

Links between the Marine Strategy Framework Directive (MSFD 2008/56/EC) and the Nature Directives (Birds Directive 2009/147/EEC (BD) and Habitats Directive 92/43/EEC (HD))

Interactions, overlaps and potential areas for closer coordination.

This document addresses some Frequently Asked Questions about links between the Marine Strategy Framework Directive and the Nature Directives. It has no formal legal status.

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Summary

- The aim of this paper is to identify and clarify interactions, synergies, differences and potential areas for greater coordination between the Marine Strategy Framework Directive (MSFD) and the Habitats and Birds Directives (HBD).
- The three Directives are clearly inter-related in that all are concerned with aspects of biodiversity conservation in the marine environment, including a requirement to achieve good status for the elements of biodiversity covered by each Directive.
- There are however also a number of important distinctions between them. The ultimate objectives to be achieved, whilst complementary are defined differently. The two concepts of good environmental status (GES) (MSFD) and favourable conservation status (FCS) (HD) or status of population (BD) are not necessarily equivalent but can be mutually supportive. There are also differences in the timetable and the measures to be applied.
- Despite the different emphasis, the measures implemented under the HBD can make an important contribution to achieving the wider objectives of the MSFD and vice versa.
- The MSFD requires Member States (MS) to develop marine strategies for each marine region or sub-region. Various requirements under HBD can contribute to this task. A number of the measures required under MSFD and HBD have elements in common such as spatial protection measures.
- Conservation measures under the Habitats Directive (HD) should be part of any programme of measures to meet the requirements of MSFD and therefore help deliver more integrated policy and planning.
- The HD objective of achieving FCS for listed habitats and species could be a relevant environmental target under MSFD. Achieving FCS will therefore cover at least a proportion of MSFD needs; however, additional biodiversity elements beyond those covered by HBD might have to be considered to fulfil MSFD requirements.
- Given that the monitoring requirements under MSFD and BHD are very broad (covering MS targets and indicators of biodiversity/listed habitats and species and all waters in the MSFD/BHD regions) there is likely to be scope for these monitoring requirements to be mutually supportive.
- Socio-economic considerations are recognised in all three Directives but at different stages. Care therefore needs to be taken to ensure that the consideration of socio-economic concerns under the MSFD is in line with the conservation management aspect of HBD.
- MSFD recognises that Member States may not achieve environmental targets or GES for a variety of reasons, or not achieve them within the time schedules set out by the Directive. However the MSFD exceptions cannot take precedence over Article 6 of the Habitats Directive as the Treaty requires that stricter provisions take precedence when more than one applies to the same issue.

Introduction and purpose of this paper

1. The aim of this paper is to identify and clarify interactions, synergies, differences and potential areas for closer coordination between the Marine Strategy Framework Directive (MSFD) and the Habitats and Birds Directives (HBD). It has been prepared to assist Member States in dealing with these interactions and is structured using questions to draw out the key issues.
2. A frequently asked questions (FAQ) document has been prepared on the links between the HBD and Water Framework Directive (WFD)¹. A comparable document is under preparation regarding the links between MSFD and WFD.

Introduction to the Directives

3. Adopted in 2008, the Marine Strategy Framework Directive (MSFD) establishes a framework within which Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment (Art.1.1). The purpose of the Directive is to protect, preserve, prevent deterioration or, where practical, restore Europe's oceans and seas where they have been adversely affected and to prevent and reduce inputs in the marine environment (Art 1.2(a) & (b)). This is to be achieved by applying an ecosystem-based approach to management of human activities whilst ensuring sustainable use of marine goods and services. It sets an ambitious target for Member States to take the necessary measures to achieve or maintain Good Environmental Status (GES) in the marine environment by the year 2020 at the latest (Box 1).
4. The MSFD addresses all aspects of biodiversity within the marine waters of EU Member States (excluding WFD transitional waters) within the overall definition of GES, and takes a regional approach to delivery of the Directive. This includes goals of maintaining biodiversity (Descriptor 1), limiting the adverse effects of non-indigenous species (Descriptor 2), achieving healthy stocks of commercially exploited fish and shellfish (Descriptor 3), maintaining food-webs (Descriptor 4) and ensuring the integrity of the sea-floor (Descriptor 6). Achieving the aims of the other GES descriptors, which address pressures and impacts on the marine environment, will be necessary to achieve the aims of these 'biodiversity' descriptors.

Box 1. Definition of Good Environmental Status in the MSFD (Article 3(5))

“Good environmental status’ means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.:

- (a) *the structure, functions and processes of the constituent marine ecosystems, together with the associated physiographic, geographic, geological and climatic factors, allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance;*

¹ The links between the WFD and BHD (Draft of June 2010) is available from http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/implementation_conventio/biodiversity_legislation/faq-wfd-bhd_june2010doc/ EN_1.0 &a=d

(b) hydro-morphological, physical and chemical properties of the ecosystems, including those properties which result from human activities in the area concerned, support the ecosystems as described above. Anthropogenic inputs of substances and energy, including noise, into the marine environment do not cause pollution effects.”

Good environmental status shall be determined at the level of the marine region or subregion as referred to in Article 4, on the basis of the qualitative descriptors in Annex I. Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status;

5. The Habitats Directive (HD) aims to contribute towards ensuring biodiversity of the EU, including in the marine environment through measures designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest (Art.2) (see also Box 2).
6. The Birds Directive is concerned with the conservation of all naturally occurring wild bird species and covers their protection, management and control (Art.1 (1)). Whilst it does not include the term “favourable conservation status” as in the Habitats Directive, the aim (set out in Article 2) can be considered analogous to FCS.
7. Together the Birds and Habitats Directives (HBD) protect all naturally occurring wild birds present in the EU, more than 1000 species of fauna and flora including certain marine species and over 230 habitat types including certain marine habitats.

Box 2. Favourable Conservation Status in the HD

The ultimate objective of the *Habitats Directive* is to ensure that the species and habitat types covered reach what is called a ‘favourable conservation status’ and that their long-term survival is deemed secure across their entire natural range within Europe.

In the case of the species covered by the Directive (ref Article 1(i)) this means that:

- *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*
- *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*
- *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.*

In the case of natural habitats, favourable conservation status (ref Article 1(e)) is achieved when:

- *its natural range and the areas it covers within that range are stable or increasing, and*
- *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*
- *the conservation status of its typical species is favourable as defined in Article 1(i).*

The aim of the *Birds Directive* is to take measures 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 (Art.2).

8. A major measure to help achieving the targets of the HBD is to designate and protect sites for the species and habitat types covered by the HD (SCI = Site of community importance and after national designation SAC = Special Area of Conservation) and the bird species listed in Annex 1 of the Birds Directive as well as major migratory species (all together more than bird 500 species; SPA = Special Protection Areas). Together, these sites make up the Natura 2000 network which currently (August 2011) contains over 26,000 sites, including ca.

200.000 km² marine area². It should also be noted that under Article 3 BD Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all species of wild birds.

9. Beside this spatial approach to protection, HBD contain provisions on species protection, monitoring and economic measures inside and outside the Natura 2000 network.
10. The implementation of HBD in the marine environment should make an important contribution to the overarching objectives of the MSFD to take measures to maintain or achieve GES in EU marine waters since achieving or securing FCS, for the species and habitats under HD and Article 2 requirements for the Birds Directive, should contribute to what is needed to achieve GES for biodiversity under the MSFD. For this to happen it is necessary to ensure that there is a clear understanding of the potential synergies between the provisions in the three Directives, how they complement each other, and ensure a consistency in their application.

How are the different Directives inter-related?

11. The three Directives are clearly inter-related in that all are concerned with aspects of biodiversity conservation in the marine environment, where MS have and/or exercise jurisdictional rights. This includes in each Directive a requirement to establish protected areas as part of the overall set of protection measures.
12. All three Directives have proactive as well as reactive elements in that they are not only concerned with protection, maintenance and management of specific elements of biodiversity but also the restoration and recovery of habitats and species, where possible.
13. Each Directive also sets in place measures which should contribute to the achievement of good environmental status, and requires monitoring and periodic assessment and reporting.
14. There are however also a number of important distinctions between them. Firstly, the MSFD has a much broader material scope in that it aims to, *inter alia*, achieve and maintain GES, which includes all marine biodiversity whilst HBD focus on the conservation of particular habitats and species (including all wild birds) in the whole territory of Member States.
15. The ultimate objectives to be achieved, whilst complementary, are defined differently. Thus the MSFD aims to take measures to achieve or maintain good environmental status (GES). Under the HD the objective is to maintain or restore at Favourable Conservation Status (FCS) the habitats and species protected under the Directive (Art 2.2). The Birds Directive requires Member States to take the requisite measures to maintain the population of all European wild bird species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational

² http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000news/nat31_en.pdf

requirements, or to adapt the population of these species to that level (Art 2), a requirement that could be considered similar to FCS (see Box 2).

