

Sustainable Water Network (SWAN)

Preparation phase of the Marine Strategy Framework Directive - Response to Public Consultation -



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1. INTRODUCTION TO SWAN

The Sustainable Water Network (SWAN) is an umbrella network of 25 of Ireland's leading environmental NGOs, national and regional, working together to protect and enhance Ireland's aquatic resources through coordinated participation in the implementation of the Water Framework Directive (WFD) and other water-related policy and legislation. SWAN member groups are listed in Appendix I. SWAN has been actively engaged in Water Framework Directive (WFD) and other water policy implementation at both national and River Basin District (RBD) level since 2004, responding to water-related public consultations and representing the environmental sector on WFD River Basin District (RBD) Advisory Councils, the South Eastern RBD Management Group and other water policy-related fora. In 2012 SWAN published the report *'The Common Agricultural Policy (CAP): Interactions with the Water Framework Directive (WFD) and implications for the status of Ireland's waters'*.

2. OVERALL COMMENTS

Reservations regarding consultation

SWAN welcomes the opportunity to comment on the preparatory stage of the Marine Strategy Framework Directive (MSFD). However we do not believe that the necessary information has been provided in a manner which is accessible or permits a meaningful response. The consultation material, comprising 133 technical reporting sheets is extremely inaccessible, almost impenetrable in places, because it is presented in a form which is not intended to be understandable to the public. While the pdf document *'Reporting Sheet Features Overview'* assists somewhat in navigating the numerous reporting sheets it is almost impossible to understand the data, its context or its implications and thus impossible to respond to it in a constructive way.

In addition, the table formats, whereby large paragraphs are often pasted into very narrow columns, make it extremely difficult to navigate and understand. There is a lack of contextual text or a summary report explaining the data and its implications. Overall, the material is almost impossible to respond to in its current form and SWAN would strongly contend the statement in the consultation document that this consultation offered an opportunity for *'early and effective'* participation.

The participation of interested parties in the implementation of the MSFD is one of its key requirements¹ and the Directive places substantial emphasis on the need for the wider public to be informed and consulted as action is taken under it. Article 19(1) of the Directive provides,

'... Member States shall ensure that all interested parties are given early and effective opportunities to participate in the implementation of this Directive, ...'

Article 19(2) provides that:

'Member States shall publish, and make available to the public for comment, summaries of the following elements of their marine strategies, or the related updates, as follows:

- a. *the initial assessment and the determination of good environmental status, as provided for in Articles 8(1) and 9(1) respectively;*
- b. *the environmental targets established pursuant to Article 10(1).....'*

¹ Article 19(1) of MSFD.

The initial assessment and in particular the establishment of ‘Good Environmental Status’, in addition to the setting of environmental targets is fundamental to the Directive, as it sets the objectives for the Directive’s implementation in Ireland. It is imperative that the public are given the opportunity for meaningful input to this, both because it is required by the Directive and because there is a danger that vital information will be missed if it is not carried out.

SWAN welcomes the commitment in the consultation document that *‘Consistent with Article 19 of the Directive, a draft summary of the Initial Assessment, Determination of Good Environmental Status and Establishment of Environmental Indicators is being prepared and will be made available by September 2013 for further consultation.’* However, the Network seeks clarification on how input to the current consultation will inform the September publication. The consultation document states that *‘Comments received will be considered in the next phases of implementation of the Marine Strategy Framework Directive that is, the development of a Monitoring Programme under Article 11 due by 15th July 2014 and a Programme of Measures under Article 13, to be developed by 2015 and for the future iteration of the MSFD.’*

SWAN would ask that any feedback from the current consultation should inform not just future stages of MSFD implementation but also the current preparatory stage and also be reflected in the final GES definitions and Environmental Targets and in the summary report due to be published in September.

In their current state, several months would be needed to decipher the tables and prepare technical feedback on each descriptor. In fact, seven weeks were provided for the consultation, 4 of which ran concurrently with another substantial and highly technical water-related consultation on the Nitrates Action Plan, which in themselves presented capacity and timing issues for the environment sector, which were articulated to the Department.

