



**Defra:**

**Consultation on the Marine Strategy Framework Directive  
– Putting in place the legal framework for implementation**

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22 January 2010

Dear Emma

**Consultation on the Marine Strategy Framework Directive: Putting in place the legal framework for implementation**

Thank you for consulting JNCC regarding the draft transposing regulations for the Marine Strategy Framework Directive (MSFD). JNCC is the statutory adviser to Government on UK and international nature conservation. We believe MSFD provides an important opportunity for the UK government to progress further our shared vision of “clean, healthy, safe, productive and biologically diverse oceans and seas” and very much welcome the prospect of the Marine Strategy Regulations being adopted in due course.

If you have any queries regarding this response please contact my colleague, Finlay Bennet, JNCC’s Senior Offshore Industries Advisor (tel: 01224 655716; email: [finlay.bennet@jncc.gov.uk](mailto:finlay.bennet@jncc.gov.uk)) in the first instance.

Yours sincerely

Marcus Yeo

## **JNCC comments on Marine Strategy Framework Directive consultation**

### ***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***

Whilst JNCC recognise the administrative advantages associated with producing a single UK Marine Strategy, it is also our view that the environmental and management issues that are the subject of MSFD will benefit from reflecting regional differences within UK waters as well as at the subregion level (i.e. the Greater North Sea and Celtic Sea sub-regions). If a single strategy is the favoured option going forward we believe it should be structured in a way that is able to reflect these geographical differences. The distinctive environmental, ecological and human use characteristics of our seas should be assessed and managed at scales appropriate to the different parts of UK waters. Our view is that the content of a single marine strategy could reflect this.

### ***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***

It is JNCC's view that the challenges associated with dividing responsibilities between competent authorities will benefit from proactive management. Environmental issues relating to MSFD, e.g. introduced underwater noise levels in marine environment, will be the responsibility of a number of competent authorities (DECC, MoD, IPC and Scottish Government). This introduces the need to have a coordinated and consistent approach across competent authorities. Managing this might best be achieved by having a lead competent authority for a particular topic. The lead competent authority may vary depending on the topic but coordination and consistency could be provided by the Marine Management Organisation (MMO) and their Scottish and Welsh equivalents for those topics led by others. The regulations should retain the necessary flexibility to ensure working arrangements can be developed to address emerging needs.

JNCC have not comprehensively considered whether there are any obligations arising from the Directive which have been overlooked and need to be assigned. We do however raise the following queries:

- We note that Regulation 4 places general duties upon competent authorities to secure compliance with the Directive and Regulation 10 is a duty to have regard to the strategy once it has been compiled. With regard to the spirit of the Directive and the duty under Regulation 4 it would appear perverse if competent authorities having considered the strategy ultimately decided to act against it. Placing a stronger duty within Regulation 10 could address this potential outcome.
- For Regulation 5(1) it is worth noting that the Directive under Article 1(2) states that strategies are to be developed and implemented. The current wording does not appear to adopt the requirement to implement. In addition we note that Regulation 5 does not make direct reference to the phraseology used in Articles 1(3) and 1(4). Consideration should be given to whether or not the current wording of Regulation 5 sufficiently reflects the intentions laid out in the Directive.
- Regulation 7 sets out provision for co-ordination between competent authorities within the UK. This is welcome. The Directive also concerns itself with co-operation between Member States and trans-boundary co-operation. The need to make provision for such measures as part of the UK Regulations should be considered.

- Regulation 11 considers assessment of marine waters. It is not very clear to JNCC why Regulation 11(2) has been added which makes additional reference to economic and social analysis given that this would form part of the provisions of Regulation 11(1) which seeks to ensure the assessment is in accordance with Article 8 of the Directive. In our view this may result in confusion, particularly with regard to appropriate weighting of the Article 8 (a, b and c) criteria. Removing Regulation 11(2) may make for a more balanced assessment.
- For Regulation 16(5) we note that the phraseology of Article 14(4) “*to take specific steps*” is replaced with “*taking of any steps*”. Consideration should be given as to whether or not the Regulation 16(5) wording sufficiently reflects the intention of the Directive to guide Member States on their responsibilities and the exceptions that are not likely to require action. For example, Regulation 16 does not make any reference to the *ad hoc* measures referred to in Article 14.
- Regulation 19(6) specifically prevents a direction from being issued by Ministers to the Infrastructure Planning Commission, to preserve the independence of its decisions. In our view the justification for this regulation appears weak; it appears to increase the risk that an important decision maker with respect to the marine environment could act in a manner that is contrary to the aims of the Regulations. *Prima facie* all competent authorities should be given equal status under the Regulations.

***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***

We refer you to our general comments provided above which apply equally to devolution.

***We would welcome any views consultees may wish to offer on the draft regulations as a whole***

There are a number of additional issues that have not been considered in detail as part of the consultation document but are of relevance to the future implementation of the Marine Strategy Regulations. We believe that consideration of the following issues will help provide clarity regarding likely application of the regulations in practice. This wider context may help address some of the uncertainties arising from the current consultation.

#### Assessment and monitoring by public bodies

It is our view that in order to be effective the regulations implementing MSFD will need to build upon the work already achieved by the UK Marine Monitoring and Assessment Strategy (UKMMAS) to maintain and deliver coordinated assessment and monitoring of our seas. Clear guidance is needed on roles and responsibilities of agencies within the UKMMAS fora and the effective mechanisms they can use to deliver appropriate and timely products for MSFD. Including resourcing issues within the scope of this consideration would seem to be appropriate.

#### The regulations and the Marine Policy Statement

The consultation does not consider in any detail the links between the Marine Policy Statement and the Marine Strategy Regulations. A further opportunity to articulate the links will arise during the public consultation for the Marine Policy Statement, and we believe it would be helpful to provide some indication of how the regulations will link with the Marine Policy Statement.

#### Good Environmental Status

It is apparent to JNCC that there are potentially different interpretations of the 2020 date within the Directive and how it relates to Good Environmental Status (GES). These interpretations revolve around the extent to which the date should represent a ‘target’ that needs to be achieved or a ‘driver’ against which progress needs to be made. This is clearly an important issue for clarifying the extent

to which relevant measures need to be implemented. In light of the different interpretations in our view it would be appropriate to seek clarification through further dialogue involving the European Commission.

With respect to the development of measures and provision of recommendations to the Secretary of State on achieving GES, it would be helpful to clarify the respective roles of advisory bodies, such as the Statutory Nature Conservation Bodies (SNCBs), and implementation bodies, such as the Marine Management Organisation. For example, the SNCBs have existing responsibilities with respect to reporting and monitoring on the state of the marine environment including marine protected areas.

#### Socio-economic issues

The need for implementation of the Regulations to be 'cost effective' is recognised in the consultation. In this respect, attention is likely to focus on those instances when measures may not be implemented for socio-economic reasons. Clarification on this issue is likely to be helpful. It is our understanding that measures may not be implemented where i) there is no significant risk to the marine environment or ii) where the costs would be disproportionate taking account of the risks to the marine environment provided that any decision not to take action is properly justified and provided that there is no further deterioration.

#### Wider measures

Implementing a comprehensive and robust legal framework for UK waters is likely to require measures that go beyond the adoption and implementation of the Regulations. It will also require integration between the Common Fisheries Policy (CFP) and MSFD implementation. The current reform of the CFP provides a clear opportunity in this regard. JNCC can provide Defra with further advice on this issue should you have specific queries that fall within our remit.