

# Marine Strategy Framework Directive: from sinking ship to thriving seas and fisheries

## Response to the MSFD consultations

### Table of Contents

Marine Strategy Framework Directive: from sinking ship to thriving seas and fisheries .....	2
Key Policy Measures .....	3
PRIORITY 1: Enabling the GES to comply with international rules .....	4
1. Good Environmental Status: a standard to ensure compliance with international rules and obligations .....	4
2. GES: from fiction to reality .....	5
a. An unequivocal obligation of result .....	6
b. Non-deterioration obligation.....	6
c. Clear threshold values set at EU level.....	8
d. National obligation to achieve GES alongside regional cooperation.....	9
e. Interim objectives to ensure progress towards the GES objective.....	9
f. Environmental targets.....	10
g. Limiting the scope of the exception regime in Article 14.....	11
3. Programmes of Measures (PoMs).....	11
PRIORITY 2. Deep dive: specific policy measures from practice .....	12
1. Marine Protected Areas .....	12
2. Climate .....	15
3. Fisheries.....	16

PRIORITY 3: Policy coherence between – not merging of – MSFD and other files.....	19
1. Relationship between Ocean Act and MSFD: two separate instruments needed to contribute to GES .....	20
2. Policy coherent permitting and planning regime.....	21
PRIORITY 4: Adequate funding to support the objectives of the MSFD .....	21
PRIORITY 5. Ensuring stability and predictability through compliance mechanisms.....	24
1. Safeguarding compliance as a legal, economic and simplification necessity .	24
2. Compliance mechanisms in MSFD.....	26
a. Access to information, public participation, access to justice .....	26
b. Proportionate and effective penalties and compensation mechanism .....	28

## Marine Strategy Framework Directive: from sinking ship to thriving seas and fisheries

“Humanity is waging war on nature. This is senseless and suicidal”. UN Secretary-General António Guterres opened the UN Report on “Making Peace with Nature”<sup>1</sup> with this powerful statement, and this is particularly true of the marine environment. Despite the ocean being a lifeline for local communities throughout Europe, we know that Europe’s seas are “generally in poor condition due to increasing pressures from human activities”, with more than “93% of Europe’s marine areas (...) already under pressure from human activities”<sup>2</sup>. It is estimated that 40% of fish and shellfish populations in Europe’s seas are “still not in good status or fished sustainably”<sup>3</sup>. Climate change may also “account for up to half of the combined impacts on marine ecosystems”<sup>4</sup>. We also know that EU’s Member States have not achieved the goal of Good Environmental Status of marine waters by 2020, overfishing is still happening despite the legal deadline to end it by 2020, and we are still far away from having enough effectively managed Marine Protected Areas by 2030.

We cannot continue down this path. The World Economic Forum declares biodiversity loss and ecosystem collapse – including the marine ecosystem – as one of the most severe risks in the next decade<sup>5</sup>. The IPBES states that “all businesses depend on and impact biodiversity”<sup>6</sup> and that creating “an effective enabling environment can help closely align what is profitable for businesses with what is good for biodiversity and society”<sup>7</sup>. With the Marine Strategy Framework (**MSFD**) revision, the Commission has a real opportunity to turn the tide, and address the multiple pressures the marine environment face, which are – in the words of the Commission itself – “exacerbated by the worsening triple planetary crisis”<sup>8</sup>. The lack of implementation means that the MSFD has failed in the achievement of Good Environmental Status in EU seas, but now we can turn this sinking ship into an effective tool to enable thriving nature for local communities and a strong economy.

<sup>1</sup> UN Environment Programme, [Making peace with nature](#) , 2021, Forward p.4

<sup>2</sup> EEA Report, August 2024, “[Healthy Seas, thriving fisheries: transitioning to an environmentally sustainable sector](#)”.

<sup>3</sup> EEA Report, August 2024, “[Healthy Seas, thriving fisheries: transitioning to an environmentally sustainable sector](#)”.

<sup>4</sup> EEA, November 2023, [How climate change impacts marine life](#).

<sup>5</sup> World Economic Forum, [Global Risks Report 2025](#).

<sup>6</sup> IPBES, [Business and Biodiversity Assessment: Summary for Policymakers](#), February 2026, p.3

<sup>7</sup> IPBES, [Business and Biodiversity Assessment: Summary for Policymakers](#), February 2026. p.3.

<sup>8</sup> Commission Staff Working Document, Evaluation of Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) {SWD(2025) 51 final} ([MSFD evaluation report](#)), March 2025, p. 81.

## Key Policy Measures

### Keep the Good Environmental Status (GES) Objective, provide clarity and enable its effective application:

- Make the GES an obligation of result that works at national level (Article 1 and 9).
- Clarify and outline an effective non-deterioration obligation (Article 1).
- Include clear and measurable targets, metrics, thresholds values and standards into the text of the MSFD – including those already existing under the GES decision 2017/848. These need to be accompanied with the requirement to update them regularly. (Article 10, Annex I and Commission Decision 2017/848).
- Prescribe clear mechanisms and obligations for regional cooperation (Article 6).
- Set interim objectives that requires Member States to continuously improve and make progress towards GES.
- Member States in setting environmental targets need to be clearly outlined in the MSFD itself, alongside clear marine management measures under their programmes of measures (PoM). The Commission should also have an obligation to assess that the environmental targets are adequate for both the achievement of the interim progress objectives and the overarching GES objective (Article 10).
- Set strict requirements under the exceptions regime (Article 14).
- The Programmes of Measures (Article 13) need to contain obligations to:
  - Use existing marine processes under other legislative files to develop measures towards the achievement of GES. These need to be expressly linked to the achievement of GES.
  - Where existing measures are not sufficient for the achievement of GES, Member States need to take measures under the MSFD's regime to achieve this overarching objective.
- The MSFD must outline an obligation in the programmes of measures to explicitly achieve 30% effective marine protected areas (and 10% strictly protected) by 2030 and to manage them effectively.

### Achieve policy coherence and effective implementation:

- The Ocean Act and MSFD should remain two separate legislative files. Nevertheless, the Ocean Act – fully in line with the European Ocean Pact – should create coherence of maritime policies with the MSFD by acknowledging the GES under MSFD as the overarching objective for ocean related policies. It must also follow the MSFD's ecosystem-based approach, as should all sectoral policies.
- Policy coherence should also be created through an explicit provision that **any plan or project being set up under other laws must be in compliance with relevant environmental targets established under Article 10 and must not jeopardize the achievement of GES and interim objectives under Article 1 and 9.**

### Guarantee adequate funding to support the objectives of the MSFD:

- Ensure that EU funds supporting fisheries, maritime and coastal sectors are demonstrably consistent with the achievement of GES and prevent public support for activities that risk degrading marine ecosystems or delaying recovery.
- Introduce a provision in the MSFD requiring the European Commission (DG ENV) to assess future National and Regional Partnership Plans (NRPPs) against the objectives of the Directive, in particular the achievement of GES.

- Each measure included in the Programme of Measures should clearly indicate how it will be financed, including the relevant EU or national funding instrument intended to support its implementation (requiring an amendment to Article 13).

#### **Align revised MSFD compliance tools in a legally and economic sound manner through**

- Access to information (Article 19)
- Public participation (Article 19)
- Access to justice (new provision)
- Penalty (new provision)
- Compensation right (new provision)

## PRIORITY 1: Enabling the GES to comply with international rules

The MSFD puts in place a comprehensive marine management regime which aims to tackle a number of pressures on the environment. As such, it is already set up to encompass cross-cutting obligations such as the ones found in international frameworks. The revision of this crucial framework must now enable the achievement of its core objective – the Good Environmental Status of marine waters – in practice.

1. Good Environmental Status: a standard to ensure compliance with international rules and obligations

**The United Nations of the Law of the Sea (UNCLOS) is the backbone of international ocean governance.** Under UNCLOS Part XII and especially Article 192, State Parties have a duty to “protect and preserve the marine environment”. Both the EU and its Member States are parties to UNCLOS.

The obligation under Article 192 – which has even been recognised as part of customary law with an erga omnes character<sup>9</sup> – encompasses many aspects. It requires States to (1) prevent, or at least mitigate, marine environmental harm, and (2) maintain “ecosystem health and the natural balance of the marine environment”<sup>10</sup>. This may include restoring marine habitats and ecosystems where the process of reversing ecosystems degradation is necessary in order to regain ecological balance<sup>11</sup>. In addition, the international courts have clarified that protecting and preserving the marine environment entails the negative obligation not to degrade the marine environment<sup>12</sup>. Finally, the “open-ended” nature of this obligation means it encompasses “any form of degradation to the marine environment, including climate change impacts, such as ocean warming, and sea level rise, and ocean acidification”<sup>13</sup>. Under Article 192, States also have a duty to protect the “living resources of the sea”<sup>14</sup>. The international courts have also clarified that States are

<sup>9</sup> While formulated in UNCLOS, the obligation under Article 192 reflects customary international law and protects a collective interest of the international community, exhibiting an erga omnes character.

<sup>10</sup> ITLOS, AO 2024, para. 385.

<sup>11</sup> ITLOS, AO 2024, para. 386.

<sup>12</sup> The South China Sea Arbitration between the Republic of the Philippines and the People’s Republic of China, Award of 12 July 2016, RIAA, Vol. XXXIII, p. 153, at p. 519, para. 941; ITLOS, AO 2024, para. 385; ICJ, AO 2025, para. 342.

<sup>13</sup> ITLOS, AO 2024, para. 388.

<sup>14</sup> Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 280, at p. 295, para. 70; ITLOS Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015, para. 120. See also South China Sea Arbitration, para. 956.

required to “take active measures to protect and preserve the marine environment, and by logical implication, entails the negative obligation not to degrade the marine environment”<sup>15</sup>.

Finally, the international courts have ruled that State action needs to include **monitoring and enforcement mechanism**. They explicitly clarified that due diligence requires parties “to put in place a national system, including legislation, administrative procedures and an **enforcement mechanism**” – which means a “certain level of vigilance in their enforcement and the exercise of administrative control”<sup>16</sup>.

The MSFD already refers in its preamble to international law: it states that given the EU and its Member States are each parties to the **United Nations Convention on the Law of the Sea**, “**the obligations (...) under those agreement should therefore be taken fully into account in this Directive**”<sup>17</sup>. The recitals further state that the Directive should support the obligations taken by the EU “in the context of the **Convention on Biological Diversity**, on halting biodiversity loss, **ensuring the conservation and sustainable use of marine biodiversity, and on the creation of a global network of marine protected areas**”<sup>18</sup>. The MSFD revision is therefore a key moment to guarantee the implementation of international obligations and update EU law in line with the recent case law. To fully comply with these obligations, the MSFD must become a truly enforceable mechanism for ocean governance.

## 2. GES: from fiction to reality

The EU has already taken steps to implement elements of these international obligations.: Notably the flagship European Green Deal<sup>19</sup> contains objectives relevant to the marine environment: achieving climate neutrality by 2050, halting biodiversity loss, preserving and restoring ecosystems and biodiversity, achieving a zero pollution ambition for a toxic free environment. The EU Biodiversity Strategy supplemented this by adding targets on protection area coverage, restoring and preventing degradation of ecosystems and mitigating impacts on sensitive habitats for instance from fishing and extractive activities<sup>20</sup>. The EU Zero Pollution Strategy also sets targets for 2030 relating to the reduction of types of pollution on the environment, including on the marine environment<sup>21</sup>. The MSFD as it stands already contains the groundwork to make many of these objectives reality through its Good Environmental Status objective. To ensure continued compliance and coherence with international law and latest EU policy strategies, GES must remain the overarching objective of the MSFD and ocean-related laws and policies. A revision of the MSFD is the opportunity to enable the implementation of the GES objective and ensure that the updated policy targets are incorporated into binding EU law.

