



European
Commission

Links between the Water Framework Directive and Nature Directives

Frequently Asked Questions

**Links between the Water Framework Directive
(WFD 2000/60/EC)
and Nature Directives (Birds Directive 2009/147/EC
and Habitats Directive 92/43/EEC)**

Frequently Asked Questions

Foreword

This paper discusses the links between EU water and EU nature legislation based on a set of frequently asked questions. It has been developed in a bottom-up approach responding to questions arising from practical implementation. It should serve as a working tool for the implementation of the relevant directives in a harmonised and integrated approach.

It has been developed in cooperation of the nature unit (ENV.B.3 – Nature), the water unit (ENV.D.1 – Water) and the legal units (ENV.A.1 – Enforcement, infringements coordination and legal issues, and ENV.A.2 – Compliance promotion, governance and legal issues) of DG Environment. It has been consulted with Member States and stakeholders in two rounds of consultations (in 2009 and 2010). Version 3.4 (June 2010) served as a key background document for the workshop on 'Biodiversity and Water: Links between EU nature and water legislation' held in June 2010 in Brussels.

This document (December 2011) has integrated all comments received after the workshop and has led to a more in-depth analysis of the questions. As requested by workshop participants two additional chapters have been drafted, 1) on groundwater dependent terrestrial ecosystems and 2) on the links with the Floods Directive. These will be consulted separately and integrated into the current document once they have been finalised.

In addition, a frequently asked questions document has been developed on the links between the EU Marine Strategy Framework Directive and nature legislation. This document was presented for consultation to an expert group dealing with marine Natura 2000 at the end of October 2011. On the basis of comments received a revised version is being prepared. It is intended to merge the documents on freshwater, marine and biodiversity into one document once the consultations have been finalised.

The current document should therefore be considered to be a living document until all parts have been finalised.

Acknowledgements

This paper has been prepared by colleagues at DG Environment.

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Contents

1	Introduction and aim of this paper	8
2	WFD and BHD objectives and their links	9
2.1	Which Natura 2000 areas does the WFD address?	9
2.2	Which are the links between the objectives of WFD and BHD?.....	10
2.3	If there are two different objectives for a water body, which one applies?	12
2.4	By when must the BHD and WFD objectives for water-dependent Natura 2000 sites be reached?	15
3	Differences in the scope of WFD and BHD	17
3.1	Which are the objects / management units addressed in the directives?	17
3.2	What is the difference between the species / biological quality elements addressed in WFD and BHD?	20
3.3	What is the relationship between good ecological status/potential of the WFD and favourable conservation status of the Habitats Directive?	20
3.4	Can a protected species or habitat be in a favourable conservation status even if the water body in which it occurs is not in good ecological status/potential?.....	22
3.5	How are WFD reference conditions / reference sites related to favourable conservation status / protected areas of BHD?.....	23
4	Designation of heavily modified water bodies and use of exemptions/derogations in water-dependent Natura 2000 sites	23
4.1	Which exemptions under WFD can be applied in Natura 2000 sites?	23
4.2	How do the specific provisions of WFD Art. 4.3 apply to Natura 2000 sites?	24
4.3	Is there a relationship between HD Art. 6.3 & 6.4 and WFD Art. 4.7?	25
5	Coordination of WFD and BHD implementation	27
5.1	Can the monitoring schemes of WFD and HD be integrated?	27
5.2	How can the river basin management plans of WFD and the conservation measures / management plans of the HD be linked?	29
5.3	Can public participation of management plans under BHD and river basin management plans under WFD be joined?.....	31

1 Introduction and aim of this paper

The 'Birds' and the 'Habitats' Directives (BHD) together form the backbone of the EU's biodiversity policy as they protect Europe's most valuable species and habitats. The protected areas designated under these directives form the Natura 2000 network. Together with the Directives' species protection requirements they are the central tool for bringing protected species and habitats into a favourable conservation status besides other existing tools. The aim of the Water Framework Directive (WFD) is to establish a framework for the protection of all surface waters and groundwater with the aim to reach good status in all waters as a rule by 2015. Both the nature directives and the WFD aim at ensuring healthy aquatic ecosystems while at the same time ensuring a balance between water/nature protection and the sustainable use of nature's natural resources. Indeed there are many synergies as the implementation of measures under the WFD will generally benefit the objectives of the nature directives. Nonetheless, the implementation of these directives in practice has led to a number of questions where both directives are concerned.

A number of guidance documents have been produced to assist and harmonise the implementation of BHD and WFD throughout the European Union:

Within the framework of BHD, guidance has been developed for the interpretation of habitat types in the '*Interpretation Manual of European Union Habitats*' which was approved by the 'Habitats Committee' and published by the European Commission. In addition, the Habitats Committee approved common methodologies on the assessment of the conservation status of species and habitats that have been developed in the context of the national reports on the implementation of measures taken under the HD (so called Article 17 reports). The Commission has also published extensive guidance on managing Natura 2000 sites, assessing plans and projects significantly affecting Natura 2000 sites, applying compensatory measures, interpreting concepts such as alternative solutions, imperative reasons of overriding public interest, overall coherence of the Natura 2000 network, and implementing the strict protection of animal species of Community interest under the Habitats Directive.

For the WFD, technical documents are produced through the 'Common Implementation Strategy' (CIS), an informal consultation mechanism involving the European Commission, Member States, Accession Countries, Norway, stakeholders and non-governmental organisations. The documents produced under the CIS represent an informal consensus on best practice agreed by all partners.

Several guidance documents have been produced that are linked with issues of concern under the BHD (e.g. CIS Guidance Document No. 2, 4, 12, 13 and 20, see list below), but no guidance so far has addressed the specific questions related to the implementation of WFD in Natura 2000 sites.

This paper compiles some frequently asked questions raised by implementing authorities and stakeholders and provides detailed answers. The paper was prepared by DG Environment (B.3 Nature, D.1 Water, A.1 Enforcement, infringements coordination and legal issues and A.2 Compliance promotion, governance and legal issues).

