

## COMBINED EVALUATION ROADMAP/INCEPTION IMPACT ASSESSMENT

This combined evaluation roadmap/Inception Impact Assessment aims to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are, in particular, invited to provide views on the Commission's understanding of the current situation, problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	Protecting the environment in the EU's seas and oceans (review of the Marine Strategy Framework Directive)
<b>LEAD DG – RESPONSIBLE UNIT – AP NUMBER</b>	DG Environment – Unit C2 "Marine Environment and Water Industry"
<b>LIKELY TYPE OF INITIATIVE</b>	To be determined
<b>INDICATIVE PLANNING</b>	Q1 2023
<b>ADDITIONAL INFORMATION</b>	<a href="https://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/marine-strategy-framework-directive/index_en.htm">https://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/marine-strategy-framework-directive/index_en.htm</a>

**This combined roadmap/Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by this document, including its timing, are subject to change.**

### A. Context, Evaluation, Problem definition and Subsidiarity Check

#### **Context**

The marine environment is subject to multiple pressures and impacts from human activities at sea and on land. Pollution, seabed damage, overexploitation, biodiversity loss, ocean warming and acidification are the results. In 2008, the EU adopted the Marine Strategy Framework Directive ([MSFD](#)) to maintain marine ecosystems in a healthy, productive and resilient condition while securing a more sustainable use of marine resources for the benefit of current and future generations. The MSFD requires Member States to develop national marine strategies in order to achieve, or maintain where it exists, 'good environmental status'. Such status should have been achieved by 2020. The marine strategies comprise regular assessments of the marine environment, setting objectives and targets, establishing monitoring programmes and putting in place measures to improve the state of marine waters. All these actions must be done in close coordination with neighbouring countries at regional sea level.

Article 23 of the MSFD sets an obligation to review the Directive. The review will build on the [implementation report](#) adopted in June 2020 that highlighted a number of elements that need to be addressed. The MSFD evaluation will look in more depth at how the MSFD has performed so far and will assess the relevance of this instrument in the context of the [European Green Deal](#), especially in relation to the new [Biodiversity Strategy](#) and the forthcoming [Zero Pollution Action Plan](#) and [Climate Adaptation Strategy](#). Building on the evaluation, an impact assessment is planned to elaborate different policy or legislative options and their potential impacts.

In terms of scope, this review will scrutinise the Marine Strategy Framework Directive, amended by [Commission Directive \(EU\) 2017/845](#) as regards the indicative lists of elements to be taken into account for the preparation of marine strategies, and further guided by [Commission Decision \(EU\) 2017/848](#) laying down criteria and methodological standards on good environmental status.

The evaluation and impact assessment will build upon other recent evaluations ([Fitness Check on Water Law](#), [Ambient Air Quality Directives](#), [Urban Waste Water Treatment Directive](#), [Industrial Emissions Directive](#), [Directive on Safety of Offshore Oil and Gas Operations](#) and relevant [chemical legislation](#)). The assessment will take into account the forthcoming reports on the functioning of the Common Fisheries Policy, the Technical Measures Regulation, the Maritime Spatial Planning Directive, the Sustainable Blue Economy, impact assessment for the Ocean Observation initiative, guidelines for sustainable aquaculture and the EEA's and EMSA's<sup>1</sup> European Maritime Transport Environmental Report; the latest EU initiatives such as the [Offshore Renewable Energy Strategy](#), [the Mission Starfish 2030](#) or the

<sup>1</sup> European Environmental Agency (EEA) and European Maritime Safety Agency (EMSA).

[Partnership for Zero Emission Waterborne Transport](#); as well as the [Special Report 26/2020](#) “Marine environment: EU protection is wide but not deep” by the European Court of Auditors.

## **Evaluation**

The MSFD evaluation will strengthen the problem assessment outlined in the implementation report (see below) and will quantify, to the extent possible, the costs and benefits of the Directive. The following criteria and evaluation questions will guide the work in compliance with the Better Regulation Guidelines:

### **Effectiveness**

- To what extent has the MSFD met its objectives?
- What are the key factors that have positively or negatively influenced the achievements observed? Are those factors shared at the (marine) regional and EU scale?

### **Efficiency**

- To what extent has the MSFD been cost-effective? What factors could have improved cost-effectiveness?
- Have the EU and its Member States mobilised sufficient resources to deliver on the MSFD objectives? Taking into account the resources used, are the results/achievements satisfactory?
- How timely and efficient is the process for monitoring, assessment and reporting? Is there room for simplification and burden reduction?

### **Relevance**

- Are the objectives of the Directive still relevant?
- To what extent are the requirements of the Directive, if implemented, appropriate to meeting the objectives?
- Is the Directive flexible enough to integrate the lessons learnt by improving the implementation process, and to modernise data collection in order to exploit current technological breakthroughs and respond to emerging issues?

