

MARINE STRATEGY FRAMEWORK DIRECTIVE:

Putting in place the legal
framework for implementation

October 2009

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Foreword from Ministers

The new EU Marine Strategy Framework Directive will play a significant role in helping to achieve the shared vision of the UK Government and the Devolved Administrations for the marine environment: the delivery of clean, healthy, safe, productive and biologically diverse oceans and seas.

The Directive sets the overall goal of achieving Good Environmental Status (GES) for Europe's seas by 2020, setting out a range of high-level descriptors of GES, but leaves it to Member States, in coordination with neighbouring countries, to determine what GES means in detail, and to take action necessary to maintain or achieve it.

This fits well with the UK Marine and Coastal Access Bill, Scottish Marine Bill and the proposed Northern Ireland Marine Bill, each of which seek to put in place better systems for delivering sustainable development of the marine and coastal environment. They will all closely support the Directive by putting in place some of the most important tools to help deliver GES. The Framework Directive and Marine Bills can be seen as integrated and complementary.

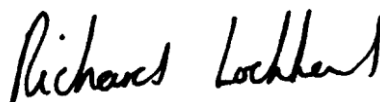
Moreover, marine pollution can be trans-boundary in nature, so taking effective action will require cooperation with countries who share our seas. We also want to see the level of protection and good governance raised right across Europe, to ensure a level-playing field for UK businesses and other stakeholders. The Directive will be a key vehicle for achieving both of these aims.

This consultation seeks your views on the regulations that transpose the Directive into UK law. They propose to put in place a high-level legal framework across the UK, but do not set out at this stage what GES will mean for UK waters, the action that might be taken to maintain or achieve it, or any of the associated assessment and monitoring – on each of which there will be further public consultations between 2010 and 2016.

We welcome the views of stakeholders in England, Scotland, Wales and Northern Ireland on these transposing regulations, and also look forward to hearing your views in the coming years, as we take further steps towards implementing the Directive – and achieving our shared vision for the UK's seas.



Huw Irranca-Davies
Minister for Marine and Natural
Environment
HM Government



Richard Lochhead
Cabinet Secretary for Rural Affairs and
Environment
Scottish Government



Jane Davidson
Minister for the Environment,
Sustainability and Housing
Welsh Assembly Government



Edwin Poots MLA
Minister of the Environment
Northern Ireland Executive

Chapter 1 – Introduction

Purpose and scope of this consultation

1.1 This consultation document fulfils four functions:

- (i) It provides an introduction to the requirements of the Marine Strategy Framework Directive (MSFD) agreed in Europe in 2008;
- (ii) It invites views on the draft regulations with which the UK Government and the Devolved Administrations propose to transpose MSFD by July 2010;
- (iii) It invites comment on a draft Impact Assessment which concentrates on the costs and benefits of transposition – which are small – but points the way towards further assessment, in future, of the substantive costs and benefits of implementing the Directive as these become clearer; and
- (iv) It provides information on steps to implement the Directive which will follow transposition, including how the UK Government and the Devolved Administrations plan to assess their marine waters, determine Good Environmental Status for them, and frame a programme of cost-effective measures in collaboration with other countries to achieve Good Environmental Status by 2020, as required by the Directive.

1.2 Further consultation will follow during the implementation phase of the Directive between 2010 and 2016.

1.3 The Directive is being transposed jointly by the UK Government and the Devolved Administrations and this consultation is issued by all of them.

How to Respond

1.4 The closing date for the submission of responses is 22 January 2010. Responses from England, Scotland and Wales should be sent by email to: MSFDTeam@defra.gsi.gov.uk. Those from Scotland should be copied to msfd@scotland.gsi.gov.uk and those from Wales should be copied to marine@wales.gsi.gov.uk.

Alternatively, responses by post from England, Scotland and Wales should be sent to:

Emma Beckles
Marine Strategy Framework Directive team
Department for Environment, Food and Rural Affairs
Area 2D Nobel House
17 Smith Square
LONDON SW1P 3JR

Responses from **Northern Ireland** should be sent by email to marineteam@doeni.gov.uk or sent by post to:

Susan Cramer
Marine Policy Team
Department of the Environment
Calvert House
23 Castle Place
Belfast BT1 1FY

1.5 Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent. An acknowledgement will be sent to confirm receipt of each response.

1.6 A list of those who are being consulted is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/msfd-legal-framework/index.htm>. If you are aware of anyone or any organisation that might be interested in seeing and commenting on the consultation paper but is not listed, please let us know and we will inform them of it. Any such suggestions should be sent to the relevant contact point shown below.

Publication of Responses

1.7 In line with Defra's policy of openness, at the end of the consultation period copies of the responses received may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, LONDON SW1P 3JR. The information they contain may also be published in a summary of responses.

1.8 If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra or the Devolved Administrations will be required to communicate information to third parties on request, in order to comply with their obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

1.9 The Defra Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or email requests (Tel: 020 7238 6575, Email: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hours' notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

Outcome of Consultation

1.10 Defra and the Devolved Administrations will consider all of the responses to the consultation and by 22 April 2010 will publish a report summarising the consultation responses.

Questions

1.11 The address to which responses to the consultation paper should be sent is at paragraph 1.4 above. Any questions about the MSFD may also be sent to David Mottershead, Head of Defra's Marine Strategy Framework Directive team at

MSFDTeam@defra.gsi.gov.uk. Alternatively, consultees in Scotland, Wales and Northern Ireland may wish to contact the following officials in the Devolved Administrations:

Anna Donald, Marine Planning Manager in Marine Scotland at Anna.Donald@scotland.gsi.gov.uk

Julia Williams, Head of Marine Planning & Nature Conservation at Welsh Assembly Government: julia.williams@wales.gsi.gov.uk

Susan Cramer, MSFD Coordinator in DOENI at marineteam@doeni.gov.uk

Comments or Complaints

1.12 Comments or complaints about the consultation process (as opposed to comments about the issue which is the subject of the consultation) should be addressed to:-

Marjorie Addo
Consultation Coordinator
Department for Environment, Food and Rural Affairs
Area 7C Nobel House
17 Smith Square
LONDON SW1P 3JR
Email: consultation.coordinator@defra.gsi.gov.uk

Background to the Directive

1.13 The Marine Strategy Framework Directive (2008/56/EC)¹ (the Directive) requires Member States to determine Good Environmental Status (GES) for their marine waters, and design and implement programmes of measures aimed at achieving it by 2020, using an ecosystem approach to marine management². It takes account both of socioeconomic factors and the cost of taking action in relation to the scale of the risk to the marine environment. It entered into force in July 2008 and its requirements must be transposed into UK law by 15 July 2010.

