eu/pdf/008.pdf>

<sup>21</sup> [http://www.ices.dk/reports/ACOM/2008/WKN2K/wkn2k\\_2008.pdf](http://www.ices.dk/reports/ACOM/2008/WKN2K/wkn2k_2008.pdf)

<b>Scope</b>	Inland surface waters, transitional waters, coastal waters and groundwater of EU Member States (Article 1)
<b>Overarching aim(s)</b>	To establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater (Article 1)
<b>Targets</b>	<p>Member States shall protect, enhance and restore all bodies of surface water, subject to the application of sub-paragraph (iii) for artificial and heavily modified bodies of water, with the aim of <b>achieving good surface water status</b> at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V (Article 4(1)).</p> <p>Member States shall implement the necessary measures in accordance with Article 16(1) and (8), with the aim of progressively reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances (Article 4(1)).</p> <p>Annex V of the Directive provides a general definition of ecological quality. General definition of good ecological status for rivers, lakes, transitional waters and coastal waters is ‘the values of the biological quality elements for the surface water body type show low levels of distortion resulting from human activity, but deviate only slightly from those normally associated with the surface water body type under undisturbed conditions’. Annex V also provides for a list of quality elements for the classification of ecological status for different water bodies.</p> <p>With respect to chemical status (applies to territorial water in the marine environment, <i>i.e.</i> 12 nautical miles from the baseline), it is stated in Annex V that ‘Where a body of water achieves compliance with all the environmental quality standards established in Annex IX, Article 16 and under other relevant Community legislation setting environmental quality standards it shall be recorded as achieving good chemical status. If not, the body shall be recorded as failing to achieve good chemical status’.</p>
<b>Strategies and measures for implementation</b>	<p>Member States shall identify the individual river basins lying within their national territory and, for the purposes of this Directive, shall assign them to individual river basin districts. Coastal waters shall be identified and assigned to the nearest or most appropriate river basin district or districts (Article 3 (1)).</p> <p>Member States shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures are coordinated for the whole of the river basin district. For international river basin districts the Member States concerned shall together ensure this coordination and may, for this purpose, use existing structures stemming from international agreements. At the request of the Member States involved, the Commission shall act to facilitate the establishment of the programmes of measures (Article 3 (4)).</p> <p>Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Each programme of measures shall include the ‘basic’ measures specified in paragraph 3, Article 11 and, where necessary, ‘supplementary’ measures (Article 11 (1-3)).</p>
<b>Assessment criteria</b>	Member States shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

	<p>— for surface waters such programmes shall cover:</p> <p>(i) the volume and level or rate of flow to the extent relevant for ecological and chemical status and ecological potential, and</p> <p>(ii) the ecological and chemical status and ecological potential (Article 8(1)).</p> <p>These programmes shall be operational at the latest six years after the date of entry into force of this Directive unless otherwise specified in the legislation concerned. Such monitoring shall be in accordance with the requirements of Annex V (Article 8(2)).</p>
<b>Exceptions</b>	<p>Paragraph 3,4,5,6 in Article 4 of the Directive specifies the circumstances in which Member States may designate a body of surface water as artificial or heavily modified (thus subject to less stringent environmental objectives), have extended deadlines for achieving environmental objectives, aim to achieve less stringent environmental objectives, or in which temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive.</p> <p>Member States will not be in breach of this Directive when:</p> <p>— failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or</p> <p>— failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities</p> <p>However, a set of conditions must be met in such circumstances(Article 4(11)).</p>

The WFD requires Member States to implement existing EU directives concerning water quality and protection. Measures required under the following EU legislation form part of the ‘basic measures’ (*i.e.* minimum requirements) that must be included in the program of measures for each river basin district (Article 11 (3)).

- The Bathing Water Directive (76/160/EEC);
- The Birds Directive (79/409/EEC) (1);
- The Drinking Water Directive (80/778/EEC) as amended by Directive (98/83/EC);
- The Major Accidents (Seveso) Directive (96/82/EC) (2);
- The Environmental Impact Assessment Directive (85/337/EEC) (3);
- The Sewage Sludge Directive (86/278/EEC) (4);
- The Urban Waste-water Treatment Directive (91/271/EEC);
- The Plant Protection Products Directive (91/414/EEC);
- The Nitrates Directive (91/676/EEC);
- The Habitats Directive (92/43/EEC) (5);
- The Integrated Pollution Prevention Control Directive (96/61/EC).

In addition, in the case of diffuse impacts of discharges the controls shall include, as appropriate, best environmental practices set out in:

- Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (1),
- Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (2),
- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (1),
- the Directives adopted pursuant to Article 16 of this Directive,

- the Directives listed in Annex IX,
- any other relevant Community legislation

: at the latest 12 years after the date of entry into force of this Directive, unless otherwise specified in the legislation concerned.

***DIRECTIVE 2001/42/EC of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment (the SEA Directive)***

<b>Scope</b>	This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.
<b>Overarching aim(s)</b>	To provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment (Article 1).
<b>Targets</b>	Not specified
<b>Strategies and measures for implementation</b>	<p>Subject to paragraph 3 of Article 3, an environmental assessment shall be carried out for all plans and programmes,</p> <p>(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC (EIA Directive), or</p> <p>(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC (Habitats Directive) (Article 3(2)).</p> <p>Plans and programmes referred in Article 3(2) which determine the use of small areas at local level and minor modifications to plans and programmes referred in Article 3(2) shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects (Article 3(3)).</p> <p>Member States shall determine whether plans and programmes, other than those referred to in Article 3(2) which set the framework for future development consent of projects, are likely to have significant environmental effects (Article 3(4)), either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive (Article 3(5)).</p> <p>Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated (Article 5(1)).</p>

	<p>Where the implementation of a plan or programme being prepared is likely to have significant <b>transboundary effects</b> on the environment, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State (Article 7(1)).</p> <p>Where a Member State is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other Member State whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the Member States concerned shall enter into consultations concerning the likely <b>transboundary environmental effects</b> of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects (Article 7(2)).</p> <p>Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed (Article 9(1)).</p>
<b>Assessment criteria</b>	A first report on the application and effectiveness of this Directive should be carried out by the Commission five years after its entry into force, and at seven-year intervals thereafter (Preamble para. 40).
<b>Exceptions</b>	<p>The following plans and programmes are not subject to this Directive:</p> <ul style="list-style-type: none"> <li>— plans and programmes the sole purpose of which is to serve national defence or civil emergency,</li> <li>— financial or budget plans and programmes (Article 3(8)).</li> </ul> <p>This Directive does not apply to plans and programmes co-financed under the current respective programming periods (1) for Council Regulations (EC) No 1260/1999 (2) (laying down general provisions on the Structural Funds) and (EC) No 1257/1999 (3) (on support for rural development from the European Agricultural Guidance and Guarantee Fund) (Article 3(9)).</p>

The SEA and EIA procedures are very similar, but there are some differences:

- the SEA requires the environmental authorities to be consulted at the screening stage;
- scoping (*i.e.* the stage of the SEA process that determines the content and extent of the matters to be covered in the SEA report to be submitted to a competent authority) is obligatory under the SEA;
- the SEA requires an assessment of reasonable alternatives (under the EIA the developer chooses the alternatives to be studied);
- under the SEA Member States must monitor the significant environmental effects of the implementation of plans/programmes, including cumulative and synergistic impacts, in order to identify unforeseen adverse effects and undertake appropriate remedial action.
- the SEA obliges Member States to ensure that environmental reports are of a sufficient quality.<sup>22</sup>

A review of the relationship between the EIA and SEA Directives indicates that there are potential overlaps between the two directives, which create confusion regarding appropriate actions to be taken

<sup>22</sup> <http://ec.europa.eu/environment/eia/sea-legalcontext.htm>

*i.e.* regarding which directive to follow or whether a combination of both directives are needed (Sheate et al. 2005).

### ***The Common Fisheries Policy (CFP) and its reform***

One of the founding principles of the EU was a European Community-wide approach to managing agriculture and fisheries, including the recognition that fisheries in a given Member State's waters have long been accessed by fishermen from other Member States. This recognition of the shared nature of Europe's fisheries is fundamental to the CFP and is enshrined through the 'relative stability' principle, whereby fishermen who can demonstrate, through their vessel's logs, a track record in accessing a particular fishery in a given Member State's waters in a specific 'reference period' will continue to be allocated a share of the TAC for that stock. This approach can realistically only be managed centrally, hence the direct approach to the regulation of the EU's fisheries by the EC.

This approach is achieved through the large number of regulations and Council Decisions that have been adopted under the CFP to manage fisheries around the EU, with the notable exception of the Mediterranean. The following table summarises the key provisions of the Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, which is the main legal basis for all subsequent fisheries legislation at the EU level (EC 2008).