16. Marine strategies under MSFD on the other hand should apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressures are within levels compatible with the achievement of GES and the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling sustainable use.
17. The timetable is also different. The MSFD requires that measures are taken to achieve or maintain GES by 2020. There is no formal timetable set for achieving FCS according to the HD. The MSFD could therefore provide an additional stimulus for the implementation of conservation measures under the Habitats and Birds Directives, if measures to achieve FCS for species and habitats protected by HD and equivalent measures for wild birds are incorporated into or cross-referenced under the programme of measures within the respective marine strategies.
18. The types of measures to be used to achieve the objectives of the Directives are also different. The Habitats and Birds Directives have two main types of measure:
- **To protect habitats as well as species and their habitats** (e.g. breeding, feeding, resting, staging sites) for 193 bird species listed in Annex I of the Birds Directive and for regularly occurring migratory birds, and for species/habitat types listed in Annexes I and II of the Habitats Directive by designating protected areas. These designated sites make up the European Natura 2000 network
 - **To establish a system of species protection** for all wild birds in the EU and for species listed in annex IV (strict protection) and annex V (subject of exploitation) of the Habitats Directive (Arts 5-9 BD, Arts 12-16 HD). This protection regime applies across their entire natural range within the EU i.e. both within and outside protected areas and may include measures to ensure exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status (Box 3).

Box 3. Species protection measures under HBD

Article 12 of Habitats Directive

*In the case of **protected animals listed in Annex IV in their natural range**, Member States shall take the requisite measures to establish a system of strict protection, prohibiting :*

- *All forms of deliberate capture or killing of specimens of these species in the wild;*
- *deliberate disturbance, particularly during the period of breeding, rearing, hibernation and migration;*
- *deliberate destruction or taking of eggs in the wild;*
- *deterioration or destruction of breeding sites or resting places;*
- *the keeping, sale, exchange and transport of specimens taken from the wild.*

Member states shall establish a system to monitor the incidental capture and killing of the animal species listed in annex IV (a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

Article 14 of Habitats Directive

If, in light of the surveillance provided for in Article 11, Member States deem it necessary, they shall take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V as well as their exploitation is compatible with their being maintained at a favourable conservation status.

Article 5 of Birds Directive

For all naturally occurring wild bird species in the EU, without prejudice to Arts 7 & 9, Member States should prohibit the:

- deliberate killing or capture by any method;
- deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
- taking their eggs in the wild and keeping of eggs;
- deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as this would have a significant negative effect on the birds;
- keeping the birds in captivity and their sale.

19. Despite the different emphasis the measures implemented under the HBD can and shall make an important contribution to achieving the wider objectives of the MSFD through their specific mechanisms (e.g. provisions under Art. 6 and 12 of HD). Similarly the MSFD can help to ensure that *Natura 2000* sites are not compromised because of degradation outside of the protected sites. The MSFD incorporates the conservation ethos of HBD and as a framework directive the detail of measures is left to the marine strategies.

20. All three Directives have reporting requirements. There is a well established reporting process for the Habitats Directive and a recently enhanced reporting system for the Birds Directive. The first EU level conservation status report under the Habitats Directive was produced in 2009 based on national reports following an agreed format. This covers the period 2001-2006. A second conservation status report for the period 2007-12 is due in 2013 for Member States and in 2015 at EU level. The first new reporting of the status and trends of birds of the Member States is due at the end of 2013 (EU-level: 2015), in order to be synchronised with the HD reporting cycle. These reports as well as reports on marine protected areas as agreed by the EU or MS concerned in the framework of international or regional agreements also need to be reported under the MSFD in 2013 (Art. 13 (4) & (6)).

21. The first major reports by Member States for MSFD are due in 2012, covering an initial assessment of marine waters, the determination of GES and the setting of environmental targets. An assessment of these reports by the Commission is due in 2013, with updated Member State and Commission reports every six years thereafter. The reporting of species and habitats under HBD, as part of the 2012 initial assessment, has been streamlined with MSFD reporting, so that MS can report for MSFD on these features using the HBD reporting formats and timescales (i.e. in 2013 instead of by October 2012).

What is the relationship between Good Environmental Status & Favourable Conservation Status?

22. Good Environmental Status (GES) is defined in Article 3(5) of the MSFD (see Box.1) and is to be determined at the level of a marine region or sub-region, on the basis of 11 qualitative descriptors set out in Annex 1 of the Directive (Box 4). Adaptive management on the basis of the ecosystem approach shall be applied with the aim of achieving or maintaining GES.

23. Favourable Conservation Status (FCS) of habitats and species is defined in Article 1(e) and 1(i) of the HD. Conservation status is initially assessed by Member States within the biogeographical or marine region of their national territory (based on parameters defined at Community level such as range, structure and function) and then by the EU at an EU – biogeographical or marine level, based on the MS reports.
24. According to Article 17(1) of HD the reporting format for species and habitats is agreed with Member States. The conservation status may be favourable, unfavourable-inadequate, unfavourable-bad or unknown. For practical reasons, marine habitats and species are assessed within five marine regions which correspond to similar marine regions under the MSFD, but whose boundaries may not coincide (see Table 1). The assessment of the status and trends of birds under Art. 12 of the BD is done throughout the European territory of Member States rather than within any particular biogeographic regions as the BD does not distinguish between such regions.
25. Conservation status is an assessment across the entire natural range of the species or habitat type within each biogeographical or marine region. It is not confined to measuring the condition of the species/habitat types within Natura 2000 sites.
26. In this sense the assessments of FCS and GES at the level of individual species and habitat types are broadly similar, as they are assessed at similarly large scales using comparable criteria. Further work is, however, needed to fully understand the relationships between the two types of assessment, with a view to seeking greater harmonisation of the two processes and their outcomes, e.g. through full alignment of the marine regions used for assessment.

Box 4. Qualitative descriptors for determining good environmental status (Annex 1 of MSFD)

- (1) *Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions*
- (2) *Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystems*
- (3) *Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock*
- (4) *All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.*
- (5) *Human-induced eutrophication is minimised, especially adverse effects thereof, such as losses in biodiversity, ecosystem degradation, harmful algae blooms and oxygen deficiency in bottom waters*
- (6) *Sea-floor integrity is at a level that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular are not adversely affected*
- (7) *Permanent alternation of hydrographical conditions does not adversely affect marine ecosystems*
- (8) *Concentrations of contaminants are at levels not giving rise to pollution effects*
- (9) *Contaminants in fish and other seafood for human consumption do not exceed levels established by Community legislation or other relevant standards*
- (10) *Properties and quantities of marine litter do not cause harm to the coastal and marine environment*
- (11) *Introduction of energy, including under water noise, is at levels that do not adversely affect the marine environment.*

27. GES is broad in scope dealing with large marine areas, incorporates sustainable use, and is concerned with biological diversity, water quality, ecosystem structure and function, and impacts on these elements. FCS is about the status of particular species and habitat types under the Habitats Directive.
28. Natura 2000 sites are important to achieving FCS, particularly where a significant proportion of the feature is within the network; the Natura 2000 network should therefore also make an important contribution to achieving or maintaining GES.
29. If FCS is not achieved at a particular level (MS territory/region), and given that FCS and GES objectives are mutually supportive and assessed at similar scales, it could influence whether GES for biodiversity components is achieved on the same scale. Consequently it should be acknowledged that achieving FCS for the relevant marine species and habitats is likely to be a key aspect in assessing the achievement of GES for the biodiversity component of the MSFD. Equally, measures taken under the Habitats Directive outside Natura 2000 sites to avoid deterioration of the features within SACs are likely to contribute to achieving GES.
30. Another important consideration comes to light when looking at the components of FCS and GES such as population dynamics and supporting structure and function in the case of FCS, and the condition of food webs and water quality in the case of GES. The two concepts are mutually supportive but not necessarily equivalent.
31. FCS and GES are most likely to be equivalent in relation to species whose populations are widely dispersed and/or affected by the condition of a range of habitats regardless of whether they are listed in the HD. FCS of harbour porpoise, for example, may depend on a range of aspects within an MSFD region having GES as these species range widely, feed on prey from many different habitat types as well as from pelagic and benthic ecosystems, and could be affected by any of the descriptors for assessing GES. At the same time provisions under MSFD should benefit species listed under the HD as they are more encompassing.