The sources of information used to prepare this note were the following:

Discussions at workshops and project reports:

- CIS Workshop '*Biodiversity and Water – Links between EU nature and water legislation*', 17-18 June 2010, Brussels, Belgium¹.
- Symposium organised by the German Federal Agency for Nature Conservation (BfN), the German Federal Environment Agency (UBA) and the Federal Ministry for Environment, Nature Conservation and Nuclear Safety: '*Biodiversity of surface waters, floodplains and groundwater*' Germany; 29-30 October 2008, Bonn, Germany.
- Workshop organised by Eurosite/Natural England: '*Integration of the Water Framework Directive and Natura 2000*', 17-18 September 2008, Peterborough, United Kingdom.

¹ Workshop Report available at:
http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/implementation_conventio/biodiversity_legislation&vm=detailed&sb=Title

- Workshop organised by Paralia Nature: 'Natura 2000, the Water Framework Directive and the EU Marine Strategy', 7-8 October 2008, Brussels, Belgium.
- Workshop organised by Paralia Nature: 'Natura 2000 Management plans in development: timing, nature restoration measures and project licensing', 9-10 April 2008, Brussels, Belgium.
- *Synergies in WFD implementation in the Wadden Sea* - Report from the trilateral workshop, Hamburg; 24-25 October 2007 Version 31.10.2007, prepared by the Common Wadden Sea Secretariat, Wilhelmshaven.
- HARBASINS Project (2004-2008): *Harmonised River Basins Strategies for the North Sea*. Interreg IIIB – North Sea Programme.
- Workshop Eurosite/ Landeslehrstätte für Naturschutz und Landschaftspflege: *Integration of the Water Framework Directive and Natura 2000*, 8-11 May 2005, Lebus (Brandenburg State Education Centre for Conservation), Germany.

Guidance documents and other EC information sources:

- CIS Guidance Document No.12: The Role of Wetlands in the Water Framework Directive²
- CIS Guidance Document No.13: Overall Approach to the Classification of Ecological Status and Ecological Potential²
- CIS Guidance Document No. 2: Identification of Water Bodies²
- CIS Guidance Document No. 4: Identification and Designation of Heavily Modified and Artificial Water Bodies²
- CIS Guidance Document No.20: Exemptions to the Environmental Objectives²
- Commission Guidance Document on the management of Natura 2000 sites under Article 6 of the Habitats Directive³
- Commission Guidance Document on the implementation of the protection regimes under Article 12 of the Habitats Directive⁴
- Other EC sources such as the WISE Water Notes

These sources of information were complemented with questions received from stakeholders (Navigation Task Group, Natural England...) and personal questions that arose during the recent work on estuaries, waterways and port related activities.

This paper addresses "aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems" (Art.1.(a) WFD). Other terrestrial ecosystem that depend on water but not necessarily on aquatic ecosystems such as bogs or alluvial meadows so far have not been considered in this paper but may be included at a later point in time.

2 WFD and BHD objectives and their links

2.1 Which Natura 2000 areas does the WFD address?

Article 1 (a) of the WFD clearly mentions the protection and enhancement of the status of aquatic ecosystems and with regard to their water needs also the protection of terrestrial ecosystems and wetlands directly depending on them. In Article 6.1, the WFD stipulates the establishment of a register of protected areas "which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water". The register must contain i.a. "areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in their protection, including relevant Natura 2000 sites ..." (Annex IV, (v) WFD).

² The CIS Guidance Documents for the implementation of the Water Framework Directive are all available at: http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/guidance_documents&vm=detailed&sb=Title

³ See: http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

⁴ See: http://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm

Any Natura 2000 site with water-dependent (ground- and/or surface water) Annex I habitat types or Annex II species under the Habitats Directive or with water-dependent bird species of Annex I or migratory bird species of the Birds Directive, and, where the presence of these species or habitats has been the reason for the designation of that protected area, has to be considered for the register of protected areas under WFD Art. 6⁵. These areas are summarised as "water-dependent Natura 2000 sites". For these Natura 2000 sites, the objectives of BHD and WFD apply.

Besides protected areas "*which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater*" Art. 6.1 WFD explicitly mentions areas which have been designated as requiring special protection (under specific Community legislation) "*for the conservation of habitats and species directly depending on water*". Annex IV WFD requests Member States to include – besides relevant Natura 2000 sites – protected areas if they have been "*designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in their protection*". Therefore, protected areas that have been designated only for national purposes can be included in the register in order to ensure that the water-relevant objectives of the WFD are contributing to the protection of species and habitats. This makes sense because the Birds and Habitats Directives also contain provisions for habitats and species occurring outside Natura 2000 sites (see provisions of Art. 3 and 5 of BD and Art. 12 & 13 and Annex IV of HD) and these provisions must also be taken into account when implementing the WFD. It is up to the Member State to decide which areas under national protection fulfilling the above requirements should be included.

The register of protected areas was to be completed by the end of 2004 and now needs to be kept under review and up to date by the Member State (Art. 6.3 WFD).

2.2 Which are the links between the objectives of WFD and BHD?

The ultimate objective of the Habitats Directive is to protect, maintain or restore at favourable conservation status selected species and habitats of Community importance and to ensure a coherent network of special areas of conservation (Natura 2000 sites).

The main objectives of the WFD for **surface waters** are 1) to prevent the deterioration of any status, 2) to reach good ecological status and good chemical status (good ecological potential and good chemical status in artificial and heavily modified water bodies) as a rule by 2015, and 3) to implement all necessary measures to progressively reduce pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances. This refers to all surface water bodies, including those that form part of a Special Protection Area (SPA) under the Birds Directive and/or a Site of Community Importance (SCI) under the Habitats Directive. With regard to protected areas Art. 4.1.(c) WFD stipulates that "*Member States shall achieve compliance with any standards and objectives ... specified in the Community legislation under which the individual protected areas have been established.*"

For **groundwater**, the main objectives of the WFD are to reach good quantitative status and good chemical status in all groundwater bodies. The definition of good status for groundwater bodies includes not only the protection of the proper groundwater, but also the protection of directly dependent surface water and terrestrial ecosystems (WFD Annex V, 2.1.2 and 2.3.2). This means that the chemical composition and the level of groundwater need to be such as to ensure that objectives in those dependent ecosystems are met. The concept of "ecosystems directly depending on groundwater" has to be understood in a broader sense. These ecosystems do not necessarily have to be within protected areas under Community legislation but they can include habitats and species protected under the HD for which favourable conservation status must be achieved.

⁵ See CIS Guidance No. 12 on wetlands, section 5.1.