<b>Scope</b>	The Common Fisheries Policy shall cover conservation, management and exploitation of living aquatic resources, aquaculture, and the processing and marketing of fishery and aquaculture products where such activities are practised on the territory of Member States or in Community waters or by Community fishing vessels or, without prejudice to the primary responsibility of the flag State, nationals of Member States. (Article 1)
<b>Overarching aim(s)</b>	The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. For this purpose, the Community shall apply the <b>precautionary approach in taking measures designed to protect and conserve living aquatic resources</b> , to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a <b>progressive implementation of an eco-system-based approach to fisheries management</b> . It shall aim to contribute to <b>efficient fishing activities</b> within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers. (Article 2)
<b>Targets</b>	Stock management and recovery plans should aim to maintain or restore stocks to within <b>safe biological limits</b> (Article 5(1), Article 6(1))
<b>Strategies and measures for implementation</b>	Community measures adopted to manage fisheries shall be established taking into account available scientific, technical and economic advice and in particular of the reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF) established under Article 33(1) as well as in the light of any advice received from Regional Advisory Councils established under Article 31 of the Regulation (Article 3).  Recovery plans shall be established for fish stocks which are outside safe biological limits (Article 5).  Management plans shall be established to maintain stocks within safe biological limits for fisheries exploiting stocks at/or within safe biological limits (Article 6).

	<p>If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action, the Commission may take emergency measures (Article 7).</p> <p>If there is evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities, in waters falling under the sovereignty or jurisdiction of a Member State where any undue delay would result in damage that would be difficult to repair, that Member State may take emergency measures, the duration of which shall not exceed three months (Article 8).</p> <p>A Member State may take non-discriminatory measures for the conservation and management of fisheries resources and to minimise the effect of fishing on the conservation of marine eco-systems within 12 nautical miles of its baselines (Article 9), subject to ‘partial derogations’ under other regulations, whereby vessels from other Member States with historical ‘grandfather’ access rights can access fisheries in another Member State’s marine territory from 6-12 nautical miles, under regulation by the CFP, along with the application of TACs to pressure stocks taken by that Member State’s inshore fishermen from 0-6 miles.</p> <p>Member States may take measures for the conservation and management of stocks in waters under their sovereignty or jurisdiction, which apply solely to fishing vessels flying the flag of the Member State concerned (Article 10).</p> <p>Member States shall ensure that the reference levels expressed in the gross tonnage of fishing vessels (GT) and their total engine power (kW) for fishing capacity referred to in Article 12 and paragraph 4 of this Article are not exceeded (Article 11(2)).</p> <p>Member States shall manage entries into the fleet and exits from the fleet in order to achieve reduction in overall fishing capacity (Article 13)</p> <p>The Council, acting by <b>qualified majority</b> on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits. Fishing opportunities shall be distributed among Member States in such a way as to assure each Member State <b>relative stability</b> of fishing activities for each stock or fishery (Article 20).</p> <p>Requirements for licence and remote monitoring systems (for vessels exceeding 15 meters in total length) (Article 22)</p>
<b>Assessment criteria</b>	Management plans shall be established to maintain stocks within safe biological limits for fisheries exploiting stocks at/or within safe biological limits (Article 6)
<b>Exceptions</b>	No specific derogations on the grounds of over-riding socio-economic reasons, though such exceptions are provided for through the political processes by which fishing opportunities (TACs) are agreed and, arguably, through a lack of enforcement of regulations by some Member States

The CFP was officially established in 1983, as governments in EU Member States recognised the increasing need for coordination in managing fisheries throughout Europe. The most important areas of action of the common fisheries policy are<sup>23</sup>:

- laying down rules to ensure Europe's fisheries are sustainable and do not damage the marine environment (see fishing rules). Such rules include fishing effort limitation, catch limits (TACs and quotas), and technical measures that regulate how and where fishing can take place.<sup>24</sup>
- providing national authorities with the tools to enforce these rules and punish offenders
- monitoring the size of the European fishing fleet and preventing it from expanding further
- providing funding and technical support for initiatives that can make the industry more sustainable (European Fisheries Fund)
- negotiating on behalf of EU countries in international fisheries organisations and with non-EU countries around the world
- helping producers, processors and distributors get a fair price for their produce and ensuring consumers can trust the seafood they eat
- supporting the development of a dynamic EU aquaculture sector (fish, seafood and algae farms)
- funding scientific research and data collection, to ensure a sound basis for policy and decision making

One of the key functions of the CFP is the allocation of TACs and catch quotas for 'pressure stocks' (currently 36 species). TACs are proposed by the Commission on the basis of scientific advice, although the TACs adopted often deviate significantly from the levels recommended by scientists (discussed below). The allocation of TACs and quotas is guided by one of the oldest guiding principles of the CFP – 'relative stability', under which the TAC for each fish stock is allocated to different EU Member States based on a fixed allocation key. The allocation key was determined using a number of criteria, including historical catches, preference for certain fish fleets in Scotland and Ireland, and compensation offered to third country waters. The purpose of 'relative stability' is to minimize disputes over how catch quotas are divided between Member States, and to provide fishers with an allocation system that is stable relative to the overall state of the stock concerned (EC 2008). However, an allocation system based on 'relative stability' has been criticised for a lack of flexibility, as stated in the Green Paper on CFP reform, and will be subject to reviews during the next reform of the CFP (discussed below).

In determining TACs and other fisheries management measures, the Commission receives advice from two main scientific advisory bodies, the Scientific, Technical and Economic Committee for Fisheries (STECF) and the International Council for the Exploration of the Sea (ICES). The STECF consists of independent scientists and experts. On biological issues, STECF depends to a great extent on advice from the International Council for the Exploration of the Sea (ICES) for the North-East Atlantic, North Sea and Baltic Sea. Founded in 1902, ICES brings together more than 1,600 marine scientists from 20 countries (EC 2008). The advice provided by ICES includes stock assessments, which form the basis for setting TACs and quotas, and long-term proposals on fisheries management. In formulating fisheries management measures, ICES provides scientific advice to the Commission. The Commission then drafts proposals in consultation with the STECF and the European Parliament. Up until the recent entry into force of the Lisbon Treaty (and the requirement of co-decision), the proposals drafted by the

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<sup>23</sup> [http://ec.europa.eu/fisheries/cfp/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/index_en.htm)

<sup>24</sup> [http://ec.europa.eu/fisheries/cfp/fishing\\_rules/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/fishing_rules/index_en.htm)

Commission were passed into the Council of Ministers, who made the final decision (Daw and Gary 2005). Proposed regulations are often ‘watered down’ when they pass through the Council of Ministers, where electoral politics often take precedence over scientific advice (Daw and Gary 2005), the EC itself reporting that TACs have exceeded scientific advice on average by 47%<sup>25</sup>. The co-decision procedure under the Lisbon Treaty places limits on the power of the Council as reviewed earlier, and it will be interesting to examine the impacts of this new procedure on the reform of the CFP.

One of the key challenges to the CFP has been that decisions have been driven by short-term interests, which has resulted in alarming declines in fish stocks in European waters. The reform of the CFP in 2002 addressed several areas of concern in regulating fisheries, including introducing long-term management and recovery plans, promotion of stakeholder participation through Regional Advisory Councils (RACs) and discouraging the use of public aid to construct new vessels. However, it has been widely accepted that the goal of sustainable fisheries has not been met. TACs continue to be set at much higher levels (on average 47% higher) than levels advised by scientists. The Green Paper on the reform of the CFP reported that 88% of Community stocks subject to scientific assessment were being fished beyond MSY, 30%, including the iconic cod, being outside safe biological limits (Symes 2009). Only very few stocks are fished within the limits of MSY and there has been little reduction in the impacts of fishing<sup>26</sup>. Reducing overfishing is a key focus of the next round of the reform of the CFP, as stated in the Green Paper on the Reform of the Common Fisheries Policy<sup>27</sup>. The Green Paper highlights that major structural problems have led to failures in regulating fisheries, including

- a deep-rooted problem of fleet overcapacity;
- imprecise policy objectives resulting in insufficient guidance for decisions and implementation, *i.e.* **no priority has been set between economic, environmental and social objectives**;
- a decision-making system that encourages a short-term focus;
- a framework that does not give sufficient responsibility to the industry;
- a lack of political will to ensure compliance and poor compliance by the industry.

The Green Paper sets out eight main areas of reform:

- A differentiated fishing regime to protect small-scale coastal fleets;
- Improving fisheries management measures, including strengthening the international commitments to achieving MSY, removing discards and limiting fishing efforts;
- Addressing problems associated with ‘relative stability’;
- Improving trading and marketing systems of fishery products;
- Integration of CFP in the broader maritime policy context, particularly supporting the implementation of IMP and MSFD, and taking into consideration the crucial issues of climate change, emission reduction and energy efficiency in future CFP decisions;
- Strengthening the knowledge base for CFP;
- Re-directing public funds so that they will be used in a way that is consistent with the objectives of the CFP.