How are the Directives applied at a regional level?

32. There are regional elements to the MSFD and HD. Four marine regions and a number of sub-regions are identified in the MSFD (Art.4(1) & 4(2)) with Member States required to develop coherent and coordinated marine strategies in respect of each marine region or sub-region (Table 1).
33. The Habitats Directive identifies nine biogeographic regions. They are complemented by five marine biogeographic regions which were created e.g. for assessment and reporting (see Table 1). These marine regions, largely correspond to the four marine regions of the MSFD with the exception of the Macaronesian marine region which is treated as a distinct marine region under the Habitats Directive but is treated as a subregion of the Atlantic region under the MSFD. However, it should be noted that the boundaries of the regions do not

coincide in the Kattegat area between the North and Baltic Seas, and that other MSFD region and sub-region boundaries remain to be defined so there may be further gaps or areas of overlap (See Figures 1 & 2 in Annex).

Table 1. Regionalisation in the MSFD & HBD

MSFD regions & sub regions (precise boundaries have still to be defined)	Marine regions used to assess adequacy of HD protected areas and FCS
North-East Atlantic Ocean <ul style="list-style-type: none"> - Great North Sea including the Kattegat and the English Channel - The Celtic Seas - The Bay of Biscay and the Iberian coast - In the Atlantic Ocean, the Macaronesian biogeographic region being the waters surrounding the Azores, Madeira and the Canary Islands 	Atlantic Macaronesian
Black Sea	Black Sea
Baltic Sea	Baltic
Mediterranean Sea <ul style="list-style-type: none"> - The Western Mediterranean Sea - The Adriatic Sea - The Ionian Sea and the Central Mediterranean Sea - The Aegean-Levantine Sea 	Mediterranean

34. The biogeographical regions under the Habitats Directive are used for the assessment of FCS and for the evaluation of Member State proposals of *Natura 2000* sites. The scales for the assessment of biodiversity components under the MSFD will become clearer by the MSs in 2012 and the relationships between the 3 directives will be reviewed after that.

35. Given that all three Directives cover the same area of sea and seabed and the overlap in the regions being used, there is again considerable benefit to be gained by including the *Natura 2000* network into Member States' strategies. This is encouraged under the MSFD and existing legislation should be taken into account.

36. Regional cooperation using existing regional institutional cooperation structures including those under Regional Sea Conventions is required for the MSFD, where practical and appropriate. Member States will therefore need to work through regional programmes rather than from a national perspective at a much earlier stage in the process compared to the situation when establishing the *Natura 2000* network although bearing in mind that regional cooperation for the latter is also recommended both when identifying marine *Natura 2000* areas and when defining management measures for them as well as for reporting on wide ranging marine species.

What are potential synergies as regards the key measures required under the different Directives?

37. A number of the measures required under MSFD and HBD have elements in common. The MSFD requires Member States to draw up a programme of measures for each marine region or sub-region to achieve or maintain GES. This shall include spatial protection measures contributing to coherent and representative networks of Marine Protected Areas, adequately covering the diversity of the constituent ecosystems such as protected areas required under HBD (SPAs and SACs) as well as other types of marine protected area set up under international or regional agreements (Art.13(4), MSFD).
38. Furthermore Art. 6(1) of HD states that management plans, where they exist, for Special Areas of Conservation can be integrated into other development plans where appropriate; therefore conservation measures in such plans could usefully be taken into account when preparing the programme of measures under the MSFD because action for species and habitats under HBD will help achieve GES. However, as Natura 2000 sites will cover a proportion of the marine environment, achieving GES is likely to require additional substantive measures outside and inside the Natura 2000 network.
39. The protection of species is also relevant to all three Directives. The HD requires that a strict protection regime is applied for species listed in annex IV across the natural range of the species (Art.12, HD), while similar provisions apply for wild birds under Art. 5, BD. This strict protection regime ought to be taken into account when drawing up the programme of measures for the marine strategies, especially as species protection measures are also essential to achieving GES, given the functional role of species as well as habitats. Additionally, species protection measures in place for HBD may, in some cases, also benefit species and habitats which are not listed on the HBD Annexes.
40. Other provisions where there is potential overlap between the Directives are management of the coherence of Natura 2000 (Art.10, HD) and striving to avoid pollution or deterioration of habitats outside protected areas (Art. 4(4), BD). These are discussed further in the section on more general conservation measures below.

How do the Protected Areas required under the Directives inter-relate?

41. The starting point for the MSFD is a broad ecosystem-based approach to management of human activities with protected areas recognised as one spatial management mechanism. HBD take a two-strand, but complementary, approach with protected areas, supported by wider measures to achieve the conservation of specific habitats and species.
42. Spatial protection measures such as Special Protection Areas as required under the Birds Directive, Special Areas of Conservation as required under the Habitats Directive, and other marine protected areas, are identified in the MSFD as measures pursuant to achieving or maintaining GES (see Box.5). The *Natura*

2000 network is therefore clearly recognised as a specific element of the programme of measures for achieving GES.

Box 5. Protected areas required under the MSFD

Article 13(4)

“Programmes of measures established pursuant to this Article shall include spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems, such as special areas of conservation pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive, and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties”.

43. Protected areas which make up Natura 2000 are intended to form a *“coherent European ecological network”* for the species and habitats covered by the HBD. Under the MSFD there is a need for *“coherent and representative networks of MPAs, adequately covering the diversity of the constituent ecosystems.*
44. There is a need for the Commission to report by 2014 on progress in the establishment of marine protected areas (Art. 21), on the basis of information made available by the Member States on their spatial protection measures, such as the Natura 2000 network and MPAs designated under international or regional agreements (Art 13(4) MSFD).
45. Under Art. 6 of the HD are specific requirements within Natura 2000 sites to not only prevent further deterioration of the habitats and species present but also establish priorities for maintaining or restoring these species/habitat types to FCS. To adequately cover the full diversity of marine ecosystems under the MSFD, Member States should establish management measures outside Natura 2000 sites where necessary and might need to broaden the scope of management measures within the Natura 2000 sites.

How do the more general conservation measures required under the Directives inter-relate?

46. The MSFD requires Member States to develop marine strategies for each marine region or sub-region. The approach required is to undertake an assessment of the current environmental status of the waters concerned and the environmental impact of human activities thereon, to determine the desired state of the marine environment (GES), to establish a series of environmental targets and associated indicators, and to develop a programme of measures in order to achieve or maintain GES.
47. Various requirements under HBD can contribute to this task. Some or all of the habitats and species protected under HBD could be considered as potential indicators of GES, especially with regard to Descriptor 1 which is concerned with biodiversity. While this primarily relates to Natura 2000 designation and management, other provisions under HBD such as the requirement to take requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all species of wild birds (Art. 3 BD) and the requirement to protect species outside protected areas (Art. 5 BD & Art.12 HD), avoiding

deterioration of habitats quality outside protected areas Art. 4(4) BD, regulations for introduction of species (Art. 22 HD) and managing landscape features (Art.10) can also be useful. Cross-reference or incorporation of the measures introduced through management plans for Natura 2000 sites could also help the measures introduced under the different Directives to be mutually supportive. The wider measures to achieve FCS will contribute to achieving GES and could be written into the MSFD marine strategies.

How can the Directives complement each other in taking forward integrated Policy & Planning?

48. Alongside the Water Framework Directive (WFD) in coastal waters, the MSFD should aim to contribute to coherence between, and the integration of environmental concerns into, the different policies, agreements and legislative measures which have an impact on the marine environment. In this regard, the MSFD provides the environmental pillar of the Integrated Maritime Policy for the European Union. This includes, but is not limited to, the conservation objectives, management measures and monitoring of *Natura 2000* sites. As conservation measures under the Habitats Directive may involve management plans for SACs or be integrated into development plans (Art.6, HD) these measures will need to be/should be part of the programme of measures to meet the requirements of MSFD and therefore help deliver more integrated policy and planning.
49. Measures required under other Community legislation such as the Water Framework Directive, Common Fisheries Policy, Common Agricultural Policy and the Bathing Waters Directive are specifically mentioned, as are Regional Conventions covering the Mediterranean, Black and Baltic Seas and the North East Atlantic Ocean.
50. A key issue regarding the management of many Natura 2000 sites and the achievement of Article 3 of the Birds Directive is how to regulate commercial fisheries activities that could have impacts within those areas. In order for the necessary regulations to be applicable to all vessels entitled to fish in EU waters, it is necessary that these be adopted in accordance with relevant provisions under the Common Fisheries Policy³. The Commission's proposal for the reform of the Common Fisheries Policy foresees that this could be done through delegated acts. It will also be necessary to ensure that EU fisheries legislation is compatible with the achievement of Good Environmental Status by Member States.