Case study

Ecological criteria for the identification of water-dependent Natura 2000 sites (UK)

The process to be adopted by Member States to derive 'water-dependent Natura 2000 sites for inclusion in the Register of Protected Areas is clearly set out in Article 6 of the WFD. The application of the process hinges on the interpretation of the term 'water-dependent'. Uttley (2010) describes some ecological criteria developed and applied in the UK for identifying which species and habitats listed in the annexes of the BHD are water-dependent.

For habitats, the following criteria were applied:

- Habitats which consist of surface water or occur entirely within surface water as defined in Article 2 of the WFD.
- Habitats which depend on frequent inundation by surface water, or the level of groundwater.
- Non-aquatic habitats which depend on the influence of surface water – e.g. spray or humidity (i.e. bryophyte rich gorges).

For species, the following criteria were applied:

- Aquatic species living in surface waters as defined in Article 2 of the WFD.
- Species with at least one aquatic life stage dependent on surface water (i.e. species that use surface water for breeding, incubation, juvenile development, sexual maturation, feeding or roosting – including many BHD bird and invertebrate species).
- Species that rely on the non-aquatic but water-dependent habitats identified resulting from surface water inundation or groundwater level or the influence of surface water.

The cross-referencing of BHD species and habitats identified using these criteria with the qualifying interest features of Natura 200 sites resulted in the definition of 'water-dependent Natura 2000 sites' in the UK.

A separate FAQ paper is being developed on links between marine N2000 sites and the Marine Strategy Framework Directive (MSFD). Details relating to marine SCIs/SACs and SPAs that are covered in the MSFD will be given there.

Uttley, C (2010). The Water Framework Directive and the Habitats and Birds Directives. An overview of the legal and Technical Relationship. In: Conservation Monitoring in Freshwater Habitats: A Practical Guide and Case Studies. C. Hurford et al. (eds).

In order to make Article 4.1.(c) on **protected areas** operational there is a need to identify the water related requirements to achieve favourable conservation status of habitats and species dependent on water. As Natura 2000 sites are protected areas under WFD, any aspect of ecological status that has direct influence on the possibilities of the protected area to contribute to the achievement or maintenance of the favourable conservation status of the habitats or species in their biogeographical region is relevant, including indirect effects on birds (if Special Protection Area (SPA) under the Birds Directive), HD Annex II species and HD Annex I habitats. The WFD does not change what Member States must achieve for the BHD, but it provides a joint framework for the implementation of measures needed by both WFD and BHD in water-dependent Natura 2000 sites.

The objectives of the directives are closely related and special attention and coordination is needed where these directives are implemented in the same areas. The measures serving the BHD and WFD objectives need to be included in the river basin management plans required under Art. 13 WFD (see also FAQ No. 5.2) and should also be included in the management plans of the Natura 2000 sites.

Case study

Pan-European Wetland Inventory (Italy)

The majority of wetland types are dependent for their water supply on either surface or groundwater bodies. As such these wetland types would be termed water-dependent with respect to the WFD. The integrity of water-dependent wetland types is linked in large part to the quantity and quality of their water supply and the WFD provides the principal mechanism for safeguarding this. The biodiversity value of wetlands is acknowledged as significant and the conservation of wetlands in the primary purpose of the Ramsar Convention and many wetlands types are protected by the BHD.

The Mediterranean Wetlands Initiative of the Ramsar Convention (MedWet), as a permanent network of collaboration and provision of scientific knowledge to all Mediterranean countries for the wetlands protection, has launched the Pan Mediterranean Wetland Inventory (PMWI). The purpose of the Inventory is to provide regions with a tool that will support decision making on regional development activities, based on the knowledge of the distribution of water related ecosystems in their territory, the benefits they provide to people and the pressures they need to be protected from. The PMWI is an innovative web-hosted tool, providing easy to use information on the location, ecological characteristics and socio-economic importance of water related ecosystems. It is designed to assist in reporting for the WFD and BHD. The project will contribute to improving wetland management in line with goals adopted by European Union Member States.

ISPRA (Institute for Environmental Protection and Research), in collaboration with the Italian Ministry of Environment (MATTM) and the Regional Agency for Environmental Protection of Tuscany (ARPAT), are realising a national wetland inventory as a contribution to the MedWet/PMWI project. More than 60 public authorities or administrations, NGOs, universities and research institutes are involved in the project to provide data and expertise. All these organisations are invited to share information about wetland values, best practices for wise use and methods for monitoring and management of water related ecosystems, in order to define guidelines of a national strategy for wetland conservation.

The approach for the data analysis will be based on integration of both Ramsar and CBD Convention with the BHD, WFD and the Marine Strategy Framework Directive (MSFD). The data will be organised, customised and stored in the MedWet/PMWI as a source of information for reporting on the state of wetlands, producing rapid assessment of wetland status and values, proposing an appropriate integration of monitoring (according to art. 8 of WFD) and defining a strategy to conserve those environments. The analysis will take into account the aspect of ecosystem services and the synergies and conflicts between the WFD and BHD. Finally the guidelines for wetlands conservation will be based on case studies and shared by the representatives of the organisations taking part in the project.

The overlapping of PMWI wetlands with the protected areas for the conservation of aquatic habitat and species of the Registers of Protected Areas (WFD art. 6) provides the opportunity to achieve a high level of integration between convention and EU directives as recommended by the River Basin Initiative (endorsed by the COP 5 of the CBD – Decision V/2, May 2000).

2.3 If there are two different objectives for a water body, which one applies?

According to WFD Article 4.1.(c) the WFD objective of good status may need to be complemented by additional objectives in order to ensure that conservation objectives for protected areas are achieved. Art. 4.2. WFD says that "*where more than one of the objectives ... relates to a given body of water, the most stringent shall apply*".

This obviously refers to situations in which two objectives set in legislation affect the same matter. For example, if a certain concentration of phosphorus is needed to achieve good ecological status and a more stringent value is needed to achieve a site's conservation objectives, then the latter applies (for example see point 3.4).

However, as it may not always be easy to decide whether the one objective fully covers the other, it is best to keep in mind the existence of both objectives. Moreover, the authorities need to determine precisely which objective is actually the more stringent objective, since the objectives in the WFD and

the BHD are not defined in the same way. In the BHD the overall objectives refer to species and habitat types at the level of the biogeographical region, but also objectives are set on site level to achieve those, whereas the objectives of the WFD refer to water bodies (see also explanations given for FAQ 3.1). The objectives for a given water body resulting from the WFD and the Habitats and Birds Directives have to be aligned in order to assess which measures must be taken.

