

# MSFD Programmes of Measures

An NGO evaluation

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# 1 Introduction and key messages

This paper presents the results of an evaluation of the national Programmes of Measures (PoMs) by European environmental NGOs engaged in the Marine Strategy Framework Directive (MSFD) implementation. The PoMs are the operational part of the MSFD implementation and are therefore key to achieving and maintaining Good Environmental Status (GES) by 2020. The objective of this evaluation was to assess the programmes' overall level of ambition to achieve GES, their key strengths and weaknesses, as well as how funding was foreseen.

This evaluation was conducted using a survey distributed to the NGO community between September 2015 and April 2016, and taking account of the priorities highlighted in the joint [NGO PoMs guidance](#) published in 2014. In total, 16 international and national NGOs responded to the questionnaire, evaluating the PoMs that were put to public consultation by ten Member States (Belgium, Denmark, France, Finland, Germany, Lithuania, Portugal, Spain, Sweden and UK).<sup>1</sup>

## Key message 1: A low level of ambition

The PoMs analysed show a disproportionately high representation of measures derived from existing obligations (such as the Water Framework Directive, the Common Fisheries Policy or the Nature Directives) that have not yet been fully implemented. This indicates an evident lack of MSFD added-value in the proposed measures across the Descriptors. According to many respondents, the assumption that the 'business-as-usual' scenario is sufficient and that no additional measures are considered necessary is based on flawed gap analyses.

## Key message 2: Predominantly 'soft' measures

Beyond existing legal and policy measures, the additional measures proposed in the PoMs are predominantly 'soft' measures, such as risk analysis, studies, pilot projects and voluntary agreements, rather than 'hard' measures related to regulations or economic incentives. Many are also too narrowly defined, either geographically or functionally, to effectively reduce the impacts of a given activity.

## Key message 3: Public consultation processes still to be improved

NGOs noted the same types of limitations in the public participation processes as those reported during the [2012 NGO survey about Article 8-9-10 implementation](#), highlighting the lack of progress on certain aspects, such as the provision of feedback following the consultation or the need to reach out to a wider audience.

## Key message 4: Lack of financial commitments

Many of the NGOs surveyed doubt whether sufficient financing is foreseen to guarantee the effective implementation of the proposed measures. The survey highlighted clear differences in approaches to cost-analysis across Member States. Without clear resources committed to the PoMs, the entire implementation of MSFD will be at risk.

<sup>1</sup> One NGO has covered two Member States, which is why the graphs show 17 respondents and not 16.

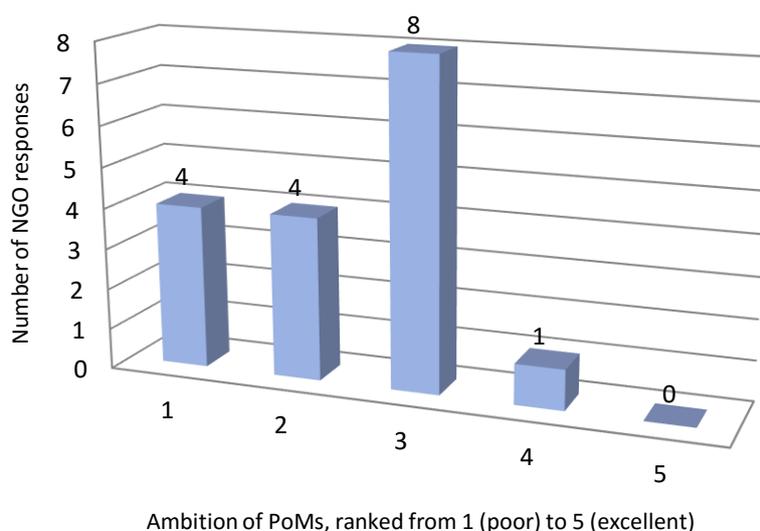
## 2 A low level of ambition

Overall, there appears to be a great discrepancy between the measures proposed and the defined Good Environmental Status, as well as between the measures and the identified pressures on marine waters. In general, respondents find it unlikely that the proposed measures will adequately address pressures, or will contribute significantly to achieving GES. Eleven NGOs out of 16 are of the opinion that the PoMs are unlikely to achieve GES by 2020, even assuming that adequate funding is provided to support their implementation.

In all of the PoMs examined, the majority of proposed measures are **based on existing policies** (such as the Water Framework Directive, the Waste Framework Directive, the Common Fisheries Policy and the Nature Directives) and measures, which are often not yet fully implemented. This is particularly true for Descriptors 1 (biological diversity), 2 (invasive species), 3 (commercial fish stocks), 5 (eutrophication) and 8-9 (contaminants). Most Member States have merely referred to existing policies as part of their PoMs, with varying degrees of adaptations to the objectives of the MSFD.