How might HBD objectives be used to support MSFD targets and indicators?

51. Member States are required to establish a comprehensive set of environmental targets and associated indicators for their marine waters to guide progress towards achieving GES (Art.10). Existing environmental targets at national, Community and international level must be taken into account and be mutually compatible where possible. The indicative list of characteristics to be taken into account when setting environmental targets set out in Annex IV of the MSFD also

³ http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish_measures.pdf

highlights the need for environmental targets to be compatible with existing Community and Member State commitments.

52. Given this guidance, the HBD objectives of achieving FCS for habitats and species and the requirements of the Birds Directive (Box 2) could be a starting point for a relevant environmental target under MSFD. Achieving FCS will therefore cover a proportion of MSFD biodiversity needs. Some feedback mechanisms from MSFD to HBD might also be helpful as part of the consideration of HBD objectives and measures in a biogeographic context.

Are there overlaps in the monitoring requirements of the different Directives ?

53. The MSFD requires Member States to establish and implement coordinated monitoring programmes for the ongoing assessment of the environmental status of their marine waters. This needs to be based on an indicative list of characteristics, pressures and impacts (Annex III), the guidance provided in Annex V, and with reference to the environmental targets required under Art.10. MSFD also has a cyclical timescale for each stage of the marine strategy including the establishment of targets and indicators to achieve or maintain GES, which must be reviewed every six years and revised if necessary.
54. HD requires Member States to undertake surveillance of the conservation status of the listed habitats and species (Art.11) and submit a report to the Commission every six years on implementation of the measures taken under the Directive, including assessments of conservation status (Art.17). Similar reporting on bird population status and trends is being put in place.
55. The timescales for reporting under the different Directives are not entirely synchronised, however as HBD monitoring is likely to contribute to MSFD monitoring requirements it should where possible be coordinated/integrated with other MSFD monitoring needs.
56. Given that the monitoring requirements under MSFD and the HD are very broad (MSFD should cover the indicative list of elements in Annex III of the Directive, including biodiversity (Art. 11(1), MSFD) and cover all waters in the MSFD regions; HD covering listed species and habitats in all waters in the marine regions in and outside Natura 2000 sites) the monitoring activities should support each other. For example MSFD lists the identification and mapping of special habitat types, especially those recognised or identified under Community legislation (the Habitats Directive and the Birds Directive) as a characteristic to be assessed and reported. There are also other characteristics listed in Annex III where there is no specific reference to HBD e.g. the predominant seabed and water column habitat types with a description of the characteristic physical and chemical features but which can contribute to monitoring the maintenance of FCS in the long term for species and habitats listed in those Directives. Equally there may be other monitoring schemes such as for site management or national requirements which may support HBD and MSFD reporting.

Can the assessments of Conservation Status under HD assist with the assessments under MSFD?

57. The Commission has published a Decision on criteria and methodological standards on good environmental status of marine waters (2010/477/EU) that should be used to assess the extent to which GES is being achieved. These are set out for each of the 11 descriptors in Annex 1 of the MSFD and build on existing obligations under EU legislation such as HBD.
58. There is clear overlap with, and specific reference to HBD in the Commission decision. The criteria and indicators given for assessing progress with descriptor 1, for example are similar/directly comparable to the criteria used to determine FCS of the habitats and species highlighted under HD across their natural range (Box 6 & 7). HD focuses on the range, population, supporting habitat for a species and its long-term maintenance when determining FCS and MSFD highlights the distribution, population size and population condition of species under the biodiversity descriptor of GES. Other descriptors e.g. 4 on food webs and 6 (sea-floor integrity) also overlap with HBD requirements although not stated in the same terms.
59. Given that HBD covers a selected list of habitats and species compared to MSFD, which is concerned with the ecosystem as a whole (even within this descriptor), the HD Art.17 assessments will contribute to but will not be sufficient to assess this descriptor.
60. There is also some overlap with the characteristics, pressures and impacts in Annex III (Table 1) of the MSFD with descriptors 5, 7 & 11. Consistency between the lists of threats/pressures/activities under HD Art 17 with those of MSFD should be ensured to facilitate use of data and comparability of assessments. These are further opportunities where combined or integrated monitoring programmes could help support implementation of both Directives.

Box 6. Evaluation matrix for assessing the conservation status of species under the Habitats Directive in each biogeographical (and marine) region.⁴

Range

- **Favourable** Range of the species is stable (loss and expansion in balance) or increasing **AND** not smaller than the 'favourable reference range'.
- **Unfavourable – Inadequate** Any combination other than those described under 'Green' or 'Red'.
- **Unfavourable – Bad** Large decline in range (equivalent to a loss of more than 1% per year within period specified by MS; other thresholds can be used but must be explained on Annex B) **OR** range more than 10% below 'favourable reference range'.
- **Unknown** No or insufficient reliable information available.

Population

- **Favourable** Population of the species above 'favourable reference population' **AND** reproduction, mortality and age structure not deviating from normal (if data available)
- **Unfavourable – Inadequate** Any combination other than those described under 'Green' or 'Red'.

⁴ Extract from "Assessment and reporting under Article 17 of the Habitats Directive, Reporting Formats for the period 2007-2012 May 2011", see Annex C and E, http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2007-2012/reporting_guidelines/reporting-formats_1/ EN_1.0_&a=d

- **Unfavourable – Bad** Large decline in population (equivalent to a loss of more than 1% per year within the period specified by MS; other thresholds can be used but must be explained on Annex B) **AND** below 'favourable reference population' **OR** population more than 25% below 'favourable reference population' **OR** reproduction, mortality and age structure strongly deviating from normal (if data available)
- **Unknown** No or insufficient reliable information available.

Habitat for the species

- **Favourable** Area of habitat(s) of the species is sufficiently large (and stable or increasing) **AND** habitat quality is suitable for the long term survival of the species.
- **Unfavourable – Inadequate** Any combination other than those described under 'Green' or 'Red'.
- **Unfavourable – Bad** Area of habitat(s) is clearly not sufficiently large to ensure the long term survival of the species **OR** habitat quality is bad, clearly not allowing long term survival of the species.
- **Unknown** No or insufficient reliable information available.

Future prospects (as regards to population, range and habitat availability)

- **Favourable** Main pressures and threats to the species not significant; species will remain viable on the long term.
- **Unfavourable – Inadequate** Any combination other than those described under 'Green' or 'Red'.
- **Unfavourable – Bad** Severe influence of pressures and threats to the species; very bad prospects for its future, long-term viability at risk.
- **Unknown** No or insufficient reliable information available.

Overall assessment of CS

- **Favourable** All 'Green' **OR** three 'Green' and one 'Unknown'
- **Unfavourable – Inadequate** One or more 'Amber' but no 'Red'
- **Unfavourable – Bad** One or more 'Red'
- **Unknown** Two or more 'Unknown' combined with 'Green' **OR** all "Unknown"

Favourable ('green'), Unfavourable – Inadequate ('amber'), Unfavourable – Bad ('red'), Unknown (insufficient information to make an assessment)

For the categories of unfavourable – 'inadequate' and unfavourable- 'bad' the use of a qualifier '+' (improving) – (declining) or = (stable) or x (unknown) is obligatory: e.g. 'U1+' = inadequate and improving, 'U1-' = inadequate and declining

Box 7. Descriptor 1 - Biological diversity for determining GES (Annex 1, MSFD) and the associated criteria for assessment (2010/477/EU)

Descriptor 1: Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climate conditions.

Species level criteria

Species distribution

- Distributional range
- Distributional pattern within the latter, where appropriate
- Area covered by the species for sessile/benthic species)

Population size

- Population abundance and/or biomass, as appropriate

Population condition

- Population demographic characteristics (e.g. body size or age class structure, sex ration, fecundity rate, survival and mortality rates)
- Population genetic structure, where appropriate

<u>Habitat level criteria</u>
<i>Habitat distribution</i>
- Distributional range
- Distributional pattern
<i>Habitat extent</i>
- Habitat area
- Habitat volume, where relevant
<i>Habitat condition</i>
- Condition of the typical species and communities
- Relative abundance and/or biomass as appropriate
- Physical, hydrological and chemical conditions
<u>Ecosystem level criteria</u>
<i>Ecosystem structure</i>
- Composition and relative proportions of ecosystem components (habitats and species)

How are socio-economic considerations covered in the different Directives?