### **Coherence**

- To what extent is the MSFD coherent with other EU environmental policies, especially water, pollution and waste control, biodiversity and nature protection?
- To what extent is the Directive coherent and mainstreamed into other EU legal instruments addressing specific activities/pressures, like fisheries, aquaculture, agriculture, maritime spatial planning, energy, transport, climate change, offshore safety, single use plastics or on ship-source pollution? How is the MSFD helping to manage the source of pressures from human activities under other policies?
- To what extent is the MSFD aligned with the EU’s international commitments, in particular with the goals and targets set in the 2030 Agenda for Sustainable Development, the Convention on Biological Diversity, the International Maritime Organisation (IMO), the UNFCCC Paris Climate Agreement, the United Nations Convention on the Law of the Sea, and agreements under Regional Sea Conventions and Regional Fisheries Management Organisations? Does it support fulfilment of these commitments?

### **EU-added value**

- What is the added value<sup>2</sup> resulting from the MSFD compared to what is likely to have been achieved by the Member States acting at national and/or regional levels in its absence? To what extent do the issues addressed by the Directive continue to require action at EU level?

## **Problem the initiative aims to tackle**

The problem definition will largely build on the results of the evaluation. However, without pre-empting the evaluation results, the MSFD implementation report identifies the following main challenges and possible areas for improvement:

- According to the Directive, Member States were supposed to reach Good Environmental Status (GES) for their waters by 2020. In practice, it is very complex to verify whether this key requirement of the Directive is met or not. Many of the Member States’ definitions of ‘good environmental status’ are not specific enough to be measurable and are not regionally coherent.

<sup>2</sup> Including an analysis of choice of legal basis, subsidiarity and proportionality.

The process of defining GES is quite complex despite efforts deployed until now to simplify and harmonise it. This hampers assessment of progress achieved towards GES as well as the enforcement of the directive.

- Member States' programmes of measures are not always sufficiently focused on tackling existing pressures on the sea, despite the significant number of measures reported. The effectiveness of measures in preventing or mitigating the impacts of human activities on the marine environment has not been fully quantified. More regional coordination to tackle transboundary issues might then be needed.
- The MSFD timelines and reporting processes appear to be time-consuming and heavy. Member States are systematically late in their reporting. This prevents the Commission from providing timely analysis and recommendations. The reported information is not always comparable, thus making the communication of EU-wide results to the general public challenging. There are still important information gaps, such as the extent to which GES has been achieved for different topics (descriptors) and areas.
- Even if at EU level the ['Aichi' target 11](#) has been partly achieved (in what referred to designate at least 10% of marine protected areas by 2020), the actual level of protection varies considerably from one protected area to another – most of them being not sufficiently protected. The MSFD should also be in line with the new ambition of the Biodiversity Strategy in regards to marine protection and restoration targets.
- So far the MSFD has not always been a key driver for better regulating activities and pressures on the seas: sustainability requirements (now strengthened by the European Green Deal, the Biodiversity Strategy, the forthcoming Zero Pollution Action Plan and the post-COVID 19 Recovery Plan for Europe, among others) are still not fully integrated into key economic activities affecting marine ecosystems (e.g. fisheries, aquaculture, agriculture, shipping, offshore oil and gas extraction, renewable energy production). The MSFD has been, however, a key driver for EU policy to address marine litter, notably through the Single Use Plastics Directive.
- While the MSFD has driven work towards better integration on its various descriptors within and across the four marine regions defined in its Article 4, the level of international cooperation and coordinated action could be raised.
- The financial and human resources devoted to implementing the Directive do not seem to match the actual needs.
- The MSFD could facilitate further data gathering, for example on pollution affecting health and the environment (contributing to the Zero Pollution Ambition), and on the impacts of climate change and the potential to mitigate and adapt to it. Marine protection could further exploit innovation and digitalisation for example drawing on state-of-the-art European programmes such as Copernicus.

#### **Basis for EU intervention (legal basis and subsidiarity check)**

The legal basis for the MSFD is Article 192(1) of the Treaty on the Functioning of the European Union. The review of the MSFD is a legal obligation set in its Article 23. The review will comprise an evaluation and an impact assessment that may lead to a revision of the Directive.

In terms of subsidiarity, the EU intervention ensures a harmonised approach across Member States. If the EU did not intervene, neighbouring Member States within the same marine region may come up with different approaches and timelines for tackling relevant human pressures. This would result in an ineffective protection of marine ecosystems as a whole. Having regard to the cross-border nature of marine biodiversity, as well as the key pressures on the marine environment (such as pollution, the introduction of non-indigenous species or climate change), it still seems crucial that protection of the marine environment is based on close coordination both at regional and at EU levels. This needs to include cooperation with non-EU countries bordering the marine waters of EU Member States in each marine region (e.g. sharing populations of migratory species or from which invasive alien species originate).

