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Each edition of **Brussels in Brief** considers topics that relate to the overall thematic focus of the current Newsletter issue.

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Brussels in Brief

Conservation and Sustainable Use of Marine Biodiversity in the EU

Oceans and seas cover more than two thirds of the world's surface. These marine areas host more biological diversity than any terrestrial or freshwater ecosystem and they also play a significant role in contributing to human welfare and wellbeing. For example, marine ecosystems and their biodiversity provide a number of services that directly or indirectly support our societies, including several economic activities. These services include, for example, fishing, waste treatment, regulation of storms and flooding, nutrient cycling, tourism and recreation.

Marine ecosystems are, however, facing serious threats. A number of anthropogenic activities, such as waste dumping, dredging and extraction of sand and gravel, deposition of dangerous substances and nutrients, coastal zone development, and bottom trawling and over-fishing, in many cases lead to the destruction of marine habitats and species, thus jeopardising the provision of marine ecosystem services.

The threats to marine ecosystems and biodiversity have been widely acknowledged and several international, regional and national initiatives aim to improve the situation. Issues related to conservation and sustainable use of marine biodiversity feature high also on the European Union's environmental agenda and they are one of the focal points of the EU Biodiversity Action Plan adopted in 2006.

This issue of *Brussels in Brief* outlines the EU framework for marine conservation. It provides an overview of the current legal and policy instruments relevant for conservation and sustainable use of marine biodiversity in the EU. In addition, it also casts a view on the potential future policy developments.

The EU framework for conservation and sustainable use of marine biodiversity

Issues related to the conservation and sustainable use of marine ecosystems and biodiversity in the EU are influenced by a number of Community policy sectors. While conservation of the marine environment has traditionally been addressed as a part of EU environmental policy, including biodiversity policy, the management of EU fisheries falls exclusively under the Community's Common Fisheries Policy (CFP). In addition, a number of other EU legislative and policy instruments can also play a significant role in this context.

Marine conservation within EU policy on biodiversity and nature conservation

Conservation and sustainable use of marine biodiversity has always formed an integral part of EU policy on biodiversity and nature conservation. In this context, the Birds and Habitats Directives – the cornerstones of nature conservation in the EU – provide for legal provisions to establish the Natura 2000 network in marine areas as well (Directives 79/409/EEC and 92/43/EEC).

The marine Natura 2000 network introduced a series of key elements in nature conservation related to the marine environment. The network provides protection for a number of valuable marine/coastal habitats and species, including specific habitat types listed in Annex 1 of the Habitats Directive. The network also enables open sea areas functioning as species' breeding, feeding or resting zones to be included in the network. The Directives also stipulate that the individual marine protected areas (MPAs) should not be managed in a vacuum but they should form a coherent ecological network. This should be made possible by guaranteeing connectivity both between sites and within the wider seascape (e.g. Articles 10 and 3 of the Habitats and Birds Directives, respectively).

The establishment of the marine Natura 2000 network is to be finalised by 2008 and the management priorities and necessary conservation measures for sites should be set up by 2012 (see Box 1). When established, the marine component of the network is to form an integral part of the overall Natura 2000 network. Given the ecological connections and interlinkages between marine, coastal and inland water ecosystems it is important to ascertain that the terrestrial and marine networks will be managed in an integrated manner.

For example, the appropriate protection of land-based areas (e.g. rivers and wetlands) is important in ensuring stock renewal for many marine and coastal species.

Issues related to conservation and sustainable use of marine biodiversity have also played an important role in the wider EU biodiversity policy that aims at taking biodiversity into consideration in all relevant EU policy sectors. The first specific strategy for conservation and sustainable use of biodiversity in the EU, the EU Biodiversity Strategy, was adopted in 1998 (COM/98/42). The strategy called for the establishment of special biodiversity action plans (BAPs) for different Community areas of activity, including the fisheries sector. The aim of establishing action plans was to integrate biodiversity-related concerns into other EU sectoral policies.¹ The BAP for fisheries was adopted in 2001 (COM/2001/0162) (see the section on CFP below). In addition, conservation of marine biodiversity was also addressed within the BAP for natural resources (COM/2001/0162).

The basis and strategic guidelines for current EU biodiversity policy is set out in the European Commission Communication on *Halting the Loss of Biodiversity by 2010 and Beyond* (COM/2006/216). The Communication reviews the implementation of the 1998 Biodiversity Strategy and its sectoral action plans (see the section on implementation below) and introduces a new comprehensive Biodiversity Action Plan for 2010 and beyond.

Issues related to marine biodiversity, including the establishment of a marine Natura 2000 network and ensuring the sustainable use of marine ecosystems, play an important role also within the new EU biodiversity policy framework. The new Biodiversity Action Plan includes a number of specific objectives and targets for marine biodiversity (see Box 1). In addition, a number of other targets listed in the Action Plan, such as the ones for climate change and invasive alien species are also relevant in the marine biodiversity context.