In July 2011, more detailed proposals for the reform of the CFP were adopted by the European Commission. The proposals are being submitted to the European Council and Parliament and will be

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<sup>25</sup> Consultation on Fishing Opportunities for 2011. COM(2010)241 final.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0241:FIN:EN:PDF>

<sup>26</sup> Communication from the Commission to the Council. Fishing Opportunities for 2008. Policy Statement from the European Commission, COM(2007) 295 final.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0295:FIN:EN:PDF>

<sup>27</sup> Commission, 2009 Commission of the European Communities, 2009. Green Paper: Reform of the Common Fisheries Policy. COM (2009) 163 final. The European Commission, Brussels.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0163:FIN:EN:PDF>

subject to the co-decision procedure. The new CFP is expected to enter into force during 2013. In the proposals, the Commission maintains the position that ambitious targets for meeting the international obligation of achieving MSY for all fish stocks by 2015<sup>28</sup> are necessary (Article 2). In addition, the following measures were proposed<sup>29</sup>:

- Multi-annual management plans that are capable of achieving MSY will be established. Such plans need to move to fisheries-based plans – covering more fisheries in fewer plans. The Commission envisages that the management plans and technical conservation measures will move away from micro-management by co-legislators. The proposed EU legislation will only establish the scope, targets, evaluation indicators and timeframes, and a decentralised approach is proposed in which Member States may develop measures to achieve the targets and objectives set out in the EU legislation.
- A second core element of the proposal is to ban discards for specified stocks. Fishermen will be obliged to land all catches for specified stocks in accordance with a precise timeline for implementation.
- Perhaps the most controversial change introduced in the Commission's proposal is the introduction of a mandatory system of transferable fishing concessions from 2014 for fishing vessels over 12 meters and vessels under 12 meters deploying towed gear. Member States will decide whether such a system should be applied to fishing boats under 12 meters in total length deploying other gears. Member States may request the Commission to exclude vessels subject to a system of transferable fishing concessions from the overall capacity ceilings as set out for each Member State in the Regulation. The introduction of mandatory transferable fishing concessions represents a move towards market mechanisms in reducing overall fishing capacity.<sup>30</sup>
- The financial assistance Member States or individual fishing operators receive from the EU will be linked to compliance. Non compliance may lead to interruption or suspension of the financial assistance.
- Within SACs, SPAs and MPAs of national importance under the MSFD, fishing activities shall be conducted in such a way as to alleviate the impacts of fishing. Substantiated proposals for such restrictions shall be put forward by Member States but the Commission shall also be empowered to specify such fishing related measures to alleviate the impact of fishing activities in SACs, SPAs and MPAs (Article 12). Similar provisions are made for temporary measures to prevent damage to wider marine biological resources or marine ecosystems (Article 13).

The reform of the CFP towards ecological sustainability, in combination with the adoption of the MSFD, provides opportunities for traditional fisheries management institutions and advisory bodies to expand their roles, *e.g.* the RACs (role in implementing ecosystem approach to marine management provided under Article 15 of the MSFD) and ICES. ICES has valuable scientific input that is being used outside the traditional stock assessment role as is illustrated by its involvement in the Dogger Bank FIMPAS initiative and, in particular, the joint HELCOM/OSPAR/ICES MSP workshop, to simulate a high-level MSP plan for the Kattaget (between Denmark and Sweden). The joint workshops will focus on the process of developing a plan and identify key transnational challenges for the implementation of Marine Spatial Planning. ICES is also establishing standards and procedures for dealing with requests for restrictions to protect *Natura 2000*<sup>31</sup> and this role should be expanded to requests for restrictions to protect MPAs of national importance under the MSFD, given that Article 12 of the proposed CFP reform regulations includes such MPAs.

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<sup>28</sup> Recommendation agreed at the World Summit on Sustainable Development (2002)

[http://www.un.org/jsummit/html/documents/summit\\_docs/2009\\_keyoutcomes\\_commitments.doc](http://www.un.org/jsummit/html/documents/summit_docs/2009_keyoutcomes_commitments.doc)

<sup>29</sup> COM(2011) 425 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the Common Fisheries Policy

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0425:FIN:EN:PDF>

<sup>30</sup> Seas At Risk (2011). CFP proposal falls short of ensuring sustainable fisheries.

[http://www.seas-at-risk.org/pdfs/SaR\\_Press%20release%20CFP%20reform.pdf](http://www.seas-at-risk.org/pdfs/SaR_Press%20release%20CFP%20reform.pdf)

<sup>31</sup> [http://www.ices.dk/reports/ACOM/2008/WKN2K/wkn2k\\_2008.pdf](http://www.ices.dk/reports/ACOM/2008/WKN2K/wkn2k_2008.pdf)

Whilst there is widespread agreement on the need for the radical reform of the CFP, which the EC itself accepts is failing to meet its objectives, there remain considerable disagreements and uncertainties as to the details of the needed reforms. From an MSP perspective, the need to integrate the CFP with MPAs (Article 12) and the ecosystem-based approach (Article 13) is a high priority, particularly recognising the very low number of restrictions so far to protect marine *Natura 2000* sites. The proposed reformed CFP regulations also specifically recognise the need to integrate the CFP with the EU's environmental legislation requirements (Article 2), which raises the issue of the balance between environmental, social and economic pillars. A short-term focus on the latter two pillars is arguably one of the key reasons why the CFP has failed in many respects. Whether the integration of the underpinning importance of environmental sustainability in EU policies, particularly the MSFD, Habitats Directive and Birds Directive, will be integrated into the CFP remains to be seen. The reformed CFP regulations must now be approved through the co-decision-making process, and there are already some indications of how shorter-term social and economic priorities can be an obstacle to integrating the environmental pillar into the CFP. For instance, at the first Agriculture and Fisheries Council to discuss the CFP reform regulations, Member State ministers:-

- discussed the difficulty of reaching the MSY target by 2015, calling for a “more gradual” approach;
- stressed that the progressive targets for banning discards “could be too tight to implement efficient measures”
- insisted that the transferable quota system should be managed at a national level “with sufficient safeguards and flexibility”<sup>32</sup>.

At the next meeting, Fisheries Commissioner Maria Damanski gave a speech which included the withdrawal of a proposal for an automatic 25% cut in TACs for stocks with insufficient data for assessment, which was intended to implement the precautionary approach (Article 2(2)), proposing instead that such precautionary cuts be decided on a case by case basis. In the recent council meeting, European Fisheries Ministers decided to set 2012 fishing quota above levels that are advised by scientists for 62 of the 75 stocks. In 53 instances this difference was more than 10%.<sup>33</sup>

Just how far the reformed CFP goes in integrating the environmental pillar into fisheries management policies remains to be seen, particularly with regards to protecting SACs, SPAs and MPAs, and implementing a precautionary ecosystem-based approach to marine fisheries management as an important contribution to achieving GES. The co-decision making process will raise many political challenges to these ambitious proposals, but their implementation through the integration of the environmental pillar into the CFP is arguably necessary if the GES objectives of the MSFD are to be achieved.

### ***The Integrated Maritime Policy (IMP) and Road Map for Marine Spatial Planning***

In 2006, the Commission (DG MARE) published a Green Paper ‘Towards a Future Maritime Policy for the Union: A European Vision for the Oceans and Seas’. The Green Paper envisages an integrated maritime policy that include, among other areas, a system of ecosystem-based MSP for managing conflicting uses, designation of MPAs in addition to the *Natura 2000* sites and the development of offshore renewable energy. The Green Paper also envisages a reduction in uncertainty in making investment decisions in various marine sectors by providing a clear policy framework. It is also stated in the 2006 Green Paper that a system of MSP should be created under the jurisdictions of the Member States, and that ‘*it should build on the ecosystem-based approach laid down in the Thematic Strategy for the Marine Environment, but should also deal with licensing, promoting or placing restrictions on*

<sup>32</sup> [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/agricult/123967.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/agricult/123967.pdf)

<sup>33</sup> <http://www.seas-at-risk.org/n2.php?page=471>

*maritime activities*'. The IMP was adopted by the EU in 2007, and includes the following five action areas:

- Maximising the sustainable use of the oceans and seas
- Building a knowledge and innovation base for the maritime policy
- Delivering the highest quality of life in coastal regions
- Promoting Europe's leadership in international maritime affairs
- Raising the visibility of maritime Europe

Actions in all areas will be guided by the principles of subsidiarity and competitiveness, the ecosystem approach, and stakeholder participation. The MSFD is regarded as being nested within the IMP (Juda 2010), particularly within the first action area on the sustainable use of the oceans and seas. Both MSP and ICZM are stated in the IMP as contributing to '*meeting the commitments deriving from the Thematic Strategy for the Protection of the Marine Environment and provide operators with improved predictability for their planning of future investments*'.

