

MSFD Second Cycle

PT position paper

The first cycle of Marine Strategy Framework Directive (MSFD) ends in 2015 with Member States (MS) establishing their programmes of measures. This cycle is marked by the implementation of the Directive at national level and not at the level of the marine region or sub region as determined by MSFD. PT has expressed several times its concern with this fact and emphasizes the need to create instruments for MSFD implementation at (sub) region level.

The review of the Common Understanding Document, GES Decision and Annex III is in progress. With this position paper PT intends to express clearly its vision on MSFD implementation and relocate MSFD at the level of the marine (sub) region.

The goal of Marine Strategy Framework Directive (MSFD) is to achieve Good Environmental State (GES) by 2020 at the latest.

To achieve this goal a marine strategy should be established, meaning a “*strategy to be developed and implemented in respect of each marine region or subregion concerned*”, Article 3(3), and “*GES shall be determined at the level of the marine region or subregion*”, Article 3(5).

Member States (MS) shall, when implementing their obligations under MSFD, “*take due account of the fact that marine waters covered by their sovereignty or jurisdiction form an integral part of the following marine regions (...)*”, Article 4.

So, MSFD is very clear about which level GES should be determined, and puts upon MS the responsibility to work/cooperate in order to maintain or achieve GES at **the marine region or (sub) regional level**.

On the other hand, “*each MS shall, in respect of each marine region or subregion concerned, develop a marine strategy for its marine waters (...)*”, Article 5(1). This means that, although being specific to its own national waters, each marine strategy must reflect the overall perspective of the marine (sub)region concerned. This is the challenge of the MSFD.

Marine strategies should be developed in accordance with a plan of action, Article 5(2), and in successive steps, *i.e.* initial assessment (Article 8), determination of GES (Article 9), establishment of environmental targets (Article 10), monitoring programmes (Article 11) and programme of measures (Article 13).

However, Article 14(4) refers that “*MS shall develop and implement all elements of marine strategies referred to in Art. 5(2), but shall not be required, except in respect of*

initial assessment describe in Article 8, to take specific steps where there is no significant risk to the marine environment, or where the costs would be disproportionate taking into account of the risks to the marine environment, and provided that there is no further deterioration”.

This means that before taking further steps, *i.e.* the steps beyond Article 8, a **risk assessment** should take place in order to identify the risks to the marine environment in each marine (sub)region. This methodology is identified in WG ESA Guidance Document¹ and is explained in the figure below.