The Commission Communication on Halting the Loss of Biodiversity by 2010 and Beyond, including the new biodiversity Action Plan: http://ec.europa.eu/environment/nature/biodiversity/current_biodiversity_policy/biodiversity_com_2006/index_en.htm

¹ The adoption of BAP took place in the context of environmental integration in the EU, ie the Cardiff Process. The Cardiff Process was based on the decision of the European Council adopted at its meeting in Cardiff in June 1998. According to the decision, different EU Council formations were to integrate environmental considerations into their respective activities.

Box 1. Specific EU future objectives and targets regarding marine biodiversity

OBJECTIVE 1: Safeguard the EU's most important habitats and species

TARGET 1.1: Marine Natura 2000 network established by 2008 and appropriately safeguarded and managed by 2012.

TARGET 1.2: Sufficiency, coherence, connectivity and resilience of the protected areas network in the EU substantially enhanced by 2010 and further enhanced by 2013.

TARGET 1.3: No priority species in worsening conservation status by 2010; majority of priority species in, or moving towards, favourable conservation status by 2013.

OBJECTIVE 3: Conserve and restore biodiversity and ecosystems in the wider EU marine environment

TARGET 3.1: Substantial progress achieved by 2010 and again by 2013 towards "good environmental status" of the marine environment.

TARGET 3.2: Principal pollutant pressures on marine biodiversity substantially reduced by 2010, and again by 2013.

TARGET 3.3: Ecosystem approach to the protection of the seas in place and implying fisheries management measures no later than 2016.

TARGET 3.4: Substantially enhanced funding provided to environmentally-friendly fisheries management from 2007 onwards.

TARGET 3.5: Stock levels maintained or restored to levels that can produce maximum sustainable yield, where possible no later than 2015.

TARGET 3.6: Impact of fisheries on non-target species and habitats progressively and substantially reduced from 2006 onwards.

TARGET 3.7: Substantially improved information and reporting on environmental integration of the Common Fisheries Policy from 2008 onwards.

Box 1.

OBJECTIVE 8: Substantially reduce the impacts of international trade on global biodiversity and ecosystem services

TARGET 8.1: Impact on biodiversity of EU trade significantly reduced by 2010 and again by 2013. This includes that Fisheries Partnership Agreements should be compatible with maintenance and recovery of stocks, and with minimising impact on non-target species and habitats (2006 onwards).

According to the EU Biodiversity Action Plan to 2010 and beyond (Com/2006/216)

The Common Fisheries Policy – framework for sustainable use of marine resources in the EU

The EU Common Fisheries Policy (CFP) was created in 1970 and is the main policy for regulating the EU fisheries sector. The CFP is a complex policy that consists of a vast number of regulations and policy documents covering most aspects of the fish production chain from capture/farming to landing, processing and marketing. The CFP was reviewed in 2002 and a new basic Regulation was adopted (Regulation 2371/2002). In addition, financial support to help Member States to implement the CFP provisions is provided by a specific Community funding instrument, namely the European Fisheries Fund (EFF), which was adopted in 2006 (Council Regulation (EC) No 1198/2006). In general, the current purpose of the CFP is to manage fisheries for both stock conservation and environmental purposes (see the 2002 CFP reform below).

Negative effects of EU fisheries on marine biodiversity

Managing fish stocks under the CFP is to a large extent based on controlling the total EU fish catch through a system of Total Allowable Catches (TACs), which are allocated to Member States based on a previously adopted formula. TACs are adopted on an annual basis and they are based on the best scientific advice at the time. Once agreed, Member States' quotas are divided among individual vessels. In order to ensure effective reproduction of fish stocks, other regulations, for example to control the minimum size of fish landed, are also implemented. Finally, the CFP also controls the fishing effort by limiting the size of fishing fleets and number of fishing days as well as through other methods such as closed seasons and closed areas.

During recent decades the CFP has been strongly criticised for its negative effects on marine biodiversity, namely by supporting and/or inadequately addressing unsustainable exploitation of fisheries resources and destructive fishing practices, which are harmful to marine ecosystems. For example, the single species quota-based system is believed to contribute to the by-catch and discarding of undersized fish or fish caught in excess of quotas. In addition, the use of unselective fishing methods also results in by-catch of non-target species, such as juvenile fish, small cetaceans and seabirds.

Additionally, a number of fishing methods used by the EU fishing fleets, such as beam trawling, are criticised for seriously damaging the marine habitats and their structure. There are also in general strong concerns about the impacts of bottom trawling on species and ecosystems over time. Furthermore, the financial support for Community fisheries has been criticised for supporting the growth in fleet capacity and generally increasing the fishing effort of the EU fleet; mainly by making it attractive for the sector to convert to larger and more efficient fishing vessels, often at the expense of small-scale, local fishermen. As regards aquaculture, the EU fish farming sector has had negative effects on marine ecosystems, for example, through pollution, eutrophication and introduction of alien species.