What does the Directive do?

1.14 Each Member State must put in place a marine strategy whose chief requirements are:

- (i) An initial assessment of the current environmental status of that Member State's marine waters (to be completed by July 2012), using a series of 11 indicators laid down in the Directive, and for which the Commission, Member States and European Parliament are required to agree criteria and methodologies by 15 July 2010;
- (ii) A determination of what Good Environmental Status means for those waters (also by July 2012);

¹ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:164:0019:0040:EN:PDF>

² See paragraph 4.9 of the impact assessment.

- (iii) Establishment of targets and indicators designed to show whether a MS is achieving GES (also by 2012);
- (iv) Establishment of monitoring programmes to measure progress towards GES (to be established by July 2014); and
- (v) Establishment of programmes of measures designed to achieve or maintain GES (subject to certain safeguards to relieve Member States of the burden of pursuing measures which are not cost-effective, or which relate to issues for which they are not responsible). Programmes of measures are to be developed by 2015 and made operational by 2016.

Good Environmental Status (GES)

1.15 Good Environmental Status is the central concept in the Directive. It is defined in the Directive as, “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”. The Directive requires Member States to determine GES for their waters by reference to a series of eleven indicators, and which range from the extent to which biodiversity and diverse marine habitats are maintained, to the sustainability of fish stocks, through to indicators of the levels of marine litter and noise. The full list of indicators is reproduced at Annex A. Although the Directive does not prescribe what level of, say, biodiversity Member States should accept as being characteristic of GES, it does provide for the Commission, in partnership with Member States, to devise and set criteria and methodological standards to be used by Member States when determining GES. The Commission has set in train the necessary work, which it will be discussing with Member States and others between now and 2010. Until these criteria and standards are known, it is not possible for the UK government to form a definitive view as to what GES is likely to mean for its waters.

1.16 Member States are required to determine what constitutes GES at a regional level – in other words, each Member State must make its determination of GES in consultation with those other Member States (and third party countries) it shares regional seas with. In the UK’s case these are Ireland, France, Belgium, Denmark, the Netherlands, Germany, Sweden and Norway. Once GES is determined, a Member State must establish targets and indicators aimed at achieving or maintaining it by 2020, and subsequently devise and implement programmes of measures for this purpose. Member States are not required to carry out measures which are not cost effective, provided the quality of their marine waters does not deteriorate as a result, and the Directive also recognises that natural forces or other factors for which individual Member States are not responsible may prevent GES targets from being achieved. What the Directive does, therefore, is to oblige Member States to put in place cost effective and proportionate programmes of measures aimed at achieving GES to the extent to which that is in a Member State’s power, including by cooperating with other Member States and by seeking additional international action.

UK vision for implementation of the Directive

- 1.17 The Directive requires the UK to draw up a strategy aimed at achieving GES by 2020 in all of its marine waters, including the Renewable Energy Zone and all those areas of the Continental Shelf over which the UK has jurisdiction. It also requires this strategy to be drawn up in coordination with other Member States sharing the same regional sea basin. The Directive divides the sea into such regions and sub-regions, with UK waters falling within the NE Atlantic region and the Celtic and Greater North Sea sub-regions. The Directive offers flexibility to Member States to develop separate strategies for any sub-regions their waters are divided into, so that the UK could, if it wished, develop separate marine strategies for its waters in the Greater North Sea and the Celtic Seas (and sub-divisions of those sub-regions so long as they are based on marine factors). It cannot, however, develop separate Marine strategies for England, Scotland, Wales and Northern Ireland since these are not sub-regions in Directive terms.
- 1.18 There are arguments for either a single UK strategy, or multiple strategies. Developing two Marine Strategies at a sub-regional level could make it easier to take account of the differences – both environmental and economic – between the Celtic Seas and the Greater North Sea. The process of coordinating our approach across the North East Atlantic region may also be easier if we can take advantage of cooperating, at least in the first instance, with smaller groups of Member States at a sub-regional level.
- 1.19 The Government and Devolved Administrations' preferred approach, however, is to produce a single marine strategy for the whole of the UK's marine waters. The marine environment cannot be managed effectively purely by reference to administrative boundaries, and the UK thus prefers to create one Marine Strategy for the UK, in close cooperation with other Member States in the North East Atlantic. This is consistent with the UK Administrations' proposal to develop a single Marine Policy Statement for the whole UK marine area, and is likely to bring benefits to businesses and other stakeholders operating in UK marine waters. Under either approach, the Devolved Administrations would provide information on the condition of their waters to inform the overall UK assessment, contribute information about any local conditions requiring special treatment in determining GES (which is gathered at UK level) and have responsibility themselves for drawing up monitoring schemes and programmes of measures. So the choice between one or two marine strategies to cover the UK is not a choice between greater or lesser involvement and influence for the Devolved Administrations.
- 1.20 **Views are sought on the advantages and disadvantages of a single UK Marine Strategy as opposed to separate strategies covering the UK portions of the Celtic and Greater North Seas.**
- 1.21 Achieving an integrated approach to marine management will involve close working between each of the UK administrations, as well as with other neighbouring Member States. Programmes of measures are expected to include both retained and devolved functions. For instance, it will be necessary to integrate how new energy infrastructure

(responsibility for which is a retained function of the UK in Great Britain although not in Northern Ireland) is integrated into the new marine planning systems (which will be the responsibility of Devolved Administrations in their inshore and offshore waters). For this reason the Government and the Devolved Administrations are taking a closely coordinated approach to the implementation of this Directive. Ministers have taken a decision to transpose the Directive using one set of Regulations covering the whole of the UK and this consultation exercise is a joint consultation process between the UK Government, the Scottish Government, the Welsh Assembly Government and the Department of Environment Northern Ireland. The UK administrations will continue to coordinate closely during the subsequent stages of implementing the Directive.