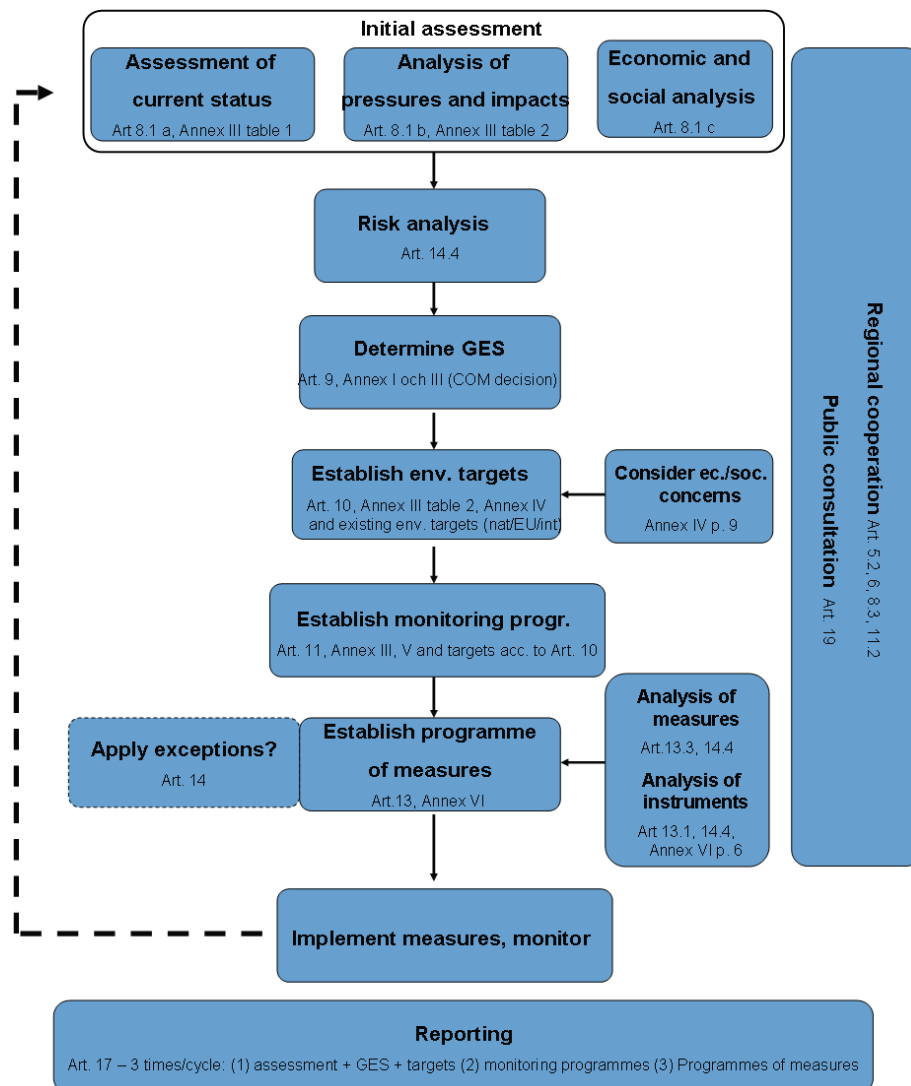


Figure 1: MSFD implementation

¹ Economic and Social Analysis for the initial assessment for the MSFD: a guidance document, WG ESA, december 2010

In order to accomplish this task **Risk Criteria per descriptor** in respect to each marine (sub)region are needed and must be established.

Risk criteria have been widely discussed in different frameworks and they are also applicable to the marine environment. As an example we may look at the work developed in the HELCOM ALIENS projects focused on non-indigenous species (NIS). The ALIENS 3 was the most recent project and aimed to support the ratification of Ballast Water Management Convention (BWMC) by developing NIS monitoring in ports and the risk assessment methods.

The joint OSPAR/HELCOM Risk Assessment algorithm was developed with three possible risk assessment outcomes (High Risk, Medium Risk and Low Risk)².