There are exceptional cases that show that harmonisation of objectives between WFD and Natura 2000 is needed. Most problems occur in cases where artificially changed or created conditions have favoured Natura 2000 species but where those environmental conditions represent less than good ecological status of the WFD. In principle, restoration towards good ecological status prevails (= WFD objectives), because the whole ecosystem is benefiting and not only specific species or habitats. In such cases the objectives of Natura 2000 species or habitats should be brought in line with the objectives of the WFD. However, there may be exceptions in cases to this general rule may be when it would become impossible to maintain a species or habitat type of community interest at a favourable conservation status or, where necessary, to restore such a status on a national – biogeographic scale when the more natural situation or processes would be restored. In this respect it is important to note that favourable conservation status of a species or habitat refers to the biogeographical region (in the Member State) and not to the site-level. Such exceptional cases surely deserve a case by case judgement.

It is advisable to have a clear track record of how judgements are made and what were the considerations made that led to this judgement.

In addition, there are cases where deterioration is the result of a restoration measure and should not be considered as a deterioration of status. Some examples to illustrate this are the following:

- when restoring a WFD water body to make it 'more natural' would lead to the loss of protected habitats or species which have developed in an artificially modified or managed environment (e.g. cut off ox-bows or freshwater marshes in a reclaimed area protected by an artificial flood bank);
- when a compensation requirement under HD Art. 6.4 will lead to a water body type change (e.g. from a freshwater marsh to a tidal lagoon);
- when managed realignment promoted by a shoreline management plan would lead to a change from an impounded (low turbidity freshwater) river to a saline, high turbidity transitional water body.

In order to decide on the management objectives (under the WFD) it is important to look at what type of surface water it is and at its natural (reference) conditions. A surface water body type is characterised by a variety of different habitats and species and by its natural hydro- and morpho-dynamics. It should be possible to include the BHD protected habitats and species into the characterisation of the water body type as these cover all types of surface waters (the HD only covers selected habitats deserving special protection; there are about 30 habitat types in Annex I HD that are relevant for freshwater and coastal water including estuaries and lagoons). By using this approach a common view of the characteristics of water body types and their management objectives can be developed (for more information on reference conditions see FAQ 3.5).

Where habitats or species are not characteristic of a water body type, their protection should not prevail over the restoration of the water body, unless they are important for the conservation status of a habitat or species of Community interest in the national biogeographical region. In order to achieve integration of provisions of WFD and BHD it is therefore recommended to use the water body type and its characteristics as guidance for setting joint objectives and agreeing on the management of the water bodies / Natura 2000 sites in order to achieve good/favourable status. It must be noted that the occurrence of species and habitats of community interest outside Natura 2000 sites should be considered as well as they also contribute to the overall conservation status.

It is important to clearly establish the scope of application of any additional requirements. The measures under WFD and BHD need to be well coordinated (integrated planning approach) and included in the river basin management plans.

Case studies

Veluwerandmeren (Netherlands)

The Veluwerandmeren or Randmeren-Oost is a single, large (c. 6000 ha) and shallow (1.5 m mean depth) water system comprising three connected parts of an alkaline character in the centre of the Netherlands. The lake is designated as a heavily modified water body under the WFD because of an artificially managed water level (low in winter and high in summer) and physical modifications of the shoreline among other pressures. The system has recovered from a hyper-eutrophic to a meso-eutrophic state and is designated as a Natura 2000 site with conservation objectives for 2 aquatic macrophyte habitats, 2 fish species, 17 bird species (of which 5 appear on BD Annex I) and 1 mammal (a bat, *Myotis dasycneme*).

To achieve Good Ecological Potential (GEP) in the Veluwerandmeren, a more natural water level fluctuation is considered necessary to allow proper reed marsh development to meet the requirements of the macrophytes and phytobenthos biological quality element. However, a change of the water level regime to a more natural situation would have negative effects for the designated water bird populations because the required extensive feeding areas are only available at low water levels. The predominantly short-necked herbivorous designated bird species require low water levels to be available at appropriate times throughout the year to sustain the population levels required by the conservation objectives. The water level regime is managed partly to facilitate this.

The additional requirement for adequate flood protection has been used in the River Basin Management Plan to justify the existing managed water level regime that supports the conservation objectives for the designated birds species but results in a reduced likelihood of achieving GEP for the macrophytes and phytobenthos quality element, i.e. in this case the flood protection and the interest to conserve the birds have been considered more stringent than the GEP for the macrophytes and phytobenthos.

Further information is available at:

http://www.rijkswaterstaat.nl/water/plannen_en_projecten/bprw/documenten/

and download: Brondocumenten IJsselmeergebied

Re-connection of oxbows and oxbow lakes to the recent river courses (Germany)

As one of five pilot projects run by the Federal State of Brandenburg in order to gather necessary information and experience how to reach the objectives of WFD with optimum ecological and economic efficiency, the "Krumme Spree" resulted in a potential conflict between the objectives of the BHD and WFD.

The Krumme Spree comprises a river system comprising a mature river system with oxbow lakes and a contemporary river channel. A hydromorphological assessment of the contemporary river channel resulted in a status assessment of 5 or 6 (classified as poor status) whereas the oxbow lakes were classified as 2 to 4 (good to moderate status). One proposed measure to improve the hydromorphological status and to contribute to floodplain restoration was to reconnect the oxbow lakes to the river channel.

However, the Krumme Spree is also designated as a Natura 2000 site with habitat types 3150 Natural eutrophic lakes (for the oxbow lakes) and 3260 water courses of plain to mountain levels (for the river channel). The proposed reconnection of the oxbow lakes to the river channel to contribute to the achievement of the WFD objectives would destroy the former habitat type in contravention of the requirements Art 6.2 of the HD.

This situation constitutes an apparent systematic contradiction between restoration of primary habitats and restoration of natural processes of rivers in order to reach the objectives of WFD and the approach of the HD to preserve a (secondary) habitat type 3150 in the long term (Favourable Conservation Status).

Despite the apparent contradiction, oxbows will be re-connected in 14 places in the Krumme Spree.