In terms of EU added value, the evaluation will consider the effectiveness of regionally coordinated strategies as required by the Directive. It will also consider the contribution of the Directive to delivering key international commitments.

## **B. Objectives and Policy options**

This initiative aims to get a more effective and efficient protection of the marine environment while

enabling a sustainable use of EU seas and oceans in line with the EU environmental agenda under the European Green Deal.

The policy options will address the problems identified above, further specified and complemented by the results of the evaluation and refined during the Impact Assessment, to address the key issues and objectives. Without prejudice to the outcome of the evaluation, the explored policy options could be a combination of the following:

- Baseline scenario: continuation of the current policy.
- Repeal the MSFD and focus on reaching environmental objectives through the Regional Sea Conventions alone and existing EU sectoral legislation.
- Strengthen implementation and enforcement of the Directive without changing its provisions. The Commission would develop further guidance documents, explore further legal actions and consider adopting delegated/implementing acts<sup>3</sup> to address some of the problems identified, including reduction of administrative burden. This option would also explore improving access to funding.
- Targeted changes to the Directive to clarify certain elements and fine-tune certain provisions. This would allow for more specific objectives, more harmonised action within marine regions, and further simplification (including strengthening the digital dimension). Some of the timelines and deadlines might be revised.
- Overhaul the Directive, with renewed deadlines and timelines. The notion of 'good environmental status' would be reviewed and adapted/completed or replaced by specific policy driven indicators to make it more enforceable.

### **C. Preliminary Assessment of Expected Impacts**

#### **Likely economic impacts**

- The development of harmonised and quantitative objectives and assessments (of environmental status, pressures and uses), as well as the improved alignment of EU legislation, can reduce the uncertainty for maritime sectors like fisheries, energy and transport on the environmental limits within which they should operate. Maritime spatial planning can also benefit from a more harmonised implementation of the ecosystem-based approach in EU waters.
- The modernisation of monitoring (remote and in-situ observations, as well as modelling) and reporting (transmission of data, including digitalisation) can increase the opportunities for new technologies (usually developed by SMEs) and reduce the cost of these activities.
- The enhanced international cooperation for the implementation of marine strategies (e.g. monitoring, measures) can focus Member States' resources on issues with most priority and save resources in the overall joint implementation. National and sub-national authorities, as well as non-EU countries surrounding the four European marine regions, can also benefit from enhanced planning and management systems.
- The improved environmental status and water quality can enhance all ecosystem services (e.g. wider benefits to ecosystem resilience to climate change, natural coastal defences, healthy fish stocks and marine habitats) and can also promote sea-based activities (e.g. the reduction of beach litter can promote fishing or touristic activities).

#### **Likely social impacts**

- The modernisation of monitoring and reporting (including digitalisation) can generate new and skilled employment opportunities in areas such as technological development, innovation and research.
- The improved environmental status and water quality (e.g. reduction of beach litter) can enhance the well-being of local communities through recreation and aesthetic experiences, and the general provision of ecosystem services. It can contribute to improve human physical and mental health, the prevention of disease outbreaks and the mitigation of negative social effects from climate change and natural disasters.
- Improvements in the harmonisation of marine data and, thus, communication of key messages about the state of our oceans can help increase transparency, public awareness and ocean literacy.

<sup>3</sup> Limited to supplement or amend certain non-essential elements of the MSFD or to uniform conditions for implementation.

- The conservation and restoration of coastal and marine environments can contribute to the preservation of EU's cultural heritage.

**Likely environmental impacts**

- This initiative, through the improvement of the MSFD, will ensure a more efficient and sustainable use of resources (renewable and non-renewable). The improved regional cooperation and cross-sectoral management will lead to more effective and efficient action to tackle key pressures. Also, a more effective MSFD will guide better the Member States in taking measures that can measurably reduce pressures to and impacts on the marine environment.
- Enhanced protection for marine biodiversity and human health (e.g. harmful algal blooms, contaminants in seafood, reductions in bycatch of vulnerable species, reduced impacts on seabed habitats), due to a more effective environmental protection. Also, more effective pollution prevention (from contaminants, excess nutrients, litter and noise).
- Improved contribution to mitigating climate change (e.g. boosting carbon sequestration and nutrients removal in natural habitats or by developing environmental services, by controlling emissions) and adaptation (e.g. increased coastal resilience, preparedness for impacts such as changes in species distribution).
- Better understanding of the effectiveness of measures to protect biodiversity and of marine ecosystem impacts from human activity, enabling also a more efficient and targeted review of such measures and responses by developing biodiversity restoration projects.
- Coherent and coordinated environmental protection across and within marine regions, with overspill to benefit riparian states.