Ensuring coherence with other EU policies and legislation is a laudable objective and helps to engage sectoral ministries and administrations. However, most respondents shared the view that their governments' intention is to implement the MSFD at a minimum level, simply continuing with existing policies at national level (Fig. 1).

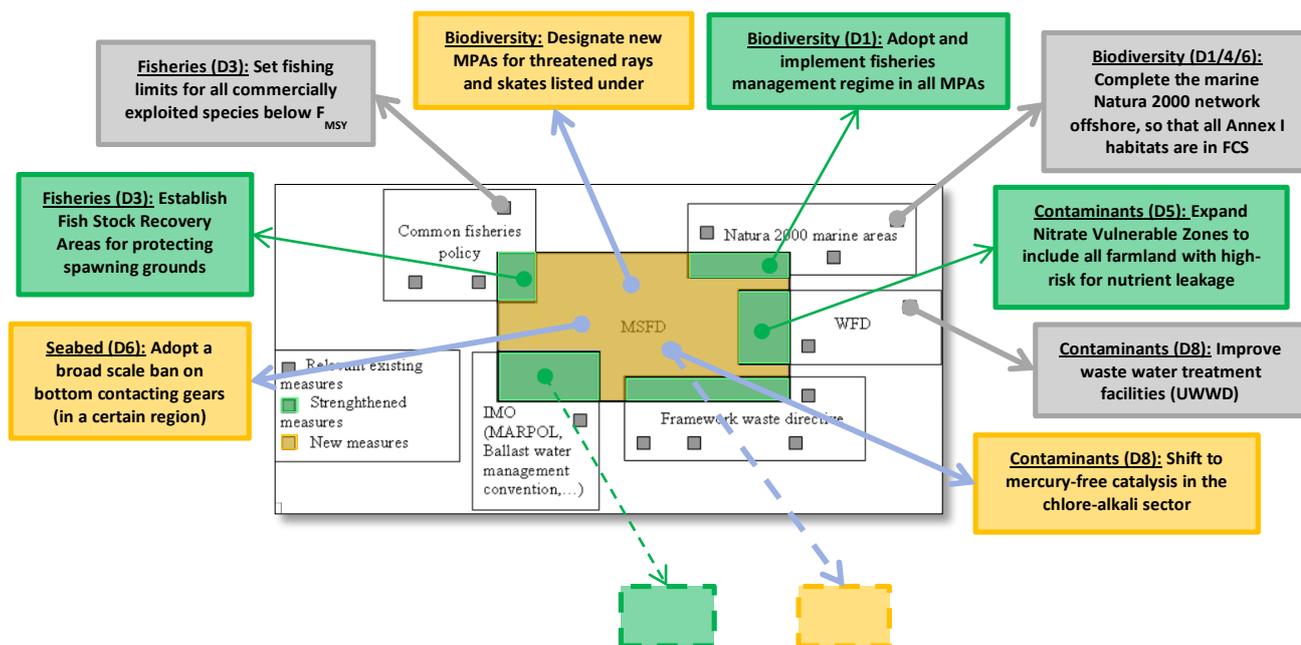
Figure 1. How would you assess the overall ambition of the PoMs ?



According to the MSFD, existing measures should be used as the baseline for a **'gap analysis'** to assess how far what is already in place contributes to achieving environmental targets and GES, and to identify gaps and determine what new measures will be required.

Fig. 2 illustrates the 'additionality' of the MSFD in relation to existing policy frameworks, through a theoretical example derived from an NGO perspective, where examples of 'existing', 'strengthened' and 'new' measures would be combined to achieve the objectives of the MSFD. The MSFD gap-analysis corresponds to the orange-coloured part of the figure.

Figure 2. Illustration of MSFD 'additionality' in relation to relevant existing policies.



In many countries, the gap analysis was either not, or only partially, provided in the PoMs, and was supported by limited evidence, in some cases relying only on expert judgement. This makes difficult to understand the decision to maintain the 'business-as-usual' scenario and the lack of additional measures.

For instance, in the UK, no new measures for reducing marine mammals bycatch are proposed despite known high levels of bycatch in certain fisheries. Similarly, in the Bay of Biscay in France, the gap analysis on D3 concluded that no new measures were necessary as fisheries is currently 'very regulated' by the Common Fisheries Policy.

Based on the gap analysis, Member States should adopt measures that fully serve the objective of the MSFD, rather than simply 're-brand' existing policies as MSFD measures, as is the case in several PoMs.