SWAN believes that this consultation runs counter to both the letter and spirit of both the MSFD itself and the Aarhus Convention which requires that *‘Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public’.*

In the context of these strong reservations, SWAN makes the following observations.

3. INITIAL ASSESSMENT

As part of the Initial Assessment, the MSFD requires Member States to assess the state of their marine waters; to analyse the pressures and human impacts on those waters and to include an *‘economic and social analysis of the use of those waters and of the cost of degradation of the marine environment.’* Article 8 of the directive requires Member States to conduct *‘an analysis of the essential features and characteristics and current environmental status’* of the waters.² The assessment of the marine waters must also consider relevant elements of other Community legislation including, for example, the Water Framework Directive and must include *‘the main cumulative and synergetic effects’*.³

² Article 8 (a)

³ Article 8 (a) (ii)

It is vital that this status assessment is based on all current data. Therefore, all existing relevant research from public bodies, academia, private consultancies and NGOs should be sourced, collated and included in the assessment. It is not clear from the Reporting Sheets whether this is the case and from where the data was sourced.

SWAN welcomes the identifications of some of the data gaps in the Reporting Sheets. However, are these gaps, gaps in the data held just by state agencies and, if so, have other sources been sourced and included also? Where there are gaps, a detailed strategy should be set out to fill them, in consultation with relevant stakeholders.

Until these gaps have been filled the associated status should be assessed as interim only, with a timeline for addressing this, applying the precautionary principle.

3.1 Current environmental status of our marine waters

Having reviewed the reporting sheets, it is not clear whether / where the current environmental status of our marine waters is recorded. This is the most fundamental information and should be clearly accessible as the start point for any public consultation. It is noted that there is a column for GES in Table 8 under which the note 'Not assessed - insufficient data to establish full extent and lack of established methods' is inserted for the majority of pressures / impacts. SWAN seeks clarity on where data on the overall status of our marine waters is recorded and what this status is, if known. Where there is insufficient data, this should be clearly set out for the public and a research programme established to fill the gaps.

3.2. Analysis of predominant pressures and impacts

The Reporting Sheets outline a diverse range of pressures, albeit as a cursory overview. It is beyond the scope of this submission, given the consultation period and the inaccessible nature of the material, to provide a comprehensive technical response on all the pressures, although it is useful to see them collated together for the first time.

Some of activity specific sheets, i.e. *Ireland's Initial Assessment Reporting Sheet for Economic and Social Assessment Activities (RS08C-01 EsaActivities) Aquaculture* contain a significant number of uncompleted fields especially in relation to 'Rank of pressure' and descriptive text on uncertainties & main gaps and the information is of a cursory nature. SWAN would recommend that the data gaps responsible for the empty fields (if this is the case) be clearly identified and a strategy set out for filling them.

CUMULATIVE IMPACTS

Many of the impacts - habitat loss, physical damage etc. are assessed as being '*localised*'. However there is no assessment regarding the cumulative impacts of a number of these localised impacts occurring together in a given water body / coastal zone area. It is also crucially important that the cumulative impacts of identified pressures are included in the assessment, as required by the directive and, where the '*cumulative and synergetic effects*' of groups of pressures are unknown, this is identified as a knowledge gap, a research programme put in place to address it and the precautionary principle applied. An initial research task, especially in the case of limited resources, should be a desk review of applicable international research on cumulative impacts and pressures, especially in the coastal zone. A risk assessment of potential cumulative impacts of pressures, based on international literature, should also be conducted and published as part of the Initial Assessment (Brady *et al.*, 2013).

3.2 Economic and social analysis, including the cost of degradation of the marine environment

SWAN welcomes the socio-economic research presented in the report *'Ireland's Initial Assessment Reporting Sheet for Economic and Social Assessment, Cost of Degradation (RS08C-03_EsaCostOfDegradation)'* and the accompanying analysis sheet. However, in its current format it is difficult to understand the findings of the research and the implications of these to the MSFD assessment.