The Commission also issued a Recommendation on Integrated Coastal Zone Management in 2002, which complements the IMP in setting out the principles for sound coastal planning and management<sup>34</sup>:

- A broad overall perspective (thematic and geographic) which will take into account the interdependence and disparity of natural systems and human activities with an impact on coastal areas;
- A long-term perspective which will take into account the precautionary principle and the needs of present and future generations;
- Adaptive management during a gradual process which will facilitate adjustment as problems and knowledge develop. This implies the need for a sound scientific basis concerning the evolution of the coastal zone;
- Local specificity and the great diversity of European coastal zones, which will make it possible to respond to their practical needs with specific solutions and flexible measures;
- Working with natural processes and respecting the carrying capacity of ecosystems, which will make human activities more environmentally friendly, socially responsible and economically sound in the long run;
- Involving all the parties concerned (economic and social partners, the organisations representing coastal zone residents, non-governmental organisations and the business sector) in the management process, for example by means of agreements and based on shared responsibility;
- Support and involvement of relevant administrative bodies at national, regional and local level between which appropriate links should be established or maintained with the aim of improved coordination of the various existing policies. Partnership with and between regional and local authorities should apply when appropriate;
- Use of a combination of instruments designed to facilitate coherence between sectoral policy objectives and coherence between planning and management.

The Commission has also published a Roadmap for Maritime Spatial Planning<sup>35</sup> which supports the implementation of the IMP. The Roadmap outlines the following 10 key principles for maritime spatial planning:

- Using MSP according to area and type of activity
- Defining objectives to guide MSP
- Developing MSP in a transparent manner
- Stakeholder participation
- Coordination within Member States — Simplifying decision processes

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<sup>34</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002H0413:EN:HTML>

<sup>35</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:DKEY=483715:EN:NOT>

- Ensuring the legal effect of national MSP
- Cross-border cooperation and consultation
- Incorporating monitoring and evaluation in the planning process
- Achieving coherence between terrestrial and maritime spatial planning — relation with ICZM
- A strong data and knowledge base

The IMP can be seen as the most comprehensive policy ever adopted by the EU, as it encompasses all possible policy areas that have a stake in the marine environment, and is the first-ever social experiment in integrated ocean policy developed by a supranational organisation (Juda 2010). In a number of aspects, the IMP is similar to the European Spatial Development Perspective, which is the overarching policy framework adopted in 1999 to guide spatial planning on land. Both policies have an explicit goal to achieve sustainable development, with balance between different policy objectives and priorities, and both recognise the importance of cross border cooperation. In addition, they both see Integrated Coastal Zone Management programmes as test fields for integrated spatial planning and management across the marine-terrestrial interface in the EU.

However the IMP also raises major challenges in terms of its implementation. The EU differs from most other federal states in that it only has exclusive jurisdiction over fisheries, therefore an overwhelming challenge will be to coordinate the actions of Member States excising sovereignty within their maritime areas (Juda 2010) in keeping with the principle of subsidiarity<sup>36</sup>. In addition, the IMP has a strong focus on promoting maritime economy and investments in maritime sectors and considers the MSFD as its ‘environmental pillar’. The overarching principles and priorities are not very clear, which could potentially undermine effective implementation of the IMP at national and local levels, particularly when there are strong conflicts between economic development and environmental conservation.

It is important to note in this respect that the MSFD constitutes a cross-sectoral framework, including a legal obligation to achieve GES, whilst the IMP is a softer policy, albeit one that is likely to attract greater political support given its emphasis of promoting integrated maritime economic development. Furthermore, the MSFD is consistent with the increasingly recognised need to give higher priority to the environmental pillar in EU policies.

***Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive, MSFD)***

<b>Scope</b>	Marine waters of EU Member States (Article 3(1))
<b>Overarching aim(s)</b>	<p>The overall aim of the MSFD is to <b>promote sustainable use of the seas and to conserve marine ecosystems</b> (Preamble (4)).</p> <p>It is also stated that ‘by applying an <b>ecosystem-based approach</b> to the management of human activities while enabling a sustainable use of marine goods and services, <b>priority should be given to achieving or maintaining good environmental status</b> in the Community’s marine environment, to continuing its protection and preservation, and to preventing subsequent deterioration’ (Preamble (8)).</p> <p>It requires an <b>ecosystem-based approach</b> to the management of human</p>

<sup>36</sup> “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level” (Article 5(3), Treaty of the Economic Union) [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.2.2.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.2.pdf)

	<p>activities: ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of <b>good environmental status</b> 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 (Article 1(3))</p> <p>With regards to <b>integration</b>, it also states that ‘This Directive shall 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 (Article 1(4)).</p>
<b>Targets</b>	<p>Annex I of the MSFD established 11 qualitative descriptors for determining good environmental status, which cover the following areas:</p> <p>1) Biodiversity; 2) Non-indigenous species; 3) Commercial fish stocks; 4) Marine food web; 5) Eutrophication; 6) Sea-floor integration; 7) Hydrographical conditions; 8) Contaminants and pollution; 9) Contaminants in seafood; 10) Marine Litter; 11) Energy</p> <p>Member States are required, as part of their marine strategy, to establish a set of characteristics and environmental targets for good environmental status, based on the above 11 descriptors, by 15 July 2012 (Article 5(2a)). These descriptors are detailed in <a href="#">2010/477/EU</a></p>
<b>Strategies and measures for implementation</b>	<p>Member States are required to develop a programme of measures, as part of their marine strategy, designed to achieve or maintain good environment status by 2015, and to start implementing the measures by 2016 (Article 5(2b))</p> <p>The MSP obligations of the MSFD are quite weak, confined to types of measure that should be <b>taken into consideration as potential measures</b> for achieving GES (Art 13(1)), set out in Annex VI</p> <p>The MPA obligations are much stronger, in that such programme of measures ‘<b>shall include</b> spatial protection measures, contributing to <b>coherent and representative networks of marine protected areas</b>’ (Article 13(4))<sup>37</sup></p> <p>Those measures should be devised on the basis of the precautionary principle and the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay (Preamble (27))</p>
<b>Assessment criteria</b>	<p>Member States are required to establish, by 15 July 2012, environmental targets and associated indicators to guide progress towards achieving good environmental status (Article 10(1))</p>
<b>Exceptions</b>	<p>A Member State may identify instances in which environmental targets or good environmental status cannot be achieved (Article 14(1)):</p> <p>(a) action or inaction for which the Member State concerned is not responsible;  (b) natural causes;  (c) <i>force majeure</i>;  (d) modifications or alterations to the physical characteristics of marine waters brought about by actions taken for <b>reasons of overriding public interest</b> which outweigh the negative impact on the environment, including any transboundary impact;  (e) natural conditions which do not allow timely improvement in the status of</p>

<sup>37</sup> Aims, along with Habitats and Birds Directives, to contribute to fulfilment of CBD target (COP10) to designate 10% of coastal and marine areas as MPAs by 2020

	<p>the marine waters concerned.</p> <p>In particular, Article 14(4) provides for marine strategies to achieve GES not to be implemented <b>where the costs would be disproportionate</b>. Such exceptional cases need to be justified to the EC “while avoiding that the achievement of good environmental status be permanently compromised”</p>
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The MSFD is considered to be a very important step forward in conserving marine ecosystems in Europe and ensuring the sustainable use of ocean resources (Salomon 2009). The MSFD envisages an ecosystem-based and coherent approach to ocean management in European’s marine waters. It requires Member States to implement spatial protection measures that contribute to ‘coherent and representative networks of marine protected areas (MPAs)’, which include special areas of conservation (SACs) and special protection areas (SPAs) established under the Habitats and Birds Directives, and MPAs designated by Member States under various international and regional agreements. Establishing coherent and representative networks of MPAs is the only required measure that is explicitly mentioned in Article 13 (Programme of Measures), therefore it is a core element in delivering the ecosystem-based approach envisaged in the MSFD. The requirement of establishing ‘coherent and representative networks of marine protected areas (MPAs)’ also implies that protection needs to be extended to the marine species, habitats and ecosystems that are not listed under the Habitats and Birds Directives, as protecting only the listed marine habitats and species cannot constitute an ecologically representative network.

In addition, Annex VI of the MSFD also includes a brief list of programmes of measures that should be taken into consideration when Member States devise strategies to achieve good environmental status. These include input and output controls, spatial and temporal distribution controls, management coordination measures, measures to improve the traceability of marine pollution, economic incentives, mitigation and remediation tools and involvement stakeholders and the public.