Links to other EU and UK legislation

- 1.22 The seas are not a closed system. Actions on land and, especially, action taken to improve the quality of rivers and coastal waters has an impact on the sea as a whole. Actions taken to comply with the Water Framework and Habitats Directives will thus help the UK towards achieving GES for its marine waters. For example, measures taken to avoid chemical contamination of rivers will reduce the level of contaminants entering the sea, and measures to protect special areas of habitat may also improve the biodiversity of marine mammals. Where the Marine and Water Framework Directives overlap – in coastal areas – the MSFD will require additional measures to address litter and noise. The Government and the Devolved Administrations will endeavour to implement the MSFD in a way that is as complementary with the WFD as possible, although consideration will need to be given to the different timetables by which the two Directives require measures to be taken.
- 1.23 The condition of commercial fish stocks is one of the descriptors of GES. Annex 1 to the Directive sets out a descriptor that “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.” Much commercial fishing is managed through the **Common Fisheries Policy**, and is not as a result under the direct control of individual member states. The Directive requires a Member State to notify the Commission if the operation of a Community policy such as CFP is having an effect on its ability to achieve GES, and obliges the Commission to propose appropriate action to the Council and Parliament. It also specifies – in Article 14 – that Member States may cite such cases – where they are not responsible for the action which is necessary if GES is to be achieved – as a reason why environmental targets or GES itself cannot be achieved. Article 14 provides other such exceptions for natural causes, force majeure, unhelpful natural conditions and overriding public interest, all of which are transcribed in the draft UK transposing regulations.
- 1.24 The Directive requires that Member States’ programmes of measures should include **spatial protection measures**. Powers which the Governments are taking in The UK Marine and Coastal Access Bill, the Marine (Scotland) Bill and the proposed Marine Bill in Northern Ireland will support implementation of the Directive by putting in place some of the most important tools to help deliver this, such as the proposed Marine Conservation Zones set out in the UK Marine and Coastal Access Bill, or Marine Protected Areas in the Marine (Scotland) Bill.

Regional Cooperation

- 1.25 The Directive places a very strong emphasis on the need for Member States to work closely together to ensure that its implementation is coordinated across each EU Marine Region. In fact, the Directive envisages three clear levels of implementation: national; regional and pan-European. The determination of GES must be undertaken by Member States in close cooperation with those sharing each of the four marine regions listed in Article 4 of the Directive, using the criteria and methodologies agreed at European level. Measures and targets are then developed by individual Member States for their own waters, but reported to the Commission who will also develop measures to facilitate the sharing of data. This approach will help to ensure that Member States throughout Europe are able to see the approach that has been taken to the determination of GES for different regions, and the Commission is able to ensure that Member States do not abuse the provisions for exceptions when deciding which measures to implement.
- 1.26 At a regional level the relevant regional sea area for the UK is the North East Atlantic. This corresponds roughly to the Oslo and Paris Regional Sea Convention (OSPAR) area.³ OSPAR's mission is to cooperate to conserve the marine environment and safeguard human health in the North East Atlantic. It has significant experience in developing monitoring and methodological standards for assessing the state of the marine environment and in agreeing regional measures for addressing environmental problems. The UK is keen to use OSPAR as the key forum for achieving the regional cooperation envisaged by the Directive. Ireland, France, Denmark, the Netherlands, Sweden, Norway, Belgium and Spain are all members of OSPAR.

³ OSPAR is the mechanism by the Governments of the western coasts and catchments of Europe, together with the EU, cooperate to protect the marine environment of the North-East Atlantic. It started in 1972 with the Oslo Convention against dumping, and was broadened to cover land-based sources and the offshore industry by the Paris Convention of 1974. These two conventions were unified, up-dated and extended by the 1992 OSPAR Convention. See: <http://www.ospar.org/welcome.asp?menu=0>

Chapter 2 – Transposition of the Directive

The transposing regulations

2.0 This chapter introduces the draft regulations which are at Annex B, and provides a commentary on each regulation. We would welcome comments on the regulations.

2.1 Views are sought on how the proposed division of responsibilities between the different competent authorities, as set out in the draft regulations, can best be made to work, and also on whether there are any obligations arising from the Directive which have been overlooked and need to be assigned to a competent authority.

2.2 Views are also sought on whether the regulations set out adequate safeguards to achieve the level of coordination needed to deliver a coherent strategy, whilst protecting the respective Devolution Settlements

Overview of the draft regulations

2.3 The draft regulations assign the duties of Member States under the Directive to the Secretary of State, Welsh and Scottish Ministers and the Department of the Environment in Northern Ireland as follows.

- (i) The Secretary of State is responsible for developing the overall marine strategy for the UK, and in particular for carrying out the assessments, determining GES (which the Directive requires should take place in consultation with other Member States) and setting targets. Scottish and Welsh Ministers, and the Department of Environment in Northern Ireland, must supply information about their particular circumstances to help with the assessment, determination and target setting. Each competent authority then devises its own programme of measures and monitoring arrangements, although these must be done in close coordination with the others;
- (ii) There are requirements for consent to be sought by each competent authority where the functions it plans to carry out under the Directive would affect functions (not just marine functions) which are the responsibility of another competent authority under the relevant Devolution settlement. For example, the Secretary of State would need the consent of Scottish Ministers before adopting targets which would affect Scottish fisheries, and Scottish Ministers would need the consent of the Secretary of State before putting in place marine conservation measures which would affect oil and gas exploration, which is a retained function of the UK Government. In practice, these consenting provisions mean that the UK-wide functions assigned to the Secretary of State under the regulations would need to be carried out in extremely close cooperation with the other competent authorities.

- (iii) There is a general duty on each competent authority to cooperate with the others so as to secure compliance with the Directive. Cooperation will be needed both over the supply of information for overall assessment and monitoring, and for the implementation of programmes of measures. This is because the latter are likely to involve a mix of devolved and retained activities, in waters where the Scots, Welsh or Northern Ireland act as competent authority. For example, measures agreed between the Scottish Ministers and the Secretary of State to protect marine ecosystems in Scottish waters may require the Secretary of State to place restrictions on how oil and gas exploration is carried out.
- (iv) There is a general duty on public bodies to have regard to the marine strategy through which the Directive is implemented. The Secretary of State and the Devolved Administrations in Scotland and Wales also have powers to direct “their” public bodies, and issue guidance to them. In Northern Ireland the function of directions is replaced by a power for the competent authority to ask for assistance from public bodies, matched with a duty on those bodies to provide it.⁴ The general duty is intended to ensure that all public authorities will have regard to GES, the targets and the programmes of measures to ensure they are taken into account when decisions are made on proposed projects or activities in the marine environment. Examples include the Infrastructure Planning Commission – which will decide on nationally significant infrastructure projects – and the activities of the coastguard.

Geographical coverage

2.4 Scottish Ministers, Welsh Ministers and DoE (NI) are the competent authority in their inshore waters, and it is proposed that Scotland should also have that responsibility offshore. Competent authorities will not, of course, carry out all of the Directive’s functions directly – many will be delegated to bodies such as the proposed new Marine Management Organisation. Further details of how implementation will operate in practice will be set out in future consultations.