#### A snapshot of PoMs: Business-as-usual

Member States commonly refer to existing policies and standards as part of their PoMs, with varying degrees of adaptations to the objectives of the MSFD:

- On D1, most Member States proposed the completion of their marine Natura 2000 network as 'new measures', although this is a decade-old existing requirement under the Habitats and Birds Directives.
- On D2, most proposed measures defined to tackle invasive species refer to implementation of existing tools, such as the recently adopted EU Regulation 1143/2014 on Invasive Alien Species; or the ratification of international treaties (e.g., on Ballast Water Convention).
- On D3, although the CFP does not accurately cover all three criteria related to GES, most PoMs referred to the implementation of the CFP as the main measure adequate to reach GES.
- On D5, many proposed measures are similar to those of current River Basin Management Plans (under the Water Framework Directive 2000/60/EC), which are known to fail to address effectively eutrophication. The proposed measures usually do not set higher quantified target for nitrates and pesticides reduction from agricultural sources, but instead rely on existing implementation of River Basin Management Plans.

### 3 Predominantly ‘soft’ measures

The analysis of the **types of measures** proposed shows that, beyond existing legal and policy measures, additional measures are generally ‘soft’ measures, such as risk analysis, studies, pilot projects and voluntary agreements, rather than ‘hard’ measures related to regulatory or economic incentives.

More specifically, on certain issues, some Member States choose to carry out additional studies even though adequate measures to eliminate the pressure or mitigate the impacts of the activity are well known and technically available. Often, this happens because the responsibility to take effective measures lies beyond the Ministry of Environment. For instance, in Finland, measure REHEV 6 aims to study the nutrient storages in the Baltic Sea, while in France, measure MMN 06-03-01 will look at improving knowledge on new fisheries techniques to limit impact on benthic habitats. Yet, the NGO community feels that on these well-studied topics, we know enough to act now, in respect of the precautionary principle.

A number of measures related to the **monitoring** of pressures or environmental state were identified. Respondents questioned whether these should rather be part of the MSFD Monitoring Programmes which were developed in 2014. NGOs are concerned that monitoring activities are considered by Member States as concrete measures needed to achieve GES, whereas monitoring should be used to know whether the measures are delivering their expected outcomes.

#### A snapshot of PoMs: Measures vs. monitoring

For several Descriptors, Member States have proposed ‘measures’ that in fact should be part of their monitoring programmes as shown by the following examples:

- ‘Establishing monitoring indicators for marine litter’ (PT, ME04-D10);
- ‘Monitor the impact of underwater noise generated by human activities’ (FR, 0052);
- ‘MISTIC SEAS Projects: reaching common grounds on monitoring marine biodiversity in Macaronesia’ (ES, BIO48);
- ‘Developing a programme for the monitoring of noise in the marine environment’ (LT, Action T9PR2).

Many Member States have proposed measures that are **too narrowly defined**, either geographically or functionally, to effectively reduce the impacts of a given activity. For instance, Portugal has proposed a measure to control contaminants and micro-contaminants only in one of its marine areas (Macaronesia) whereas the pressure is found across the national waters. Spain has defined measures for biodiversity conservation only for a few selected threatened species and habitats, ignoring all others in need of protection. It is also relevant to note that some of the most impacting marine activities are still ignored in some of the PoMs studied, such as shipping, military activities at sea and, in certain cases, recreational activities.

A few **noteworthy measures** have been identified within some of the proposed PoMs (see box below), in particular in the field of marine litter, for which there is a growing political momentum and strong public interest. In certain cases, such as for marine litter and underwater noise, it seems that new measures have been driven by the lack of a historical regulatory or policy framework, combined with recent efforts made on these topics in the EU and regional context.

#### A snapshot of PoMs: Emerging issues

Examples of interesting measures in the field of marine litter include measures relating to:

- Lost and abandoned fishing nets and gear, including dolly ropes (DE, BE, FR, FI);
- Pre-production plastic pellets (FR);

- Levy on plastic bags (UK).

Other measures worth highlighting relate to:

- Conservation of gravel beds (BE);
- Strengthening regulation of recreational fisheries (FR);
- Setting-up protection for Fish Stock Recovery Areas (FR);
- Addressing the issue of TBT pollution in harbours (SE);
- Noise mitigation measures (DE).