Further information is available at:

<http://www.mugv.brandenburg.de/cms/detail.php/bb1.c.165002.de>

2.4 By when must the BHD and WFD objectives for water-dependent Natura 2000 sites be reached?

There is no specific date mentioned in the **Birds and the Habitats Directives** to reach the conservation objectives. The absence of a specific deadline in the Habitats Directive for achieving favourable conservation status does not imply that Member States need not improve the status over time as the HD is very clear in stipulating that Member States need to restore species and habitats to favourable conservation status in case they are not (Art. 4.4). In practice this means that Member States must clearly show progress in achieving favourable conservation status. In the recently published (3 May 2011) new biodiversity strategy "*Our life insurance, our natural capital: an EU biodiversity strategy to 2020*" includes a specific target (target 1) referring to the improvement of conservation status of habitat types and species (HD) and the status of bird populations (BD).

TARGET 1: FULLY IMPLEMENT THE BIRDS AND HABITATS DIRECTIVES

To halt the deterioration in the status of all species and habitats covered by EU nature legislation and achieve a significant and measurable improvement in their status so that, by 2020, compared to current assessments:

- (i) 100% more habitat assessments and 50% more species assessments under the Habitats Directive show an improved conservation status; and
- (ii) 50% more species assessments under the Birds Directive show a secure or improved status.

Furthermore, "*Member States shall take appropriate steps to avoid ... the deterioration of natural habitats and the habitats of species ... for which the areas have been designated*" (HD Art. 6.2). Measures needed to avoid deterioration of BHD targeted natural elements must be implemented as soon as the sites are classified as SPA under the Birds Directive or formally adopted by the Commission as a site of Community importance under the Habitats Directive. In the period between the proposal of the Member State for inclusion of a site into the EC list of SCI and the relevant Commission Decision the Bund Naturschutz case-law⁶ is relevant which implies that deterioration of ecological values needs to be avoided already at the time when a site is proposed by the Member State.

Moreover, conservation status of habitats and species of the HD is assessed and reported every 6 years at the national biogeographical level. Article 17 requires Member States to report every six years about the progress made with the implementation of the Habitats Directive. As the main focus of the directive is on maintaining and/or restoring a favourable conservation status for habitat types and species of community interest, monitoring and reporting under the directive also focuses on this. In future also the progress reporting under the Birds Directive will be streamlined with this method. The reporting deadlines in the BHD equally apply to the water-dependent Natura 2000 sites identified under the WFD (included in the register under Art. 6 WFD).

The conservation status of species and habitats under the HD has to be maintained and where necessary improved for the next assessment in 2013. The ultimate aim is to ensure or reach favourable conservation status for all protected habitats and species. The first assessment of their status was established in 2007 and overall it showed that the conservation status of habitats and species still has to be improved until the next assessment in 2013.

The objectives of the **Water Framework Directive** need to be reached as a rule by 2015. "As a rule" means that there are certain exemptions possible. However, when applying for an extension of deadlines under the WFD, due account must be taken of possible consequences for achieving the objective under the Habitats Directive.

In the following the provisions of Art. 4.1.(a) and (b) which refer to surface water and groundwater bodies and Art. 4.1.(c) which refers to protected areas will be dealt with separately.

⁶ ECJ-Ruling of 14 September 2006 (Bund Naturschutz Bayern - C-244/05)

1) Provisions related to Art. 4.1.(a) WFD for surface water and (b) for groundwater bodies

According to Art. 4.1. the WFD objectives for surface water and groundwater bodies need to be reached by 2015 at the latest. Exemptions are possible if certain conditions are met.

The provisions of Art. 4.1.(a) and (b) are independent of the fact that a water body is in a protected area or not. Therefore any exemptions that are related to achieving the WFD objectives (no deterioration and reaching good ecological status/potential and good groundwater status) can be applied if certain conditions are met.

In Art. 4.1.(a) and (b) there is a clear reference to the application of extensions determined in accordance with Art. 4.4 (and to the application of Art. 4.5, 4.6 and 4.7). Art. 4.4 WFD allows extending the deadlines where the improvements cannot be achieved in time because they are:

- technically infeasible (a maximum extension of 12 years, i.e. until 2027), or
- disproportionately expensive (a maximum extension of 12 years, i.e. until 2027), or
- not possible due to natural conditions,

but this is only possible provided that

- "no further deterioration occurs in the status of the affected body of water" (Art. 4.4),
- "the application does not permanently exclude or compromise the achievement of the objectives of the WFD in other bodies of water within the same river basin district" (Art. 4.8) and
- "[the application] is consistent with the implementation of other Community environmental legislation" (Art. 4.8).

Therefore, the use of extensions needs to be coherent with the objectives and measures established under the BHD and the implementation of water-related measures should be well coordinated so that both objectives can be met.

In any case steps must be undertaken to ensure that the application of extensions "guarantees at least the same level of protection as the existing Community legislation" (Art. 4.9 WFD).

The WFD is also clear in that the application of exemptions must be indicated and justified in the river basin management plans.

2) Provisions related to Art. 4.1.(c) WFD for protected areas

Art. 4.1.(c) WFD stipulates that for protected areas "Member States shall achieve compliance with any standards and objectives at the latest 15 years" after the WFD entered into force, "unless otherwise specified in the Community legislation under which the individual protected areas have been established". This means that all standards and objectives of the relevant Community legislation, including the water-related objectives linked to the achievement of favourable conservation status of species and habitats in water-dependent Natura 2000 sites, need to be implemented as a rule by 2015.

Article 4.4 to 4.7 contain a number of limited derogations to the WFD requirements for specific water bodies under certain circumstances. When such derogations are applied MS have to ensure that this is consistent with other EU environmental legislation and guarantees at least the same level of protection available under existing EU legislation. This includes both the Habitats and Birds Directives.

Other non-water related BHD objectives falling outside the scope of the WFD are not affected by the deadlines of the WFD.

Other exemptions/derogations are explained in Chapter 4 of this document.