What the draft regulations do not set out

2.5 The draft Regulations do not aim to set out:

- The detail of what GES means for UK seas – the UK determination of GES and the associated targets and indicators will not be developed until 2012. The UK cannot

⁴ In Northern Ireland, unlike other parts of the UK power is vested in departments and not with Ministers. This means that it is not possible for the Department of the Environment to direct other departments. It is for this reason that the Northern Ireland departments which exercise functions in the marine environment and the cross border body the Foyle, Carlingford and Irish Lights Commission are bound to exercise their functions to secure compliance with the Directive and to take the necessary measures to secure GES (regulation 4). Regulation 19(11) and (12) make specific provision for coordinated delivery in Northern Ireland.

complete this work until appropriate EU-wide parameters for GES have been agreed– these are expected to be finalised in 2010.

- The monitoring programmes of the UK Government and Devolved Administrations for GES – monitoring programmes for GES do not need to be developed until 2014. At this stage, before we know exactly what GES means for UK waters, it is too early to set out in any detail what the monitoring programmes will entail.
- The UK programmes of measures for achieving GES - programmes of measures for GES do not need to be developed until 2015. Again, at this stage it is too early to set out what measures will be needed to achieve GES.
- A number of obligations which bind the UK in its dealings with other Member States, such as the requirement to determine GES in consultation with other Member States sharing the same marine region. These do not require transposition.

2.6 Stakeholders will have the opportunity to provide detailed input to each of the aspects of implementation set out above in future consultations on this Directive. For the purposes of this consultation, very initial views on how each of these requirements of the Directive might be taken forward are set out in Chapter 3.

2.7 In the table below a commentary is provided on each regulation. **We would welcome any views consultees may wish to offer on the draft regulations as a whole.**

Commentary on the proposed regulations

| Part 1 | |
|--|---|
| Regulation 1 | The “marine strategy area “covered by the regulations is defined in regulation 3 to include the whole of the UK’s inshore and offshore waters, including the Renewable Energy Zone (REZ) ⁵ and including “coastal waters” but not “transitional waters” as defined by the Water Framework Directive. There is thus an overlap in respect of “coastal waters” with the WFD. |
| Regulation 2 Interpretation | <p>Provides the definitions used elsewhere in the regulations. These are discussed in context where they are not self-explanatory. The definition here of “competent authority” determines which of the Secretary of State, Scottish Ministers, Welsh Ministers and the Department of Environment in Northern Ireland are responsible for drawing up programmes of measures and monitoring arrangements for which marine waters.</p> <p>Paragraph 4 provides that references to the Annexes to the MSFD invoke those annexes as they may be amended from time to time, by comitology decisions. This will help to reduce the need to amend the Marine Strategy Regulations to take account of any future amendments to the Annexes.</p> <p>The annexes deal with GES descriptors, requirements for notifying the Commission of the details of competent authorities; pressures and impacts to be considered; indicative list of characteristics to be taken into account when setting targets; and monitoring programmes. The last three of these can be amended by comitology decisions, whilst all but annexe II can be supplemented by methodological standards adopted by committee. Our working assumption is that the Government and Devolved Administrations would be responsible for integrating these Annexes into their policy frameworks, so there is no danger that the proposed “ambulatory provision” would impose new requirements (resulting from amended annexes) on bodies who were unaware of them. The alternative approach would require the making of new regulations whenever even minor details in an annex were changed.</p> |
| Regulation 3: the Marine Strategy Area | <p>This regulation sets out the area in relation to which the obligations under the Marine Strategy Regulations apply. The area consists of:</p> <ul style="list-style-type: none"> • The territorial sea adjacent to the UK. This extends seaward up to 12 nautical miles from the baseline⁶. • The sea within the limits of the Renewable Energy Zone (REZ). This extends seaward up to a maximum of 200 nautical miles from baseline. The reference to renewable energy zone will be |

⁵ This will be replaced with a reference to the Exclusive Economic Zone (EEZ), if such a zone is declared as a result of discussions in relation to the UN Convention on the Law of the Sea before June 2010. See commentary on regulation 3.

⁶ The baseline is usually the low water mark around the coast. But there can be straight baselines across the mouths of bays, and all rocks, reefs etc above the sea at low water but submerged at other times extend the baseline if they are within 12 nautical miles of the mainland or an island.

| | |
|--|--|
| | <p>replaced with a reference to the Exclusive Economic Zone (EEZ), if such a zone is declared before June 2010. The exact limit of the EEZ is not known at present, but is expected to be similar to the existing REZ.</p> <ul style="list-style-type: none"> • Any area of UK continental shelf. Unless falling within the limits of the REZ as well, the obligations under the MFSD will only apply to the seabed and subsoil, and not the sea above the continental shelf. |
|--|--|

| Part 2: General duties | |
|--|---|
| Regulation 4: the general duties | <p>The general duty applies to the competent authorities defined in regulation 2 – the Secretary of State, Scottish and Welsh Ministers and the Department of Environment in Northern Ireland. Because the Department of Environment in Northern Ireland does not have responsibility for the full range of measures and issues which will need to be considered in order to implement the Directive in Northern Ireland, the duty extends to other “Northern Ireland bodies”. These are the other NI Departments with marine responsibilities (eg DARD for fisheries, DETI for renewable energy) plus the Foyle, Carlingford and Irish Lights Commission.</p> <p>The general duty is an important guarantor of each competent authority’s ability to deliver the requirements of the directive. This is because the measures likely to be required involve both retained and devolved functions.</p> |
| Regulation 5: Functions of the Secretary of State | <p>The Secretary of State is required to develop a single marine strategy consisting of:</p> <ul style="list-style-type: none"> (i) An assessment of marine waters by 15 July 2012; (ii) A determination of the characteristics of good environmental status by the same date; (iii) Environmental targets and indicators, also by the same date; (iv) A programme of monitoring implemented, in respect of its relevant marine area, by each competent authority, by 15 July 2014; (v) A programme of measures for achieving or maintaining GES (subject to certain exceptions and qualifications) drawn up by each competent authority in respect of its area, by 31 December 2015 and made operational no later than 31 December 2016. <p>The details of these components are set out in regulations 11 to 15 below. Other competent authorities – the Scottish and Welsh Ministers, and DOE in Northern Ireland contribute to tasks (i), (ii) and (iii), and draw up their own programmes of monitoring and measures.</p> <p>The wording in draft regulation 5(1) (a) and (b) is taken from article 1(2) of the Directive and describes the overall purpose of the strategy.</p> |
| Regulation 6: Functions of the devolved policy authorities | <p>The term “devolved policy authority” refers to the Scottish and Welsh Ministers, and DoE in Northern Ireland. Regulation 6 requires these authorities to send the Secretary of State proposals for those elements of the marine strategy they develop themselves and information to support the Secretary of State’s completion of the tasks which fall to him – overall assessment, determining GES and developing targets and indicators.</p> |
| Regulation 7: coordination between competent authorities | <p>This regulation requires coordination in respect of the development of monitoring programmes and the determination of programmes of measures (which will include the identification of exceptions such as cases where force majeure or disproportionate cost applies).</p> |