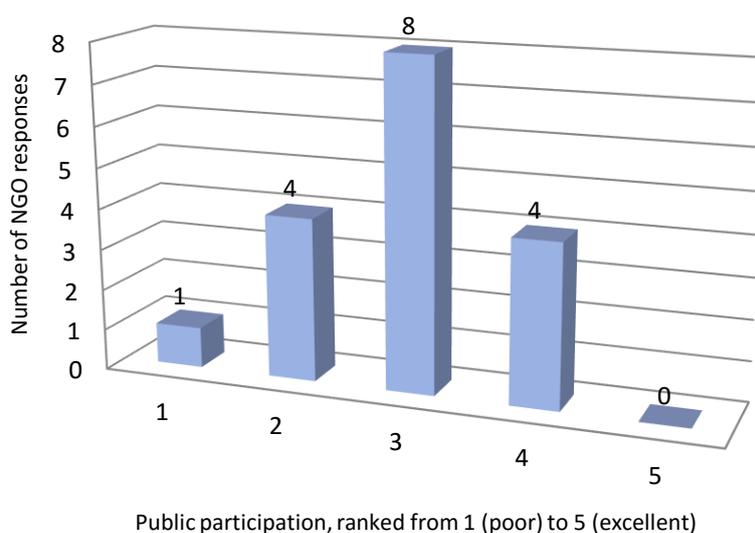
## 4 Public consultation processes still to be improved

The majority of NGOs that participated in the survey rated the public participation processes in their countries as average or lower (Fig. 3). Timeframes for submitting comments and general efforts made to summarise the PoMs for non-experts were satisfactory. However, consultations generally failed to reach out to a wider audience and the general public. It must also be noted that in some Member States, limited prior consultation was organised with key stakeholder groups to gather views on the draft measures. NGOs felt that a genuine dialogue early in the process would have been a real improvement.

Although public consultations on the draft PoMs had just ended in some Member States, all of the NGOs expected feedback that would allow them to understand the governments' final decisions and possible trade-offs. Some worrying discrepancies have been identified between the public consultation documents and the final documents submitted to the European Commission. For instance, the French reports in public consultation provided a detailed break-down of estimated costs for each measure. This seems to have disappeared from the final PoM documents sent to the Commission, calling into question the level of commitment from the government to the final measures proposed in the PoM.

Overall, these results are in line with the outcome of the [2012 NGO survey about Article 8-9-10 implementation](#).

**Figure 3. How do you assess the public participation process in the developing of PoMs?**



## 5 Lack of financial commitments

A major concern of the NGOs about the PoMs analysed is whether sufficient funding is foreseen to guarantee the effective implementation of the proposed measures. The assessment highlighted clear differences in approaches to cost-analysis across Member States. Some Member States, such as Belgium, France and Sweden made a significant effort in detailing and breaking down estimated costs, while others did not even address the issue.

The recommendations for implementation and reporting on the PoMs furthermore required the Member States to include information on the sources of funding for each measure. However, only a minority of Member States (i.e., Finland, Lithuania, Portugal) specified the planned funding sources for the implementation of their PoMs. In most cases, potential funding opportunities were mentioned only in a very generic manner (e.g., domestic budget, EU funds such as European Maritime and Fisheries Fund (EMFF), EU regional funds, EU Programme for the Environment and Climate Action (LIFE +)).

This uncertainty regarding financial support for the PoMs is all the more problematic because some countries have explicitly stated that the implementation of the proposed measures is subject to the availability of funding. Without clear resources committed to the PoMs, the entire implementation of MSFD will be at risk.

## 6 Further recommendations

Despite efforts made in certain areas, such as marine litter, the PoMs that have been analysed do not meet the expectations of NGOs and jeopardise both the ambition of the MSFD and its own objective of reaching Good Environmental Status by 2020.

According to the NGOs that participated in the survey, the following recommendations need to be urgently considered, to ensure the effective implementation of the MSFD and the achievement of GES by 2020:

- Clearer links are needed to articulate the PoMs with other EU policy processes, such as the Maritime Spatial Planning Directive or the Blue Growth Strategy. Competing marine policy frameworks risk reducing the effectiveness of each policy and losing focus on the overall objective of achieving GES.
- Implementation should not only be limited to the remit of authorities working on environmental protection. Because of its cross-cutting nature and its holistic approach, the MSFD must be recognised as horizontal legislation that frames other sectoral policies. In most Member States, there is currently no ownership of the MSFD by ministries responsible for land-based activities with significant impacts on the quality of the marine environment. As an integrated policy, the MSFD cannot deliver without a higher profile within Member States' political priorities and on the European Commission's political agenda.
- More and better regional coordination is needed on large-scale issues (e.g. migratory species, wide-spread pressure like noise or eutrophication).
- Finally, it is critical to raise the public awareness of the MSFD, and of the protection of the marine environment in general. To improve the MSFD implementation in the next cycle, there is a need for much stronger citizen engagement on oceans related issues tackled by the MSFD so that more pressure is felt by policymakers that people care about their seas.