The CFP has also had impacts on marine ecosystems outside the EU. Under the CFP, the EU maintains a distant water fishing fleet, which is allowed to fish in third country waters, under bilateral fisheries agreements, to meet the domestic demand for fish. Most EU agreements are with African states. Under these agreements the EU pays the third countries for EU vessels to catch a set amount of fish. However, the agreements are frequently criticised on the basis that they are a form of subsidy to EU vessels and that they may undermine sustainable management of fisheries resources in the third countries. Furthermore, there are indications that the diminishing fish stocks contribute to the increased consumption of bush meat, i.e. the meat of terrestrial wild animals.

CFP's role in promoting sustainable use of conservation of biodiversity

The CFP was most recently reformed in 2002. Since this reform, the CFP has increasingly aimed at addressing the negative effects of fisheries on marine ecosystems and focusing on conservation and sustainable exploitation of fisheries resources in the EU. The CFP reform provided a response to objectives outlined in the 2001 Biodiversity Action Plan for Fisheries (COM/2001/0162). Consequently, the current CFP includes a number of specific measures that aim to promote the sustainable use of marine resources and conservation of marine ecosystems.

The reform in particular introduced two specific approaches, the ecosystem-based approach and the precautionary approach, as the basis for current fisheries management in the EU. These approaches aim to support the conservation and sustainable use of marine biodiversity in the context of fisheries management (Regulation 2371/2002). The ecosystem-based management approach shifts the emphasis of CFP from pure fish stock management to a more holistic management of marine ecosystems and resources, including aspects related to conservation. The application of the precautionary approach to fisheries management means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve marine species and their environment.

In order to further enhance the sustainable use of fish stocks, the CFP includes provisions for the establishment of multi-annual recovery plans for stocks outside safe biological limits and of multi-annual management plans for other stocks (Regulation 2371/2002). This supports a more long-term approach to fisheries management. In this context, a number of recovery plans for species such as cod, hake and anchovy have been adopted. In addition, the CFP also includes a number of measures that aim to minimise the capture of both juvenile fish and non-target species, e.g. introduction of more selective fishing gear and minimum catch size.

As regards the conservation of marine biodiversity, the 2002 CFP Regulation provides for the establishment of “zones and/or periods in which fishing activities are prohibited or restricted, including for the protection of spawning and nursery areas”. These specific areas established under the CFP are commonly called the fisheries MPAs and are distinguished from MPAs established under the Habitats and Birds Directives. The CFP Regulation does not require the EU or Member States to develop MPAs, but rather puts in place a legal framework through which they could be established. As fisheries is a policy area of “exclusive competence” of the EU, the management of fisheries beyond inshore waters, including spatial management, should be done through the CFP at an EU level. Therefore, the fisheries MPAs form an important tool for expanding the protected areas network in marine areas outside the national jurisdiction, i.e. the High Seas areas (see also the section on implementation below).

The CFP also aims to address the negative impacts of fish farming and ensure environmentally sound aquaculture in the EU (COM/2002/551). This includes reducing the impact of waste and preventing pollution and eutrophication of marine ecosystems. Aquaculture projects are subject to environmental impact assessments under the Council Directive 85/337/EEC. Concerning the introduction of alien species, a proposal for a new Regulation on the use of alien and locally

absent species in aquaculture was adopted by the Commission in April 2006 (COM/154/2006). The proposed Regulation would require Member States to establish a permit system for the introduction of new aquaculture species. It further provides for quarantine measures, pilot releases, monitoring, contingency planning, and the keeping of national registers of introductions and translocations of alien species. The Regulation is still in the pipeline but when adopted it will improve the framework for control of marine and coastal alien species in the EU.

With regard to the effects of EU fisheries outside the EU, the EU is now working towards a more integrated framework for accessing third country fisheries resources through fisheries partnership agreements (FPA), as set out in a Commission Communication in December 2002 (COM/2002/637). The Communication states that, in the future, the EU's financial contribution under the FPAs would be based on the "mutual interest" of the two parties to invest in a sustainable fisheries policy, rather than only as a payment for access rights. The EU also considers that the financial contribution is not to be considered as a subsidy to the European fishermen but would have to be regarded as investments for the improvement of responsible and rational fishing. In addition, in 2002 the Commission adopted an action plan for the eradication of illegal, unreported and unregulated fishing (IUU) (COM/2002/180). The action plan addresses prevention of illegal fishing also in the context of third countries and it supports assistance for developing countries to control unlawful fishing.

The implementation of the CFP is financially supported by the European Fisheries Fund (EFF). One of the main EFF objectives is to promote the sustainable exploitation of fisheries resources, including the application of environmentally-friendly fishing and production methods. In this context, the EFF offers a number of possibilities for supporting the management of marine and freshwater Natura 2000 sites.² These include, for example, the direct management of sites related to fishing and "aqua-environmental measures", whereby payments may be made to aquaculture operators to bring their systems into line with the needs of Natura 2000 sites. In addition, Natura 2000 sites could also benefit from the EFF support for ecotourism. In general, providing support for the management of coastal and marine Natura 2000 sites through EFF is part of the Commission's plan for ensuring the financing of the Natura 2000 network in the 2007–2013 funding period (COM/2004/431).