| | |
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| Regulation 8: requirement for consents | This regulation places symmetrical obligations on the Secretary of State and devolved policy authorities to seek each other's consent before adopting elements of their components of the marine strategy which would affect devolved or retained functions respectively. These two regulations relate to the process of adopting the marine strategy, whereas regulation 9 refers to the exercise of relevant functions during the implementation phase. |
| Regulation 9: Cooperation in implementation | This regulation imposes mutual requirements for consent in cases where the exercise of relevant functions (eg marine planning, fisheries control etc) by a competent authority or Northern Ireland body would affect functions falling on the other side of the devolved/retained split. NB that the test is whether "retained/devolved functions" are likely to be affected by the exercise of a relevant function carried out for the purpose of implementing the Directive. For example, if a devolved administration proposed to exercise its relevant functions in relation to fisheries in a way which is likely to affect defence operations carried out by the military, the devolved administration would have to obtain the consent of the Secretary of State. |
| Regulation 10: Duty to have regard to the marine strategy | This important duty ensures that not simply the competent authorities themselves, but all other public bodies must have regard to assessments, targets, monitoring programmes and programmes of measures when discharging any of their functions which affect the waters to which these regulations apply. A similar duty already exists under regulations implementing the Water Framework Directive. Guidance will be issued to public bodies as to how they are expected to take the marine strategy into account as elements of that strategy themselves are published. It is not the case that achievement of GES "trumps" other, legitimate uses of the sea – the Directive requires a balanced and proportionate approach. |
| Part 3: Elements of the marine strategy | |
| Regulation 11: Assessment of marine waters | Article 8 of the Directive sets out a number of requirements relating to the assessment of marine waters, of which the requirement for an economic and social analysis of the use of marine waters, and of the cost of degradation, is judged to be particularly important and thus worthy of transposition on the face of the regulations. The UK is jointly leading an EU workstream with Sweden to establish how best to go about making such assessments, and will provide more detail in subsequent consultations. |
| Regulation 12: Determination of Good Environmental Status | The Secretary of State must determine GES for UK marine waters in consultation with the devolved policy authorities, and must obtain the consent of the relevant Devolved Administration before determining GES in a manner which would affect devolved functions. The same requirements apply to revisions, which must take place periodically and no later than at six yearly intervals. |

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| Regulation 13: Environmental targets and indicators | This regulation requires the Secretary of State to establish targets and indicators on the same basis as regulation 12 as far as coordination within the UK is concerned. |
| Regulation 14: Monitoring | This regulation provides for monitoring programmes to be established by the UK, Scottish and Welsh Governments and DoE in Northern Ireland, based on requirements set out in Annexes III and V of the Directive. Annex III is an indicative list of characteristics, pressures and impacts. Annex V is a list of requirements (eg the need to provide information on contaminants entering the human food chain) which a monitoring programme might satisfy. |
| Regulation 15: Programme of measures | <p>This article requires the Secretary of State, the Scottish and Welsh Ministers and DoE in Northern Ireland to publish by 31 December 2015 separate programmes of measures to achieve or maintain GES. Regulation 15(3) implements a specific requirement of the Directive that the measures should include the establishment of marine spatial protection measures, which the UK expects to implement through the Marine Conservation Zones proposed in the Marine and Coastal Access Bill and the Marine (Scotland) Bill, via the proposed Northern Ireland Marine Bill and via Natura 2000 sites designated under Habitats and Birds Directives. Information about spatial protection measures must be made available by the relevant competent authority by 31 December 2013.</p> <p>Regulation 15(6) sets out important requirements for impact assessment and consultation. Such impact assessments will potentially trigger the exceptions provision in regulation 16, under which the UK can inform the Commission that it is not proceeding with a measure because it is disproportionately costly, provided that there is no further deterioration and the achievement of GES is not permanently compromised. Programmes of measures must be made operational within one year of their publication.</p> <p>Regulation 15(8) specifies when the programme of measures should be reviewed - at the latest six years after their establishment. But paragraphs (9) and (10) also set out provisions for Secretary of State to request a review of all or part of the programme of measures by a devolved policy authority, and vice versa, where retained/devolved functions are affected.</p> |
| Regulation 16: Exceptions | <p>This regulation transposes the exceptions which are allowable under the Directive – circumstances where measures do not have to be taken even though the determination of GES and the targets set would indicate that they are necessary. Regulation 16(2), (3), (4) and (6) transposes the Directive's requirements for transparency, including notification to the Commission of cases in which the UK decides to invoke the exceptions. The Directive does not require Member States to take measures relating to defence or security, although they are encouraged to do so to the</p> |

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| | extent reasonable and practicable. Regulation 16(7) transposes this provision. |
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| Part 4: Procedural requirements | |
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| Regulation 17: Notification | This regulation transposes obligations to notify the Commission of the varying stages of implementation of the marine strategy. Since international relations is a retained function, the obligation has been placed on the Secretary of State even though the devolved policy authorities will produce some of the components of the strategy (monitoring and measures for their areas). |
| Regulation 18: Public Participation | These requirements have been included because the UK takes the view that Article 19(1) of the MSFD applies the relevant provisions of the Directive on Public Participation (Directive 2003/35/EC) ⁷ to the specified decisions listed in this regulation. |
| Part 5: Directions and guidance | |
| Regulation 19: Directions to, and assistance from, public authorities | <p>Since programmes of measures within the devolved marine areas are expected to consist of a mixture of devolved and retained functions (eg planning (devolved) and marine conservation (retained) in the Welsh offshore region), both the relevant devolved policy authority and the Secretary of State need to have powers of direction in order to ensure that the measures are carried out. The provisions of regulation 8 requiring mutual consent where the issuing of such directions would affect both devolved and retained functions apply.</p> <p>Regulation 19(6) specifically prevents a direction from being issued under these regulations to the Infrastructure Planning Commission, to preserve the independence of its decisions. The IPC is nonetheless bound by the duty in regulation 10. Functions relating to Orders granting development consent under the Planning Act 2008 have been excluded because that Act creates a decision-maker – the Infrastructure Planning Commission – which has been specifically established as a body which is independent from Ministers. The Act makes specific provision for the only circumstances in which Ministers are able to intervene in relation to applications to the IPC. To ensure consistency with this policy, it is therefore necessary to exclude these functions from the scope of regulation 19.</p> <p>Paragraphs (11) and (12) are necessary because the Department of Environment (Northern Ireland), rather than Northern Ireland Ministers, is competent authority and functions under the Regulations are also assigned to a number of other Northern Ireland departments. Northern</p> |