---

<sup>15</sup> The South China Sea Arbitration between the Republic of the Philippines and the People’s Republic of China, Award of 12 July 2016, RIAA, Vol. XXXIII, p. 153, at p. 519, para. 941; ITLOS, AO 2024, para. 385; ICJ, Obligations of States in Respect of Climate Change, Advisory Opinion, I.C.J. Reports 2025, 21 of July 2025 (ICJ, AO 2025), para. 342.

<sup>16</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I) para. 197.

<sup>17</sup> Preamble paragraph 17, Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (MSFD) .

<sup>18</sup> Preamble paragraph 18, MSFD

<sup>19</sup> Communication from the Commission to the European Parliament, The European Council, the Council, the European Economic and Social Committee and the Committee of the Region, the European Green Deal, (COM2019) 640 final ([EU Green Deal](#)), December 2019

<sup>20</sup> Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions, the EU Biodiversity Strategy for 2030: Bringing nature back into our lives (COM/2020/380 final) ([EU Biodiversity Strategy](#)), May 2020

<sup>21</sup> Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions: Pathway to a Healthy Planet for All, Eu Action Plan: Towards Zero Pollution for Air, Water and Soil, (SWD(2021 140 final) ([EU Zero Action Plan](#)), May 2021, p.3: 2030 target set to reduce “by 50% plastic litter at sea and by 30% microplastics released into the environment”.

a. An unequivocal obligation of result

The MSFD sets an objective under its Article 1 for Member States to “**take the necessary measures to achieve or maintain good environmental status** by the **year 2020** at the latest”. Member States are required to adopt marine strategies to “**protect and preserve the marine environment, prevent its deterioration** or, where practicable, **restore marine ecosystems**”. This echoes the obligation of State Parties outlined under UNCLOS to protect and preserve the marine environment. Importantly, the Commission itself confirms that achieving GES is the “core objective” and an “**outcome based**” obligation<sup>22</sup>. But despite this target and the international obligations, GES “for all marine waters was not achieved by 2020”<sup>23</sup>. The **flexibility** left to the Member States in setting their objectives has made the enforceability of the Directive **challenging**. The Commission highlights that this flexibility can in part explain the low number of infringement proceedings brought by the Commission<sup>24</sup>.

In order to achieve enforceability of this objective, the revised MSFD must keep the GES as an “outcome based” obligation and strengthen it as an “**obligation of result**” in **Article 1 MSFD** going forward, with clear provisions on how it should be implemented. For that, this objective needs to be outlined in **sufficiently clear and unequivocal terms** as relates to its **geographical scope, its deadline, and through interim targets**. This type of obligation exists already in a number of EU environmental laws: the **Water Framework Directive (WFD)** has an objective of achieving good status on surface and groundwater which can be considered as obligation of result based on their wording, deadlines and limited exemptions<sup>25</sup>. Moreover, the WFD’s obligation to prevent deterioration is interpreted as an obligation of result. The European Court of Justice (CJEU) made clear that Member States would be considered in breach of their obligations if it can be proved that groundwater has in fact been deteriorated<sup>26</sup>. The obligations relating to the limit values set for certain air pollutants under the **Ambient Air Quality Directive (AAQD)** have also been clarified by the CJEU to be obligations of results as Member States are required to achieve compliance with these limit values within a given period, and to maintain that result<sup>27</sup>. States will be found to be infringing the AAQD even if they can prove a partial downward trend in pollutant concentration should it continue to exceed that limit value<sup>28</sup>.

b. Non-deterioration obligation

The obligation to achieve GES needs to be **twofold**: Member States need to take **active, positive measures** to achieve this objective **while also being required not to deteriorate the status of marine waters**. It is key that the main obligations are supported by a clear non-deterioration obligation which would be **applicable at all phases of implementation**. The International Courts have also clarified that, under this obligation, States are required to “take active measures to protect and preserve the marine environment, and by logical implication, entails the negative obligation not to degrade the marine environment”<sup>29</sup>. The EU Green Deal

<sup>22</sup> European Commission, [MSFD evaluation report](#), March 2025, p.59

<sup>23</sup> European Commission, [MSFD evaluation report](#), March 2025, p.26

<sup>24</sup> European Commission, [MSFD evaluation report](#), March 2025, p.24

<sup>25</sup> Van Kempen 2012, qt 510; J van Kempen, ‘Countering the Obscurity of Obligations in European Environmental Law: An Analysis of Article 4 of the European Water Framework Directive’ (2012) 24[3] JEL 499.

<sup>26</sup> Case C-559/19 Commission v Spain [2021] ECLI:EU:C:2021:512, paras 32–39.

<sup>27</sup> Case C-644/18 (Grand Chamber), Commission v Italy [2020] ECLI:EU:C:2020:895, para. 79; Case C-375/21, Maritsa iztok 2, 9 March 2023, ECLI:EU:C:2023:173.

<sup>28</sup> Case C-336/16, Commission v Poland [2018] EU:C:2018:94, para. 65; Case C-638/18, Commission v Romania [2020] EU:C:2020:334, para 70.

<sup>29</sup> The South China Sea Arbitration between the Republic of the Philippines and the People’s Republic of China, Award of 12 July 2016, RIAA, Vol. XXXIII, p. 153, at p. 519, para. 941; ITLOS, AO 2024, para. 385; ICJ, Obligations of States in Respect of Climate Change, Advisory Opinion, I.C.J. Reports 2025, 21 of July 2025 (ICJ, AO 2025), para. 342

recognises the importance to “halt biodiversity loss”<sup>30</sup> and such, the MSFD needs to both positively contribute and prevent deterioration to the marine environment.

The **MSFD in its Article 1** already requires the prevention of deterioration of the marine environment. To ensure result in practice, it should be complemented with clear measures by which Member States need to take the necessary measures to prevent deterioration of the marine environment within their national waters and in the marine waters of other Member States. Again, when looking at the existing body of EU law we find precedence in environmental quality instruments, including the **Water Framework Directive (WFD)**. There is a clear obligation on Member States to achieve good status of services waters and groundwater. Furthermore, the WFD asks to “prevent further deterioration”<sup>31</sup>. The CJEU seems to interpret this as an obligation of result rather than best efforts<sup>32</sup>. Further, it established that deterioration happens where even just one of the quality elements related to the status of a water body falls, even if that does not lead to the fall in the classification of the overall water body<sup>33</sup>. Member States will therefore be considered in breach of this obligation if the Commission produces sufficient evidence that the status of groundwater has in fact been deteriorated<sup>34</sup>.

The **Habitats Directive** also contains a non-deterioration obligation under its Article 6(2) whereby Member States must “take appropriate steps to avoid (...) the deterioration of habitats and that habitats of species”. The CJEU has held that this needs to be interpreted in light of Article 6(3) of the Habitats Directive which requires the exclusion of a “significant effect” on the habitat prior to the authorisation of a project and provide the same level of protection<sup>35</sup>. It follows that Article 6(2) of the Habitats Directive has therefore been interpreted by the CJEU as an “obligation to ensure no significant deterioration or disturbance in light of the conservation objectives of the sites”<sup>36</sup>. This means that Member States need to assess both the maintenance of favourable conservation status and whether an activity interferes with the achievement of the favourable conservation status in an area<sup>37</sup>. Therefore grounds for non-compliance in the Habitats Directive applies even where is a risk or likelihood of deterioration of a protected site<sup>38</sup>.

Further, the **Nature Restoration Law** sets out obligations for Member States to not only “put in place measures” by specific deadlines (2030, 2040 and 2050) and show continuous improvement of the restoration site but also to not significantly deteriorate areas where good condition has been reached<sup>39</sup>.

**The MSFD revision should therefore build on these files and case law, and outline an effective non-deterioration obligation in relation to the result based objective of achieving GES (Article 1 MSFD).**

---

<sup>30</sup> European Commission EU Green Deal, December 2019, p.13

<sup>31</sup> Article 1(a), Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive), October 2000

<sup>32</sup> See, e.g., case C-96/98 Commission v France [1999] ECLI:EU:C:1999:580, paras 22–27; C-418/04 Commission v Ireland [2007] ECLI:EU:C:2006:569, paras 179–180; C-559/19 Commission v Spain, paras 152–153.

<sup>33</sup> C-461/13, BUND v Germany, para 69

<sup>34</sup> Ibid.

<sup>35</sup> ClientEarth, Restore Now, Destroy Later? A legal Analysis of the non-deterioration obligations in the Nature Restoration Regulation and beyond, July 2025, p. 15 and footnote 80 referring to case law C-258/11, para 32; C-241/08, para 31; C-399/14, para 52; C-293/17, para 87; C-66/23, para 41; European Commission (n. 70) 35.

<sup>36</sup> ClientEarth, Restore Now, Destroy Later? A legal Analysis of the non-deterioration obligations in the Nature Restoration Regulation and beyond, July 2025, p. 15 and footnote 81 referring to case law C-258/11, para 33 and AG Opinion Sharpston, para 44; C-241/08, para 32 and AG Opinion Kokott para 28; see also Schoukens (n. 49) 140.

<sup>37</sup> ClientEarth, Restore Now, Destroy Later? A legal Analysis of the non-deterioration obligations in the Nature Restoration Regulation and beyond, July 2025 p. 15 and footnote 82 referring to Schoukens (n. 49) 141.

<sup>38</sup> ClientEarth, Restore Now, Destroy Later? A legal Analysis of the non-deterioration obligations in the Nature Restoration Regulation and beyond, July 2025, p.4

<sup>39</sup> Article 4(1) and 4(12), Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 (Nature Restoration Law), July 2024

c. Clear threshold values set at EU level

To enable a coherent application of the Directive, determinations of GES made by the Member States should not be provided as general or vague descriptions, but rather defined as clearly quantifiable metrics. To support this, the Commission should ensure that **Article 9 MSFD** on determining GES integrates the system outlined in the **Commission Decision 2017/848** on the use of standardised methods and specifications as well as on threshold setting which needs to be codified into the law itself (Article 3 and 4 of the Commission Decision 2017/848), **including a provision for updating it on a regular basis**. This would bring greater clarity for Member States in determining what GES looks like in their national, as well as bring greater harmonization at EU level.

The MSFD evaluation report stresses the lack of measurable targets set in the Directive itself as a key shortcoming of the MSFD<sup>40</sup>. It outlines that the determination of GES lacked “sufficient quantification, instead relying on qualitative descriptors”<sup>41</sup>, and that the “broad lack of quantified and measurable GES determination for many descriptors (...) have hindered the preparation of effective marine strategies, including quantifiable measures with tangible results on the quality of the marine environment”<sup>42</sup>. Given that the Commission has itself found that the Member States’ “GES determinations were not sufficient to encourage the necessary changes for clean and healthy seas”<sup>43</sup>, it follows that the **thresholds for GES should be outlined in a binding manner within the MSFD itself – to address this gap and ensure harmonisation across EU seas**.

These need to be outlined in the Directive itself (in an annex, for instance), based on the best available science to be in line with international obligations, and regularly updated. Indeed, the EU and the EU Member States must do their “utmost” to protect marine environment and fight climate change<sup>44</sup>. There is a “stringent” due diligence standard to be met by State Parties when complying with this obligation, and measures taken must be based on best available science and the precautionary approach<sup>45</sup>. **Where thresholds have already been outlined in sufficiently clear, quantifiable and measurable ways under the Commission Decision 2017/848, these should be incorporated into the Directive as minimum requirements to achieve GES**. Where the descriptors for GES do not currently have adequate descriptors or thresholds outlined in the Commission Decision, **these should be developed as soon as possible, in line with the best available science and within a clear deadline set by the revised MSFD. All thresholds should also be accompanied with a rule to regularly update them**.