61. Socio-economic considerations are recognised in all three Directives but at different stages. The first steps in the preparation of marine strategies under the MSFD include an economic and social analysis of the uses and cost of degradation of the marine environment. Furthermore, Member States need to take account of the pressures or impacts of human activities in each marine region as part of the determination of GES, as MSFD recognises the importance of enabling the sustainable use of marine goods and services whilst ensuring that collective pressures are compatible with GES (Art.1.3). Socio-economic considerations are also to be taken into account in the development of the programmes of measures (i.e. the programmes of measures should be cost effective and subject to a cost-benefit analysis).
62. Economic and social considerations are not relevant to site selection in either the Habitats or Birds Directives but may be taken into account when management measures are being developed for Natura 2000 sites which were selected on scientific grounds. Activities can and do often take place in these Natura 2000 sites provided they do not adversely affect the integrity of the site.
63. Care therefore needs to be taken to ensure that the consideration of socio-economic concerns under the MSFD is in line with the conservation management aspect of HBD. Management plans for Natura 2000 areas can provide a suitable framework to that effect whilst recognising that their objectives are concerned with the conservation status of species and habitats for which the sites were designated. The MSFD encompasses sustainable use within its determination of GES (i.e. considered at the level of the region/subregion).
64. The same applies to the question of cost which is mentioned in the MSFD as a possible way of avoiding taking action. MSFD Art. 14(4) says that "Member States shall not be required,, to take specific steps *where there is no significant risk to the marine environment, or where the costs would be*

disproportionate taking account of the risks to the marine environment, and provided that there is no further deterioration". Any decision not to take action needs to be properly justified. This raises the question of what would happen if precautionary (and costly) action is needed at a regional level to maintain or improve the status of Natura 2000 sites? Such a case should be addressed in accordance with the specific legal requirements under Article 6 of the HD including provisions on EU co-financing under its Article 8.

Can exceptions under MSFD create difficulties for achieving targets under HBD?

65. MSFD recognises that Member States may not achieve environmental targets or GES for a variety of reasons, or not achieve them within the time schedules set out by the Directive (Art.14). Under such circumstances appropriate *ad hoc* measures need to be taken to continue pursuing the targets and preventing further deterioration in the status of the marine waters affected. Member States also need to ensure that any modifications or alterations *"taken for reasons of overriding public interest which outweigh the negative impact on the environment, including any transboundary impact"* (Art 14(d)) do not preclude or compromise the achievement of GES at the level of the marine region or subregion.
66. Under the Habitats Directive plans or projects likely to have a significant effect on *Natura 2000* sites (which include Special Protection Areas designated under the Birds Directive) must be subject to an appropriate assessment and can proceed if the integrity of the site is not adversely affected (Art 6(3)). If this is not the case, and in the absence of feasible alternative solutions, plans or projects can only be carried out for imperative reasons of overriding public interest, so long as the overall coherence of the *Natura 2000* network is protected (Art 6(4)) through adequate compensatory measures.
67. The overriding public interest exception under Art.14 of MSFD has fewer safeguards than the Habitats Directive (as the coherence of *Natura 2000* must be maintained with compensatory measures), but Member States must still avoid permanently compromising the achievement of GES through any inaction (Art 14 (4)). However the MSFD exceptions cannot take precedence over Article 6 of the Habitats Directive as the Treaty requires that stricter provisions take precedence when more than one applies to the same issue.

Useful references

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Connor, D.W. (2010) Assessment of marine biodiversity for the Marine Strategy Framework Directive and relationships to the Habitats Directive. Joint Nature Conservation Committee paper for the meeting on Article 17 reporting for marine species and habitats of the Habitats Directive. European Topic Centre for Biological Diversity, Paris, 28 May 2010.

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).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0056:EN:NOT>

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http://eur-lex.europa.eu/Result.do?T1=V4&T2=2010&T3=477&RechType=RECH_naturel&Submit=Search

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European Commission (2007) Interpretation Manual of European Union Habitats. EUR 27

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ETC/BD (2009) Article 17 Technical Report

<http://bd.eionet.europa.eu/article17>

N2K Group (2011) Assessment and reporting under Article 12 of the Birds Directive - Explanatory Notes & Guidelines for the period 2008-2012

http://circa.europa.eu/Public/irc/env/monnat/library?l=/reporting_art12/art12_2008-2012/reporting_2008-2012/art12_guidelines_1/ EN_1.0_&a=d

OSPAR (2010) Comparison of high level biodiversity aspirations across international obligations. OSPAR/MSFD Workshop on approaches to determining GES for biodiversity. Utrecht (Netherlands): 23-24 Nov, 2010. GES4 BIO Document 3.

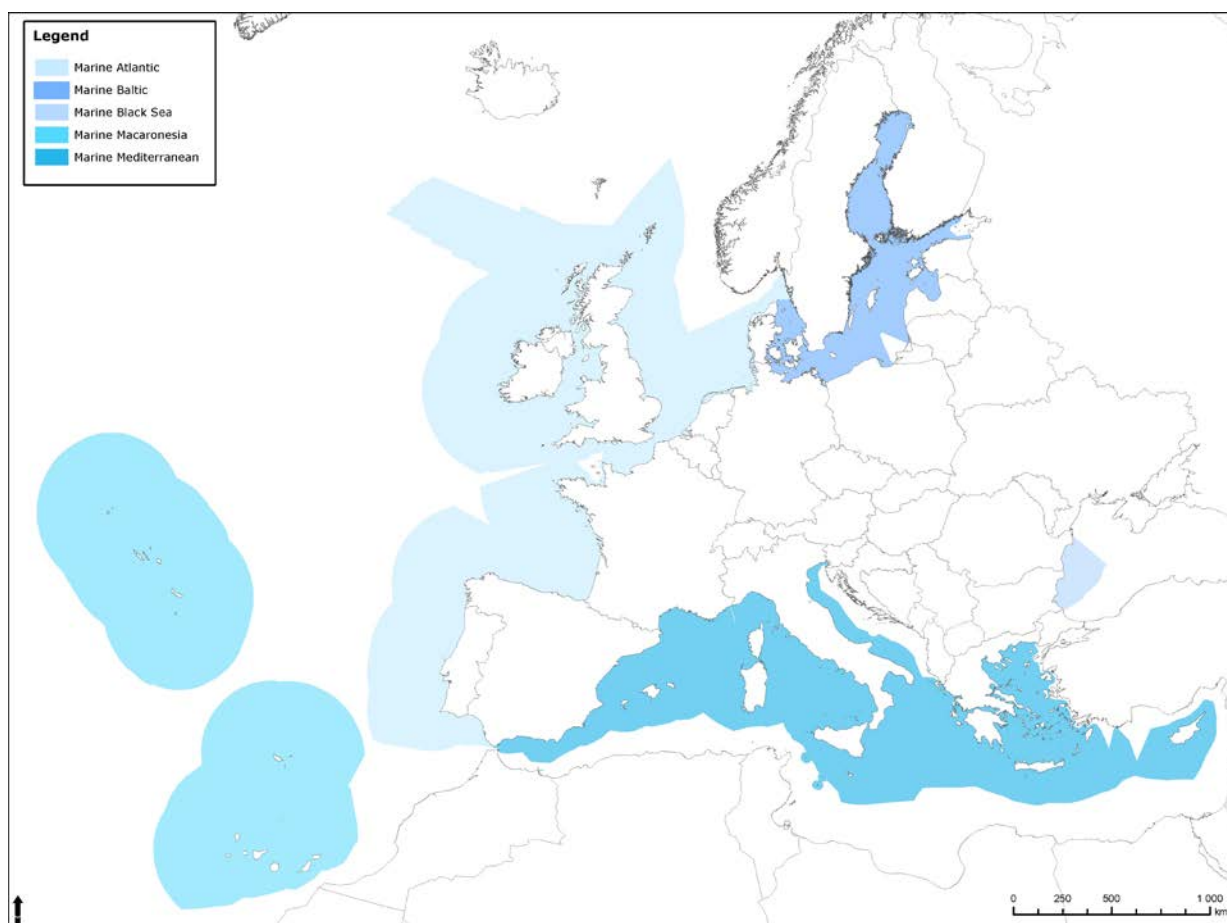
Annex

<p style="text-align: center;">Marine habitat types and species in the Habitats and Birds Directives that also fall within the scope of the MSFD</p>