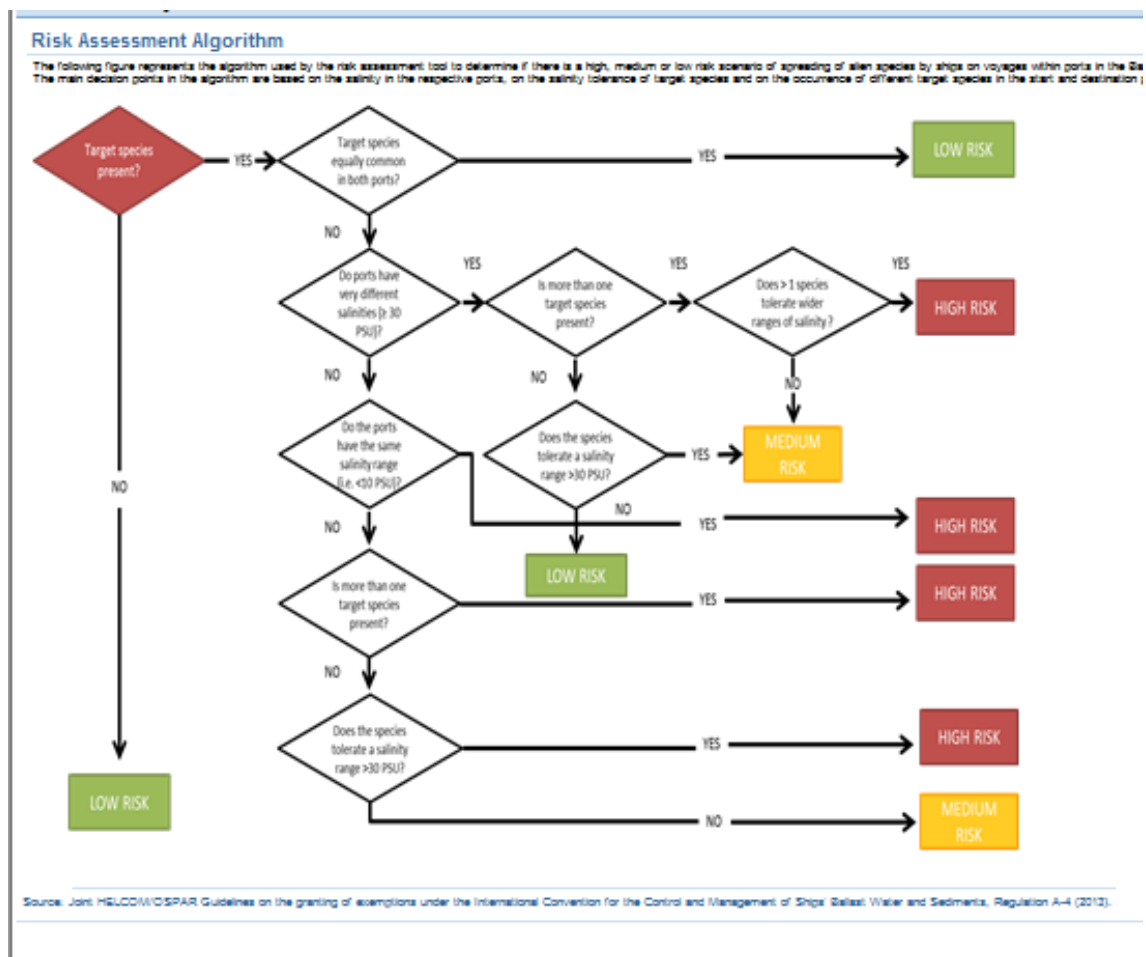


Figure 2: Risk assessment algorithm (OSPAR/HELCOM, BWMC)

² Joint HELCOM/OSPAR Guidelines on the granting of exemptions under the International Convention for the Control and Management of Ships' Ballast Water and Sediments, Regulation A-4.

Risk assessment and the MSFD

Article 14(4) implies that whenever there is significant risk to the marine environment and a deterioration of the marine environment is envisaged, MS are required to take steps beyond Article 8, *i.e.* for each descriptor at risk MS must assess GES (Article 9), monitor that descriptor (Article 11), and establish environmental targets (Article 10).

Risk assessment will be the driver that allows MS to act at the (sub)regional level, through establishing a common and coordinated strategy and also to apply in national waters the necessary actions (Article 11 and Article 13) to maintain or achieve GES for each descriptor. Therefore, risk criteria *per* descriptor appear to be a fundamental tool for MS to cooperate and act on the problems, not only in their marine waters, but for the whole (sub)region.

The information provided by MS initial assessment (article 8) will be the key to assess risk to each descriptor at a (sub)regional level, allowing the identification of descriptors and areas at risk of not achieving or maintaining GES, and enabling the prioritization of efforts in order to developing monitoring actions and mitigation measures.

As an example, for descriptor 11 (underwater noise): the risk assessment would take into account the impacts and pressures identified in the initial assessment, *e.g.* shipping (Source), the physical characteristics of the marine environment (Path) and the presence of receptor species (Target). For each one of these elements it is necessary to develop specific risk criteria in order to determine the level of significant risk. These risk criteria could be of quantitative or qualitative nature, and would incorporate the vulnerability and pressures acting on the (sub)region marine environment. Specific characteristics associated with the descriptor in that (sub)region would also be taken in consideration as well as “GES indicators”.

The absence of any one of these elements (Source, Path, and Target) indicates that there is no risk for the marine environment. For descriptors which are not at risk in respect to each marine (sub)region, and provided that there is no further deterioration during the six year cycle, it will not be necessary to take initiatives beyond Article 8.