⁷ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:HTML>

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| | Ireland has a collaborative approach to the marine area and functions are shared between a number of bodies ⁸ . A close working relationship exists between these bodies and this is reflected in the regulation which requires NI bodies to provide the Department of the Environment with information and assistance and for the Department to consult with relevant NI bodies at key stages during the implementation process. These provisions, underpinned by the Northern Ireland Ministerial Code, will help ensure the Directive is delivered in an effective, collaborative and holistic way in Northern Ireland. A special provision to ensure compliance with the requirements of the Directive in Northern Ireland is also contained at regulation 4. |
| Regulation 20: Guidance | The Secretary of State has a widely-drawn power to give guidance to “any person” on the practical implementation of the Directive, as do the competent authorities in the Devolved Administrations. This is to enable them to issue statutory guidance to bodies which make up UKMMAS, which plays an important role in monitoring the state of the seas but is not a public authority or body, but may in future acquire a legal personality. Guidance issued in respect of both retained and devolved functions must be issued jointly. |
| Schedule 1 | This lists the enactments which indicate the relevant functions to which the duty in regulation 4 – on competent authorities and relevant Northern Ireland Bodies to exercise their functions to secure compliance with the requirements of the Directive – will apply. As indicated in the definition of ‘relevant function’ at regulation 2, this list is inclusive (rather than exclusive). |
| Schedule 2 | The definition of retained functions in Part 1 of Schedule 2 is based on the definition in clause 60 of the Marine and Coastal Access Bill. It is intended to reflect the existing devolution settlement, rather than in any way alter it. Parts 2 and 3 contain further definitions as set out in the Directive and also the Water Framework Directive. |
| Schedule 3 | This copies out the exceptions contained in article 14 on the Directive, under which environmental targets or GES cannot be achieved in all aspects. |

⁸ The administrative and political structures in Northern Ireland do not permit the Department of the Environment to direct other departments and their associated non departmental public bodies. In NI the Department of Agriculture and Rural Development (DARD) is responsible for fisheries; the Department for Regional Development (DRD)- ports and harbours and water policy, the Department of Enterprise Trade and Investment (DETI) - energy, mineral extraction, telecoms and tourism and the Department of Culture Arts and Leisure (DCAL)- inland fisheries. The cross border body, the Foyle, Carlingford and Irish Lights Commission is responsible for the promotion and development of Lough Foyle and Carlingford Lough for recreational purposes in respect of marine, fishery and aquaculture; the development and licensing of aquaculture and the development of marine tourism.

Chapter 3 – Initial Views on Implementation of the Directive

Introduction

3.0 Implementation involves several stages, in summary these are:

- An initial assessment of the current environmental status of a Member State's marine waters (to be completed by July 2012);
- A determination of what GES means for those waters (to be completed by July 2012);
- Establishment of targets and indicators designed to show whether a Member State is achieving GES (to be established by July 2012);
- Establishment of monitoring programmes to measure progress towards GES (to be established by July 2014);
- Establishment of programmes of measures designed to achieve or maintain GES (to be developed by July 2015 and made operational by July 2016).

3.1 To assist Member States with these tasks, the European Commission has put in place a number of working groups and other fora. The most immediate tasks these groups are undertaking are the preparation of criteria and methodologies for use when determining GES, and the devising of arrangements for sharing data between Member States, the European Environment Agency and the Commission.

EU coordination

3.2 The UK is involved in the following other activities (besides the Commission's implementation groups) at European level:

- **Identifying possible common EU methodologies for socio-economic analysis** – Defra and the Scottish Government have volunteered to lead this work in partnership with Sweden. A strong focus on socio-economic analysis will be critical both for the initial assessment and in the longer-term in assessing the costs and benefits of different programmes of measures for GES.
- **Identifying the key monitoring needs of the Directive and prioritising areas where coordination at an EU level may be necessary** – the Government, supported by relevant experts from across the UK, will participate in this work, which is key to shaping the future monitoring programmes required for GES.
- **Ensuring that the latest scientific research is used effectively to support the implementation of the Directive** – the Government, supported by relevant experts across the UK, will participate in this work, which is critical to ensuring that research results are shared effectively across the EU and that maximum advantage is taken of opportunities for joining-up with other Member States when carrying out new research to support the Directive.

Regional coordination

3.3 One of the Directive's requirements is that Member States must work closely with other countries in their marine region to ensure that implementation is coordinated effectively at a regional level. As described at paragraph 1.18 above, the UK hopes that the forum of the Oslo Paris Convention (OSPAR) will provide the necessary regional coordination in the case of the North-East Atlantic.

3.4 OSPAR has already identified the Directive as a key priority and has set up a group to look at how the OSPAR structure and strategies can be developed in order to support its implementation. OSPAR could support the implementation of the directive in number of ways:

- **By acting as forum to enable Member States and other countries in the N.E. Atlantic to discuss and coordinate each element of their Marine Strategies** – OSPAR already brings together networks of policy makers and experts across the region. It makes sense to make best use of these existing networks for implementation of the Directive rather than creating new structures;
- **By continuing to develop common, regional approaches to monitoring and assessment** – OSPAR already has a particularly strong role in coordinating regional approaches to monitoring and assessment. It develops regular Quality Status Reports of the marine environment in the North-east Atlantic, with the next assessment due to be published in 2010. It also carries out a Joint Assessment and Monitoring Programme across the region. These aspects of OSPAR's work will play a key role in supporting the coordination of the initial assessment and monitoring programmes at regional level;
- **By continuing to develop environmental targets and indicators at Regional level** – OSPAR has already carried out significant work to develop a set of Ecological Quality Objectives for the North Sea. This experience should be fed into the process of developing targets and indicators for GES and will be a good starting point to help OSPAR countries coordinate the approach they take to setting these targets at a national level.