Introduction

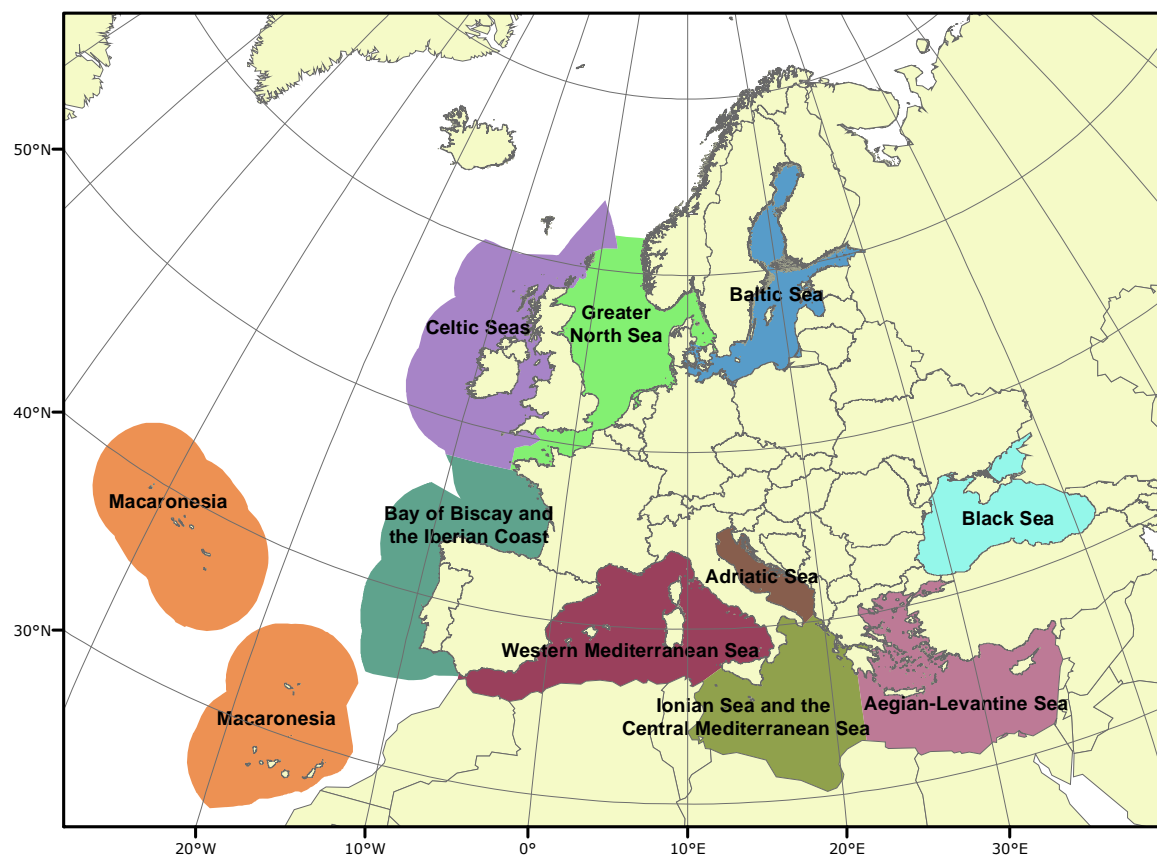
1. The Habitats Directive aims to protect the biodiversity of the EU by taking measures to maintain or restore a favourable conservation status of a selected number of species and habitats of Community interest. The Birds Directive requires the protection of all naturally occurring wild bird species in the EU. A number of these habitat types and species occur in the marine environment and should therefore also benefit from measures introduced under the Marine Strategy Framework Directive (MSFD), whose coverage extends to all marine biodiversity. This Annex provides a summary of the areas of overlap.
2. Before looking at the species and habitat types it is worth clarifying the extent to which the geographical scope of the three directives overlap.
3. The MSFD applies to all 'marine waters' of Member States, as defined in Art. 3(1), i.e. including, where claimed, Exclusive Economic Zones (EEZ) and extended Continental Shelf areas. According to Art. 3 of MSFD, marine waters include 'coastal waters' as defined under the Water Framework Directive (WFD), but exclude WFD 'transitional waters'.
4. The Habitats and Birds Directives apply in the whole European territory of the Member States. In terms of marine areas, this means they apply to all marine waters where Member States exercise jurisdictional rights and thus cover the same geographical area as the MSFD. However, the Habitats and Birds Directives also apply to 'transitional waters' of the WFD which are not covered under the MSFD.
5. Species and habitats listed in the Birds and Habitats Directive that depend for all or some of their life cycle on the marine waters under the scope of MSFD has been identified in the following sections. Some of these, however, may primarily depend upon transitional waters, whilst others that are not listed may need further consideration as they may still be shown to depend on marine waters for part of their life cycle.

Figure 1: The marine regions for Article 17 reporting under the Habitats Directive⁵



⁵ Indicative map, without prejudice to the delimitation of maritime boundaries of Member States. No distinction is made between waters and seabed/subsoil.

Figure 2. Draft map of the MSFD regions and subregions.
 Note that it does not distinguish between EU and non-EU waters⁶



⁶ For the North-East Atlantic region, outer boundaries are indicated for the sub-regions listed in the MSFD, without addressing the remaining parts of the overall marine region (e.g. waters in the Iceland Sea, Norwegian Sea and Barents Sea). For the purpose of this map, all boundaries shown are indicative only and are subject to an ongoing consultation with Member States. The areas currently shown follow the boundaries of EEZ or other maritime zones (such as fisheries zones) where Member States exercise sovereign rights or jurisdiction. In addition, in relation to the seabed and subsoil, it will be necessary to consider the full extension of the continental shelf, in cases where a submission has been made to the UN Commission on the Limits of the Continental Shelf for the delimitation of the boundaries of the continental shelf (Source: DIKE 5/2012/08– March 2012, EEA).

Marine habitats of the Habitats Directive and under MSFD

6. The Habitats Directive requires the conservation of about 230 habitat types listed in its Annex I through the designation of protected sites as well as other measures. Nine of the listed habitat types are treated as 'marine' for reporting purposes (i.e. assessment of CS and of the Natura 2000 sites uses the marine regions) (Table B).
7. The MSFD does not list specific habitat types, but rather specifies two broad categories of habitats to be addressed: predominant habitats and special habitats. The latter refers especially to those recognised or identified under Community legislation (e.g. Habitats and Birds Directives) or international conventions as being of special scientific or biodiversity interest. According to the Commission Decision on criteria for good environmental status⁷, these are to be treated together with their associated biological communities in the sense of the term biotope.
8. A list of predominant habitat types of the seabed and water column is provided in the MSFD Commission Staff Working Paper of October 2011 (see Table C)⁸.
9. Being clear about the relationship between MSFD and HD habitat types is important when it comes to coordinating the measures adopted under the MSFD Marine Strategies for the conservation of biodiversity (which should include conservation of the predominant habitats) with those required under Article 6(1) of the Habitats Directive. Habitat Directive measures should also contribute to achieving the objectives of the MSFD.

Table A: Marine habitat types in Annex I of the Habitats Directive⁹

Annex I habitat types which are reported according to the HD marine regions	
1110	Sandbanks which are slightly covered by sea water all the time
1120*	<i>Posidonia</i> beds (<i>Posidonion oceanicae</i>)*
1130	Estuaries
1140	Mudflats and sandflats not covered by seawater at low tide
1150	Coastal lagoons
1160	Large shallow inlets and bays
1170	Reefs
1180	Submarine structures made by leaking gasses
1650	Boreal Baltic narrow inlets
8330	Submerged or partially submerged sea caves

10. 'Estuaries' may largely fall outside the scope of MSFD as they tend to be treated as transitional waters under the WFD; however certain

⁷ Commission Decision of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters (2010/477/EU) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:232:0014:0024:EN:PDF>.

⁸ http://ec.europa.eu/environment/marine/pdf/SEC_2011_1255_F_DTS.pdf

⁹ Detailed descriptions of these habitat types are given in the EU-27 habitats Interpretation manual http://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/2007_07_im.pdf.