This MSFD ‘shall 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’ (Article 1 (4)). This is reflected in the 11 descriptors for determining environmental status, which cover key sectors or activities and their impacts on marine ecosystems. The MSFD specifically states that the reform of the Common Fisheries Policy should take into account the environmental impacts and the objectives of this Directive (Preamble (40)). In addition, the MSFD also requires that Member States shall, when developing programmes of measures for achieving ‘good environmental status’, take into account measures required under the Water Framework Directive, Directive 91/271/EEC concerning urban waste-water treatment (1) and Directive 2006/7/EC concerning the management of bathing water quality (2), as well as forthcoming legislation on environmental quality standards in the field of water policy (Article 13 (2)). However, the degree to which the MSFD can influence other sectoral policies at EU level and in different Member States has yet to be seen. A related issues is that the MSFD has been established as ‘the environmental pillar of the future maritime policy for the European Union’ (Preamble (32)), rather than underpinning the Integrated Maritime Policy (IMP, reviewed below) or constituting an underpinning theme in the IMP. The MSFD’s relationships with the other pillars of the IMP (economic and social) have not been clearly defined or tested, and this leaves rooms for debates and potential tensions in the future. It should be recognised, however, that the MSFD is a legally binding directive, while the IMP is a ‘soft policy’, *i.e.* no legal actions can be taken against non-compliance. Therefore, it can be argued that legal recognition of the underpinning importance of the environmental pillar discussed above *should* provide for the environmental pillar, through the MSFD, to be prioritised in MSP initiatives over the economic pillar, through the IMP.

The MSFD gives significant deference to the principle of subsidiary, and Member States are responsible for establishing a set of environmental targets for determining ‘good environmental status’, and developing and implementing a programme of measures in their own jurisdiction (see Table 1).

However, it also envisages a nested governance structure through enhanced cooperation and coordination between Member States in a marine region or subregion, as defined in Article 4 of the MSFD, including implementation of the Regional Seas Conventions. Furthermore, to ensure that decisions and actions taken by Member States are coordinated and consistent, the MSFD provides for an oversight, control and coordinating role for the European Commission (Juda 2010). Among other things, the European Commission is responsible for setting common methodological standards and criteria (Annex III, IV and V) for assessment and monitoring programmes undertaken by Member States. The Commission will also assess if programmes of measures formulated by Member States 'constitute an appropriate framework to meet the requirements of this directive', taking into consideration the coherence of such programmes of measures across Europe (Article 16).

For cross-border issues related to achieving GES that cannot be tackled through actions at a national level, or issues concerning other EU policies or international agreements, the Member State concerned is required to inform the Commission, together with justifications and a set of recommendations. The Commission will respond within six months and, and if appropriate, take the issues and recommendations to the European Parliament and Council (Article 15).

It is important to note that whilst the MSFD allows for exceptional cases in which environmental targets or good environmental status cannot be achieved. *i.e.* such provisions must be justified to the EC and should not permanently compromise GES (Article 14). Article 14 allows for activities that could undermine GES by modifying or altering the physical characteristics of marine waters, where such activities are required to go ahead for reasons of overriding public interest which outweigh the negative impact on the environment and where the costs of restricting such activities would be disproportionate. However, Member States shall ensure that the modifications or alterations do not permanently preclude or compromise the achievement of good environmental status at the level of the marine region or subregion concerned or in the marine waters of other Member States. This emphasis on the environmental pillar is consistent with the 'underpinning importance of environmental sustainability in EU policies' discussed above and is reinforced by such wider commitments.

These commitments mean that, in the context of MSP under the MSFD and wider EU policies, biodiversity conservation is not on an equal standing as a type of 'use' of sea space that competes with other sectors or uses; rather, environmental sustainability, particularly the achievement of GES, including an obligation to designate and effectively manage MPAs, is legally recognised as being of underpinning importance. It remains to be seen, however, whether the underpinning importance of the environmental pillar will actually be implemented into other sectoral policies, particularly under the Common Fisheries Policy and the Integrated Maritime Policy.

### ***Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the Conservation of Wild Birds (the Birds Directive)***

The Birds Directive was initially adopted by the EC in 1979 and is the oldest nature conservation legislation in the EU. The directive has been amended several times as new Member States joined the EU and the current Directive 2009/147/EC is the updated version of Directive 79/409/EEC which incorporates all the recent amendments.

<b>Scope</b>	European territory of EU Member States (Article 1)
<b>Overarching aim(s)</b>	To maintain the population of wild bird species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level (Article 2)
<b>Targets</b>	<p>The conservation status of a species will be taken as ‘favourable’ when:</p> <ul style="list-style-type: none"> <li>— its natural range and areas it covers within that range are stable or increasing, and</li> <li>— the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and</li> <li>— the conservation status of its typical species is favourable as defined below</li> </ul> <p>The conservation status of a species will be taken as ‘favourable’ when:</p> <ul style="list-style-type: none"> <li>— population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and</li> <li>— the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and</li> <li>— there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis (Article 1(e) and(i))</li> </ul>
<b>Spatial measures for implementation</b>	Member States shall classify in particular the most suitable territories in number and size as special protection areas (SPAs) for the conservation of species listed in Annex I (Article 4(1)), and take similar measures for regularly occurring migratory species not listed in Annex I, including the protection of wetlands (Article 4(2)). SPAs should be protected through appropriate measures (Article 4(4)), but this has been amended by the Habitats Directive to the effect that SPAs are now reactively managed under Article 6(2-4)
<b>Assessment criteria</b>	Member States shall forward to the Commission every three years, starting from 7 April 1981, a report on the implementation of national provisions taken under this Directive (Article 12)
<b>Exceptions</b>	<p>Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:</p> <p>(a) — in the interests of public health and safety,</p> <ul style="list-style-type: none"> <li>— in the interests of air safety,</li> <li>— to prevent serious damage to crops, livestock, forests, fisheries and water,</li> <li>— for the protection of flora and fauna;</li> </ul> <p>(b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;</p> <p>(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.</p>

SPAs contribute, alongside SACs, to the *Natura 2000* network and whilst their selection and monitoring is mainly based on the provisions of the Birds Directive and its annexes, their management is mainly based on the provisions of the Habitats Directive, particularly Article 6(2-4).

<sup>58</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/628>

***The EU Climate and Energy Package and Directive 2009/28/EC on the promotion of the use of energy from renewable sources (Renewable Energy Directive)***

The Climate and Energy Package was adopted in December 2008, which established the following legally binding targets for EU Member States<sup>58</sup>:

- cutting greenhouse gas emission by at least 20% of 1990 levels (increase to 30% in the context of a satisfactory international climate agreement in which other developed and developing countries contribute their fair share to limiting global emissions);
- cutting energy consumption by 20% of projected 2020 levels - by improving energy efficiency;
- increasing the share of renewables to 20% of total energy consumption.

The climate and energy package consists of four legislative texts:

- A Directive revising the EU Emissions Trading System (EU ETS), which covers some 40% of EU greenhouse gas emissions;
- An "effort-sharing" Decision setting binding national targets for emissions from sectors not covered by the EU ETS;
- A Directive setting binding national targets for increasing the share of renewable energy sources in the energy mix (the Renewable Energy Directive);
- A Directive creating a legal framework for the safe and environmentally sound use of carbon capture and storage technologies.

The package is complemented by two further legislative acts that were agreed at the same time:

- A Regulation requiring a reduction in CO<sub>2</sub> emissions from new cars to an average of 120g per km, to be phased in between 2012 and 2015, and further to 95g per km in 2020. This measure alone will contribute more than one-third of the emission reductions required in the non-ETS sectors;
- A revision of the Fuel Quality Directive requiring fuel suppliers to reduce greenhouse gas emissions from the fuel production chain by 6% by 2020.

The table below summarises the main provisions of the Renewable Energy Directive, which is a key component of the Climate and Energy Package.

<b>Scope</b>	This Directive establishes a common framework for the promotion of energy from renewable sources in EU Member States (Article 1)
<b>Overarching aim(s)</b>	The promotion of energy from renewable sources (Article 1)
<b>Targets</b>	Each Member State shall ensure that the share of energy from renewable sources, calculated in accordance with Articles 5 to 11, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year, as set out in Annex I of the Directive. Such mandatory national overall targets are consistent with a target of at least a <b>20% share of energy from renewable sources in the Community's gross final consumption of energy in 2020</b> (Article 3(1)).  Member States shall introduce measures effectively designed to ensure that the