Initial Assessment - 2012

3.5 One of the earliest requirements of the Directive is for Member States to carry out an initial assessment of the current state of their marine waters by 2012 (Article 8). This includes an analysis of the key features and characteristics of those waters as well as an analysis of the key pressures and impacts from human activity. The assessment must also include an economic and social analysis of a Member State's waters and must consider the cost of degradation of the marine environment.

3.6 The UK already has experience in developing UK-wide marine assessments and first published a report on the state of the UK's seas in 2005 called Charting Progress <http://www.defra.gov.uk/environment/marine/science/stateofsea.htm>. The Scottish Government has also produced its own report on the state of Scottish marine waters

called Scotland's Seas: Towards Understanding their State (published in 2008 - see <http://www.scotland.gov.uk/Publications/2008/04/03093608/0>). In response to the recommendations of Charting Progress, the UK Marine Monitoring and Assessment Strategy (UKMMAS) was created in 2005. The UKMMAS comprises of over 250 different stakeholders involved in marine monitoring, including representation from Government departments and each of the Devolved Administrations. Its purpose is to provide robust, coordinated evidence of the state and variability of our seas, enabling the UK to demonstrate compliance with a number of national and international targets and objectives, such as the requirements of this Directive.

- 3.7 Stakeholders within the UKMMAS are currently involved in producing Charting Progress 2, the second integrated assessment of the state of UK seas, which is due to be published in May 2010. Charting Progress 2 will provide extensive information on key developments since the first report in 2005, the pressures and impacts on the marine environment and will place the work within the wider political, social, economic and environmental context.
- 3.8 The Government and the Devolved Administrations intend to use the evidence used to produce Charting Progress 2 as the backbone of the UK's initial assessment for this Directive. It is anticipated that Charting Progress 2 will provide the majority of the information necessary for the initial assessment, however, there may be gaps in knowledge and data and the Government is currently considering what further evidence might be needed and how this can be developed by 2012. One area where further work will certainly be necessary is in developing the socio-economic assessment required by the Directive, and the work the UK and Scottish Government have volunteered to lead with Sweden will provide a framework for this. Charting Progress 2 will include information about the economic and social use of the UK's marine waters, but further consideration is needed about how to meet the requirement to analyse the cost of degradation of the marine environment.
- 3.9 At a regional level, the UK has been actively involved in the development of the OSPAR Quality Status Report which is due to be published in 2010. This assessment of the state of the environment across the North-east Atlantic is the product of significant joint-working across the OSPAR countries and should meet the Directive's requirements for regional cooperation on the development of the initial assessment.

Determination of GES and associated targets and indicators - 2012

- 3.10 By 2012, Member States must also determine what GES means for their waters and develop an associated set of targets and indicators to guide progress towards achieving GES (Articles 9 and 10). This will involve setting out the specific characteristics of GES for UK waters, on the basis of the definition of GES given in the Directive and the 11 descriptors of GES (**see Annex A on page 31**) and then developing more detailed targets and indicators which underpin this.
- 3.11 This gives the UK some flexibility in the way GES is interpreted for UK waters and, most importantly, allows any specific characteristics of UK waters to be taken into account when setting targets for GES. However, it is also important to ensure a level

playing field across the EU. The European Commission is currently leading a piece of work to develop common criteria and methodological standards which will underpin the descriptors of GES and will apply to Member States across Europe when setting their national-level targets and indicators. The Commission has asked the Joint Research Centre (JRC) and the International Council for the Exploration of the Sea (ICES) to lead the scientific work which will support the development of these criteria and standards – this is due to be completed in early spring 2010. From a policy perspective, Member States and stakeholders will be given the opportunity to influence the development of this work through a Working Group on Good Environmental Status. The Commission is required by the Directive to have a final set of criteria and methodological standards agreed by the Directive's formal committee (which entails agreement between the Commission, Member States and the European Parliament) by summer 2010.

3.12 Until these criteria and methodological standards have been agreed the Government and Devolved Administrations cannot develop a specific UK determination of GES. For this reason the priority over the next six months is to continue to engage as actively as possible in the Commission led work on GES, both through the Working Group on Good Environmental Status and via bilateral engagement with the Commission and other Member States where appropriate. As the Commission's proposals for GES criteria and methodological standards become available the Government and Devolved Administrations will seek views from stakeholders on what these might mean for the UK and where the UK should try to seek to influence their development. This will be done informally, since the timetable does not allow for further formal consultation.

3.13 Between summer 2010 and July 2012 the Government and Devolved Administrations will focus on developing a specific determination of GES for UK waters, in consultation with other Member States sharing the North-East Atlantic Region. The way in which GES is determined will have significant implications for businesses and organisations which operate in the marine environment, and stakeholders will be given a full opportunity to input to the process.

Monitoring programmes - 2014

3.14 The next stage in the implementation of the Directive is for Member States to develop and implement coordinated monitoring programmes for assessing progress towards GES. This has to be achieved by July 2014.

3.15 As set out in Chapter 2, the transposing regulations will put a duty on each competent authority to develop and consult on a monitoring programme for GES for the waters they are responsible for. In practice, the Government and Devolved Administrations will work closely together on the development of these monitoring programmes from an early stage in order to ensure that a coordinated approach is taken across the UK. The UK Marine Monitoring and Assessment Strategy, informed by the results of Charting Progress 2, will play a key role in this respect, assessing gaps in the UK's current marine monitoring programmes and developing proposals to fill them. As the UK already carries out significant monitoring and assessment of the marine environment, it is anticipated that this will very much be about filling gaps in existing programmes and adding to them where necessary.

- 3.16 Currently a wide range of organisations and delivery bodies are involved in carrying out marine monitoring on behalf of the Government and Devolved Administrations. The following bodies are likely to play a particularly important role, reflecting the wide ranging nature of the Directive: the Centre for Ecology, Fisheries and Aquaculture Science (Cefas), Natural England, the Joint Nature Conservation Committee, the Environment Agency in England and Wales, the Marine Management Organisation, Marine Scotland, Scottish Natural Heritage, the Scottish Environment Protection Agency, the Countryside Council for Wales, the Northern Ireland Environment Agency, the Agri-Food and Biosciences Institute and the Foyle, Carlingford and Irish Lights Commission.
- 3.17 The Government and Devolved Administrations will also need to ensure that the development of the UK's monitoring programmes for GES takes into account any activity on monitoring and assessment which is taking place at an EU and regional level.
- 3.18 The Directive enables the European Commission to develop EU-wide methodologies for monitoring and assessment which the Government and Devolved Administrations would need to follow when developing the monitoring programmes for GES. Although the Commission has said that it is unlikely to take this work forward until 2011, the UK has agreed to be involved in some initial work at EU-level which aims to identify which aspects of monitoring would benefit from further coordination across the EU. The Government is keen to influence this work and, in particular, to ensure that the role of OSPAR in coordinating monitoring at the level of the North East Atlantic is taken into account. OSPAR is due to revise its Joint Assessment and Monitoring Programme in 2010 and is aiming to ensure that this supports the future monitoring needs of the Directive. The Government and Devolved Administrations are supportive of this approach and are keen to avoid duplication of effort at EU and regional level.