**Likely impacts on fundamental rights**

The improvement of the MSFD will contribute to a more effective protection of the marine environment, which has a direct positive impact on the realisation of the right to environmental protection enshrined in Article 37 of the EU Charter of Fundamental Rights. Ensuring a high level of protection and improvement of the quality of the environment is also one of the objectives of the Treaty on European Union (Article 3(3)).

Safeguarding a healthy marine environment will contribute to the rights of future generations to continue to benefit from the sea both socially and economically. The access to a healthier marine environment and water quality will also have indirect impacts on freedom and equal opportunities, especially for the most vulnerable groups.

**Likely impacts on simplification and/or administrative burden**

- Expected reduced administrative burden by a possible simplified, more harmonised and digitalised reporting system. The impact assessment will quantify the costs and benefits of the options in terms of the administrative burden as far as possible.
- Clearer regulatory framework due to a possible strengthened legislative instrument, better streamlined and aligned with other policies.
- Improved regional coordination will provide an opportunity to set up common strategies across Member States (e.g. for monitoring programmes or programmes of measures) saving time and resources on implementation.

**D. Evidence base, Data collection and Better Regulation Instruments**

**Impact assessment**

An impact assessment will inform the Commission's decision to take legislative and/or non-legislative action on MSFD.

**Evidence base and data collection**

This review will build on existing evidence, ongoing assessments, reviews of Member States' reports and compliance and an external contract to collect further information, especially to strengthen the socio-economic analyses.

The key achievements and challenges of the Directive, as well as the overall state of the EU marine environment, have been recently assessed in the [MSFD implementation report](#). In the past years, the Commission assessed each stage of the national strategies in [regular reports and accompanying annexes](#), identifying gaps in implementation and providing guidance to each Member State. The most

recently reported information by Member States is currently being assessed by the Commission and will directly feed into the evaluation.

Information reported under other EU instruments (such as the Water Framework Directive, Birds and Habitats Directives, Single Use Plastics, Common Fisheries Policy, Maritime Spatial Planning, etc.) is normally taken into account in MSFD Commission assessments. This will also be the case for this review. Provided there is evidence available at European level, the use of other sources of information (such as research projects, Copernicus information products, etc) will also be explored.

The review will benefit from the support of the Joint Research Centre (via their [in-depth assessments](#) of MSFD submissions and a marine modelling toolbox that can help assess different policy options), the European Environment Agency (which hosts the MSFD reported information from the Member States, provides public access and visualisation through the WISE-Marine information system and regularly publishes the 'Marine Messages'), the European Maritime Safety Agency (which hosts a set of maritime environmental monitoring services and is about to publish a report, jointly with the EEA, on environmental impacts of maritime transport), and close coordination with other Commission services.

The [Special Report 26/2020](#) "Marine environment: EU protection is wide but not deep" by the European Court of Auditors, as well as information generated by the Regional Sea Conventions around Europe, will also provide a good basis for this review.

A bespoke contract to support the evaluation and impact assessment will gather further evidence, in particular about the evaluation questions; the costs and benefits of the MSFD, including the administrative burden; expected impacts of alternative policy options; and other relevant studies on specific topics.

### **Consultation strategy**

A full-fledged consultation strategy will be developed early in the process. The following is currently foreseen as a minimum.

Citizens and stakeholders will be consulted in particular (a) on the main topics and issues to be covered by the evaluation and prioritised for the subsequent impact assessment, (b) to gather knowledge about the implementation of the MSFD and the coordination it requires, (c) to solicit views and opinions on possible future options and actions. These opinions and knowledge will complement the analyses based on other information sources.

The main stakeholders identified are: national and international public authorities (notably the competent authorities in charge of implementing MSFD, and/or other key EU laws relating to seas and oceans), professional associations of maritime activities, non-governmental organisations, intergovernmental organisations (e.g. regional sea conventions, UNEP, IMO), EU expert groups and sub-groups, research and academia specialised on the marine environment, interested citizens and civil society representatives.

A range of consultation activities are being considered and are expected to include:

- A 12-week online public consultation in all the official EU languages to be launched in 2021 Q2. It will be announced and available on the Commission's [consultation page](#).
- A stakeholder conference tentatively planned for autumn 2021, to present and discuss the main issues and approaches to address them.
- Expert workshops on individual topics of interest/relevance (from spring 2021 to summer 2022) organised in parallel to expert group meetings of the MSFD common implementation strategy.
- Targeted consultations carried out with the support of the consultants, in particular addressing Member State authorities and Europe-wide stakeholder organisations.

### **Will an Implementation plan be established?**

The current MSFD has a Common Implementation Strategy in place with sufficient implementation structures, which will be given opportunities to contribute to the process as appropriate. The usefulness of an implementation plan will be further considered after completion of the impact assessment.