---

<sup>40</sup>European Commission, [MSFD evaluation report](#), March 2025, p.20-21 on the shortcomings identified: “environmental targets often failed to specify or quantify the pressure or impact to be reduced. Without measurable targets set in the Directive itself, and with very few Member States setting appropriate targets at national or regional level, an assessment of progress towards GES has proven difficult.”

<sup>41</sup> European Commission, [MSFD evaluation report](#), March 2025, p.25

<sup>42</sup> European Commission, [MSFD evaluation report](#), March 2025, p.28

<sup>43</sup> European Commission, [MSFD evaluation report](#), March 2025, p.41

<sup>44</sup> [ICJ, AO 2025](#), para 270.

<sup>45</sup> The precautionary approach is an “integral part of the general obligation of due diligence” under the duty to prevent significant harm to the environment, [ICJ, AO 2025](#), para. 294, quoting from para. 131 of ITLOS, Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, at p. 47, para. 135. The precautionary approach (or principle) is largely recognised as one of the most important principles of international environmental law. Its most frequently cited version of the principle is enshrined in Principle 15 of the 1992 Rio Declaration, which provides that the lack of scientific certainty shall not be used as a reason for postponing cost-effective measures in case of a threat of serious or irreversible harm. UN General Assembly, Report of the United Nations Conference on Environment and Development – Annex I: Rio Declaration on Environment and Development, A/CONF.151/26 (Vol. I) (3-14 June 1992), Principle 15.

Incorporating these elements of the Commission Decision into the text of the Directive and expanding on them where necessary would allow for greater legal certainty as to the determination of GES and more enforceability of the various objectives as relates to the different indicators.

#### d. National obligation to achieve GES alongside regional cooperation

The overarching objective of achieving GES needs to be achieved not only at subregional level but also at national level – GES is a state of the environment that Member States need to achieve in the marine waters within their own jurisdiction. This provides for utmost clarity, simplifies responsibilities, and allows for Member States to take immediate action in the first place. GES needs to be set as a clear obligation of result with clearly prescribed objectives and specific timeline.

Given the nature of the marine environment, it is key for Member States to coordinate with each other and to make use of existing regional convention or other cooperation mechanisms to achieve GES across the regions and subregions. The Commission should therefore also look at **Article 6 MSFD** outlining specifically what Member States need to do to coordinate together: they need to **set the characteristics of GES on the scale of their marine region, formulate necessary regional or subregional measures and integrate those into their national strategies and programmes of measures** to ensure coherence across the area.

#### e. Interim objectives to ensure progress towards the GES objective

To steer continuous progress in implementation of achieving and maintaining GES (nationally and on a (sub)regional scale), the Commission should introduce interim objectives into the revised MSFD. These would help structure the programmes of measures that Member States need to adopt: the measures could first be adopted in view of achieving those interim objectives, and that experience would then inform the implementation of the subsequent programmes to achieve the overarching GES objective by the set deadlines.

The general need for interim objectives has been outlined in the landmark ruling of the **European Court of Human Rights** (“Klimaseniorinnen”<sup>46</sup>): The Court concluded that in working towards achieving carbon neutrality (an overarching objective), **clear, tangible intermediate targets, timelines and pathways are to be set out**. It also stressed that evidence must be provided by the States showing whether targets have duly been complied with, or are in the process of being complied with. Importantly, the ECtHR added that such targets had to be **updated with due diligence, and in line with the best available science**. In the same vein, the **Constitutional Court of Germany** has confirmed in a groundbreaking decision (“Neubauer”<sup>47</sup>) the importance of a clear pathway detailing how to achieve climate neutrality. A number of EU laws already follow this approach and set interim objectives: for instance the EU climate law has an overarching objective to achieve climate neutrality by 2050<sup>48</sup>, which is accompanied by clear and measurable interim objectives for 2030 and 2040<sup>49</sup>. The Nature Restoration Law also contains a pathway to restoration with targets set for 2030, 2040 and 2050<sup>50</sup>. It follows that a specified pathway in the MSFD will provide for clearest guidance and simplification for all stakeholders involved.

However, it must be noted that the objective to achieve GES is not new, and had been originally set to be achieved by 2020. Failure to have achieved this objective in time cannot result in a debate about pushing the

<sup>46</sup> See ECtHR, 9 April 2024, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (application no. 53600/20), § 550.

<sup>47</sup> See Order of 24 March 2021 - 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20.

<sup>48</sup> Article 2(1), Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (EU Climate Law), July 2021

<sup>49</sup> Article 4 EU Climate Law, July 2021

<sup>50</sup> Article 5(1) Nature Restoration Law

deadline further into future. On the contrary, given that the Member States knew that they had to comply with the GES objective for almost two decades, and yet they did not accelerate their efforts sufficiently, setting a new GES deadline far in the future risks another decade or more of inaction. The revision of the MSFD should state clearly that within the next implementation cycle there should be an obligation to progress towards GES as soon as possible with the subsequent implementation cycle.

Should the revised MSFD contain a new deadline, we must learn from the current MSFD (non-)implementation and **set interim objectives** with frequent deadlines that requires Member States **to continuously improve, i.e. continuously make progress on all the descriptors and report about it**. Given that the deadline has already passed over 5 years ago, the progress must be assessed in **shorter frequencies than the current implementation cycles**, to achieve that “old” objective as soon as possible. Only this way, the EU and Member States can comply with the “**stringent due diligence standard**”<sup>51</sup> to protect the marine environment as imposed by international case law.

#### f. Environmental targets

The Commission needs to consider the current **Article 10 of the MSFD** on environmental targets, to ensure that it sufficiently governs different sectors and sources of pressures in a legally forceful way, and that it is linked to the obligations Member States have to achieve GES. The setting of environmental targets needs translate the goal of achieving GES into clear, tangible and actionable sub-targets and action. For this, environmental targets need to be formulated as concrete, specific and quantifiable targets set at the relevant geographical scales. **The obligations of Member States in setting environmental targets need to be clearly outlined in the MSFD itself, alongside clear marine management measures under their programmes of measures (PoM). The Commission should also have an obligation to assess that the environmental targets are adequate for both the achievement of the interim progress objectives and the overarching GES objective.** It should be made clear within that Article 10 that Member States need to take the necessary measures to reduce relevant adverse impacts identified under the initial assessment in order to ensure progress and improvements in the marine environment, in compliance with the objective to achieve GES. Article 10 needs to outline that environmental targets should be set in a **concrete, specific, quantified and actionable manner**.

For instance, to satisfy GES, seafloor integrity should be kept at a level “that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected” (as outlined in Annex I MSFD). The Commission Decision 2017/848 further establishes criteria for this threshold under its Annex I – Descriptor 6 which has enabled the setting of an EU wide threshold stating that “for seabed habitat to be considered in good environmental status, no more than 25% should be adversely affected by human pressures, including no more than 2% that should be irreversibly lost.”<sup>52</sup> Following this, Member States then need to assess the situation in the national marine waters and set environmental targets to reach this EU determined threshold. These could entail restrictions or bans on activities adversely affecting the habitat not being allowed to operate in a specific area. The specific measures taken should be outlined in the Member States PoM.

---

<sup>51</sup> ITLOS, AO 2024, para. 239; ICJ, AO 2025, paras. 138 and 343

<sup>52</sup> European Commission, Descriptors under the Marine Strategy Framework Directive, as accessed in March 2026.

### g. Limiting the scope of the exception regime in Article 14

Article 14 of the MSFD allows Member States to apply exceptions where environmental targets or GES will not be reached through the measures taken<sup>53</sup> if they are “duly justified and are within one of the categories set out in Article 14”. The March 2025 evaluation report of the Commission outlines that exceptions under the regime of the MSFD reported by Member States were not used “consistently, even within the same marine region”<sup>54</sup>. It further states that some Member States did not even report the type of exemption they were relying on when not failing to reach GES<sup>55</sup>.

The current wording of the exemption regime in Article 14 of the MSFD is too wide, and enables discretionary options to Member States rather than outlining an exhaustive list, which would be the only justifications available for not meeting interim objectives or GES. The available exemptions should be reasonable and not lower the effectiveness of Member States to achieve GES. This means that there should not be further exemption regimes except for cases where the natural process of the measure taken takes time to come to fruition – and **Article 14 must become exhaustive**. The 2020 deadline has already been missed, and further delay is not acceptable given the state of the marine environment.

### 3. Programmes of Measures (PoMs)

In its evaluation report of February 2025 on the Programmes of Measures, the Commission demonstrated an increase from 25% to 42% of measures specifically designed via the MSFD taken by Member States to address marine pressures and contribute to the achievement of GES. Despite this progress however, it concludes that there is a “need for more work to cover (...) gaps when designing MSFD measures”<sup>56</sup>. Hence, while progress has been made toward a holistic approach, many measures stem from other legislative frameworks (including water, nitrates, chemicals, CFP, etc); the scope of these frameworks are different and do not address the additional forms of environmental pressures included in the MSFD. The March evaluation report further states that a factor for not achieving GES is the “inconsistencies between MSFD and relevant sectoral policies with conflicting interests”<sup>57</sup> and that “despite the development of strong links between the MSFD and other relevant legislation, especially in the maritime domain, there is still insufficient integration of the MSFD principles and objectives, in particular the achievement of GES and the application of the ecosystem-based approach in sector-specific legislation<sup>58</sup>”. This means that it “remains difficult to gauge by how much and by when the measures will reduce the impact on the marine environment and help achieve GES”<sup>59</sup>. There is a need to address these gaps<sup>60</sup> to ensure that, through the integrated use of MSFD and sectoral policies we fulfil the international requirements to stop thinking in siloes.

The PoM provision need to set a **clear legal obligation on Member States to utilise the PoMs for the achievements of the environmental targets and GES**. First and foremost, it should regulated clearly the types of instruments that Member States need to take into account when setting up PoM – not only by referring to existing measures under other legislation, but also in identifying complementary measures solely under the MSFD.

<sup>53</sup> European Commission, [MSFD evaluation report](#), March 2025, footnote 51

<sup>54</sup> European Commission, [MSFD evaluation report](#), March 2025, p.19

<sup>55</sup> European Commission, [MSFD evaluation report](#), March 2025, p.19

<sup>56</sup> Report from the Commission to the Council and the European Parliament on the Commission’s assessment of the Member States’ programmes of measures as updated under Article 17 of the Marine Strategy Framework Directive (2008/56/EC), COM(2025) 3 final, February 2025 ([MSFD Report on the Programmes of Measures](#), February 2025), p.24

<sup>57</sup> [MSFD evaluation report](#), March 2025, p.41

<sup>58</sup> European Commission, [MSFD evaluation report](#), March 2025, p.52

<sup>59</sup> European Commission, [MSFD Report on the Programmes of Measures](#), February 2025, p.25

<sup>60</sup> European Commission, [MSFD Report on the Programmes of Measures](#), February 2025, p.24

In addition, the PoM must clearly link measures under other legislation to the achievement of environmental targets and GES overall. It should refer explicitly to the need for Member States to take measures under the following files, linking them to the achievement of GES:

- Maritime Spatial Planning Directive
- Habitats and Bird Directives
- Nature Restoration Law
- Water Framework Directive
- Directive on Urban Wastewater Treatment
- Common Fisheries Policy
- EU Climate Law
- Industrial Emissions Directive
- All other relevant Union legislation which could cause pressures on the marine environment (chemicals, plastics, etc)
- As well as other relevant forthcoming legislation or international agreements<sup>61</sup>.

One option to simplify the identification of suitable MSFD measures could be a toolbox in an Annex.