Programmes of measures

- 3.19 The final stage of implementation of this Directive is the design and delivery of programmes of measures for achieving Good Environmental Status. Member States are required to develop programmes of measures by the end of 2015 and to have put these in place by the end of 2016. The development of the programmes of measures is expected to build on all the previous stages of implementation, using the information gathered from the initial assessment to aim at meeting the targets and indicators they have set for GES. Member States are also required to carry out a full cost-benefit analysis of the programmes of measures they propose.

What types of measure might be needed?

- 3.20 At this point, before the earlier stages of implementation have been carried out, it is hard to give a clear indication of what the programmes of measures for GES might look like. Due to the broad-ranging nature of the Directive the measures are likely to be varied and potentially impact on a wide range of activities which affect the marine environment. The Government and Devolved Administrations already carry out a lot of existing programmes aimed at protection of the marine environment, both to meet other

EU legislative requirements such as the Water Framework Directive and the Birds and Habitats Directives, and to deliver nationally agreed policies. All this existing work will play a critical role in supporting the achievement of GES, and the challenge will be to assess what additional measures are necessary. This is likely to vary significantly across the different descriptors of GES. For some descriptors, such as Descriptor 8 (contaminants not giving rise to pollution effects), it may be possible to achieve GES largely through existing measures and policies. For other descriptors, however, such as descriptor 10 (marine litter) and descriptor 11 (underwater energy) significantly more work might be needed, both in terms of understanding the extent and causes of the issues and in developing measures to address them. Whatever measures are necessary, the competent authorities are only required to implement them to the extent that their costs are justified by their benefits. The Directive quite plainly does not seek the achievement of GES no matter what the cost.

- 3.21 The only types of measure which the Directive specifically requires Member States to implement are spatial protection measures, such as marine protected areas. The Government and Devolved Administrations have already designated a number of marine protected areas in order to meet the requirements of the Birds and Habitats Directives and are in the process of identifying additional sites in UK waters. The UK Marine and Coastal Access Bill, the Scottish Marine Bill and the Northern Ireland Marine Bill will also put in place legislation to allow the Government and Devolved Administrations to designate further national Marine Conservation Zones (Marine Protected Areas in Scottish waters) and the Government and devolved administrations are currently taking forward a programme to identify new sites with the aim of putting in place a coherent network of Marine Protected Areas across the UK. This programme of work will support the UK in delivering the Directive's requirement for spatial protection measures to achieve GES.

How will the programmes of measures be developed?

- 3.22 As set out in Chapter 2, the draft regulations will put a duty on each competent authority to develop a programme of measures for the waters for which they are responsible. The Government and Devolved Administrations intend to work together closely to ensure that these programmes are as coordinated as possible and that together they will achieve the UK's targets for GES. Development of successful, cost effective programmes of measures will require close consultation with a wide range of bodies and stakeholders. However, it will be important for one body to lead the development of the programmes of measures for each part of the UK's waters, and current thinking on this is as follows:

- For English waters and all parts of the UK offshore area other than the Scottish offshore region: the Marine Management Organisation will lead development of the programme of measures and make recommendations to the Secretary of State.
- For the Scottish inshore and offshore regions: Marine Scotland will lead the development of the programme of measures and make recommendations to Scottish Ministers.

- For the Welsh inshore region: the Welsh Assembly Government will lead the development of the programme of measures and make recommendations to Welsh Ministers.
- For the Northern Ireland inshore region: the Department for the Environment in Northern Ireland will lead the development of the programme of measures and make recommendations to Northern Ireland Ministers.

3.23 As outlined above, there will be close coordination between administrations as part of this process and the Secretary of State will be responsible for pulling together the final UK programmes of measures for submission to the EU Commission in 2015.

How will the programmes of measures be implemented?

3.24 At this stage it is still too early to say which organisations will have the most significant role in implementing the programmes of measures, or which businesses operating in the marine environment will be most affected. It is probably reasonable to assume, however, that all organisations which are currently involved in managing activities which can affect the marine environment will have some kind of role to play.

3.25 One of the priorities in implementing the programmes of measures is to ensure that there is clarity about what is required and how that should be applied to decision making on the ground. In order to achieve this, the Government and Devolved Administrations intend to use the new marine planning process created by the UK Marine and Coastal Access Bill, the Scottish Marine Bill and the proposed Northern Ireland Marine Bill, as a key tool for implementing the programmes of measures for GES. At a high-level, the requirements of GES and the programmes of measures will be set out in the Marine Policy Statement (MPS). This will help to set the achievement of GES in the context of other Government policies for the marine area, such as renewable energy targets. Although the requirements of this Directive will be referred to in the first MPS, due to the timing for publication (expected in 2011) information about the UK's targets for GES and programmes of measures will have to be added at the first review point. Individual marine plans will then be used to set out in more detail how the programmes of measures should be applied to particular areas of water and decision making in those areas. In due course, the UK's approach to GES and the programmes of measures developed to achieve it will where relevant be integrated into the National Policy Statements which will govern the decisions of the Infrastructure Planning Commission.

Timeline for future consultation

3.26 As stated throughout this document, stakeholders will be given the opportunity to engage in all stages of the implementation of this Directive, both on a formal and informal basis. At this stage it is not possible to say exactly what form this engagement will take or when it will be, but a broad timetable, setting out the key opportunities for engagement is set out below.

- Consultation on an initial assessment of the current environmental status of the UK's marine waters is expected by July 2011;

- Consultation on the determination of what GES means for UK waters, as well as targets and indicators is also expected by July 2011;
- Consultation on the establishment of monitoring programmes to measure progress towards GES is expected by July 2013;
- Consultations on the programmes of measures to achieve or maintain GES are expected by July 2014

Annex A

Qualitative Descriptors for determining Good Environmental Status – contained in Annex I of the Directive.

- 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 alteration 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 underwater noise, is at levels that do not adversely affect the marine environment.