* = Priority habitats.

estuaries may have estuarine plumes which extend beyond transitional waters into coastal waters or beyond; in these cases the estuarine habitat would fall within the scope of MSFD.

11. Additional HD habitat types, such as coastal types occurring at the top of the intertidal zone may occur within marine waters as defined by MSFD.
12. There is significant overlap in the habitats being covered by HD and MSFD although the information on assessment and reporting of GES and FCS may be compiled under different processes.
13. It should be noted that there is also overlap with habitats listed in various regional conventions (e.g. OSPAR and HELCOM).

Assessment of habitat status

14. On 1 September 2010, a European Commission Decision on the criteria to be used for assessing environmental status under the EU Marine Strategy Framework Directive (MSFD) was adopted. This provides three criteria (habitat distribution, extent and condition) for the assessment of habitats under Descriptor 1 on biological diversity; these criteria are in essence equivalent to the criteria for assessing habitat types under HD (Range, Area covered within range, Structure and functions, including typical species and Future prospects) with the exception of future prospects¹⁰.
15. Thus, the MSFD and the Habitats Directive are both concerned with the assessment of habitat types (biotopes) in order to determine and monitor changes in their status. It would be helpful to have, where possible, comparable approaches to these assessments, particularly as they may be assessing the same habitat/biotope types. The revised guidelines for reporting under the HD have introduced the option of reporting extra information for some Annex I habitat types by using the MSFD predominant habitat types. To assist with this, it is important to clarify the relationship between the broad-scale predominant habitat types identified for the MSFD, and the habitat types listed in the Habitats Directive (Table B).

¹⁰ Article 17 of the Habitats Directive states "Every six years from the date of expiry of the period laid down in Article 23, Member States shall draw up a report on the implementation of the measures taken under this Directive". The Article 17 report for the period **2001-2006** for the first time includes assessments on the **conservation status of the habitat types and species** of Community interest. To view the conservation status of the marine habitat types and species go to: <http://bd.eionet.europa.eu/article17>.

Table B – Potential overlap between MSFD and Habitats Directive marine habitat types

Predominant seabed habitat types for MSFD ^a	HABITAT TYPES LISTED IN ANNEX 1 OF THE HABITATS DIRECTIVE AND CONSIDERED 'MARINE' FOR ARTICLE 17 REPORTING									
	1110 Sandbanks slightly covered all the time	1120 <i>Posidonia</i> beds	1130 Estuaries	1140 Mudflats & sandflats not covered at low tide	1150 Coastal lagoons	1160 Large shallow inlets and bays	1170 Reefs	1180 Submarine structures made by leaking gas	1650 Boreal Baltic narrow inlets	8330 Submerged or partially submerged sea caves
Littoral rock & biogenic reef								These structures may occur in a range of predominant habitat types		
Littoral sediment										
Shallow sublittoral rock & biogenic reef										
Shallow sublittoral coarse sediment										
Shallow sublittoral sand										
Shallow sublittoral mud										
Shallow sublittoral mixed sediment										
Shelf sublittoral rock & biogenic reef										
Shelf sublittoral coarse sediment										
Shelf sublittoral sand										
Shelf sublittoral mud										
Shelf sublittoral mixed sediment										
Upper bathyal rock & biogenic reef										
Upper bathyal sediment										
Lower bathyal rock & biogenic reef										
Lower bathyal sediment										
Abyssal rock & biogenic reef										
Abyssal sediment										

a From Commission Staff Working Paper (October 2011)

b Estuaries (1130) typically fall within transitional waters of WFD and therefore may mostly fall outside the scope of MSFD. Coastal lagoons (1150) are considered under marine reporting if there is a permanent connection with the sea. Coastal habitats (e.g. Atlantic salt meadows (1330), *Spartina* swards (1320)) are covered under terrestrial reporting of HD but may occur within 'coastal waters' of WFD and hence fall within scope of MSFD.

Marine species under MSFD

16. The MSFD has a broad remit for marine species; in addition to those which are dealt with as part of habitat types (e.g. angiosperms, algae, plankton, and benthic fauna of the seabed and water column), it addresses all marine species of birds, mammals, reptiles and fish. Annex III Table 1 of the Directive also indicates that species which are the subject of Community legislation or international agreements should also be addressed. This consequently includes those marine species covered by the Habitats and Birds Directives.

Marine species under the Habitats Directive

17. The Habitats Directive protects over 1000 European species (other than birds) in various ways. The marine species among them are listed in Table D:

- For the habitats of those species listed in **Annex II** of the Habitats Directive *sites must be designated under the Natura 2000 Network* and they must be managed in accordance with the ecological requirements of the species (Articles 3-7);
- For species and sub-species listed in **Annex IV** (incl. many that are also listed in annex II) *a strict protection regime must be applied across their entire natural range within the EU, both within and outside Natura 2000 sites* (Article 12-16);
- for species and sub-species listed in **Annex V** Member States shall, if deemed necessary as a result of surveillance work, take measures to ensure that their exploitation and taking in the wild is compatible with maintaining them at a favourable conservation status (Article 14).

18. All species listed need to achieve or be maintained at favourable conservation status; this requires measures to be taken both inside and outside *Natura 2000* sites.

Table C. Species listed in one or more of the Annexes of the Habitats Directive and which are considered 'marine' species for Article 17 reporting¹¹

NB1: This list needs to undergo further review and revision (esp. for fish).

NB2: Highlighted species would be very usual/vagrant in EU waters. Other species, such as the Otter *Lutra lutra*, occur in marine waters in part of their range.

SPECIES NAME	COMMON NAME	HD ANNEX		
		II	IV	V
Mammals				
Cetaceans				
<i>Balaenoptera acutorostrata</i>	Minke whale		IV	
<i>Balaenoptera borealis</i>	Sei whale		IV	
<i>Balaenoptera edeni</i>	Bryde's whale		IV	

¹¹ http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2007-2012/reporting_guidelines/guidelines-finalpdf/ EN_1.0_&a=d

HD ANNEX

SPECIES NAME	COMMON NAME	II	IV	V
<i>Balaenoptera musculus</i>	Blue whale		IV	
<i>Balaenoptera physalus</i>	Fin whale		IV	
<i>Delphinapterus leucas</i>	Beluga		IV	
<i>Delphinus delphis</i>	Common dolphin		IV	
<i>Eubalaena glacialis</i>	Northern right whale		IV	
<i>Globicephala macrorhynchus</i>	Short-finned pilot whale		IV	
<i>Globicephala melas</i>	Long-finned pilot whale		IV	
<i>Grampus griseus</i>	Risso's dolphin		IV	
<i>Hyperoodon ampullatus</i>	Northern bottle-nose whale		IV	
<i>Kogia breviceps</i>	Pygmy sperm whale		IV	
<i>Kogia sima</i>	Dwarf sperm whale		IV	
<i>Lagenorhynchus acutus</i>	Atlantic white-sided dolphin		IV	
<i>Lagenorhynchus albirostris</i>	White beaked dolphin		IV	
<i>Lagenodelphis hosei</i>	Fraser's dolphin		IV	
<i>Megaptera novaeangliae</i>	Humpback whale		IV	
<i>Mesoplodon bidens</i>	Sowerby's beaked whale		IV	
<i>Mesoplodon densirostris</i>	Blainville's beaked whale		IV	
<i>Mesoplodon europaeus</i>	Gervais' beaked whale		IV	
<i>Mesoplodon mirus</i>	Ture's beaked whale		IV	
<i>Monodon monoceros</i>	Narwhale		IV	
<i>Orcinus orca</i>	Killer whale		IV	
<i>Peponocephala electra</i>	Melon-headed whale		IV	
<i>Phocoena phocoena</i>	Harbour porpoise	II	IV	
<i>Physeter macrocephalus</i>	Sperm whale		IV	
<i>Pseudorca crassidens</i>	False killer whale		IV	
<i>Stenella coeruleoalba</i>	Striped dolphin		IV	
<i>Stenella frontalis</i>	Atlantic spotted dolphin		IV	
<i>Steno bredanensis</i>	Rough-toothed dolphin		IV	
<i>Tursiops truncatus</i>	Bottle-nosed dolphin	II	IV	
<i>Ziphius cavirostris</i>	Curvier's beaked whale		IV	
Seals				
<i>Cystophora cristata</i>	Hooded seal			V
<i>Erignathus barbatus</i>	Bearded seal			V
<i>Halichoerus grypus</i>	Grey seal	II		V
<i>Monachus monachus</i>	Mediterranean monk seal	II	IV	
<i>Phoca (Pagophilus) groenlandica</i>	Harp seal			V
<i>Phoca (Pusa) hispida botánica</i>	Ringed seal	II		V
<i>Phoca vitulina</i>	Common seal	II		V