Case study

Restoration of the Lippe floodplains, North Rhine-Westphalia (Germany)

The Lippe is a river of 215 km in length draining a catchment of 4800 km² in North Rhine-Westphalia. The land use in the catchment is dominated by agriculture (47% arable and 17% pasture) with significant areas of human settlement (15%) and forestry (17%). The river receives discharges of treated wastewater, cooling water from the power industry and salt water drainage from coal mining. Past development has encouraged the channelisation of the river which was cut unnaturally deep requiring bank reinforcement. The combined effect of this activity was to disconnect the river from its natural floodplain. In 1990, the state of North Rhine-Westphalia started a programme of floodplain restoration aimed at preserving and restoring floodplains and stream systems as natural veins in the landscape. The programme comprises a wide range of individual measures appropriate to the stream type and its local ecology that together deliver the development goals set for the river system. Today large parts of these rivers and floodplains are Natura 2000 sites and the many measures implemented contribute both individually and in combination to the achievement of the objectives of the BHD and WFD.

One of the measures that has contributed significantly to the floodplain restoration is a process of land consolidation. This process is facilitated by a legal instrument that allows landowners to exchange of land within the floodplain zone with land outside the zone according to a land consolidation plan. Once the land within the floodplain zone has been secured, measures to allow a more natural pattern of flooding can be reinstated. Floodplains restored in this way have resulted in improvement in the status of many target species. While the success of the floodplain restoration is demonstrable, the timescales for the improvements are long (c.20 years) such that the use of extensions under the WFD to 2027 are likely.

Further information on part of the Lippe restoration project is available in German at:

www.life-lippeaue.de

3 Differences in the scope of WFD and BHD

3.1 Which are the objects / management units addressed in the directives?

The criteria for the delineation of water bodies and Natura 2000 areas are different as the purpose of the two directives is also different.

The **WFD** addresses all surface waters: rivers, lakes, transitional waters⁷ and coastal waters⁸ (called water categories in the WFD). These water categories are divided into surface water types that have been defined using selected abiotic criteria (listed in Annex II, 1.2 WFD). Examples of such types are: "small gravel-dominated lowland rivers", "oligotrophic, stratified Alpine lakes" or "inner coastal waters of the Baltic Sea".

The surface water types are divided into water bodies which form the basic unit for water management under the WFD. Water bodies are discrete and significant parts of surface water, e.g. a section of a river, a lake or part of a lake that can be attributed to one status class, e.g. good ecological status⁹.

Considering protected areas in the delineation of water bodies is considered best practice. CIS Guidance Document No. 2 on the identification of water bodies recommends that the water bodies are delineated as far as possible taking into account the protected areas, because those introduce additional objectives: "... there are additional objectives to be considered for water bodies which are

⁷ 'Transitional waters' are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.' (Art. 2.6 WFD)

⁸ 'Coastal water' means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters.' (Art. 2.7 WFD)

⁹ CIS Guidance Document No. 2: Identification of Water Bodies, section 3.3.2.

also fully part of a protected area. Hence, the existing boundaries of protected areas may be considered for the identification of water bodies under the Water Framework Directive. (...) In case a water body would not fully be inside or outside a protected area, it may be considered to sub-divide the water bodies into two parts so that the boundaries coincide".

The WFD also addresses groundwater. Groundwaters are divided into water bodies which form the basic water management unit under the WFD. A groundwater body is a discrete volume of groundwater in one or several aquifers that can be attributed to one status class.

The **Habitats Directive** focuses on so-called Natura 2000 sites (sites of Community importance under the HD and SPAs under the BD), and the species and habitats it protects. A site is "a geographically defined area whose extent is clearly delineated" (Art. 1(j) HD). A site of Community importance is a site "which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II ..." (Art. 1(k) HD). A SPA is a territory designated by the Member State for the conservation of the bird species listed in Annex I BD and migratory bird species taking into account their protection requirements in the geographical sea and land area where the Directive applies (see Art. 4.1 BD).

In the Habitats Directive, natural habitats are defined as terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features¹⁰. This includes open sea and tidal area habitats as well as freshwater habitats (standing waters and running waters). Correspondences between WFD categories and HD habitat types can be seen in Table 1, but there is no direct correspondence between water body types of the WFD and habitat types of the HD. The typology of water bodies required under the WFD is much more detailed and requires the consideration of a number of different abiotic parameters (see Annex II, 1.2 WFD).

As all waters are divided into water bodies, all aquatic Annex I habitats of the Habitats Directive are part of water bodies. In a water-dependent Natura 2000 site, the aquatic Annex I habitats of the Directive can be included in either one or in several water bodies. In many cases, the Natura 2000 sites are much larger than the water bodies and the same site may include several water bodies. But whatever the relationship between the water body(ies) and the Natura 2000 site(s) is, it should not pose any particular problem in managing WFD and BHD objectives.

As a final point it should be noted that including small water bodies such as ponds in the programme of measures would actually make achieving Habitats and Birds Directive's objectives significantly easier, because they would be directly included in the coordination process of WFD and BHD programmes of measures.

¹⁰ This definition is similar to one given in the CBD where an ecosystem is a 'dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit'.

Table 1 Examples of habitats listed in the Habitats Directive and their relationship to the water categories of the Water Framework Directive¹

Examples of habitats listed in Annex I of the Habitats Directive	Relevant WFD category ²
1. Coastal and halophytic habitats	
11. Open sea and tidal areas	
1110 - Sandbanks which are slightly covered by sea water all the time	Coastal or transitional waters
1120 - Posidonia beds *	Coastal waters
1130 - Estuaries	Transitional waters
1140 - Mudflats and sandflats not covered by seawater at low tide	Coastal or transitional waters
1150 - Coastal lagoons*	Transitional waters
1160 - Large shallow inlets and bays	Coastal or transitional waters
3. Freshwater habitats	
31. Standing waters	
3160 - Natural dystrophic lakes and ponds	Lakes
32. Running water - sections of water courses with natural or semi-natural dynamics (minor, average and major beds) where the water quality shows no significant deterioration	
3210 - Fennoscandian natural rivers	Rivers
3220 - Alpine rivers and the herbaceous vegetation along their banks	Rivers
3250 - Constantly flowing Mediterranean rivers with <i>Glaucium flavum</i>	Rivers
3260 - Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation	Rivers

¹Some other habitats of Community Interest may also be influenced by river basin management planning, e.g. fens, humid (usually riverine) meadows or floodplains, i.e. the typical "wetlands".