*Relevance for Policy Measures under Stakeholder Survey: The policy measures outlined above are relevant for all areas listed in the Background Document<sup>62</sup>, i.e. for Objective of the Directive: achievement of Good Environmental Status (in particular sections A. providing clarity on the GES definition, B. Address the GES deadline, C. Provide clarity of the Ecosystem-based Approach (EBA) D. Provide for environmental targets pressure reduction and spatial protection to make progress towards GES and E. Limit the Scope of Exceptions); Taking more effective action (in particular F. Improve the Programmes of Measures); Simplification & knowledge (in particular L. increase the alignment of the MSFD with other legislation).*

## PRIORITY 2. Deep dive: specific policy measures from practice

### 1. Marine Protected Areas

At EU level the science is clear on the benefits of achieving effective Marine Protected Areas (MPAs): the Europe Environmental Agency (EEA) states that covering 30% of Europe’s seas with MPAs is a “key measure for restoring ecosystem resilience”, including against the effects of climate change<sup>63</sup>. The EEA also iterates the importance of implementing the EU’s Action Plan to protect and restore marine ecosystems for sustainable and resilient fisheries<sup>64</sup> which outlines that mobile bottom fishing activities, including bottom trawling, need to be phased out of MPAs by 2030. The MSFD itself contains spatial planning provisions under Article 13(4) which enables Member States to contribute to a coherent network of MPAs. The Commission’s

<sup>61</sup> As is already the case today under Article 13(2) MSFD.

<sup>62</sup> See Background Document, [EUSurvey - Survey](#).

<sup>63</sup> European Environment Agency (EEA) Report, [How climate change impacts marine life](#), November 2023,

<sup>64</sup> EEA Report, [How climate change impacts marine life](#), November 2023

evaluation report however does point out that the “ineffective management of the MPAs is a major limiting factors in the progress towards protection and restoration of marine biodiversity”<sup>65</sup>. It further flags that currently only 3% of EU MPAs are covered by “the necessary fisheries management measures to achieve the related conservation objectives”<sup>66</sup>. Finally, it stated that “While the MSFD (Article 13(4)) fully supports this CBD objective, progress towards a coherent network of effective MPAs has been limited. In 2019, MPAs covered approximately 12% of Europe’s seas, while the share of MPAs effectively covered by management plans was much smaller. Overall, the 2020 MSFD implementation report clearly concluded that biodiversity loss had not been halted in Europe’s seas, thus calling in question the capacity of Member States to reach the CBD biodiversity protection targets by 2030.”<sup>67</sup>

The aim of these frameworks is to conserve habitats and species to support thriving marine ecosystems through the setting of MPAs, yet their implementation have failed at both national and EU level: at national, by allowing destructive activities to take place in these areas; and at EU level by not properly enforcing EU nature conservation laws<sup>68</sup>: For example, bottom trawling – despite is well-documented negative environmental impacts – is still carried out across European MPAs. A study has shown that between 2015 and 2023, more than 4.4 million hours of bottom trawling<sup>69</sup> have been recorded in MPAs in seven EU countries. If one were to take the EU as a whole, the figure would be much larger. This systemic lack of enforcement and implementation of the Habitats Directive has led to the filing of two complaints by ClientEarth and partners to the European Commission against a number of Member States, namely France, Germany, Italy<sup>70</sup>, Denmark, Netherlands and Spain<sup>71</sup>. There are also a number of national legal actions happening in Spain<sup>72</sup>, France<sup>73</sup> and the Netherlands<sup>74</sup> on the same topic of destructive fishing activities happening in MPAs. Allowing these fishing activities to take place in MPAs makes little economic sense, as in European waters, bottom trawling is estimated to cost society up to €11 billion annually<sup>75</sup>.

Strong international obligations already exist on the need for effective MPAs networks. State Parties have an obligation under Article 8 **CBD** to “establish a system of protected areas (...) taken to conserve biological diversity”. Article 2 of the CBD defines a “protected area” as “geographically defined area which is designated or regulated and managed to achieve specific conservation objectives”. The **GBF** builds on this obligation and sets a further spatial target of having 30% of “effectively conserved and managed” protected areas in the sea by 2030<sup>76</sup>. The **BBNJ** states that area-based management tools, including MPAs should have as an objective to “protect, preserve, restore and maintain biological diversity and ecosystems, including with a view to enhancing their productivity and health, and strengthen resilience to stressors, including those linked to climate change”<sup>77</sup>. They also serve to “support food security and other socioeconomic objectives”<sup>78</sup>. It is important to note that under the BBNJ, MPAs must be proposed according to “the best available science and scientific information and (...) relevant traditional knowledge (...) taking into account the precautionary

---

<sup>65</sup> European Commission, [MSFD evaluation report](#), March 2025, p.32

<sup>66</sup> European Commission, [MSFD evaluation report](#), March 2025, p.32

<sup>67</sup> European Commission, [MSFD evaluation report](#), March 2025, p. 73

<sup>68</sup> Seas At Risk, [Factsheet: Marine Protected Areas in the EU: ensuring legal compliance and effective enforcement](#), June 2025

<sup>69</sup> Marine Conservation Society, Oceana, Seas at Risk, [A quantification of bottom towed fishing activity in marine Natura 200 sites](#), April 2024.

<sup>70</sup> ClientEarth, [EU faces legal complaint as France, Germany, Italy leave “protected” marine areas open to destruction](#), April 2025.

<sup>71</sup> ClientEarth, [UNOC countdown: Fresh legal challenge over untackled bottom-trawling in EU Marine Protected Areas](#), June 2025.

<sup>72</sup> ClientEarth, [NGOs continue to fight against bottom trawling in marine protected areas with lawsuit in Spain](#), October 2024.

<sup>73</sup> ClientEarth, [NGOs take France to court over trawling in Mediterranean “protected” marine areas](#), September 2024.

<sup>74</sup> ClientEarth, [Netherlands faces court as pressure to end bottom trawling in marine protected areas mounts](#), January 2025.

<sup>75</sup> National Geographic Press Release, [Study: Bottom Trawling in European Waters Costs Society up to 11Billion Annually](#) March 2025.

<sup>76</sup> Target 3, [CoP Decision 15/4 adopting the Kunming-Montreal Global Biodiversity Framework \(GBF\)](#), December 2022.

<sup>77</sup> Article 17(c) [Agreement on Marine Biological Diversity of Areas Beyond National Jurisdictions \(BBNJ\)](#).

<sup>78</sup> Article 17(d) [BBNJ](#).

approach and an ecosystem based approach”. The Commission has gone some way to include these targets into the EU frameworks by including, in its EU Biodiversity Strategy<sup>79</sup>, a commitment to “effectively manage all protected areas, defining clear conservation objectives and measures and monitoring them appropriately<sup>80</sup>” and by achieving the above mentioned 30x30 target as well as a 10% target by 2030 for strictly protected areas.

The MSFD already provides in its Article 13(4) the ability for Member States to take “spatial protection measures contributing to the coherence and representative networks of marine protected areas”. A key recommendation outlined in the 2025 Programmes of measures report is for Member states to put in place “additional measures” on biodiversity which would involve “completing the network of coherent, representative, effectively managed MPAs to reach 2030 targets set in the biodiversity strategy to protect 30% of waters, including 10% strictly, in line with the ambition set in the marine action plan and the obligations under the Kunming-Montreal Global Biodiversity Framework”<sup>81</sup>.

In so far as the upcoming Ocean Act does not address the key issues surrounding MPAs, the MSFD could and should elaborate on the obligations of Member States as relates to the establishment of Marine Protected Areas. Namely, the MSFD should:

- Include a **legally binding target** for achieving **effectively conserved and managed MPAs in 30% of EU seas** in line with international law and the EU Biodiversity Strategy by 2030.
  - The latest data shows that only 13.7% of EU seas have been designated as MPAs<sup>82</sup>. And this is before one even considers the effectiveness of the management measures in those MPAs. For example, a recent report by WWF shows that only 2.04% of EU seas are currently covered by Marine Protected Areas (MPAs) with management plans<sup>83</sup>.
  - Explicit provisions to this effect should be added in the Programme of Measures Article 13(4).
- Include a **legally binding target for achieving 10% of strictly protected areas by 2030** in line with the EU Biodiversity Strategy and with IUCN categories<sup>84</sup>.
  - The IUCN guidelines distinguish between two types of strict protection: “strict nature reserves” and “wilderness areas”. They aim to be “as undisturbed” by human activity as possible<sup>85</sup> and to secure the environment in its natural state.
  - As above, this could be included as a target under the Programmes of Measures Article 13.
- Support the **effective implementation of the Habitats Directive, particularly as relates to effective management**. In light of the Habitats Directive, support the application of clear, adequate and site-specific conservation objectives and measures, proper monitoring of these, and guarantee

<sup>79</sup> European Commission, EU Biodiversity Strategy for 2030 : Bringing Nature back into our lives COM(2020) 380 Final (EU Biodiversity Strategy), May 2020.

<sup>80</sup> European Commission, EU Biodiversity Strategy, May 2020, p.5.

<sup>81</sup> European Commission MSFD Report on the Programmes of Measures, February 2025, p.26.

<sup>82</sup> European Commission, EU Biodiversity Dashboard (accessed February 2026); and EEA Indicators Marine Protected Areas in Europe's Seas, November 2025.

<sup>83</sup> WWF, A drop in the ocean: Only 2% of EU seas protected as 2030 deadline looms, WWF warns, June 2025

<sup>84</sup> International Union for Conservation of Nature (IUCN), Guidelines for Applying Protected Area Management Categories, Best Practice Protected Areas Guidelines Series No.21.

<sup>85</sup> IUCN, Guidelines for Applying Protected Area Management Categories, Best Practice Protected Areas Guidelines Series No.21, p.13-14.

implementation and enforcement. **Effective management should also be ensured for MPAs designated under other frameworks.**

- The EEA states that the next “major implementation challenge” of the Natura 2000 network is to “increase the effectiveness of its management”<sup>86</sup>. In line with IUCN’s indications, management systems and processes should be both adequate and appropriate, enabling protected areas to deliver on their objectives, including conservation of values<sup>87</sup>.
- **A legally binding prohibition on mobile bottom fishing activities, including bottom trawling, in MPAs by 2030**, should be included in Ocean Act in line to satisfy the requirements of the Marine Action Plan. A case-by-case approach as suggested in the EOP<sup>88</sup> does not only create additional burden, but also undermines the effectiveness of the existing legislation. Under the Habitats Directive, potentially destructive human activities should by default be prohibited from taking place in Natura 2000 MPAs, unless it can be clearly shown that there is no adverse effect on site integrity – which is clearly not the case with bottom trawling.
  - This would support progress as relates to the sea-floor integrity indicator and should be set as a minimum threshold for that indicator. Elements of the Commission Decision 2017/848 relating to descriptor D6 on seafloor integrity should be incorporated into the Directive itself to bring greater clarity and make legally binding these elements of GES.

## 2. Climate

Recent **international jurisprudence** on the international obligation to protect and preserve the marine environment<sup>89</sup> clarified that this obligation encompasses “**any form** of degradation of the marine environment, including climate change impacts, such as ocean warming and sea level rise, and ocean acidification”<sup>90</sup>. It further clarifies that policy coherence is key – marine protection and the fight against climate change go hand in hand and obligations under environmental treaties, climate treaties, customary law and human rights all inform each other<sup>91</sup>. We need to see an **integrated, mutually supportive approach is required between fisheries, biodiversity, and climate frameworks as well as customary international law**. When it comes to climate and ocean, the MSFD is key to integrate the obligations under the **United Nations Framework Convention on Climate Change (UNFCCC)** and the **Paris Agreement** with the legally relevant benchmark to **limit global warming to 1.5°C** above pre-industrial levels. Parties do not enjoy unfettered discretion – in contrast, they must do their “utmost”<sup>92</sup>. “Stringent”<sup>93</sup> due diligence is needed to prevent, reduce and control

<sup>86</sup> EEA Report, Management effectiveness in the EU’s Natura 2000 network of protected areas, October 2020.

<sup>87</sup> IUCN, Guidelines for Applying Protected Area Management Categories, Best Practice Protected Areas Guidelines Series No.21.