Risk assessment may be used as a benchmark in successive cycles, allowing us to identify which descriptors achieve/deviate from GES in respect to each marine (sub) region.

ODEMM project has developed a risk assessment approach using existing information on the status of relevant ecological characteristics and pressures. The purpose is to identify the extent of departure of current regional sea ecosystems from GES, and

therefore the scale of the current risk and effort required to achieve GES. The assessment compares current status against three sets of risk criteria for high, medium and low risk of not achieving GES in 2020. The risk assessment methodology and results of an application in Europe's regional seas is summarised in Deliverable 1, Chapter 3 (www.liv.ac.uk/odemmm/outputs/projectdeliverables)³. The work developed under this project could be a good starting point.

³ ODEMM Linkage Framework Userguide, ODDEMM Guidance Document Series Nº. 1 (version1), july 2011

MSFD Steps

Towards a (sub)regional MSFD implementation 3 major steps should be considered:

Step 1 – Article 8 and risk assessment in respect to each marine (sub)region

Step 2 – Articles 9, 10, and 11

Step 3 - Articles 13, 14, and 15

The proposal approach also aims to strengthen Regional Sea Convention (RSC) by assigning a central role in risk assessment, development of a monitoring strategy and a measures plan. The methodology is presented in a schematic way in the Figure below and describe step by step.