² Note: The typology of surface water bodies is much more detailed than the WFD categories given here

Case study

Ecological basis for the conservation of the Aquatic Epicontinental Habitat types of Community Interest (HCI) – Standing Waters (Spain)

In an attempt to secure the achievement of the objectives of the WFD and the BHD for standing waters (lakes) in Spain, the Spanish Ministry of Environment and Rural and Marine Affairs (MMA) undertook a project to define and characterise the inter-linkages between HD Annex 1 lake habitat types and WFD lake water body types on an ecological basis to meet the HD objective of Favourable Conservation Status (FCS) and the WFD objective of Good Ecological Status (Potential) (GES(P)).

The HD requires Member States to commit to maintain or restore natural HCIs (annex I of the HD) at a Favourable Conservation Status (FCS). The conservation status of a natural habitat will be taken as 'favourable' when:

- Its natural range and areas it covers within that range are stable or increasing,
- The specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- The conservation status of its typical species is favourable.

The HD also establishes that conservation of HCIs must be based on their "environmental requirements".

The WFD definition for GES(P) also includes reference to the structure and functioning of ecosystems and this provides a link between the FCS and GES(P) objectives.

The work in Spain included the characterisation of the ecological functioning of the main types of lakes, lagoons, ponds and wetlands in Spain, their association to HCIs considered by Annex I of the HD and to the water body types defined for the WFD, as well as comparisons of the goals to be achieved by both Directives for aquatic ecosystems, and the compatibility and synergies of the systems developed for the evaluation of the conservation status or the ecological status following both European Directives regarding epi-continental aquatic lake ecosystems.

Further information (in Spanish) available at:

http://www.mma.es/portal/secciones/biodiversidad/rednatura2000/documentos_rednatura/bases_ecologicas_habitats/index.htm

3.2 What is the difference between the species / biological quality elements addressed in WFD and BHD?

Both WFD and BHD aim to protect aquatic ecosystems but in different ways.

For the first time in EU water legislation aquatic biology (and not only physico-chemical elements) is at the centre of water quality assessment. Ecological status assessment in the **WFD** focuses on selected groups of aquatic plants and animals and these are used as indicators to determine the overall structure and functioning of the aquatic ecosystem. The biological quality elements are generally phytoplankton, (benthic) aquatic flora, benthic invertebrates and fish, and the assessment is generally based on species composition and abundance. Some aquatic organism groups are not included in the WFD, e.g. zooplankton or amphibians. Also, species depending on water, but living outside the water, e.g. the otter or the beaver, are not included in WFD ecological status assessment, although they can benefit from a healthy aquatic environment.

Therefore, contrary to the BHD the aim of the WFD is not to protect certain species (identified in HD and BD) but rather to use the species (of the biological quality elements identified in the WFD) as indicators of the ecological status of the aquatic ecosystem.

Under the HD aquatic species / species groups can also be used as indicators of the conservation status of the habitats protected under HD Annex I. Species / species groups can indicate the state of the specific structure and functions of the habitat type. Structure and functions and the conservation status of typical species that live in these habitat types are components of the conservation status of a habitat type. When assessing the status of habitats the BHD therefore comes very close to the aim of ecological status assessment, i.e. assessing the structure and function of the aquatic ecosystem. Ideally, the assessment systems for ecological status under WFD and BHD conservation status of habitats (and species) should therefore achieve similar results (see also FAQ 3.3).

The **BHD** targets specific components of aquatic ecosystems such as species or habitats (sometimes ecosystems such as estuaries). The Habitats Directive sets the parameters for assessing the health of these components/ecosystems with features such as range, areas, population size and structure and functions of habitats for long-term maintenance. The general assessment matrix for species can be found in the CIRCA library¹¹

The directives are coherent as they help to protect or enhance aquatic ecosystems, which includes either directly or indirectly protecting biodiversity of species and habitats and the sustainable use of their components, but the targeted objects for the implementation of the directives are not always the same.

3.3 What is the relationship between good ecological status/potential of the WFD and favourable conservation status of the Habitats Directive?

First of all, it should be kept in mind, that the Member States are bound by the provisions of the WFD and the BHD, which implies that they should achieve all the objectives of these directives. Achieving the objective of one directive does not necessarily imply achieving the objectives of the other directives. It is obvious though, that achieving the objective of the WFD by taking appropriate measures, may also benefit achieving the objectives under the BHD, and vice versa. When a Member States takes measures under the WFD the authorities should assess whether and if so, they could impact on the objectives of the BHD, and vice versa.

The ultimate objective of the Habitats Directive is to ensure that the species and habitat types covered by this directive reach a **'favourable conservation status'** and that their long-term survival is deemed secure across their entire natural range within Europe. The provisions for species protection apply to

¹¹ For species: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/reporting_framework/eval-matrix-species/_EN_1.0_&a=i

For habitats: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/reporting_framework/eval-matrix-habitats/_EN_1.0_&a=i

the whole of a Member State's territory and refer in particular to the protection of individuals as well as their breeding sites and resting places. Natura 2000 sites form a coherent network contributing to the aim of reaching a favourable conservation status¹². The conservation objectives, which have been set for SACs on the basis of Article 4.4 of the HD, also need to be taken into consideration. With regard to Annex IV HD species Member States must adopt strict protection measures under Article 12 HD which also contribute to fulfilling the main objective of the Directive, namely maintaining or restoring a favourable conservation status of these species.

In the case of a protected *species* covered by HD a favourable conservation status means that:

- populations are maintaining themselves in the long term and do not show signs of continuing decline;
- their natural range is not being reduced;
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

In the case of a protected *habitat type*, a favourable conservation status is achieved when:

- its natural range and the areas it covers within that range are stable or increasing;
- the specific structure and function which is necessary for its long-term maintenance are present and are likely to continue to exist in the foreseeable future;
- the conservation status of typical species that live in these habitat types is favourable as well.

Under the WFD 'Ecological status' is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters. Ecological status assessment is type-specific. All surface waters must be divided into types and their undisturbed reference conditions must be defined. The assessment of ecological status is based on the deviation of the status from its type-specific reference conditions and is supported by selected physico-chemical and hydromorphological elements. Ecological status is classified in accordance with the normative definitions for high, good and moderate status for each of the biological, hydromorphological, and physicochemical quality elements. By intercalibrating good ecological status it can be ensured, firstly that the Member States' definitions of good ecological status are consistent with the normative definitions and, secondly, that the Member States' assessment results are comparable.