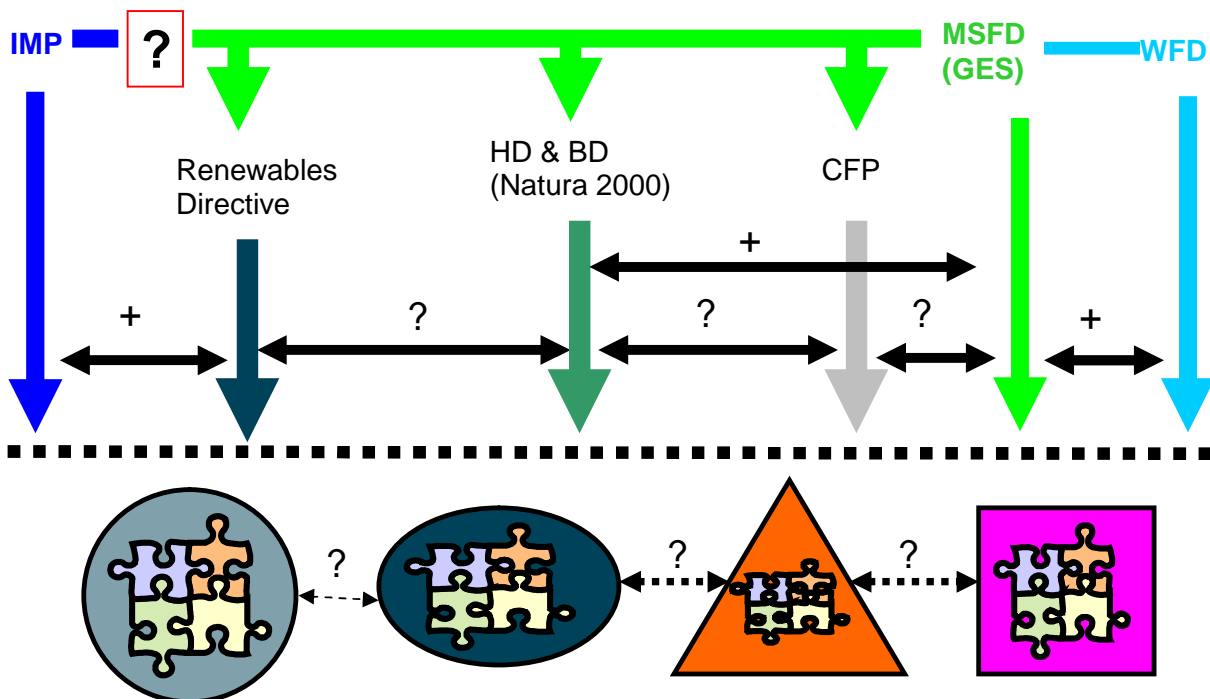
	<p>share of energy from renewable sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I (Article 3(2)).</p> <p>Each Member State shall ensure that <b>the share of energy from renewable sources in all forms of transport in 2020 is at least 10% of the final consumption of energy in transport</b> in that Member State (Article 3(4)).</p>
<b>Strategies and measures for implementation</b>	<p>In order to achieve the national targets for the share of renewable energy sources, Member States can apply measures including (Article 3(3)):</p> <p>(a) support schemes;</p> <p>(b) measures of cooperation between different Member States and with third countries for achieving their national overall targets in accordance with Articles 5 to 11.</p> <p>Each Member State shall adopt a national renewable energy action plan. The national renewable energy action plans shall set out Member States' national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020 (Article 4(1)).</p>
<b>Assessment criteria</b>	<p>Each Member State shall submit a report to the Commission on progress in the promotion and use of energy from renewable sources by 31 December 2011, and every two years thereafter. The sixth report, to be submitted by 31 December 2021, shall be the last report required (Article 22(1))</p> <p>By 31 December 2014, the Commission shall present a report, addressing, in particular, the following elements:</p> <ul style="list-style-type: none"> <li>(a) a review of the minimum greenhouse gas emission saving thresholds for biofuels and bioliquids</li> <li>(b) a review of targets for the share of energy from renewable sources in the transport sector</li> <li>(c) an evaluation of the implementation of this Directive, in particular with regard to cooperation mechanisms, in order to ensure that, together with the possibility for the Member States to continue to use national support schemes referred to in Article 3(3), those mechanisms enable Member States to achieve the national targets defined in Annex I on the best cost-benefit basis, of technological developments, and the conclusions to be drawn to achieve the target of 20 % of energy from renewable sources at Community level (Article 23(8))</li> </ul>
<b>Exceptions</b>	<p>A Member State whose share of energy from renewable sources fell below the indicative trajectory in the immediately preceding two-year period set out in part B of Annex I, shall submit an amended national renewable energy action plan to the Commission by 30 June of the following year, setting out adequate and proportionate measures to rejoin, within a reasonable timetable, the indicative trajectory in part B of Annex I.</p> <p>The Commission may, if the Member State has not met the indicative trajectory by a limited margin, and taking due account of the current and future measures taken by the Member State, adopt a decision to release the Member State from the obligation to submit an amended national renewable energy action plan (Article 4(4)).</p>
<b>Relationship with other EU policies</b>	<p>The coherence between the objectives of this Directive and the Community's other environmental legislation should be ensured. In particular, during the assessment, planning or licensing procedures for renewable energy</p>

installations, Member States should take account of all Community environmental legislation and the contribution made by renewable energy sources towards meeting environmental and climate change objectives, in particular when compared to non-renewable energy installations (Preamble (44)).

The Climate and Energy Package, and Renewable Energy Directive legally require the development of renewable energy sources, including marine renewables, the spatial requirements of which are likely to have very significant consequences for MSP.

## Discussion

The information listed above describes an emerging policy landscape for the integrated planning and management of ocean use in Europe, moving from a sectoral to more integrated ecosystem-based approach. Some of the key linkages, synergies and potential tensions between the different directives are examined in previous sections. As illustrated in the diagram below, questions remain as to how the linkages between different sectoral policies will be addressed, particularly between the MSFD and IMP, and between the CFP and environmental legislations. The key linkages and issues which will likely have important implications for marine spatial planning in Europe are summarised and highlighted below.



Member States: different national priorities and sectoral interests

<sup>63</sup> Joint NGO Position Paper on Maritime Spatial Planning, May 2011.

### *The relationship between the MSFD and the IMP*

It seems that the MSFD and IMP prescribe two different approaches to marine spatial planning in Europe. As discussed earlier, the MSFD provides an overall framework for achieving 'good environmental status' (GES), and requires different sectoral activities to be managed in accordance with the environmental objectives set out in the Directive. The MSFD does provide some scope for sustainable development, however it does not explicitly promote economic development. The MSFD is **legally binding** on all Member States, and although it does not explicitly require marine spatial planning to achieve GES, this requirement being limited to MPAs, it can be used as a good basis for marine spatial planning in different EU countries (de Vivero 2011). Using the MSFD as an overall framework for marine spatial planning will enhance clarity of objectives and much needed consistency and coordination in managing different sectors across different EU countries, particularly given the obligation for MSPs themselves to be subject to a SEA, including the potential for cumulative and cross-border impacts.

On the other hand, the IMP envisages marine spatial planning as being an instrument for promoting economic development (de Vivero 2011). As a policy it is **not legally binding** but underpins the development of plans and objectives for various maritime sectors, and it includes the MSFD as its 'environmental pillar'. In a simplified sense, the IMP and MSFD may prescribe two different approaches or routes for marine spatial planning in Europe. Following the IMP, marine spatial planning is more likely to be developed as a mechanism for balancing the needs of different sectors and ensuring that strong growth in certain maritime sectors does not lead to undesirable environmental and social consequences. From a MSP perspective, nature conservation (particularly the designation of MPAs) is likely to be considered as one type of 'sectoral' use of ocean space, which is considered in relation to other sectors. Such an approach to marine spatial planning is more likely to be adopted in countries with strong maritime industries, with increasing competition for sea space among different sectors. In contrast, in countries that do not have strong maritime industries, marine spatial planning is more likely to be used as a preventive strategy to ensure overall ecosystem health. Such an approach is more consistent with the provisions of the MSFD (de Vivero 2011).

Underlining the issue of potential disconnections between the MSFD and IMP is that they fall under the responsibility of different Commission bodies: DG Environment oversees the implementation of the MSFD and DG MARE oversees the implementation of the IMP, along with the CFP. MSP-related initiatives commissioned under the two bodies seems to have little connection with each other, causing some confusions and tensions regarding the regarding the strategic direction(s) for marine spatial planning in Europe (de Vivero 2011). As it stands, DG MARE and DG Environment receive scientific advice from different advisory bodies. As discussed earlier, DG MARE receives scientific advice from the Scientific, Technical and Economic Committee for Fisheries (STECF), and the International Council for the Exploration of the Sea (ICES), and it receives stakeholder input from the Advisory Committee for Fisheries and Aquaculture (ACFA) and the Regional Advisory Councils (RACs). DG Environment relies on a Habitats Committee comprising representatives from all Member States and the Commission, which is not an independent scientific body and is hardly a match to the ICES in terms of its technical capacity and influence over decision-making in the Commission (De Santo 2010).

The disconnections between the two main Commission bodies responsible for marine management and the related lack of clarity regarding the relationship and linkages between the two most important EU policies (MSFD and IMP) are likely to be key issues in the development of a better integrated policy landscape for marine spatial planning in Europe.

The relationship between the MSFD and the IMP can also be considered as being an opportunity to better integrate the environmental and economic pillars of European maritime policies, recognising that the economic pillar has generally been favoured over the environmental pillar, despite the wider provisions which emphasise the underpinning importance of the environment pillar (Eurostat report

cited in Client Earth 2011). This is why the EC tends to focus on Directives, such as the MSFD, that promote environmental protection rather than economic development, it being safe to assume that Member States need no encouragement to engage in the latter, including in their maritime territories through the IMP. The framework nature of the MSFD is emphasised by Article 1(4): “This Directive shall 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.” It is reasonable to assume that the IMP is one of the key policies with which the environmental pillar should be integrated by the MSFD. The main differences between the MSFD and the IMP are summarised in the table below.