More information on the CFP and on the 2002 CFP reform: http://ec.europa.eu/fisheries/cfp_en.htm and http://ec.europa.eu/fisheries/cfp/2002_reform_en.htm

More information on the environmental effects of EU fisheries (by WWF and Greenpeace): www.panda.org/about_wwf/where_we_work/europe/what_we_do/epo/initiatives/fisheries/index.cfm and www.greenpeace.eu/issues/oceans.html

Towards an EU-wide maritime policy – the proposed EU Marine Strategy Directive and the Maritime Policy Green Paper

In October 2005 the Commission adopted the Thematic Strategy on the Protection and Conservation of the Marine Environment (COM/2005/504). The overall objective of the Thematic Strategy is to protect and restore Europe's oceans and seas and ensure that human activities are carried out in a sustainable manner. The Strategy stems from the Community's commitments outlined in the Sixth Environmental Action Programme (6EAP) (Decision No 1600/2002/EC) and it is based on the recognition that existing measures at Community and national level are inadequate to deal with the threats to the marine environment in the EU. To address this shortcoming, the Thematic Strategy puts forward a proposal for a new Community-level instrument for marine conservation called the Marine Strategy Directive.

Towards an EU Marine Strategy Directive

The proposed Marine Strategy Directive is the main instrument for implementing the Thematic Strategy. The Directive adopts an ecosystem approach as the fundamental principle for marine protection. Furthermore, it aims at achieving "good environmental status" in the marine environment by 2021, at the latest. The definition of "good environmental status" is to be formulated by Member States for each marine region within the Community, including the North-East Atlantic Ocean, the Baltic Sea and the Mediterranean Sea. The formulation is to be based on generic criteria and standards adopted by the Commission. The Member States are then to develop specific regional (or sub-regional) strategies to attain the identified good environmental status. According to the Directive, these programmes are to be established and operational by 2016 and 2018 respectively.

The proposed Marine Strategy Directive provides an integrated framework for the protection and sustainable use of marine biodiversity. Even though the Directive does not include any new provisions for biodiversity conservation, it strongly supports the implementation of existing legislation and policies, including the Habitats Directive and the

² Miller, C., Kettunen, M. and Torkler, P. 2006. Financing Natura 2000 - Guidance Handbook (http://ec.europa.eu/environment/nature/nature_conservation/natura_2000_network/financing_natura_2000/guidance/pdf/financing_natura2000_en.pdf).

designation of Natura 2000 sites. Therefore, conservation and sustainable use of marine biodiversity, including the establishment and management of marine Natura 2000 areas, can be foreseen to form an integral part of the good environmental status of marine ecosystems. However, as measures regulating fisheries management can only be taken in the context of the CFP, the conservation and sustainable exploitation of fisheries resources fall outside the scope of the proposed Directive.

The role of a maritime policy

In addition to the Marine Thematic Strategy and related Directive, an EU maritime policy Green Paper was launched in June 2006 (COM/2006/275). While the Marine Thematic Strategy focuses on protection of the marine environment in the EU, the objective of the Green Paper was to initiate a discussion on a broader future maritime policy for the Union. The launch of the Green Paper is accompanied by a one-year-long public consultation process, lasting until the end of June 2007.

The Green Paper suggests that the aims of an EU maritime policy should be to manage the EU marine areas in a holistic manner and to strike the right balance between the economic, social and environmental dimensions of sustainable development in the marine environment. The Lisbon Agenda for competitiveness, jobs and growth forms one of the main bases for the suggested future maritime policy. In addition, it suggests that the ecosystem approach forms an integral element of the policy. The environment is not neglected as the Green Paper seeks to stimulate growth and jobs in the EU maritime sector in a sustainable manner that also ensures the protection of the marine environment.

As for sustainable use and conservation of biodiversity, the Green Paper recognises the threats posed by the reduction of marine biodiversity, notably due to pollution, impacts of climate change and overfishing. The Paper does not, however, specifically focus on addressing these threats in the context of a future maritime policy. It mainly highlights the socio-economic value of marine biodiversity, including blue biotechnology (i.e. new products that can be obtained through the exploitation of marine biodiversity).

The links between the initiatives

The parallel developments related to the Marine Thematic Strategy and Maritime Green Paper has led to some confusion on the relationship between these two initiatives. In general, while the Marine Thematic Strategy has its roots in the EU environmental policy (the 6EAP), the Green Paper can be seen as an initiative of two specific Commissioners; José Barroso (Commission President) and Joe Borg (Commissioner for Fisheries and Maritime Affairs). In terms of scope and content, the

main difference between the Green Paper and the Thematic Strategy is that the former takes a broader perspective, including all socio-economic activities in the marine environment, whilst the latter takes an entirely environmental perspective. In summary, it is likely that the Maritime Thematic Strategy and related Directive will be forming the environmental pillar of the future maritime policy.