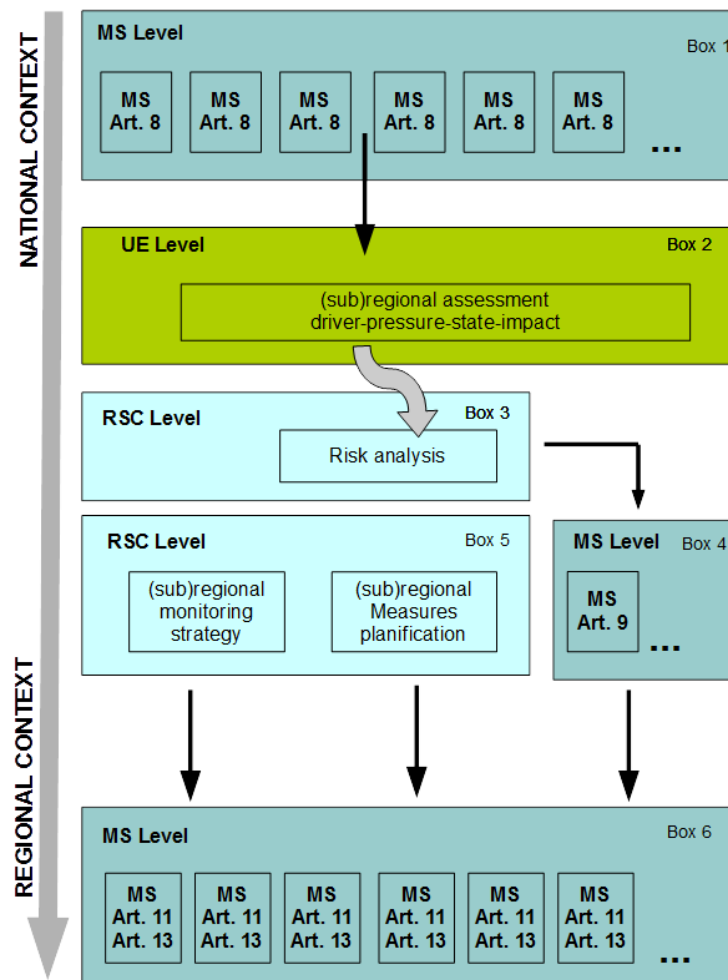


Figure 2: Towards (sub)regional context

Step 1 – Initial assessment and Risk Assessment

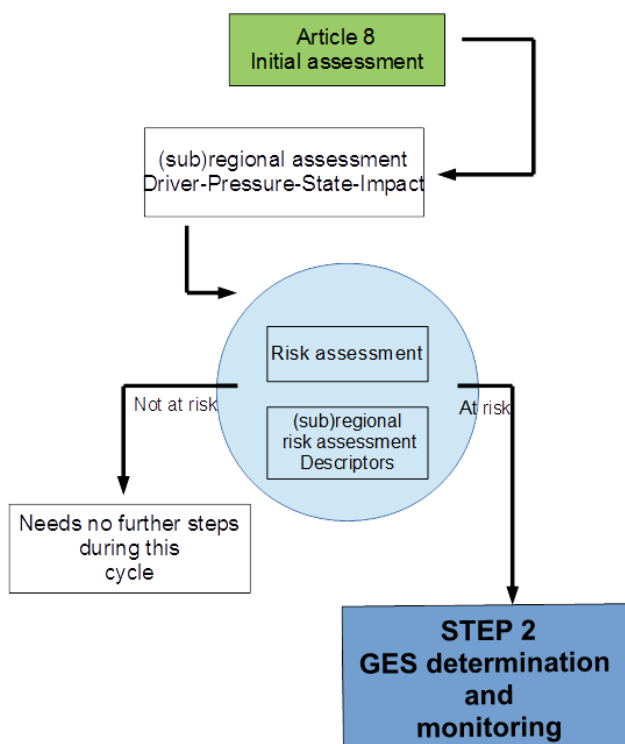
The first step - initial assessment – should be done according to the requirements that are established in Article 8 of the MSFD. Each MS shall make an analysis addressing the status of their marine waters (Article 8.1(a)), an analysis identifying the pressures and the effects they have on the state of the marine environment (Article 8.1(b)), together with an economic and social assessment (Article 8.1(c)). → **Box 1 Figure 2**

Then, a (sub)regional overview of Drivers, Pressures, State and Impacts is required and shall be performed at EU level. To achieve this, national assessments must be collated and the outcome shall be interpreted and integrated to provide a coherent overview of the main problems in (sub)regions. → **Box 2 Figure 2**

The identification of status and any trends in the ecological characteristics, environmental impacts, and also the link of these impacts to pressures and activities in the marine sub(region) will be the input expected for risk assessment. This will allow the identification of those descriptors and areas that are at risk of not achieving or maintaining GES. → **Box 3 Figure 2**

The link between pressures, state and impacts could be used to identify problems and to direct management response where required.

1st STEP (Initial assessment and risk assessment)