	<b>MSFD</b>	<b>IMP</b>
<b>Overarching aim</b>	A framework for implementing ecosystem-based approach	A framework for promoting maritime economic development
<b>Role of MSP</b>	MSP as a mechanism for achieving ‘good environmental status’	MSP as a mechanism for balancing different uses
<b>Role of MPAs</b>	Conservation through MPAs at the core of its implementation	Conservation and MPAs as one of the uses of sea space
<b>Legal power</b>	Legally binding (Member States can be taken to the European Court of Justice for non-compliance)	Soft policy (no legal actions will be taken for non-compliance)
<b>Authority</b>	Under DG Environment	Under DG MARE

### ***Co-decision making, MSFD and the reform of the Common Fisheries Policy***

The reform of the CFP will have major implications for marine spatial planning considering the wider impacts of fishing on marine ecosystems. Despite provisions for fisheries restrictions to support environmental conservation and the management of *Natura 2000* sites under the CFP, such provisions are actually very rarely used. An inherent issue in the implementation of environmental policies in the EU is that while Member States are ultimately responsible for the implementation of environmental legislations (*e.g.* the Birds and Habitats Directive and the MSFD) within their jurisdictions, they do not have full control over fishing activities beyond 12 nm from the coast (or 6nm where there are partial derogations based on historical access rights), which are managed directly by the EC under the CFP (De Santo 2010). This bifurcation between fisheries management and nature conservation within the EU means that ‘good environment status’ of the seas in Europe (as required under the MSFD) cannot be achieved without substantial reform of the CFP. This is why the preamble to the MSFD states that the CFP “including in the future reform, should take into account the environmental impacts of fishing and the objectives of this Directive”. The importance of integration between the CFP, *inter alia*, and the MSFD is also an obligation under the latter: “this Directive shall 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 (Article 1(4))”.

Evidence shows, however, that national fisheries interests will present significant political hurdles when reforming the CFP in order for it to contribute to achieving GES, including the sustainable exploitation of stocks. This is illustrated by the issues raised in relation to CFP reform proposals at recent Agriculture and Fisheries Council meetings, which demonstrate that compromises and qualifications are already being discussed for both the MSY and precautionary approach proposals (see CFP section above). This arguably reflects a continuation of the tendency to undermine the precautionary principle and international commitments in decision-making in fisheries under the CFP. It will be interesting to see whether this reform of the CFP is significantly influenced by the MSFD requirement for the integration of environmental priorities.

It will also be interesting to see if the new requirement for co-decision making will make a difference in this reform of the CFP, one certainty being that the passage of the new CFP regulations will become a lengthy and complicated process. Under the co-decision making procedure, the European Parliament will have the power to challenge the position of the Council. Previously, fisheries ministers, under significant lobbying pressure from their fishing industries, have exerted considerable influence on CFP negotiations through the Council. The new co-decision approach will mean that other political representatives, including those with environmental sympathies and under lobbying pressure from conservationists, as well as those with wider sectoral interests, will have a much greater influence through their national parliaments and through the European Parliament.

### ***The necessity of a new EU directive for marine spatial planning?***

Under the current policy and regulatory framework, Member States are not obliged to implement marine spatial planning. A recent report by the Commission states that ‘development of MSP processes by Member States is taking place, but on an *ad hoc* basis, following different paths and time scales’ (EC 2010). In order to promote a common approach to MSP, the Commission has launched a consultation process and impact assessments to explore different options for marine spatial planning. The consultation process presented four policy options (PRC 2010):-

- **Status quo:** maintaining the same level of interactions between the Commission and Member States, with no further actions;
- **Non-legally binding acts:** encouraging Member States to pursue MSP through guidelines and recommendations published by the Commission;
- **EU directives:** which establish the goals and targets, Member States then being required to adapt national laws to achieve such goals and targets;
- **Regulations:** legally binding on every Member States.

In light of recent discussions with EC MSP policy experts, it seems that the most likely outcome could be the adoption of a legally binding instrument for marine spatial planning, in the form of a MSP directive. This is in line with the Commission’s position that early development of a coherent framework for MSP is needed at the EU level to guide national processes and to ensure consistency and cross-border cooperation among Member States, and that the legal effects of MSP must be established to ensure its implementation and to provide strategic vision, certainty and transparency (EC 2010).

The idea of a new MSP directive has already generated concerns. Environmental NGOs are concerned that a new MSP directive with a focus on coordinated economic development may weaken the environmental obligations established under the MSFD. For example, a number of environmental NGOs, including Birdlife International, RSPB and Greenpeace, have issued a joint position paper, opposing the Commission’s view that a new framework for the sustainable use of Europe’s seas and oceans is needed, as the MSFD already provides for such a framework. They point out that additional provisions for MSP can be added to the MSFD as an annex or amendments, rather than being fragmented into a new legal instrument<sup>63</sup>. Member States are concerned that a new MSP directive may add to the legislative requirements that they are obliged to address, in addition to those already established by MSFD and other directives relating to the management of maritime activities. A new MSP directive would require additional resources for implementation, stretching the already thin government resources. Furthermore, several countries in the EU have already started their own national MSP processes, and the introduction of a new MSP directive may require substantial changes in existing national planning approaches and practices.

Beyond such concerns and issues, the practicality of bringing together all policies and directives related to the marine environment under an overarching MSP framework would present a major challenge to the Commission. Maritime activities in Europe have been managed on a strongly sectoral

basis; until the recent passage of the Marine Strategy Framework Directive, there were limited interactions and synergies between different marine-related policies and directives (Lloyd et al. 2011). The legislative basis for the most important marine sectors, such as marine renewables, environmental protection and fisheries, have already been established, and a new MSP may likely become a collection of goals under existing directives, rather than proposing new visions, priorities and forward-thinking objectives. Establishing new visions, priorities and objectives would also require the consideration of the principle of subsidiarity and the needs and political realities in different Member States. A key question in this respect is whether the EC should have a role in obliging Member States to adopt particular MSP *processes*, or whether their role should be confined to obliging the achievement of certain *outcomes*, such as GES and renewable energy capacity. Accepting that the latter is more consistent with the principle of subsidiarity, though particular data sharing requirements and standards could be included as process requirements, the question remains as to what outcomes an MSP directive could provide for, recognising that the SEA already requires cumulative and cross-border impacts to be addressed whilst the MSFD includes the obligation to maintain GES.

There is also the question of whether the MSP Directive is intended to provide an economic development counter-balance to the environmental protection objectives of the MSFD, the former being promoted primarily by DG MARE and the latter by DG Environment. The MSFD is already considered to represent an overarching framework that includes provisions for economic development priorities to over-ride environmental protection obligations where the costs, through foregone development opportunities, are ‘disproportionate’, provided wider GES is not undermined at a sub-regional or regional scale. Furthermore, other sectoral Directives, such as the CFP and the Renewables Directive already provide for the promotion of economic development opportunities, whilst the SEA Directive requires the cumulative cross-border impacts of developments under national plans to be addressed. It must also be considered whether an MSP Directive would address the confusions, inconsistencies and conflicts between the MSFD and the IMP or exacerbate them.

There is also the key question of whether another overarching maritime framework directive is warranted, given that the MSFD is itself a ‘framework’, along with the question of whether Member States actually need obligations to promote integrated maritime economic development, and whether such obligations would be consistent with the principle of subsidiarity. It could be argued that another framework Directive promoting integrated maritime economic development would not be consistent with the need to strengthen the environmental pillar into European policies, recognising that in reality the economic pillar has been favoured over the environmental pillar, despite the wider provisions which emphasise the underpinning importance of the environment pillar (Eurostat report cited in Client Earth 2011).

It could also be argued that the MSFD, along with the SEA, Habitats and Birds Directives, appropriately oblige the management of the cumulative impacts of different maritime activities in order to integrate the environmental pillar into maritime planning, including provisions for economic development priorities to over-ride environmental protection, whilst the CFP, Renewables Directive, etc, provide for particular sectoral development priorities.

It is also worth tracing the development of the EU policy framework for spatial planning on land. The ‘mother document’ for spatial planning on land – the European Spatial Development Perspective (ESDP) – was adopted in 1999; however, early proposals on spatial development in the EU date from the sixties.<sup>64</sup> The ESDP is a strategic framework, not a legally binding document, and a ‘learning machine’ for planners and policy makers who set out to do spatial planning (Faludi 2010). It contains policy guidance to improve cooperation among Community sectoral policies with significant spatial impacts and between Member States<sup>65</sup>. The main aims of the ESDP are:

- development of a balanced and polycentric urban system and a new urban-rural relationship;

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<sup>64</sup> [http://europa.eu/legislation\\_summaries/regional\\_policy/management/g24401\\_en.htm](http://europa.eu/legislation_summaries/regional_policy/management/g24401_en.htm)

<sup>65</sup> [http://ec.europa.eu/regional\\_policy/sources/docoffic/official/reports/pdf/sum\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/pdf/sum_en.pdf)

- securing parity of access to infrastructure and knowledge; and
- sustainable development, prudent management and protection of nature and cultural heritage.