<sup>88</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Ocean Pact, COM/2025/281 final, June 2025 (EOP), p.7

<sup>89</sup> Article 192 of the United Nations Convention on the Law of the Sea (UNCLOS).

<sup>90</sup> ITLOS, AO 2024, paragraph 388.

<sup>91</sup> See recent landmark advisory opinions: International Tribunal of the Law of the Sea (ITLOS), Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, No. 31, 21 of May 2024 (ITLOS, AO 2024); have been issued by the International Court of Justice (ICJ); International Court of Justice (ICJ), Obligations of States in Respect of Climate Change, Advisory Opinion, I.C.J. Reports 2025, 21 of July 2025 (ICJ, AO 2025). Another breakthrough advisory opinion has been issued by the Inter-American Court of Human Rights (IACtHR), The Climate Emergency and Human Rights. Advisory Opinion OC-32/25, 29 April 2025, (IACtHR, AO 2025), although the latter is not directing binding on the EU / its Member States.

<sup>92</sup> ICJ, AO 2025, para. 275.

<sup>93</sup> ITLOS, AO 2024, para. 239; ICJ, AO 2025, paras. 138 and 343.

any forms of marine pollution, including GHG emissions<sup>94</sup>, consistent with the goal of limiting global warming to 1.5°C – a standard informed by best available science and the precautionary approach<sup>95</sup>.

The Commission itself states that “climate change is relevant to all MSFD descriptors”<sup>96</sup> and that the commitments under the Paris Agreement “directly contribute to the objectives of the MSFD as climate change constitutes the most significant pressure on the marine environment with potential consequences for achieving GES for all descriptors and in all regions”<sup>97</sup>. It further acknowledges that the recent decision of the international tribunals qualifying GHG emissions as constituting pollution of the marine environment should be “read in the context of the MSFD requiring Member States to tackle pollution of the marine environment”<sup>98</sup> and that “**Member States’ obligations under UNCLOS should be fully taken into account under the Directive**”<sup>99</sup>.

To satisfy international rules and obligations, a revised MSFD must become a “stringent” instruments to fulfil climate obligations and ensure that the EU and Member States does their “utmost” in the fight against climate change.

### 3. Fisheries

GES cannot be achieved or maintained if fisheries management is not fully aligned with the MSFD. Overfishing and destructive fishing practices have been the main causes of marine biodiversity loss for several decades. They also critically undermine the resilience of fish, crustaceans, corals, seabirds, marine mammals, and other wildlife to the impacts of climate change, as well as undermining their capacity to mitigate the latter<sup>100,101</sup>. The EU’s failure to date to ensure that fisheries decisions, including on the setting of fishing opportunities, are aligned with the MSFD’s core objective of achieving GES constitutes a **major roadblock in the EU’s journey towards GES delivery**.

Both the EU and its Member States need to adhere to the principle of sincere cooperation (see Art. 4(3) TEU), meaning that they need to ensure the fulfilment of the obligations resulting from EU law and refrain from any measure which could jeopardise the attainment of the EU’s objectives – such as the GES. Hence, when it comes to fisheries management, the EU and its Member States must not only adhere to the Common Fisheries Policy and its “MSY Objective” of restoring all stocks above biomass levels capable of producing the maximum sustainable yield (MSY), but also to very concrete elements of the MSFD’s core objective of achieving GES that are both *directly impacted by* and *impacting on* the sustainability of fisheries.

However, this is currently not the case. Key obstacles are:

1. The failure of the EU and its Member States to ensure that a) effective fisheries management measures are taken to address the lack of progress towards GES, and b) that all measures that are taken (including fishing opportunities) are fully aligned with the GES criteria (particularly for Descriptors 3 and 4) already listed in Commission Decision (EU) 2017/848. In particular, key GES

<sup>94</sup> ITLOS AO, 2024, para 179 states “the Tribunal concludes that anthropogenic GHG emissions into the atmosphere constitute pollution of the marine environment”

<sup>95</sup> ITLOS, AO 2024, paras. 207-213.

<sup>96</sup> European Commission, [MSFD evaluation report](#), March 2025, p.74

<sup>97</sup> European Commission, [MSFD evaluation report](#), March 2025, p.74

<sup>98</sup> European Commission, [MSFD evaluation report](#), March 2025, p.75

<sup>99</sup> European Commission, [MSFD evaluation report](#), March 2025, p.75

<sup>100</sup> IPCC (2019), [Special Report on the Ocean and Cryosphere in a Changing Climate](#). IPBES (2019). [Global Assessment Report on Biodiversity and Ecosystem Services](#).

<sup>101</sup> Mariani, G, Cheung, WWL, Lyet, A, Sala, E, Mayorga, J, Velez, L, Gaines, SD, Dejean, T, Troussellier, M, Mouillot, D (2020): Let more big fish sink: Fisheries prevent blue carbon sequestration—half in unprofitable areas. *Science Advances* Vol 6, Issue 44. 28 October 2020. DOI:[10.1126/sciadv.abb4848](https://doi.org/10.1126/sciadv.abb4848).

elements are neither explicitly integrated in the setting of fishing opportunities, nor in the scientific single-stock advice the Commission's DG MARE requests from the International Council for the Exploration of the Sea (ICES) to underpin them<sup>102</sup>. This is a fundamental flaw in current EU fisheries management – and an obvious example of policy incoherence and of a lack of coordination between DG MARE and DG ENV.

2. The lack of clear, meaningful and quantifiable binding thresholds on certain key aspects of GES in cases where the relevant Member States have so far not agreed to such thresholds.
3. The lack of relevant criteria and thresholds aimed at accounting for and making management measures (and the progress towards GES they are intended to deliver) robust to climate change impacts.

The revision of the MSFD can play a key role in fixing this situation and setting the EU on a clear path towards GES being fully embedded both 1) in the fisheries decisions that are impacting on and impacted by GES delivery (or a lack thereof), and 2) in the scientific advice the Commission requests to underpin them.

First and foremost, it is key to **clarify the legally binding nature of the MSFD obligations and providing a clear, tangible pathways** for all stakeholders involved – including the fisheries sector – through integrating the **key policy measures outlined** in our Key Policy Measures Table. In addition, the following policy measures are specifically relevant:

- **Scientific advice towards GES:** The entity in charge of commissioning scientific advice to inform management measures in the marine environment that may affect GES delivery should ensure that the requested advice is explicitly geared towards achieving all relevant GES elements that could impact on or be impacted by the management measures in question. For fisheries, this means the Commission should a) request recovery-focused, precautionary and ecosystem-based scientific advice to inform fishing opportunities that is in line with the MSFD's core objective of achieving GES; b) explicitly recognise and account for remaining shortcomings in the scientific advice used to underpin fishing opportunities, where relevant GES elements are not or cannot yet be fully reflected in this advice; and c) ensure that relevant Commission departments / directorates collaborate effectively in areas of overlapping competence – such as fisheries (DG MARE) and marine conservation (DG ENV) – where management in the marine space impacts on and/or is impacted by (lack of) GES achievement. This should include the mandatory consultation of DG ENV when developing requests for advice on fishing opportunities.
- **Fish stock rebuilding plans:** Member States – and the Commission where stocks shared with non-EU countries are concerned and the Commission negotiates on behalf of the EU – are to develop rebuilding plans for any stocks below the lower boundary of fluctuation around  $B_{MSY}$ , or  $MSY B_{trigger}$ ,<sup>103</sup>

<sup>102</sup> Our Briefing 3 ““Best available” is not good enough – addressing shortcomings in the current scientific advice”, July 2027, supported by almost 30 organisations (including environmental NGOs, recreational fishers and Low Impact Fishers of Europe), further explains the shortcomings in the current scientific advice on fishing opportunities and how they should be acknowledged, addressed and accounted for. We therefore welcome Commissioner Kadis' confirmation in his recent response to a joint letter that his “*services are committed to ensuring that the Grant Agreement [between ICES and DG Mare that guides the provision of scientific advice on fishing opportunities] incorporates provisions whereby scientific advice is recovery-focused, precautionary, and ecosystem-based*”. However, we re-emphasise that as of February 2026 the issues we raised in our briefing remain largely unaddressed. This briefing is part of our joint Briefing Series “Recommendations to the EU and the UK on the setting of fishing opportunities”.

<sup>103</sup> The biomass reference point  $B_{MSY}$  is defined as the Spawning Stock Biomass (SSB) that results from fishing at  $F_{MSY}$  (the fishing mortality consistent with achieving MSY) for a long time. This point marks the mid-point of fluctuation around  $B_{MSY}$ , meaning the likelihood that a stock estimated to be at  $B_{MSY}$  is actually above or below it is 50%, respectively. It effectively corresponds to the “biomass capable of producing the MSY”, as referred to in EU and UK legislation (see [Briefing 2](#) in our [joint Briefing Series](#)).  $MSY B_{trigger}$  is the point below which ICES advises a decrease in fishing mortality below  $F_{MSY}$  (compared to populations that are estimated

in order to meet criterion D3C2 on biomass levels capable of producing MSY. Such rebuilding plans should include clear recovery targets, timeframes and bycatch reduction strategies, including spatial measures (such as temporary and permanent closures) and selective gears, as well as harvest control rules to achieve them<sup>104</sup>. They should also contain strong safeguards to prevent future population declines or stagnation below MSY  $B_{\text{trigger}}$ , and be subject to close monitoring and enforcement using REM with cameras. The revised MSFD must contribute through its tools to deliver on the rebuilding plans.

- **Thresholds and targets:** The Member States and the Commission must use relevant targets and thresholds regarding GES elements not only to monitor progress towards achieving GES, but also to assess and ensure the alignment of any management measures in the marine environment, including the setting of fishing opportunities, with this goal.

The transposition of existing provisions regarding relevant Descriptors under Commission Decision (EU) 2017/848 into the revised MSFD is key to set a clear legally binding EU-wide minimum standard for criteria and relevant thresholds to be used when assessing progress towards achieving GES and the alignment of management measures with the goal of achieving GES. With regards to fisheries, this should include the relevant details regarding:

- Descriptor 3 on commercially-exploited fish and shellfish, particularly:
  - A fishing mortality at or below levels which can produce MSY (D3C1)
  - A Spawning Stock Biomass (SSB) above levels capable of producing MSY (D3C2)
  - An age and size distribution of individuals indicative of a healthy population (D3C3)
- Descriptor 4 on marine food web integrity, particularly
  - The diversity (species composition and their relative abundance) of the trophic guild (D4C1),
  - The balance of total abundance between the trophic guilds (D4C2),
  - The size distribution of individuals across the trophic guild not being adversely affected due to anthropogenic pressures (D4C3),
  - The productivity of the trophic guild is not adversely affected due to anthropogenic pressures (D4C4).

A default threshold should be used across the EU for any GES criteria where threshold values have not yet been established, and a time-bound requirement to seek scientific advice on relevant indicators that would at least allow an assessment of the direction of travel in the absence of a concrete threshold.

The Commission should consider complementing the existing criteria laid out in Commission Decision 2017/848 (to be integrated into the legal text of the revised MSFD) with additional criteria and relevant thresholds to ensure that both the Commission's and Member States' assessments of progress towards GES, and any management measures taken in the marine environment account for and are robust in the face of climate change impacts and uncertainty around them. This could include for example (not exhaustive list):

---

to be at or above MSY  $B_{\text{trigger}}$ , i.e. this is the level which "triggers" a more cautious approach. For further explanations of biological reference points, please refer to ClientEarth, "[Linking the law to biological reference points used in scientific advice when setting Total Allowable Catches \(TACs\)](#)", December 2020.

<sup>104</sup> Also see [Briefing 9](#) on "Depleted stocks with zero or very low catch advice", as part of our joint [Briefing Series](#).