		HD ANNEX		
SPECIES NAME	COMMON NAME	II	IV	V
Reptiles				
<i>Caretta caretta</i>	Loggerhead turtle	II	IV	
<i>Chelonia mydas</i>	Green turtle	II	IV	
<i>Dermochelys corlacea</i>	Leatherback turtle		IV	
<i>Eretmochelys imbricata</i>	Hawksbill turtle		IV	
<i>Lepidochelys kempii</i>	Kemp's Ridley turtle		IV	
Fish				
<i>Acipenser gueldentaedtii</i>	Russian sturgeon			V
<i>Acipenser naccarii</i>	Adriatic sturgeon	II	IV	
<i>Acipenser nudiventris</i>	Ship sturgeon			V
<i>Acipenser stellatus</i>	Stellate sturgeon			V
<i>Acipenser sturio</i>	Atlantic sturgeon	II	IV	
<i>Huso huso</i>	Beluga/European sturgeon	II		V
<i>Alosa agone</i>	Twaite shad	II		V
<i>Alosa alosa</i>	Allis shad	II		V
<i>Alosa caspia caspia</i>	Caspian shad	II		V
<i>Alosa fallax</i>	Twaite shad	II		V
<i>Alosa immaculata</i>	Pontic shad	II		V
<i>Alosa maeotica</i>	Black Sea shad	II		V
<i>Alosa tanaica</i>	Azov shad	II		V
<i>Aphanius fasciatus</i>	Mediterranean Killifish	II		
<i>Alpanius iberus</i>	Spanish toothcarp	II		
<i>Anaocypris hispanica</i>	Jarabugo	II	IV	
<i>Coregonus spp.</i>	White fish.houting			V
<i>Coregonus albula</i>	Vendace			V
<i>Coregonus lavaretus</i>	Lavaret			V
<i>Coregonus oxyrhynchus</i>	Houting	II	IV	
<i>Lampetra fluviatilis</i>	River lamprey	II		V
<i>Petromyzon marinus</i>	Sea lamprey	II		
<i>Pomatoschistus canestrinii</i>	Canestrini's goby	II		
<i>Valencia hispanica</i>	Valencia toothcarp		IV	
<i>Salmo salar</i> ¹²	Atlantic salmon	II		V
<i>Valencia letourneuxi</i>	A toothcarp	II	IV	
Invertebrates				
<i>Gibbula nivosa</i>	A trochid mollusc	II	IV	
<i>Corallium rubrum</i>	Red coral			V

¹² Covered under Annex II and V of Habitats directive only for fresh water

HD ANNEX

SPECIES NAME	COMMON NAME	II	IV	V
<i>Centrostephanus longispinus</i>	Long-spined urchin		IV	
<i>Lithophaga lithophaga</i>	European date mussel		IV	
<i>Patella ferruginea</i>	Ribbed Mediterranean limpet		IV	
<i>Pinna nobilis</i>	Pen shell		IV	
<i>Scyllarides latus</i>	Mediterranean slipper lobster			V
Plants				
<i>Lithothamnium coralloides</i>	Maerl			V
<i>Phymatholithon calcareum</i>	Maerl			V

Seabirds, waders and wildfowl under the Birds Directive

19. Under the Birds Directive, Member States shall establish a general system of protection for all naturally-occurring wild bird species in the EU including marine species. MS shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all species of wild birds (Art. 3). These provisions apply both inside and outside protected sites (Art. 5).
20. Derogations to the species protection provisions are allowed in some circumstances (e.g. to prevent serious damage to crops, livestock, forests, fisheries and water) provided that there is no other satisfactory solution and the consequences of these derogations are not incompatible with the overall aims of the Directive. The conditions for applying derogations are set out in Article 9 BD.
21. For 193 species listed in Annex I BD, and for regularly occurring migratory birds, there is the obligation to conserve their most suitable habitats by designating and conserving the most suitable territories in number and size as Special Protection Areas (SPA) in each of the 27 Member States. These SPA form an integral part of the Natura 2000 network.

Table D. Seabirds and waterbird species for which SPAs should be considered under the Birds Directive (Annex I and migratory species)¹³

<i>Gavia stellata</i>	<i>Gavia arctica</i>
<i>Gavia immer</i>	<i>Podiceps cristatus</i>
<i>Podiceps grisegena</i>	<i>Podiceps auritus</i>
<i>Podiceps nigricollis</i>	<i>Fulmarus glacialis</i>
<i>Pterodroma feae</i>	<i>Pterodroma madeira</i>
<i>Bulweria bulwerii</i>	<i>Calonectris diomedea</i>
<i>Puffinus griseus</i>	<i>Puffinus assimilis</i>
<i>Puffinus puffinus</i>	<i>Puffinus mauretanicus</i>
<i>Puffinus yelkouan</i>	<i>Hydrobates pelagicus</i>
<i>Oceanodroma leucorhoa</i>	<i>Oceanodroma castro</i>
<i>Pelagodroma marina</i>	<i>Morus bassanus</i>
<i>Phalacrocorax carbo</i>	<i>Phalacrocorax aristotelis</i>
<i>Phalacrocorax a. desmarestii</i>	<i>Phalaropus lobatus</i>
<i>Phalaropus fulicarius</i>	<i>Aythya marila</i>
<i>Somateria mollissima</i>	<i>Polysticta stelleri</i>
<i>Melanitta nigra</i>	<i>Melanitta fusca</i>
<i>Clangula hyemalis</i>	<i>Bucephala clangula</i>
<i>Mergus serrator</i>	<i>Mergus merganser</i>
<i>Stercorarius skua</i>	<i>Stercorarius pomarinus</i>
<i>Stercorarius parasiticus</i>	<i>Stercorarius longicaudus</i>
<i>Larus genei</i>	<i>Larus ridibundus</i>
<i>Larus canus</i>	<i>Larus melanocephalus</i>
<i>Larus audouini</i>	<i>Larus marinus</i>
<i>Larus fuscus</i>	<i>Larus argentatus</i>
<i>Larus michahellis</i>	<i>Larus hyperboreus</i>
<i>Larus glaucoides</i>	<i>Larus minutus</i>
<i>Rissa tridactyla</i>	<i>Sterna caspia</i>
<i>Sterna albifrons</i>	<i>Sterna nilotica</i>
<i>Sterna sandvicensis</i>	<i>Sterna paradiseae</i>
<i>Sterna hirundo</i>	<i>Sterna dougallii</i>
<i>Cepphus grylle</i>	<i>Fratercula arctica</i>
<i>Alle alle</i>	<i>Alca torda</i>
<i>Uria aalge</i>	<i>Uria aalge ibericus</i>

¹³ Reference: Table 3: Seabirds and waterbird species for which SPAs should be considered. Guidelines for the establishment of the Natura 2000 network in the marine environment. Application of the Habitats and Birds Directives, Appendix 2: Lists of existing marine Habitat types and Species for different Member States, European Commission 2007, http://ec.europa.eu/environment/nature/natura2000/marine/index_en.htm

Assessment of Species

22. The European Commission Decision on the criteria to be used for assessing environmental status under the EU Marine Strategy Framework Directive (MSFD) provides three criteria (species distribution, population size and population condition) for the assessment of species under Descriptor 1 on biological diversity; these criteria are in essence equivalent to the criteria for assessing species under HD (range, population, habitat for the species and future prospects) with the exception of future prospects and result in classification into one of four grades of condition (favourable, unfavourable-inadequate, unfavourable-bad and unknown). Under BD there is reporting on the status and trends of species and measures taken by Member States to achieve the objectives of the Directive.
23. Thus, the MSFD and the HBD are concerned with the assessment of species in order to define and monitor changes in their status. Species may also be used to determine changes in ecosystem health and function such as in Descriptor 4 (food webs) under MSFD. It would be helpful to have, where possible, comparable approaches to these assessments, particularly as they may be assessing the same species.

Marine Natura 2000 sites

24. The number and area of marine SPAs and SCIs designated under the Birds and Habitats Directives is available at:
http://ec.europa.eu/environment/nature/natura2000/barometer/index_en.htm
25. Through the Natura 2000 Viewer it is possible to locate each Natura 2000 site on a map and find out for which of the species and habitat types it has been designated under the Habitats or Birds Directives:
<http://natura2000.eea.europa.eu/#>