The ESDP has an explicit goal to achieve ‘sustainable and balanced development’, reflected in the ‘triangle of objectives’ encompassing social, economic and environmental objectives. The interpretation of sustainability in the ESDP is therefore more consistent with the IMP, *i.e.* placing environmental protection as one pillar but primarily promoting the economic pillar, as its name – spatial development perspective-implies. Another key issue is the competence of the Commission over spatial planning, which remained controversial throughout the process leading to the adoption of the ESDP. The dominant view was that spatial planning was not a Community competence, and the argument often put forward was the principles of sovereignty and subsidiarity, *i.e.* whether the legal rights of Member States and self-governing sub-national regions within Member States would be impaired by subscribing them to some kind of a ‘master plan’ from the Commission, although the real reasons behind Member States’ oppositions to Commission’s competence in spatial planning might be more complicated (Faludi 2010). The final draft of the ESDP contains the following statements:

- the existing competencies of the institutions responsible for Community policies remain unchanged. The ESDP may contribute to the implementation of Community policies which have a territorial impact, but without constraining the responsible institutions in exercising their responsibilities,
- the central aim will be to achieve sustainable and balanced development,
- it will be prepared respecting existing institutions and will be non-binding on Member States,
- it will respect the principle of subsidiarity,
- each country will take it forward according to the extent it wishes to take account of European spatial development aspects in its national policies.

Statements like the above are considered to be the weak points in the development of the ESDP, as they deprive the Commission of the means to exercise its power more effectively in ensuring inter-sectoral linkages and cross-border coherence in spatial planning. Noting that ICZM was one of the policies that was pursued through the ESPD (Kidd et al. 2003), it is very likely that similar debates on competence and subsidiarity will come to the fore if a proposal for a MSP directive is pursued.

These issues and questions will continue to be debated through the consultation on the necessity for a new policy to promote MSP. The pursuit of such a policy, once the outcome of the consultation has been announced, will certainly intensify such debates and it is important to recognise that any new MSP policy will have to be agreed on a co-decision basis, widening the platforms for these debates. The outcome remains to be seen but the potential for a fourth option of including MSP as a required policy under the MSFD, including guidelines on the links to other laws such as the SEA Directive and policies such as the IMP, is likely to be included in such debates, despite the explicit absence of this option from the consultation.

### ***Power, displacement and justice issues in the ‘race for space’ in Europe’s seas***

It is generally inevitable that marine spatial planning leads to the redistribution and displacement of certain sectors and users, particularly as ‘new sectors’ such as marine renewables and marine conservation make claims and are granted concessions for marine space. Marine spatial planning can be purposefully introduced and/or implemented so that the result will bear positive implications for the development of some sectors, which are often of strategic importance to the country concerned (Jay 2010). In the EU, the entry into force of the MSFD and the Renewable Energy Directive provides a driving force for the designation of MPAs and development of wind farms across Europe, which may claim extensive marine area and lead to a ‘race for space’ in the marine environment, often running ahead of formal marine spatial planning. For example, nominated *Natura 2000* sites in Germany cover

about 31% of the country's EEZ<sup>66</sup>. In addition, the German Government has passed a statutory order to install 12 GW of offshore wind energy, in areas that are not already occupied by *Natura 2000* sites and shipping. The UK is planning to derive 29 GW of electricity (~22% of total demand) from marine renewables and to expand the MPA network, potentially involving the co-location of windfarms within MPAs. In both the UK and Netherlands, marine spatial planning processes were introduced to have positive implications for the development of the marine renewables industry (Jay 2008, 2010). Such planning systems can create 'ownership of the sea' through allocation of sea space to particular sectors, which facilitate the development of emerging sectors but can also lead to conflicts (Flannigan and Ó Cinnéide 2008).

While marine spatial planning may have positive implications for the development of new sectors, as a means to promote strategically important sectors or industries, it often also results in the displacement of existing activities, and some of the impacts of such displacement arguably cannot be 'planned away'. A key difference between planning on land and in the sea is that the former is often subject to approval from local authorities, while the latter is often subject to much more centralised controls (Jay 2010). In land-use planning, local authorities are held accountable to the decisions they made to their constituents and are often obliged to consider different interests (economic, environmental and social) thoroughly during the planning process. The process can become a hurdle to the development of certain sectors, such as renewable energy. However, localised planning processes allow different interests to be debated and considered in a more balanced manner. However, in the marine environment, planning was traditionally conducted more centrally on a sectoral basis and the move towards MSP provides opportunities for national governments to establish new systems of priorities, often based on the longer term economic development and other strategic needs of the country concerned. The impacts on some local users may be considered as a low priority or not sufficiently addressed, particularly in the presence of powerful sectors such as marine renewables. In Europe, the combined impacts of wind farm development and *Natura 2000* designations on fisheries will lead to displacement of fishing efforts to other areas, as well as higher fishing costs and reduced catches for some species (Berkenhagen et al. 2010). Furthermore, due to a lack of property rights in many marine fisheries, fishermen lack the stance for compensation or negotiation when negative impacts from the development of other activities are anticipated (Degnbol and Wilson 2008).

At the European level, the Aarhus Convention provides the legal platform through which issues relating to public rights and justice can be addressed. The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters has been adopted by the EU and implemented through two EU directives and one regulation (De Santo 2011). The two directives provide for public access to environmental information (Directive 2003/4/EC) and public participation in environmental decision-making (Directive 2003/35/EC). In addition, Regulation 1367/2006 lays down rules to apply the provisions of the Convention to EU institutions and bodies. However, existing EU directives and regulation transposing the Aarhus Convention mainly deal with public access to information and their rights of participation in decision making related to environmental issues. The Council failed to agree on a proposed directive dealing with the justice aspects of the Aarhus Convention. It is yet to be seen whether existing legal platforms, at the EU or national level, provide effective mechanisms for justice issues relating to MSP to be addressed.

## Conclusion

Maritime activities in Europe have been managed on a strongly sectoral basis, and the recent passage of the Marine Strategy Framework Directive and the Integrated Maritime Policy provides opportunities to address potential conflicts and to achieve integrated management across different

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<sup>66</sup> BfN. Federal Agency for Nature Conservation, Habitat Mare *Natura2000*.  
<http://www.habitatmareNatura2000.de/en/hintergrund.php>

maritime sectors. However, whether and how integrated and cross-sectoral marine planning and management can be achieved in reality remains to be tested, and this overview of the policy landscape within which MSP is currently developing has identified six key and inter-related issues (explored in the discussions above), particularly:-

- The integration of environmental protection and economic development objectives;
- The prospects for reforming the CFP in order to deliver such integration;
- The relationship between the MSFD and the IMP;
- The necessity of and potential roles of an MSP Directive;
- The implications of co-decision making;
- Power, displacement and justice issues in the ‘race for space’ in Europe’s seas.

Underlying these issues are arguments that have been raging at least since the Stockholm Conference (1972) as to whether healthy ecosystems underpin economic development or whether economic development provides for ecosystem conservation initiatives (Jones 2006). Such debates will continue, emerging European MSP policies providing a framework for them, including addressing related conflicts, rather than a platform for reaching consensus on them.

Given the strategic national importance of many maritime activities, *e.g.* renewable energy, oil/gas development and commercial shipping, it is important to recognise that decisions concerning the space which should be allocated to these activities are ultimately taken through central political processes, often on a reactive basis. The conflicts that such decisions often generate can be considered within a given MSP framework, but whether such decisions are based on a given MSP framework and whether such a framework can successfully address or, at least, ameliorate conflicts is debatable and still remains to be seen. This recognition of the importance of strategic priorities and related political processes needs to be recognized in MSP analyses. A widely accepted definition of MSP recognises the importance of such processes:-

“Marine spatial planning (MSP) is a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process” (Ehler and Douvère 2007).

It could be argued, however, that political processes not only specify the three categories of objectives, which constitute the three pillars of sustainable development, but that such processes often also influence and even drive decisions that have implications for national strategic priorities. The role of MSP frameworks involving step-by-step approaches needs to be considered in conjunction with the role of political processes in not only setting the objectives, but also in taking decisions that, in effect, prioritise one of the three pillars, often the economic one, hence the need for binding Directives that oblige Member States to give priority to the environmental pillar. Political processes must therefore be considered in governance analyses as the reality is that they often have a significant influence on MSP decisions that cannot be recognised by only focusing on MSP frameworks involving step-by-step approaches. Such political processes operate at many levels, from the local to the European, and so pervade the six key issues discussed in this overview. One of the aims of the governance analytical structure developed through the governance work package is to explore the realities of how such political processes influence decision-making in MSP.

At this stage it is argued that the six key issues set out above, including the influence of political processes that run through them, constitute a common European policy landscape that applies to all the MESMA case studies. These case studies will be important in further exploring how the emerging EU landscape for MSP ‘plays out’ in different contexts.

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