As regards future developments, the Council is to adopt a common position on the Marine Strategy Directive in Spring 2007. The Directive will then be examined by the European Parliament. The Directive is envisaged to be adopted by the end of 2007. The Consultation on the Maritime Green Paper is to be finalised by June 2007. In November 2007, the Commission is expected to adopt a Communication containing political conclusions on the consultation. On the basis of the Communication a wider action plan is to be launched in 2008.

More information on EU Maritime Strategy and related Maritime Strategy Directive: <http://ec.europa.eu/environment/water/marine.htm>

More information on the Marine Green Paper, including the public consultation process: http://ec.europa.eu/maritimeaffairs/index_en.html

Other Community instruments relevant in the context of marine conservation

In addition to policy sectors outlined above, there are a number of other Community instruments that are relevant in the context of marine biodiversity conservation. A number of these instruments are outlined below.

Within the EU, the management of coastal zones is to be based on integrated coastal zone management (ICZM) (Recommendation (2002/413)). As a consequence, Member States are to formulate and adopt national ICZM strategies aimed at ensuring the protection of their coastal environment. These strategies should be based on the application of the ecosystem approach and they should also take into consideration the implementation and management of MPAs as a part of the overall management of coastal areas. Consequently, the adoption of ICZM plans has good potential for supporting the conservation and sustainable use of marine biodiversity within a wider coastal areas context.

In March 2007, the Commission is expected to publish a Communication on further policy orientations for integrated coastal zone management in Europe. The Communication will be another step in a broader process defining a future maritime policy for the Union in the context of the Maritime Green Paper.

Furthermore, the Directive establishing a framework for Community action in the field of water policy (2000/60/EC), also known as the “EU Water Framework Directive” (WFD), sets up the basis for the protection of inland and coastal waters and groundwater resources in the EU. The Directive requires all inland and coastal water bodies to reach, as a minimum, “good status” by 2015.

The WFD “good status” comprises aspects related to both ecological and chemical characteristics of the water body. The ecological status refers to the quality of the structure and functioning of aquatic ecosystems. Consequently, the WFD provides a good framework for supporting the future conservation of coastal marine ecosystems. In addition, as the WFD takes fully into account the provisions of the Habitats Directive it can also contribute to the management and monitoring of coastal Natura 2000 areas in the future.

Finally, the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives (1997/337/EEC and 2001/42/EC, respectively) require prior assessment and authorisation of certain plans, programmes and projects that could potentially impact on the environment. These provisions also apply in the marine environment and are relevant, for example, when planning aquaculture activities. Considering the possible effects of a planned activity on marine ecosystems and biodiversity forms an integral part of EIA and SEA procedures.

Implementation of EU policies - conservation and sustainable use of marine biodiversity in practice

Marine protected areas – state of play regarding implementation

It has been generally acknowledged that the designation of marine Natura 2000 sites has been very slow and lagging considerably behind the initial proposed timeframes. The original deadline for implementing the marine Natura 2000 network was 2004 at the latest (according to the Habitats Directive’s provisions) but this has now been delayed till 2012 (COM/2006/216). By the end of 2006, altogether 77,807km² of marine areas had been designated as Sites of Community Importance (SCI) under the Habitats Directive in the EU.³ Similarly, 65,112km² had been designated as Special Protection Areas (SPAs) under the Birds Directive. As regards the number of marine sites, almost 17% of the SCIs and 10% of the SPAs include a marine component.⁴

Most progress on the implementation of MPAs under the Habitats and Birds Directives has been made inshore and very little offshore. In May 2004, Germany designated ten Natura 2000 areas in the offshore areas of its Exclusive Economic Zone (EEZ) (for explanation, see below) in the North Sea and Baltic Sea, making it the first Member State to complete its marine designations. Furthermore, Germany is one of the few Member States to have designated offshore sites. The MPAs designated within the German EEZ account for about 31% of the total offshore German marine area.⁵

The EU LIFE programme has to a large extent contributed to the establishment of marine Natura 2000 areas and helped Member States to fulfil their obligations to protect the marine environment. Some of the most common actions funded by the LIFE programme are, for example, information gathering about the status and requirements of marine species and habitats, identification and designation of Natura 2000 sites in open waters, elaboration and implementation of management actions for marine sites, and public consultation and capacity building.

The establishment of the marine Natura 2000 network, especially in the offshore marine environment, has been slow for several reasons. Amongst other things, there is still a significant lack of knowledge about the distribution and abundance of marine species and habitats. Such knowledge is essential if suitable marine sites are to be selected for the Natura 2000 network. As the costs of carrying out oceanographic research are quite substantial, bridging this knowledge gap requires strong political commitment and significant resources. In addition, there is also a need for a more precise definition of marine habitat types listed in the Habitats Directive. The legal aspects of applying the Birds and Habitats Directives to the marine environment have also formed one of the factors hindering the establishment of marine Natura 2000 sites (see Box 2).

In order to provide more guidance on the establishment of marine Natura 2000 areas, an *ad hoc* working group under the Habitats Committee, an advisory body for the implementation of the Habitats Directive, was established in 2003. The aim of this working group is to improve the common understanding of those Natura 2000 provisions that aim at the marine environment. The objective of the working group is thus to facilitate the designation and future management of these areas.