SWAN recommends that this initial assessment phase should include a comprehensive socio-economic analysis which, in addition to the direct use value (e.g. value at market of annual fish take), fully incorporates the indirect use values (e.g. sustaining of food chains and nutrient cycling) of marine waters also. The analysis presented does not appear to constitute such an analysis.

4. DETERMINATION OF GOOD ENVIRONMENTAL STATUS (GES)

The directive requires that each MS must determine *'a set of characteristics for good environmental status'* and sets out a comprehensive definition of what constitutes good environmental status for marine waters. In summary, it's defined as *'ecologically diverse and dynamic oceans and seas which are clean, healthy and productive'* where *'...the structure, functions and processes of the constituent marine ecosystems,allow those ecosystems to function fully'*; *'human-induced decline of biodiversity is prevented'* and *'Anthropogenic inputs into the marine environment do not cause pollution effects'*.

Much specialist knowledge on the various key descriptors are housed in a diverse range of academic institutions and NGOs, in addition to public agencies and SWAN strongly recommends that these experts, be consulted before the final determination of GES. It is SWAN's understanding that this is not the case, and the Network would urge much wider consultation on the definition of GES before these are finalised.

The language used in definitions of GES for some of the descriptors is much too vague. For example for Descriptor 2 Non-Indigenous Species: *'Good status is achieved when the risks and pathways from vectors which facilitate the introduction and spread of NIS as a result of human activities is significantly reduced by way of appropriate measures ; and should they arrive, by applying, where feasible, practical and cost-effective means ,to control or reduce their further spread.'* (SWAN's underlining)

This definition is not in keeping with the Directive's definition of GES as cited above nor the with the descriptor as listed in Annex 1 of the Directive which, for Non-Indigenous Species is as follows: *'Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystems'*.

SWAN recognises that the definitions of GES for some descriptors are closer to the Directive's definition but is concerned about this divergence in others.

5. ESTABLISHMENT OF ENVIRONMENTAL TARGETS & INDICATORS

The setting of correct environmental targets to guide the achievement of Good Environmental Status (GES) is one of the most crucial implementation exercises required to be undertaken by Directive, because this is the stage at which the 'bar is set' in terms of what must be achieved during the implementation of the Directive. Weak targets will result in weak measures, and accordingly will result in a failure to achieve real improvements in environmental quality standards for Ireland's marine waters.

The Directive defines an environmental target as '*a qualitative or quantitative statement on the desired condition of the different components of, and pressures and impacts on, marine waters in respect of each marine region or subregion.* Annex IV of the directive provides an indicative list of characteristics to be taken into account for setting targets and includes the requirement to set '*targets establishing desired conditions based on the definition of good environmental status*'. The CIS Common Understanding paper (EC, 2011) clarifies both the differences and the link between the process of defining GES and that of setting targets: Environmental targets are '*a means of articulating in a quantitative or qualitative manner either the desired levels of, or necessary changes to, environmental pressures and impacts which would ultimately result in the achievement of GES*'. They may also reflect either '*GES itself*' or '*the actual changes necessary to the current state in order to achieve or maintain GES*'.

It is important that targets are set using the strictest interpretation of, in the first instance the Directive, and, in addition, the CIS Common Understanding document. In particular, the targets must not reflect the already impacted marine environment but must establish '*desired conditions based on the definition of good environmental status*' This means that they must '*reflect the changes in state, pressure and impact necessary to achieve or maintain GES*' (EC, 2011) and that this is GES is defined strictly as per the directive: '*...the structure, functions and processes of the constituent marine ecosystems,allow those ecosystems to function fully*'; '*human-induced decline of biodiversity is prevented*' and '*Anthropogenic inputs into the marine environment do not cause pollution effects*'.