- A new criterion D3C4 aimed at ensuring the impact of fisheries on the SSB of populations of commercially-exploited fish and shellfish species does not adversely affect the contribution of these populations to oceanic carbon sequestration;
- A new criterion D3C5 aimed at maximising the resilience of commercially-exploited fish and shellfish populations to climate change impacts on population health and productivity. For example, this could involve setting SSB targets and corresponding fishing mortality targets that build in an explicit buffer towards climate change impacts (or uncertainty around them), i.e. an SSB target higher than D3C2 and an F target lower than D3C1;<sup>105</sup>
- A new criterion D6C4 and/or D7C3 under Descriptors 6 and/or 7 aimed at ensuring fisheries do not adversely affect carbon sequestration through seabed disturbance.

*Relevance for Policy Measures under Stakeholder Survey: The policy measures outlined above are relevant for all areas listed in the Background Document<sup>106</sup>, i.e. for Objective of the Directive: achievement of Good Environmental Status (in particular sections A. providing clarity on the GES definition, D. Provide for environmental targets pressure reduction and spatial protection to make progress towards GES); Taking more effective action (in particular F. Improve the Programmes of Measures, G. Strengthen the Spatial Protection Measures, and H. Integrate climate change); Simplification & knowledge (in particular L. increase the alignment of the MSFD with other legislation).*

### PRIORITY 3: Policy coherence between – not merging of – MSFD and other files

A revised MSFD alone will not lead to greater effect than today's MSFD if it will be applied in silo. Instead, it is already the EU Treaties that prescribe the need for coherence among its own EU acquis (Art. 7 TFEU), especially when it comes to environmental protection (Art. 11 TFEU). In practice, both the EU and its Member States need to adhere to the principle of sincere cooperation. This includes the obligation for Member States to ensure the fulfilment of the obligations resulting from EU law, as well as the obligation to refrain from any measure which could jeopardise the attainment of the EU's objectives (Art. 4(3) TEU).

Hence, bringing policy coherence into practice for the MSFD works in two ways: (1) The objective of achieving GES under the MSFD must be explicitly acknowledged as the overarching objective of all ocean-related laws and policies. The Ocean Act can build that "bridge" and bring together existing targets from various laws – which does not require merging all these laws itself with all its additional instruments and rules into one Ocean Act. (2) With regards to other policies, the revised MSFD can achieve policy coherent actions through both, setting up its environmental targets and programme of measures by utilising other legislation, as well as by asking for policy coherent permitting and planning decisions under other legislation.

---

<sup>105</sup> See for example a scientific paper by Kemp et al. 2023 that concluded that the "biomass of fish stocks should be allowed to regenerate to a minimum of 120% of that which will achieve MSY to provide a buffer against the uncertainty in ecological response to climate change". Similarly, an earlier study by Beaugrand et al. 2022 investigating the impacts of fishing pressure and climate-induced environmental change on cod found that "alleviating fishing effort is the only way to maintain a stable SSB when the environmental regime becomes less suitable" and that "preventing collapse is easier than trying to reverse a collapse". Kemp, PS, Subbiah, G, Barnes, R, Border, K, O'Leary, BC, Stewart, B, Williams, C (2023). The future of marine fisheries management and conservation in the United Kingdom: Lessons learnt from over 100 years of biased policy. *Marine Policy* 147 (2023) 105075, <https://doi.org/10.1016/j.marpol.2022.105075>, p. 1 (abstract). Kemp, PS, Subbiah, G, Barnes, R, Border, K, O'Leary, BC, Stewart, B, Williams, C (2023). The future of marine fisheries management and conservation in the United Kingdom: Lessons learnt from over 100 years of biased policy. *Marine Policy* 147 (2023) 105075, <https://doi.org/10.1016/j.marpol.2022.105075>, p. 1 (abstract). Also see our joint Briefing on "Fishing opportunities in an ecosystem context" for further background.

<sup>106</sup> See Background Document, [EUSurvey - Survey](#).

A policy coherent approach does not mean to “mix up” everything together in one law – instead, it means to work towards the same legal objective and bringing all actors on the same, clear pathway for achieving the goal. This is fully in line with recent international case law. In fact, it results clear from the International Court of Justice Advisory Opinion on Climate Change that the time for thinking in silos has passed: marine protection is not only to be considered under the Law of the Sea, but also for other laws such as on human rights, climate or biodiversity<sup>107</sup>.

## 1. Relationship between Ocean Act and MSFD: two separate instruments needed to contribute to GES

With the European Ocean Pact, the Commission has announced that all existing targets from EU laws and policies will be put under one roof in the Ocean Act<sup>108</sup>. Therefore, the new EU Ocean Act has real potential to create policy coherence in the maritime sector and beyond. However, instead of simply “listing” all targets, it is of utmost importance to confirm their interaction between one another to actually enable and facilitate their implementation. This means that the Ocean Act (e.g. in a new first Article or if based on the Maritime Spatial Planning Directive (MSPD) in its Article 5) must explicitly affirm that the achievement of the **Good Environmental Status as defined under the Marine Strategy Framework Directive (MSFD) is its’ overarching objective**. The MSFD is already the most comprehensive, integrated regime for effecting ecosystem approach in the entire marine environment, and its descriptors already capture many other legal objectives, targets, impacts and pressures – including fisheries, energy or pollution. It also provides for the main principles that the European Commission seeks to implement according to the European Ocean Pact, namely the “four key principles: a source-to-sea approach on tackling pollution; a precautionary principle; a science-based approach to policy decisions; and an ecosystems-based approach”<sup>109</sup>.

As the MSFD is the backbone of EU ocean governance reference, the Ocean Act also needs to follow the **MSFD’s ecosystem-based approach and align all other ocean-related laws and policies with the MSFD’s approach**. The relevance of the MSFD’s ecosystem-based approach has already been acknowledged by the European Commission, be it in the “Guidelines for implementing an ecosystem-based approach in maritime spatial planning” from CINEA in 2021, or in the MSFD evaluation report 2025, where the European Commission stresses that both the MSFD and MSPD, follow a ‘strong sustainability’ perspective. This means that “**economic goals can only be pursued if the basic societal needs are fulfilled which, in turn, can only be achieved within the limits of a healthy environment**. This implies that the environmental goals should take precedence, followed by the social and economic goals. Decision-making should thus always occur within the environmentally safe and socially just space. In practice this implies that environmental thresholds are not exceeded”<sup>110</sup>. However, policy coherence does not require to merge all relevant laws into one law. The Ocean Act will bring the relevant targets under one roof, but it must not put all detailed laws and provisions into the same law. For example, it is also not to be expected that the Ocean Act will merge with the EU Climate Law, despite the huge relevance of the climate neutrality objective.

The EU Ocean Act will be built on the Maritime Spatial Planning Directive (MSPD) which is a separate legislative file from the MSFD. The MSFD puts in place a marine management mechanisms to achieve a specific state of the environment – by reducing various pressures. The MSPD is however a tool to enable

---

<sup>107</sup> [ICJ, AO 2025](#), para 311 “*treaties are to be “interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation”*”.

<sup>108</sup> European Commission, [EOP](#), p.2

<sup>109</sup> European Commission, [EOP](#), p.6.

<sup>110</sup> European Commission, [MSFD evaluation report](#), March 2025, p. 39, 40, and footnote 139; European Commission, [Guidelines for implementing an Ecosystem-based Approach in Maritime Spatial Planning](#), September 2021, p. 20.

“sustainable growth”<sup>111</sup> by focusing on the planning process of maritime activities. Merging the two would not lead to simplification as their approaches are so different. Further, simply gathering all the various provisions in one place would not solve the issues we see today. Instead, to enable simplification and policy coherence in an effective way, we need to see the Ocean Act to set a framework for how these targets operate with each other. Hence, the environmental instrument we have in the MSFD need to remain the backbone of ocean governance and the Ocean Act, based on the MSPD, should promote its components and not undermine these standards through ‘trade-offs’ with socio-economic objectives.

This structure can, again, be compared with the EU Climate Law and its related laws and policies. While the EU Climate law clarifies the legally bindingness of the climate neutrality objective for all climate-related laws and policies, it keeps its various instruments separate, e.g. through the additional Emissions Trading System Directive or the Industrial Emissions Directive.

More details on the potential of the EU Ocean Act, its structure and relationship to the MSFD can be found in ClientEarth, *Ocean Act: Charting a course from paper commitments to real practice*, February 2026<sup>112</sup>.

## 2. Policy coherent permitting and planning regime

Policy coherence is also a key priority when setting the environmental targets and programmes of measures under the MSFD itself – Member States will utilise other legislation to operationalise the achievement of GES (see above, Priority 1). In addition, the revised MSFD must also require acts and decisions under other legislation to be aligned with these marine strategies in specific and the GES, including its non-deterioration principle, in general. This can be done through an explicit provision stating that **any plan or project being set up under other laws must be in compliance with relevant environmental targets established under Article 10 and must not jeopardize the achievement of GES and interim objectives under Article 1 and 9**. Comparison can again be drawn from the Habitats Directive which requires an appropriate assessment of the likely implications of plans and projects for conservation sites under **Article 6(3) Habitats Directive**.

*Relevance for Policy Measures under Stakeholder Survey: The policy measures outlined above are relevant for all areas listed in the Background Document<sup>113</sup>, i.e. for Objective of the Directive: achievement of Good Environmental Status (in particular sections A. providing clarity on the GES definition, C. Provide clarity of the Ecosystem-based approach (EBA)); Taking more effective action; Simplification & knowledge (in particular L. increase the alignment of the MSFD with other legislation).*

## PRIORITY 4: Adequate funding to support the objectives of the MSFD

The revision of the MSFD will not deliver its objective of accelerating progress towards GES unless strengthened environmental obligations are matched by a coherent and performance-oriented EU funding framework under the next Multiannual Financial Framework (MFF).

The Commission itself recognises that further and better-targeted implementation efforts – including financial support – are necessary to achieve the objectives of the Directive. The Commission’s **MSFD review background note** (DG ENV, 2022) acknowledges that programmes of measures only partially address pressures on the marine environment and that GES has not been achieved, highlighting persistent

<sup>111</sup> Article 1(1) Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (MSPD), July 2014

<sup>112</sup> ClientEarth, *Ocean Act: Charting a course from paper commitments to real practice, response to the call for evidence*, February 2026

<sup>113</sup> See Background Document, *EUSurvey - Survey*.

implementation gaps between legal obligations and ecological outcomes<sup>114</sup>. This finding is confirmed by the Commission in the evaluation report, which states that while several EU funding instruments have contributed to MSFD implementation, financial support has been fragmented and not consistently earmarked for MSFD-specific measures<sup>115</sup>.

## a. Structural funding gaps for MSFD implementation

Under the previous European Maritime and Fisheries Fund (EMFF), 10% of the budget fund was earmarked for the integrated maritime policy specifically dedicated to MSFD implementation, whereas this earmarking no longer exists under the current European Maritime, Fisheries and Aquaculture Fund (EMFAF), even though achieving GES and protecting marine biodiversity remain central objectives<sup>116</sup>. Even where earmarking existed, the effective use of funds for marine conservation remained limited. The European Court of Auditors estimated that only a limited share of funds in visited Member States was used for conservation measures most directly linked to the MSFD<sup>117</sup>. This illustrates the broader structural challenge: EU funding streams have often been poorly aligned with the ecological objectives of marine legislation.

The Commission's evaluation highlighted indeed that access to EU funds for MSFD implementation remained challenging for Member States due to administrative complexity and tight programming timelines<sup>118</sup>. These barriers have limited the capacity of Member States to mobilise available funding to support the implementation of marine environmental measures.

If administrative burdens have already represented an obstacle to accessing funding under the current and previous MFFs, expectations for improved implementation of the MSFD risk becoming even more challenging under the next programming period unless the funding architecture is better aligned with marine protection objectives.