³ Natura barometer: http://ec.europa.eu/environment/nature/nature_conservation/useful_info/barometer/pdf/sci.pdf. Please note that the figures for SCIs and SPAs are overlapping.

⁴ SCIs: 1248 sites of the total 20.862 sites; SPAs: 484 sites of the total 4617 sites.

⁵ www.habitatmare.de/en/intro.php

Box 2. Applying Habitats Directive provisions outside the Member States territorial waters

The Member States govern the marine areas within 12 nautical miles from their coastline (the territorial sea). In addition, the Member States have special rights over the exploration and use of marine resources in the area extending to a distance of 200 nautical miles (370km) from its coast. This area is called the Exclusive Economic Zone (EEZ). Due to the different legal status of these marine areas it has been unclear to which extent the provisions of the Birds and Habitats Directives apply outside the territorial sea.

According to the Commission, the provisions of the Habitats Directive automatically apply to the marine habitats and marine species located in territorial waters. In addition, if a Member State exerts its sovereign rights in the EEZ to exploit natural resources (e.g. oil and gas exploration) this also implies that the Member State has obligations to conserve marine ecosystems in the area. In other words, the Habitats Directive's provisions, as implemented through national legislation, apply also outside the territorial waters. This includes all the maritime areas claimed by the Member States, including the EEZ or equivalent zones, and the continental shelf.

This Commission opinion was also confirmed by the Position of the European Court of Justice delivered in the case C-6/04 on 20 October 2005.

Source: Silva, J.P., Jones., W., Eldridge, J. and Sarvan, E. 2007. LIFE and the marine environment - Promoting sustainable management of Europe's seas: http://ec.europa.eu/environment/life/infoproducts/marine/marine_lr.pdf

Implementation of measures under the CFP

According to the European Commission, substantial progress has been made in the implementation of the CFP in recent years to better integrate biodiversity requirements.⁶ However, there remain serious shortfalls in implementation at Member State level. The 2006 report by the CFP Compliance Scoreboard continues to reveal substantial problems in

compliance.⁷ These include, for example, poor reporting of catch quantities, fishing effort, fleet registry obligations and environmental issues; some overruns of fishing quotas; and increasing numbers of serious infringements, in particular related to unauthorised fishing. In addition, Council Decisions laying down total annual allowable catches continue to exceed the Total Allowable Catches (TACs) recommended by scientists and proposed by the European Commission. As regards the impacts of EU fisheries outside the Union, the lack of financial and human resources in third countries often prevent the control of unsustainable and illegal fishing in practice.

As for the establishment of protected areas, there are a number of cases of fishing activities being managed on a spatial basis under the CFP.⁸ For example, it is estimated that in UK territorial waters around England and Wales spatial management measures under the CFP cover 33% of those waters. Examples include access restrictions in the Shetland and Orkney regions, known as the "Shetland box", for species, which are biologically sensitive because of their exploitation characteristics (Regulation 2371/2002, Article 18). Access restrictions are also implemented in the "Irish box", a biologically sensitive area with a high concentration of juvenile hake. (Regulation 1954/2003).

Such CFP measures are introduced for a number of different reasons, including fish stock management, nature conservation and resource access. However, it is often unclear what the underlying objectives behind area restrictions are. While stock protection is their stated objectives, protection of local fishing fleets against the presence of vessels from other Member States is also a cause for their establishment.

The establishment of areas protected from fishing for nature conservation, such as the protection of sensitive habitats, is still rather limited under the CFP. Indeed, the European Commission only considers there to be seven such examples, most of which were adopted in the last two years (see Box 3). In none of these cases, however, is the cause of the prohibition purely due to fish stock recovery or nature conservation. These established fisheries MPAs are broad and shallow; they have been developed primarily for fisheries purposes (often single stock), apply only to certain gear/vessel categories and are often temporary.

⁶ An Annex to the Communication on *Halting the Loss of Biodiversity by 2010 and Beyond* (COM/2006/216) (impact assessment).

⁷ CFP Compliance Scoreboard 2005 report: http://ec.europa.eu/fisheries/cfp/control_enforcement/scoreboard_en.htm

⁸ Lutchman, I., Brown, J. and Kettunen, M. 2006. *Marine Protected Areas in the EU and UK Progress, Perspectives and Outlook*. Draft Report. IEEP: London.

As with Natura 2000 sites, the establishment of MPAs under the CFP is limited by the lack of data on marine species and habitats. Some also argue that there is little empirical evidence demonstrating that MPAs are beneficial for sustainable fisheries management. Furthermore, as the Member States have no powers to manage fisheries beyond 12 nautical miles, any fisheries-related measures for nature conservation purposes, whether for national or foreign vessels, must be agreed at the EU level. This lack of competence hinders Member States' capacity to adopt conservation measures, e.g. for species conservation, in offshore areas.

