

## **The importance of Programmes of Measures of the Marine Strategy Framework Directive implementation to the navigation and dredging sector**

As the next step in the Marine Strategy Framework Directive (MSFD) implementation process, EU Member States are now publishing their draft programmes of measures for public consultation. In this document MSFD NAVI<sup>i</sup> highlights some of the issues relevant to the dredging and navigation sector and encourages members of the associations represented on NAVI to respond to the public consultation in their own countries.

### **1. Background**

The EU Marine Strategy Framework Directive (MSFD) provides the legislative basis and sequence of steps for EU Member States (MS) to establish national marine strategies to achieve or maintain Good Environmental Status (GES). GES is determined at the level of the marine region or sub-region on the basis of eleven qualitative descriptors. These relate to biological diversity, non-indigenous species, commercially exploited fish and shellfish, food webs, human-induced eutrophication, sea floor integrity, hydrographical conditions, contaminants, contaminants in fish and other seafood, marine litter and introduction of energy (including underwater noise).

As the 3rd major milestone in the implementation process<sup>ii</sup>, in 2015 Member States (MS) have to develop programmes of measures for their marine waters to ensure that these achieve or maintain GES by 2020. Additionally the measures need to contribute to a coherent and representative network of marine protected areas.

A measure in MSFD terms is any action – technical, legislative, economic, or policy driven – on a national, European or international level which is intended to influence human activities in order to achieve or maintain GES.

The MSFD requires Member States to make summaries of their proposed programmes of measures available to the public and stakeholders to provide suggestions and comments. Some of the Member States, e.g. France, the Netherlands and the UK have already started this process.

The adopted programmes of measures have to be implemented by December 2016.

### **2. What are the key points of interest to the navigation and dredging sector and why?**

MSFD measures have the potential to affect navigation or dredging related activities. The programmes of measures are intended to consider the implications for human uses of the marine environment so such potential effects may therefore have been recognised and – where necessary – justified. Notwithstanding this, MSFD NAVI has identified five key aspects that will deserve attention

when the draft Programmes of Measures are reviewed because there may be unwarranted implications for the activities of the sector - for example in some or all Member States in a marine region or sub-region.

Those responding to the Programmes of Measures consultation are therefore advised to pay particular attention to the following potential issues when preparing their submissions.

**(i) Geographic scale**

The MSFD sets a requirement to achieve or maintain GES at the level of the marine region or sub-region. It is NAVI's view that the measures imposed by the Member States should be relevant (i.e. capable of making a difference) at the geographical scale at which the MSFD operates **and** be directly linked to achieving or maintaining GES. If not, the proposed measures will most likely not be (cost-) effective, in turn creating a disincentive for those implementing the measures.

The appropriate scale at which measures are taken is likely to be a key issue for various descriptors and not least for the assessment of cumulative and in-combination effects. For some descriptors it is clear that multiple, local measures applied even at a very small scale are likely, cumulatively, to have a beneficial impact at the scale at which GES is determined. Examples include measures to prevent nutrients or litter entering the marine environment. For other descriptors, notably but not only hydrographical conditions, this is not necessarily the case. For example, relevant permitting regimes and/or WFD compliance may require measures to manage the temperature of water discharged from a power station, but it is unlikely that either the local impact of the discharge of warm water or the measures to manage it will be relevant to the geographical scale at which the MSFD is to be implemented. Rather, rising sea temperatures as a result of global warming will likely affect marine biodiversity, both directly and indirectly, at the level of the marine region or sub-region.

Similarly, measures which lead to a reduction in the input of contaminants and/or eutrophication to river, estuarine and coastal water bodies can reasonably be expected to contribute to long term improvements in GES at a pertinent MSFD scale. However, measures to reduce suspended sediment levels in the vicinity of a dredging operation are designed to deal with a temporary, local impact and will have no meaningful implications for GES at the scale of the sub-region, however this is defined. The same argument can apply to the deepening of a navigation channel. Such activities will affect depth locally, and measures may be required to mitigate or even compensate for adverse effects on the **local** environment. However, neither the deepening nor the associated mitigation measures are likely to materially affect the achievement of GES. Further, with regard to hydrographical conditions it seems very unlikely in most Member States, that a number of small physical modifications or hydrographical changes caused by dredging activities, which are relevant at a local scale will, together with other small modifications, have a cumulative effect of significance to the MSFD at a national, sub-regional, or regional level. What constitutes a significant cumulative effect at the scale of relevance to the MSFD has to date remained unclear and it will be interesting to see how Member States deal with this specific aspect.