## b. Concerns regarding the MFF proposal and the disappearance of dedicated ocean funding

These concerns are reinforced by the current Commission proposal for the next MFF, which appears to further weaken the structural link between EU marine policy objectives and EU funding instruments<sup>119</sup>.

First, the disappearance of a dedicated structural fund equivalent to EMFAF risks removing one of the few funding instruments specifically designed to support the implementation of EU fisheries, maritime and ocean policies. A shift towards broader funding instruments risks diluting the financial support available for marine protection and conservation measures<sup>120</sup>.

Second, a significant share of future EU funding is expected to be channelled through National and Regional Partnership Plans (NRPPs)<sup>121</sup>. While this instrument may offer flexibility, they are primarily driven by national priorities. The NRPP architecture does not currently provide a dedicated financial target for marine

<sup>114</sup> European Commission, Background Note – MSFD Review: State of Play (Meeting of Marine Directors, 9 June 2022), Brussels, 9 June 2022, p. 12.

<sup>115</sup> European Commission, MSFD evaluation report, March 2025, p. 50–52.

<sup>116</sup> Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004.

<sup>117</sup> European Court of Auditors, Special Report 26/2020 – Marine environment: EU protection is wide but not deep, p. 18.

<sup>118</sup> European Commission, MSFD evaluation report, March 2025, p. 52.

<sup>119</sup> European Commission, An ambitious budget for a stronger Europe: the EU long-term budget 2028-2034, Communication accompanying the proposal for the Multiannual Financial Framework 2028–2034, 16 July 2025.

<sup>120</sup> Seas At Risk, BirdLife Europe & ClientEarth (2025), Misalignment of EMFAF operational programmes with EU environmental and social objectives (2021–2027), Policy Brief, October 2025, p.7.

<sup>121</sup> European Commission (2025), Proposal for a Regulation of the European Parliament and of the Council establishing the European Social Fund as part of the National and Regional Partnership Plan set out in Regulation (EU) [...] [NRPP] for the period 2028–2034, COM(2025) 558 final, 16 July 2025.

biodiversity. Blue NGOs therefore called for a specific biodiversity allocation within the EU budget, including dedicated ringfence for marine biodiversity conservation and restoration<sup>122</sup> under the NRPP Regulation.

Third, several competitive project based that currently provide important support for marine protection — such as LIFE, Horizon-funded initiatives including Mission Restore Our Ocean and Waters, and other project-based instruments are expected to disappear. While these instruments play an important complementary role, project-based and competitive funding cannot substitute for stable, predictable and structurally aligned funding streams capable of supporting the long-term implementation of marine environmental legislation across all marine regions.

Taken together, these developments raise significant concerns that the future EU funding architecture may further weaken the financial foundations required for the effective implementation of the MSFD.

Recent opinions of the European Court of Auditors (ECA) reinforce these concerns from a performance and accountability perspective. In Opinion 10/2026 on the proposed horizontal performance framework, the ECA warns that the new system risks measuring implementation progress rather than actual environmental results, due to its reliance on output indicators, broadly defined intervention fields and the absence of impact indicators<sup>123</sup>. In Opinion 09/2026 on the proposed European Fund, the ECA further stresses that milestone-based payments and output-focused targets do not in themselves ensure performance orientation, comparability or value for money. These weaknesses are particularly problematic in the context of the MSFD, whose core objective – achieving GES – requires demonstrable ecological improvement rather than procedural compliance<sup>124</sup>.

Taken together, the Commission's evaluation and the ECA's opinions reveal a structural misalignment between marine environmental objectives and EU budgetary architecture. For the revised MSFD to be effective, it should therefore explicitly require coherence between marine protection obligations and EU financial instruments. In particular, the new MFF should:

- ensure that EU funds supporting fisheries, maritime and coastal sectors are demonstrably consistent with the achievement of GES;
  - prevent public support for activities that risk degrading marine ecosystems or delaying recovery;
  - require the integration of robust, science-based result and impact indicators aligned with MSFD descriptors into funding frameworks; and
  - strengthen transparency, traceability and accountability of marine-related expenditure.
1. Without such structural coherence between legal obligations and financial flows, strengthened MSFD provisions risk remaining aspirational rather than operational.
  2. Introduce a provision in the MSFD requiring the European Commission (DG ENV) to assess future National and Regional Partnership Plans (NRPPs) against the objectives of the Directive, in particular the achievement of GES.

---

<sup>122</sup> ClientEarth, BirdLife Europe and Central Asia, BLOOM, Blue Marine Foundation and Seas At Risk (2026), [The next EU budget: Investing in ocean resilience and thriving coastal communities](#), NGO policy briefing on the post-2027 Multiannual Financial Framework (MFF), February 2026, p. 4-5.

<sup>123</sup> European Court of Auditors, [Opinion 10/2026 concerning the proposal for a regulation establishing a budget expenditure tracking and performance framework](#), paras 12–15, p. 9.

<sup>124</sup> European Court of Auditors, [Opinion 09/2026 concerning the proposed European Fund \(2028–2034\)](#), sections on performance framework and milestone-based payments.

3. Each measure included in the Programme of Measures should clearly indicate how it will be financed, including the relevant EU or national funding instrument intended to support its implementation (requiring an amendment to Article 13).

*Relevance for Policy Measures under Stakeholder Survey: The policy measures outlined above are relevant for all areas listed in the Background Document<sup>125</sup>, i.e. for Objective of the Directive: achievement of Good Environmental Status; Taking more effective action (in particular I. Improve funding for MSFD implementation); Simplification & knowledge (in particular L. increase the alignment of the MSFD with other legislation);*

## PRIORITY 5. Ensuring stability and predictability through compliance mechanisms

The EU's ocean legislation can only deliver on its environmental – and socio-economic – objectives if its rules are implemented in a predictable, consistent, and credible way. Strengthening compliance tools in the Marine Strategy Framework Directive is therefore not about adding new burdens, but about ensuring that the commitments translate into real-world results – i.e. commitments that have been proposed, negotiated and agreed by the European Commission, the European Parliament and the Member States themselves. Clearer rules, better transparency, and effective follow-through are what create stability for administrations, certainty for businesses, and trust for citizens.

### 1. Safeguarding compliance as a legal, economic and simplification necessity

Implementation and enforcement is understood to be a priority for the Commission: in its 2025 Communication on a Simpler and Faster Europe, it stresses that “[a]s part of the broader change in regulatory culture, the EU needs to focus on improving the implementation of our rules and joining forces between EU institutions, Member States and stakeholders”; and commitments are made to “pursue a resolute enforcement action as Guardian of the Treaties, to ensure that rules are implemented”<sup>126</sup>. At the start of her mandate, Commission’s President von der Leyen promised “better enforcement”<sup>127</sup>. She tasked her Commissioners to “make full use of all instruments for implementation and enforcement, including infringement proceedings”<sup>128</sup>.

However, despite these announcements and prioritisation, little progress has been made on enforcement in the context of the MSFD. Several infringement proceedings have been initiated since its adoption in 2010 on transposition and reporting issues – however, none have been brought on the actual failure to achieve GES and the incorrect application of the MSFD’s substantial provisions<sup>129</sup>.

The reason for the lack of further enforcement actions by the Commission in this regard is mainly that it appears to regard the objectives of the MSFD as barely enforceable<sup>130</sup>. In its MSFD evaluation report, it highlights that the incorrect application of the MSFD stems in particular from the “lack of clear enforceable provisions in the text of the Directive itself” (providing for broad discretion and flexibility for Member States)<sup>131</sup>

<sup>125</sup> See Background Document, [EUSurvey - Survey](#).

<sup>126</sup> European Commission, [Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, A simpler and faster Europe: Communication on implementation and simplification, Com\(2025\) 47 final](#), February 2025, p.4.

<sup>127</sup> Ursula von der Leyen, [Political Guidelines for the next European Commission 2024-2029](#), July 2024, p. 7: implementation is mentioned as a priority throughout.

<sup>128</sup> See e.g. [Mission Letter to Commissioner for Fisheries and Oceans, Costas Kadis](#), September 2024.

<sup>129</sup> European Commission Website, [Infringement Cases in the EU Database](#) (checked in February 2026).

<sup>130</sup> This does not fully reflect the authors' view. However, for this submission for the MSFD revision consultations, we focus on effective compliance mechanisms needs even under today's interpretation of the European Commission.

<sup>131</sup> European Commission, [MSFD evaluation report](#), March 2025, p. 24 and 41.

as well as from the lack of provisions ensuring effective, proportionate and dissuasive penalties as well as access to justice, as compared to other EU environmental legislation<sup>132</sup>.

Enabling clearer enforcement through a revised MSFD text is not only about implementing the promised priorities from the European Commission, it is needed from a legal, economic and simplification point of view.

- **Safeguarding compliance is a legal necessity:**

Just right in time for the MSFD revision, the world's top courts – the **International Court of Justice** and the **International Tribunal of the Law of the Sea** – stated crystal clear that enforcement mechanisms are part of the international obligations to protect marine environment. They explicitly clarified that due diligence under international law requires “to put in place a national system, including legislation, administrative procedures and an **enforcement mechanism**”<sup>133</sup> – which means a “certain level of vigilance in their enforcement and the exercise of administrative control”<sup>134</sup>.

Strengthening the MSFD's compliance provisions is therefore essential for the EU to meet its own Treaty obligations and to maintain credibility as a defender of an international rules-based order.

- **Safeguarding compliance is an economic necessity:**

A predictable regulatory environment is a core asset of the EU economy. When rules are implemented unevenly across Member States, all stakeholders, including maritime businesses, face uncertainty, fragmented requirements, and unfair competition. Strengthening compliance provisions – such as on transparency and access to justice, as well as on proportionate penalties and compensation mechanisms – helps ensure that all actors operate under the same conditions. This reduces legal ambiguity, prevents costly disputes, and supports long-term investment planning, especially in sectors like fisheries, tourism, offshore energy, and maritime transport.

The Commission's own Environmental Implementation Review states that “EU environmental law and policy contributes to the EU's prosperity, competitiveness and security and is essential to achieve its sustainable development”<sup>135</sup>. Simply implementing existing **EU environmental legislation** could save the EU economy around **180 billion EUR per year** in health costs and direct costs to the environment – far outweighing the costs of implementation<sup>136</sup>. When focusing only on the MSFD, the potential future environmental benefits deriving from the **full achievement of GES are estimated to be worth EUR 15.8 billion per year**<sup>137</sup>. To put these numbers in context: With the **ten Omnibus proposals** in 2025, the Commission only aims to save **less than 12 billion EUR** for EU businesses<sup>138</sup> – revealing a massive economic mismatch between implementation benefits and deregulation chaos.

Hence, ensuring that the MSFD is enforceable is a sound economic investment<sup>139</sup> that strengthens competitiveness and reduces costs for administrations and businesses.

---

<sup>132</sup> European Commission, [MSFD evaluation report](#), March 2025, p. 25.

<sup>133</sup> [ICJ, AO 2025](#), para 281; [ITLOS, AO 2024](#) para 235.

<sup>134</sup> [Pulp Mills on the River Uruguay \(Argentina v. Uruguay\)](#), Judgment, I.C.J. Reports 2010 (I) para. 197.

<sup>135</sup> European Commission, [Communication from the Commission to the European Parliament, The council, The European Economic and Social Committee and the Committee of the Regions, 2025 Environmental Implementation Review, Environmental implementation for prosperity and security, COM \(2025\) 420 Final \(2025 Environmental Implementation Review\)](#), June 2025, p.11.

<sup>136</sup> European commission, [2025 Environmental Implementation Review](#), June 2025.

<sup>137</sup> European Commission, [MSFD evaluation report](#), March 2025, p. 47, states that “incremental benefits of MSFD-only measures to date are estimated at EUR 1.01 billion a year”

<sup>138</sup> European Commission, [2025 Omnibus proposal](#).