In addition, the MPA debate is complex and existing MPA definitions are very broad. Whilst this creates flexibility, which can be positive as MPAs can then be tailored to fit specific circumstances, this can also lead to ambiguity. Consequently, the arguments presented for and against their use are more diffuse than effective in moving the debate forward. This has been a factor in stalling the MPA debate, both in fisheries management and nature conservation.

Implementation of ICZM strategies

The development and implementation of ICZM strategies by Member States was reviewed in 2006.⁹ The review concluded that none of the 24 EU coastal Member States and Accession Countries had implemented an ICZM National Strategy as prompted by the EU. Furthermore, even though an ICZM National Strategy, or equivalent, had been developed in a number of countries, its implementation was often still pending.

The review concluded that conservation of coastal biodiversity played a significant role in a number of coastal areas. For instance, the national coastal zones of Poland, Latvia, Lithuania and Estonia have significant areas, which are designated as Natura 2000 sites. For example, 45% of the Latvian coastal zone is protected under the Habitats Directive.

According to the review, a number of Member States appeared to have incorporated aspects related to the conservation of natural coastal systems and processes in the context of their ICZM regulatory framework. However, specific references to biodiversity conservation were somewhat limited. Protection of biodiversity and nature seemed to play a prominent role in only a few national ICZM approaches, such as those of Finland, Germany, Sweden, Latvia and Lithuania.

Box 3. Areas protected from fishing under the CFP for nature conservation purposes

- Bottom trawling prohibition above the Posidonia meadows or other marine phanerogams in the Mediterranean since 1994
- Bottom trawling prohibition in the Mediterranean within three nautical miles of the coast or at depths less than 50m where that depth is reached at a shorter distance
- Prohibition to use bottom trawls or similar towed nets in contact with the bottom of the sea in the area known as "Darwin Mounds" north-west of Scotland, adopted in 2004
- As above, prohibitions in areas surrounding the Azores, Madeira and Canary islands, adopted in 2005
- Restriction on trawling activities in only 14 geographically identified "trawlable" areas within the 25 nautical miles zone of Malta, adopted in 2004
- "Transitional" prohibitions on bottom set-nets at depths beyond 200 metres in ICES Divisions VIab, VIIbcjk and Subarea XII, adopted in 2005
- Bottom trawling and static gears ban for the protection of vulnerable deep-sea habitats on: the Hecate Seamounts, the Faraday Seamounts, Reykjanes Ridge (partem), the Altair Seamounts, and the Antialtair Seamounts, adopted in 2005

Source: European Community Report 2006 (http://ec.europa.eu/fisheries/publications/factsheets/legal_texts/ec_report59-25paras66to69final.pdf#search=%22actions%20taken%20by%20states%20and%20regional%20fisheries%20management%20EC%22).

⁹ An evaluation of Integrated Coastal Zone Management (ICZM) in Europe, a report by the Rupprecht Consult GmbH (Germany) and the International Ocean Institute (Malta) finalised in 2006 (<http://ec.europa.eu/environment/iczm/home.htm>).

Future challenges and opportunities

Finalising and managing the network of marine MPAs

Ensuring the finalisation of the marine Natura 2000 network is indisputably one of the main immediate challenges for marine biodiversity conservation in the EU. The 2006 Biodiversity Action Plan sets clear timelines for the establishment and future management of the network. Given the significant delays in the past, it would be of high importance that the Member States take these deadlines seriously and step up their efforts to establish and manage their marine Natura 2000 sites, particularly in offshore areas.

In the past, the implementation of marine Natura 2000 areas has been held back by several factors including lack of clarity in applying the Birds and Habitats Directives to the marine environment. A number of these difficulties are, however, being solved and there is an increasing consensus on how the provisions of Natura 2000 should relate to the marine environment.

Some questions still remain to be answered. For example, once the Natura 2000 sites have been designated and included on the Commission's site lists, Member States are obliged to prevent deterioration of sites, and to restore them to, or maintain, favourable conservation status. Due to a lack of baseline information about marine sites, and a general paucity of information on the functioning of many marine ecosystems, it remains to be seen how these obligations are to be fulfilled and how the success in achieving them is to be measured. It would be important that both the Commission and the Member States would work together in seeking to clarify this.

The establishment of MPAs under the CFP could significantly contribute to the overall network of MPAs in the EU, particularly when expanding the network in marine areas outside the national jurisdiction. Under the CFP, the establishment of areas protected from fishing for nature conservation reasons should, therefore, be further encouraged. In order to maximise the benefits for sustainable use and conservation of biodiversity it would be important to ensure that the Natura 2000 sites and CFP MPAs complement each other. This requires improving cooperation between the nature conservation and fisheries sector both at the EU and national level.

Ensuring connectivity within the MPA network supports the natural functioning of marine ecosystems and will greatly enhance the possibilities for marine species to adapt to climate change. Therefore, securing movement of species both between individual MPAs and within the wider seascape should form an integral part of the establishment and man-

agement of the marine Natura 2000 network. The Habitats and Birds Directives include provisions for maintaining connectivity within the Natura 2000 network (e.g. Articles 10 and 3, respectively).