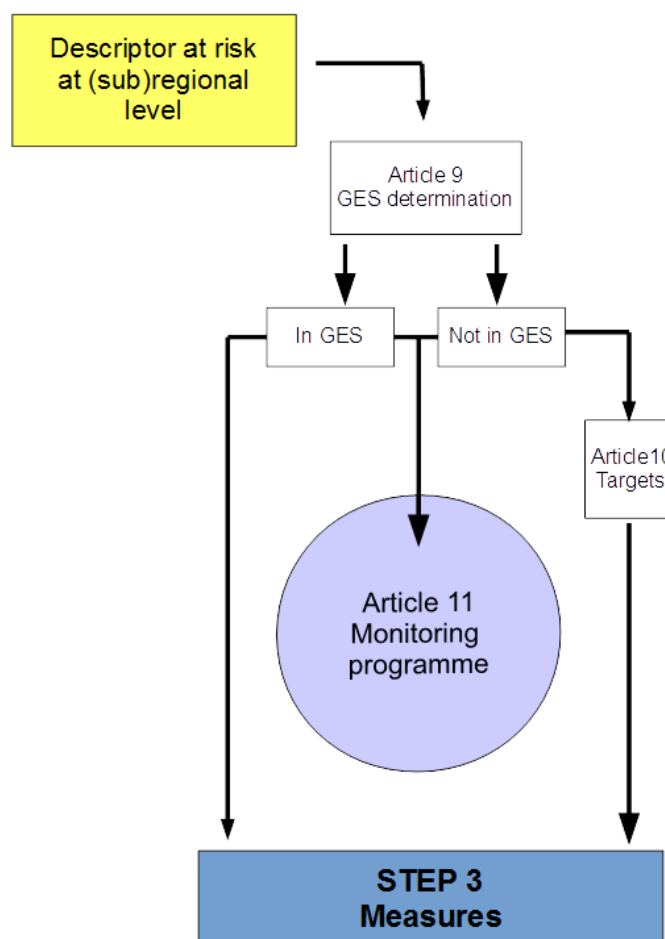
Step 2 – GES, Targets and Monitoring

In each (sub)region and for the areas and descriptors identified in **Step 1** as being at risk of not achieving or maintaining GES, MS should coordinate efforts and determine GES. Doing that and despite the fact that MS are working in their marine waters, GES determination will be performed in respect to each (sub)region. → **Box 4 Figure 2**

After GES determination, a monitoring strategy should be developed for ongoing assessment. → **Box 5 Figure 2**

Finally, MS should establish, for their marine waters, targets (Article 10) and monitoring programmes (Article 11). Targets are established in order to “*guide progress towards achieving GES in the marine environment*” (Article 10(1)). Therefore, their establishment is only required for descriptors that are not in GES. → **Box 6 Figure 2**

2nd STEP (GES determination and monitoring)



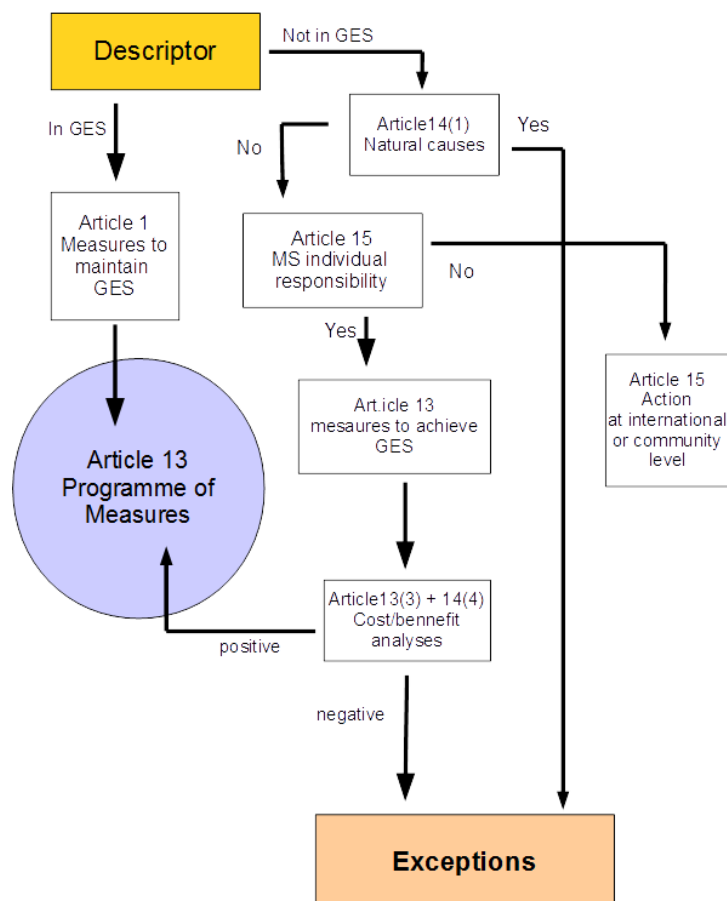
Step 3 – Measures

MS should cooperate to identify the measures that must be taken in order to achieve or maintain GES in each (sub)region. → **Box 5 Figure 2**

This should be done by applying Articles 13, 14 and 15 *i.e.* identifying measures that are needed in national waters, and which shall be implemented at MS level, or at community and international level, while identifying any cases where the costs would be disproportionate. → **Box 6 Figure 2**

Measures should be taken whenever there is a significant risk to the marine environment, either by acting at the source in order to reduce risk or through corrective measures, e.g. habitat restoration or removal of marine litter.

3rd STEP (measures and exceptions)



PT really considers that this methodology complies with MSFD requirements and objectives. It will allow the development of marine strategies in such a way that everyone knows who does what and financial and human resources are used wisely.