Care should also be taken to ensure that evaluation criteria recognise the site-specific appropriateness of certain measures. The same measure may be useful and cost effective in one location but inappropriate and/or prohibitively expensive in another.

## **(ii) Links with the Water Framework Directive**

The MSFD should make as much use as possible of existing measures and agreements within the Water Framework Directive (WFD) because many of the measures to meet the objectives of the WFD will also deliver MSFD targets. This is of particular relevance to the contaminants descriptor where source control in riverine and coastal waters may have significant positive consequences for marine waters. The implications of the extensive geographical overlap with the WFD are also relevant for several other descriptors (e.g. biodiversity, eutrophication, hydrographical conditions).

## **(iii) Choice of measures**

It would be easy to include in the MSFD Programmes of Measures, the full range of mitigation, compensation and other environmental protection measures as applied, for example, to ensure compliance with environmental impact assessments, the WFD, and Habitats and Bird Directives. In NAVI's view this approach is not helpful for the following reasons:

- Including the full range of measures without an assessment of spatial and temporal relevance implies that they are all (equally) capable of contributing to achieving or maintaining GES either alone or in combination. Only those measures shown to contribute at an appropriate scale should be included.
- Including all such measures, irrespective of the extent to which they add value, would potentially detract from the real - and often more difficult - issues which need to be addressed if the Directive is to achieve its objectives and deliver GES.

## **(iv) Unintended consequences**

Another aspect to pay attention to regarding the Programmes of Measures is the potential unintended consequences that introducing a measure for one descriptor could have upon another. For example, introducing speed restrictions in order to reduce the introduction of underwater noise<sup>iii</sup> has the potential to impact on the descriptor relating to levels of contaminants because ship's engines are designed to run at a particular speed to be at their most efficient and reducing the speed could potentially result in an increase of unburnt fuel entering the marine environment.

## **(v) Level of co-ordination between Member States**

It is important for the sector to look into how Member States address the above issues individually within their PoMs, but also to be aware of potential differences in the types of measures advocated by different Member States. Special attention should be paid to the possibility of different Member States implementing different measures to improve the status of the same descriptor within a particular (sub)region.

### 3. Where can more information be found?

More information about the MSFD can be found on the CEDA-website:

- [www.dredging.org/MSFD](http://www.dredging.org/MSFD);
- [Proposed Programmes of Measures made available for public consultation by Member States](#)

On the following websites of the EU Commission more information about the Directive itself as well as the implementation process, public consultations and the determination of Good Environmental Status including the eleven descriptors can be found:

- [MSFD - Directive](#);
- [Implementation process](#);
- [Public consultation processes](#); and
- [Achievement of Good Environmental Status \(GES\)](#).

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<sup>i</sup> [MSFD NAVI](#) is a 'thematic cluster' of nine navigation sector bodies that exists to disseminate to, and coordinate responses from, the various players in the marine and inland, commercial and recreational navigation and dredging sector. Members include: MSFD NAVI members include: CEDA - Central Dredging Association, EBA - European Boating Association, EBI - European Boating Industry, ECSA - European Community Shipowners Association, EuDA- European Dredging Association (Corresponding Member), ESPO - European Seaports Organisation, ICOMIA - International Council of Marine Industry Associations, ISU - International Salvage Union and PIANC - International Navigation Association.

<sup>ii</sup> Major milestones of the MSFD implementation process: MS have to complete the initial assessment of their seas and have to define Good Environmental Status (GES), including targets and indicators by: July 2012; MS have to establish monitoring programmes by: July 2014; MS have to design programme of measures by: July 2015; MS have to implement programme of measures by: December 2016; GES have to be achieved for MS seas by: July 2020

<sup>iii</sup> McKenna, M.G., Wiggins, S.M. & Hildebrand J.A (2013) Relationship between container ship underwater noise levels and ship design, operational and oceanographic conditions. [Online] Available from: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3641522/> [Accessed 12 February 2015].