<sup>139</sup> See also European Commission, [2025 Environmental Implementation Review](#), June 2025, p.11.

- **Safeguarding compliance is a simplification necessity:**

Weak enforcement does not simplify EU law – it complicates it. When rules are unclear, administrations must rely on diverging interpretations, repeated planning cycles, and corrective measures. This increases bureaucracy and creates uncertainty for businesses.

By contrast, clear obligations, transparent data, and accessible review mechanisms streamline implementation. They lower the risk of infringement proceedings and help Member States avoid costly litigation. Stronger compliance tools therefore support the Commission’s agenda for a “**simpler and faster Europe**”.

To conclude, enforcement provisions are not about “punitive measures” – first and foremost, they are practical tools that ensure rules are applied in the first place and work in practice, to create a level playing field and protect compliant authorities, businesses and citizens from the costs of unlawful actions.

## 2. Compliance mechanisms in MSFD

The Commission has identified the inclusion of “provisions on access to justice in EU legislative proposals made by the Commission for new or revised EU law concerning environmental matters” as a priority area for action in its 2020 Communication on improving access to justice in environmental matters in the EU and its Member States<sup>140</sup>. The inclusion of such a provision as well as strengthened wording on transparency, participation, penalties and compensation has become a standard practice of EU environmental law-making ever since. Recent examples introducing more effective rules are, for example, the Microplastic Pollution Regulation, the Urban Waste Water Treatment Directive or the Ambient Air Quality Directive. Other laws already included more effective enforcement provisions than the MSFD, such as the Water Framework Directive<sup>141</sup>.

The MSFD must now follow the same logic and design the law in a way that will safeguard the consistent implementation and fully align with international obligations. This includes, as a minimum, provisions on **access to information, public participation and access to justice** (fully in line with the Aarhus Convention), as well as **other effective enforcement provisions** (fully in line with recent international case law<sup>142</sup>), including **penalties and a compensation right mechanism**.

### a. Access to information, public participation, access to justice

The MSFD evaluation report acknowledges that the current MSFD does not provide for access to justice provisions, while “this obligation derives from the Aarhus Convention”, which is “of importance when it comes to ensuring the enforcement of the different rules laid down by EU environmental legislation”<sup>143</sup>. The MSFD revision must now integrate all relevant Aarhus rights in its legal text.

- **Access to information – Article 19 MSFD**

---

<sup>140</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Improving access to justice in environmental matters in the EU and its Member States, COM(2020) 643 Final, para. 33.

<sup>141</sup> The MSFD evaluation report is explicitly referring to the WFD and other EU environmental laws in that context, see European Commission, MSFD evaluation report, March 2025, p. 25.

<sup>142</sup> State (and EU) action must not only include legislative measures, but also “administrative procedures, and enforcement mechanisms necessary to regulate the activities in question, and ... exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective”, see ICJ, AO 2025, para 281; ITLOS, AO 2024, para 235.

<sup>143</sup> European Commission, MSFD evaluation report, March 2025, p. 25.

- While Article 19 MSFD already provides for access to information in principle. Its scope should cover all relevant documents (beyond “summaries” in Article 19(2)) and new digital tools should be used to ensure effective, up to date, and free of charge access to information.
- **Public participation – Article 19 MSFD**
  - Today’s Article 19 on public participation should ensure effective participation throughout all relevant steps of the MSFD prior to their finalisation and ensure that the public is given reasonable timeframes allowing for sufficient time to be informed, participate and express its views, and it should encourage the active involvement of all interested parties.
  - Strategic environmental assessments under the SEA Directive<sup>144</sup>, including the corresponding public participation, must be conducted for the Programmes of Measures ahead of their adoption.
  - Fully in line with the policy coherence objective of the European Ocean Pact, the MSFD should refer to the Public Participation Directive<sup>145</sup> and Marine Strategies should be added in the Annex I of this Directive.
  - Bodies and structures to consult under Article 19(1) are not exhaustively listed therein. Other bodies of relevance should be added to ensure an effective and coherent implementation of the MSFD. This includes, for example, the European Scientific Advisory Board on Climate Change, following the need for climate impact assessments under the EU Climate Regulation<sup>146</sup>.
- 4. Comparable examples: Article 10 Governance Regulation<sup>147</sup> ; Article 19(7) Ambient Air Quality Directive (AAQD)<sup>148</sup>
  - **Access to justice – new Article in MSFD required**
    - The MSFD must provide for an explicit and effective possibility for NGOs and the general public to challenge public authorities for contravening environmental law when they adopt specific acts or omissions that are required under the MSFD. The Commission has already committed itself to introduce access to justice provisions into sectoral EU laws impacting the environment<sup>149</sup>, so the MSFD is one of the missing pieces on marine environment.
    - Access to justice must be ensured for any decisions, acts or omissions public authorities need to adopt to comply with the Directive which have legal and external effects. This includes, among others, the marine strategies and any parts thereof referred to in Article 5 (and their updates in

<sup>144</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, [Directive - 2001/42 - EN - EUR-Lex](#).

<sup>145</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, [EUR-Lex - 02003L0035-20161231 - EN - EUR-Lex](#).

<sup>146</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’), [Regulation - 2021/1119 - EN - EUR-Lex](#).

<sup>147</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council, [EUR-Lex - 02018R1999-20231120 - EN - EUR-Lex](#).

<sup>148</sup> Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient air quality and cleaner air for Europe (recast), [Directive - EU - 2024/2881 - EN - EUR-Lex](#).

<sup>149</sup> European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Improving access to justice in environmental matters in the EU and its Member States](#), COM(2020) 643 Final.

Article 17), including the determination of good environmental status under Article 9, the establishment of environmental targets under Article 10 and the programmes of measures under Article 13; the urgent plan of action in Article 5(3); as well as any decisions, acts, or omissions following the programmes of measures under Article 13.

- Comparable examples: Article 25 Urban Waste Water Treatment Directive (UWWTD)<sup>150</sup>; Article 27 AAQD

## b. Proportionate and effective penalties and compensation mechanism

The MSFD evaluation report points to the lack of any penalty provision – despite their importance for implementation<sup>151</sup>. In addition, the Background document of the Stakeholder Survey lists a compensation mechanism in case of failure to achieve the MSFD’s objective as a policy measure under its main areas of work for the revision<sup>152</sup>. It also follows from recent international case law that the national systems must include enforcement mechanisms<sup>153</sup>.

### • Penalties – new Article in MSFD required:

- The MSFD must provide for effective, proportionate and dissuasive penalties, including minimum penalties for certain infringements, increasing fines for ongoing/repeated breaches of the law, and other criteria or ‘catalogue’ similar to existing environmental and non-environmental<sup>154</sup> legislation.
- Comparable examples: Article 20 UWWTD; Article 29 AAQD; Article 79 Industrial Emissions Directive (IED)<sup>155</sup>; Article 23 WFD<sup>156</sup> (as pointed out by the European Commission in the MSFD evaluation report itself, among others<sup>157</sup>)

### • Compensation right – new Article in MSFD required:

- The MSFD must provide for an explicit and effective possibility to claim damage for persons that have suffered damage as a result of a breach of the MSFD. What damage can be covered under this compensation right depends on the MSFD scope and objective. **Article 3(8) MSFD** lists the various deleterious effects that it wants to prevent, which includes, among others “**hazards to human health, the hindering of marine activities, including fishing, tourism and recreation and other legitimate uses of the sea**”. If persons suffering damage in this regard resulting from a breach of the MSFD, they must have the right to claim compensation from the responsible natural or legal person<sup>158</sup>. Importantly, including these potential damages into a compensation

<sup>150</sup> Directive (EU) 2024/3019 of the European Parliament and of the Council of 27 November 2024 concerning urban wastewater treatment (recast), [EUR-Lex - 02024L3019-20241212 - EN - EUR-Lex](#).

<sup>151</sup> European Commission, [MSFD evaluation report](#), March 2025, p. 25.

<sup>152</sup> See Background Document, [EUSurvey - Survey](#).

<sup>153</sup> [ICJ, AO 2025](#), para 281; [ITLOS, AO 2024](#), para 235 referring to [Pulp Mills on the River Uruguay \(Argentina v. Uruguay\), Judgment](#), I.C.J. Reports 2010 (I) para. 197

<sup>154</sup> See e.g. General Data Protection Regulation ((EU) 2016/679).

<sup>155</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast), [Directive - 2010/75 - EN - EUR-Lex](#).

<sup>156</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, [EUR-Lex - 02000L0060-20141120 - EN - EUR-Lex](#).

<sup>157</sup> [MSFD evaluation report](#), March 2025, p.25.

<sup>158</sup> Compensation rights apply against legal persons, which should include Member States. This can be supported by the jurisprudence of the European Court of Human Rights, see for more: Karageorgou, “[The Introduction of Compensation Clauses in EU Environmental Directives: A New Era for Private Enforcement?](#)”, February 2026, EU Law Live; Bartolucci/Esen, “[Less, but Not Zero Pollution? The Revision of the EU’s Industrial Emissions Directive](#)”, July 2024, Journal for European Environmental and Planning Law, 95 et seq.

right will ensure greater compliance in the first place which is highly beneficial for small-scale-fishers and coastal communities. This is different from the Environmental Liability Directive, which only applies to liability for narrowly defined damages to the environment<sup>159</sup> and does not afford compensation to private parties<sup>160</sup>.

- Comparable examples: Article 26 UWWTD ; Article 21 of Microplastic Pollution Regulation<sup>161</sup> ; Article 28 AAQD

*Relevance for Policy Measures under Stakeholder Survey: The policy measures outlined above are relevant for all areas listed in the Background Document<sup>162</sup>, i.e. for Objective of the Directive: achievement of Good Environmental Status; Taking more effective action; Simplification & knowledge; and in particular for Access to justice and its possible policy measures P. Improve access to justice and introduce a mechanism for redress and compensation in case of failure to achieve the Directive's objective.*

## About ClientEarth

ClientEarth is a non-profit organisation that uses the law to create systemic change that protects the Earth for – and with – its inhabitants. We are tackling climate change, protecting nature and stopping pollution, with partners and citizens around the globe. We hold industry and governments to account, and defend everyone's right to a healthy world. From our offices in Europe, Asia and the USA we shape, implement and enforce the law, to build a future for our planet in which people and nature can thrive together

Juliet Stote

Law and Policy Advisor

Marine Ecosystems

[jstote@clientearth.org](mailto:jstote@clientearth.org)

[www.clientearth.org](http://www.clientearth.org)

Bellinda Bartolucci

Senior Legal Expert

Marine Ecosystems

[bbartolucci@clientearth.org](mailto:bbartolucci@clientearth.org)

[www.clientearth.org](http://www.clientearth.org)

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office The Joinery, 34 Drayton Park, London, N5 1PB, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a non-profit limited liability company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered foundation in Poland, Fundacja "ClientEarth Prawnicy dla Ziemi", KRS 0000364218, NIP 7010254208, a registered delegation in Spain, Fundación ClientEarth Delegación en España, NIF W0170741C, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836, a registered subsidiary in Japan, Ippan Shadan Hojin ClientEarth, corporate number 6010405022079, a registered subsidiary and company limited by guarantee in Australia, ClientEarth Oceania Limited, company number 664010655.

<sup>159</sup> Environmental Liability Directive, Art. 3(1), in conjunction with Art. 2(1).

<sup>160</sup> Ibid, Art. 3(3).

<sup>161</sup> REGULATION (EU) 2025/2365 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 November 2025 on preventing plastic pellet losses to reduce microplastic pollution, [Regulation - 2025/2365 - EN - EUR-Lex](#).

<sup>162</sup> See Background Document, [EUSurvey - Survey](#).