Securing sufficient financing for MPA management activities is also one of the future challenges for marine conservation. According to the plan adopted by the Commission, the European Fisheries Fund (EFF) should increasingly contribute to management of coastal and marine Natura 2000 sites in the future. However, the programming of EFF funding gives Member States a lot of freedom to develop policies and measures that suit their national and regional specificities. Consequently, the actual level and types of funding in support of Natura 2000 in individual countries will depend on decisions taken at a national level. It is therefore important that both the Commission and Member States make an effort to ensure that activities related to the management of Natura 2000 sites are included in the national priorities for EFF funding.

In this context, an Expert Workshop on Marine Ecosystems will take place in Berlin in April 2007. The workshop, organised jointly by IUCN and the German EU Presidency, aims at further promoting marine conservation both in the EU and in High Seas areas. The objectives of the workshop are to exchange information and experience on marine conservation in the EU, and to reach expert-level consensus on future steps for the implementation of existing commitments. The event is organised within the framework of the Countdown 2010 initiative.

More information on the Expert Workshop on Marine Ecosystems: www.countdown2010.net/marine/expert-workshop-on-marine-ecosystems

Stepping up the implementation of the existing policy framework

The EU legal and policy framework provides a number of instruments that support the sustainable use and conservation of marine biodiversity. The problem is, however, slow and inadequate implementation of these existing measures. The 2006 Biodiversity Action Plan aims at stepping up Community and Member States' efforts by providing a comprehensive Action Plan for the implementation of existing instruments and commitments. The Action Plan clearly addresses both EU institutions and the Member States, specifying the roles of both levels of governance in relation to each item of the Action Plan.

In general, the Action Plan provides a good basis for the conservation of marine biodiversity in the future. It does, however, suffer from a lack of time-bound actions (e.g. for the fisheries sector) and allocation of new resources to ensure implementation. Political endorsement at the EU and Member States level, including different Commission Directorate Generals and the European Parliament, is therefore needed to ensure the success of the Action Plan.

As for the relevant sectoral policies, the 2002 CFP provides a number of opportunities for enhancing the conservation and sustainable use of marine resources, both within and outside the EU. Up to now, the implementation of these measures has been far from adequate. For example, it would be of high importance that Member States urgently improve their efforts in both applying, and monitoring compliance with, the CFP provisions. This would also mean adopting long-term approaches to fisheries management and accepting the possible structural changes needed to make the EU fisheries sector sustainable. As for the effects of CFP outside the EU, the Community should try to assure that appropriate support is given to the third countries for controlling unsustainable and illegal fishing in their territory.

Implementation of WFD and ICZM also provide opportunities for supporting the conservation and sustainable use of coastal marine biodiversity. As the implementation of both these instruments is still at an early stage, it remains to be seen how the Member States will include these aspects as an integral part of their coastal/river basin management plans.

Marine protected areas – state of play regarding implementation

The Marine Thematic Strategy and the suggested Marine Strategy Directive form important new instruments for the integration of the existing and future EU, regional and national policies affecting marine issues. In particular, the application of the ecosystem approach can further improve the integration of biodiversity aspects into planning and decision-making processes.

From the perspective of conservation and sustainable use of marine biodiversity, however, the exclusion of fisheries creates a significant limitation to the proposed Directive. Therefore, it would be important that appropriate mechanisms, both at Community and Member States level, are in place or will be implemented to assure a smooth interplay between the marine and fisheries policy sectors. At the moment, however, the mechanisms provided by the Directive seem rather weak.

In addition, the Marine Strategy Directive does not provide criteria for defining and judging good environmental status. Given that this would form the target of all actions under the Directive, the lack of criteria can be seen as one of the main weaknesses of the proposed Directive. The proposed Marine Strategy Directive also does not add anything to the designation of marine protected areas. At a time when the designation of marine Natura 2000 sites is behind schedule and the development of management measures is a subject of intense debate, it would be important to ensure that, as a minimum, the final Directive clearly incorporates the obligations Member States have under the Habitats and Birds Directives.

As for the Maritime Green Paper, it can be concluded that even though the overall tone of the Green Paper is detectably aligned with the Lisbon Agenda, environmental aspects can also be expected to form an integral part of the future maritime policy. However, the Green Paper makes no particular attempt to address the conservation and sustainable use of marine biodiversity. Biodiversity-related aspects come into the picture through the Marine Thematic Strategy, which is considered by the EC to be the environmental pillar of the future maritime policy. Consequently, it would be important to reinforce the role of the Marine Thematic Strategy and Marine Strategy Directive when further developing the EU maritime policy. However, the Thematic Strategy and Directive do not address the impacts of fisheries on the marine environment. Consequently, this could result in a serious shortcoming in the proposed environmental component of the maritime policy, particularly in a biodiversity context.

In general, the suggested Marine Strategy Directive and the future EU maritime policy, as outlined in the Maritime Green Paper, provide a possibility to conserve and sustainably manage biodiversity in the EU in a better and more integrated manner. However, there is undoubtedly scope for improving the integration of biodiversity-related aspects into the discussions on EU maritime policy in the future.