Trend based targets must be avoided. These are directional targets from a set baseline without specific quantitative targets. e.g. a specified reduction over time in the amount of marine litter. Trend-based targets may provide an ostensibly easy solution to a lack of scientific information or understanding of a particular descriptor. However, they are insufficient to adequately guide significant improvements in environmental quality. Consequently, it is important that their use in the MSFD process is avoided. At most, these should be used only as an interim measure where absolutely necessary, while knowledge gaps are filled, and should be phased out as soon as possible once sufficient scientific data has been generated.

Due to its importance, it is vital that the target-setting process is subject to the public participation process provided by Article 19 of the Directive. Therefore proposed targets must be published in clear, accessible draft form and should not be finalised until the comments and input of stakeholders have been incorporated into the final targets to be adopted. It is strongly recommended that workshops with experts and stakeholders should be held, allowing for adequate time for the content of the draft document to be considered in advance. The terms of reference for these Workshops must specify how the comments and amendments of stakeholders and experts will be integrated with the finalised document.

SWAN welcomes the state-based targets, with deadlines for some descriptors e.g. Eutrophication presented in the consultation material, but is extremely concerned to see that some environmental targets are operational and trend-based and do not provide either absolute figures or % trend reductions but rather use vague language referencing reduced risk. For example the Environmental Target for Non-Indigenous Species is: '*Reduction in the risk of introduction and spread of*

non-native species through the prioritisation of species and improved management of high risk pathways and vectors.' Given the lack of baseline knowledge acknowledged in the reporting sheets, this provides no clear target for the further stages of action required by the Directive.

SWAN acknowledges that trend-based targets may be necessary for some descriptors, for which there is insufficient data. However, we reiterate our recommendation that, in this case, an exercise in wider data collation be carried out, and that environmental targets be assigned interim status until more information is available. We further reiterate our call for a meaningful public participation exercise in the setting of environmental targets, given their significance, including workshops, to inform the final targets.

6. REFERENCES

- BRADY E., DUBSKY K., FREEMAN N, LEWIS S., O'BRIEN S. (2013) *The Marine Strategy Framework Directive in Ireland: Requirements, Implications, Opportunities for Environmentally Sustainable Management of Our Marine Waters* Sustainable Water Network (SWAN), Dublin
- EC (2011b) *Common Understanding of (initial) Assessment Determination of Good Environmental Status (GES) and Establishment of Environmental Targets (Articles 8, 9 and 10 MSFD)*, WG-GES, European Commission, Brussels.

Appendix I

SWAN Member Organisations

SWAN National Groups		SWAN Regional & Local Groups	
1.	An Taisce	16.	Carra Mask Corrib Water Protection Group
2.	Bat Conservation Ireland		
3.	Birdwatch Ireland	17.	Cavan Leitrim Environmental Awareness Network
4.	Coastwatch Europe Network		
5.	Coomhola Salmon Trust Ltd.	18.	Cork Environmental Forum
6.	Eco-UNESCO	19.	Longford Environmental Alliance
7.	Friends of the Earth	20.	Macroom District Environmental Group
8.	Friends of the Irish Environment		
9.	Irish Doctor's Environmental Association	21.	Save Our Lough Derg
10.	Irish Peatland Conservation Council	22.	Save Our Lough Ree
11.	Irish Seal Sanctuary	23.	Save The Swilly
12.	Irish Water and Fish Preservation Society	24.	Shannon Whale & Dolphin Foundation
13.	Irish Whale and Dolphin Group		
14.	Irish Wildlife Trust	25.	Slaney River Trust
15.	Voice Of Irish Concern for the Environment (VOICE)		

Appendix II

SWAN Board of Directors

SWAN Board of Directors:	
Mark Boyden, Chair	Coomhola Salmon Trust
Eamonn Moore, Vice Chair	An Taisce
Karin Dubsy, Director	Coastwatch Europe
David Healy, Director	Friends of the Irish Environment
David Lee, Director	Cork Environmental Forum
Elaine Nevin, Director	ecoUNESCO
Joachim Schaefer, Director	Cavan Leitrim Environmental Awareness Network