The good ecological *potential* is established for heavily modified water bodies (compare point 4.2).

Ecological status/potential of the aquatic fauna and flora is assessed in terms of species composition and abundance. In the HD the focus is on selected species and habitats of Community interest. This also means that the HD does not look at all species occurring in a water body, only indirectly by looking at the status of the habitat type it addresses the status of the aquatic community. The WFD looks at presence or absence of certain species, only if their presence is a good parameter for the assessment of the status of a specific biological quality element or their absence is essential to determine the ecological status of that water body type.

These differences in objectives, scope and approach also result in different monitoring needs. Nonetheless, synergies in monitoring programmes should be taken under consideration (compare FAQ 5.1). The main objective should be to integrate monitoring as far as possible.

¹² With regard to all species of naturally occurring birds in the wild state Member States must take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats. This obligation applies to the whole territory of the Member States and not only to the special protection areas (SPAs) designated according to Article 4.1 BD which, in addition, are subject to the protection regime of Article 6.2-4 of the Habitats Directive.

Case study

Implementation of environmental flows in Spain (Spain)

While good ecological status/potential under the WFD and Favourable Conservation Status (FCS) under the HD is determined primarily from the status of the appropriate biological communities, the assessments under both Directives are underpinned by supporting hydromorphological and physico-chemical elements. Hydromorphological elements supporting the biological elements in the WFD include characteristics of the hydrological regime such as 'quantity and dynamics of water flow' and 'connection to groundwater bodies.' For Natura 2000 sites with appropriate qualifying species or habitats, the relevant characteristics of the hydrological regime would form part of the Conservation Objectives set for the site to achieve FCS. The establishment of environmental flows that support both the requirements of the qualifying features of Natura 2000 sites and those of good ecological status/potential is therefore desirable.

A significant programme of work has been undertaken by the Ministry of the Environment and Rural and Marine Affairs (MMA) in consultation with Basin Agencies, Research Centres, Universities and NGOs to establish environmental flows in rivers, lakes, wetlands and estuaries to meet the ecological requirements of the relevant ecosystems. These environmental flow standards are intended to be included in national legislation to underpin water management.

The work sought to define the main attributes of the environmental flow regime relevant to the water body type. So for rivers, the attributes included the temporal distribution of minimum and maximum flows, the maximum rates of change and the flood regime (including peak flow, duration, frequency, seasonality and rate of change). This was undertaken using a combination of hydrological and hydrobiological methods that included estimation of the flow regime requirements of species and habitats that either comprised the designated features of Natura 2000 sites and/or indicators of the appropriate biological quality element for the water body type. The approach was adapted as required for other water categories. In this way, environmental flows suitable for consistent application for surface water categories were derived to meet the requirements of the WFD and HD.

Further information is available in Spanish at: <http://ambiental.cedex.es>

3.4 Can a protected species or habitat be in a favourable conservation status even if the water body in which it occurs is not in good ecological status/potential?

In general, good ecological status/potential of a water body will contribute to the favourable conservation status of species and habitats. Nonetheless, there are cases in which good ecological status/potential may not be sufficient to meet the specific objectives of BHD.

Some HD Annex I habitat types or HD Annex II species may require more stringent conditions to reach favourable conservation status than the ones necessary to achieve good ecological status. For example, the habitat type '1130 - Estuaries' may require better hydromorphological conditions than those necessary for good ecological status/potential of that water body. Another example is the mussel *Margaritifera margaritifera*: it may need lower nutrient concentrations than those needed for good ecological status. In this case a more stringent value is needed to achieve favourable conservation status for a protected species, therefore – in agreement with Art. 4.2 WFD – the lower nutrient concentration must be reached.

However, the achievement of favourable conservation status may not only depend on the ecological status of the water body. It may be that human pressures such as over-fishing (e.g. of the sturgeon) or effects of tourism alter the conditions for the species or even the habitat in a specific site. Therefore, it is necessary to look carefully at the reasons for the species or habitat not being in favourable conservation status when defining the specific objectives and planning appropriate measures. In other cases, objectives may be indirectly linked and may appear in contradiction (see e.g. case study on **Veluwerandmeren (Netherlands)** above).

In addition, it is important to bear in mind that favourable conservation status does not apply to the status of species and habitats in the individual site but to their status in the natural range in the entire national part of a biogeographical region. This means that a favourable conservation status can be

achieved for particular species or habitat types of Community interest at the national biogeographical level with individual Natura 2000 sites showing different degrees of reaching the targeted conservation status for such species and habitat types. For WFD implementation this means that BHD-related objectives may vary from water body to water body according to the site specific conservation objectives to be established by the national competent authorities.

3.5 How are WFD reference conditions / reference sites related to favourable conservation status / protected areas of BHD?

WFD reference conditions represent conditions with no or very minor human pressures, i.e. sites in high status or near natural conditions. Reference conditions are established for each water body type. The assessment of ecological status in WFD is based on the degree of deviation from the reference conditions.

For a site to be in reference conditions, the levels of human pressure have to be very low. Therefore, reference sites may lie in protected areas under the BHD. But the criteria to designate protected areas and to identify reference sites are different. A WFD reference site may or may not have BHD protected habitats or species, and vice versa: a protected area under BHD may be protected because of the presence of particular habitats or species but may be inappropriate as a WFD reference site due to existing pressures on the aquatic environment (e.g. too high nutrient concentrations or too low water levels for reference conditions).

In summary, there is no direct relationship between WFD reference conditions and the conditions in protected areas as their definitions serve different purposes and use different criteria.

4 Designation of heavily modified water bodies and use of exemptions/derogations in water-dependent Natura 2000 sites

4.1 Which exemptions under WFD can be applied in Natura 2000 sites?

The use of exemptions is an integral part of the WFD which aims at the balance between sustainable water use and the protection of all waters. The WFD provides several possibilities for making use of exemptions if certain conditions are met. The following exemptions are possible:

- 1) extension of deadlines (by 2021 or 2027 at the latest; Art. 4.4.), discussed in chapter 0 of this paper,
- 2) less stringent objectives (Art. 4.5),
- 3) temporary deterioration (Art. 4.6), and
- 4) new modifications/new sustainable human developments (Art. 4.7) (see FAQ No.4.3).

The WFD attaches very stringent criteria to the application of exemptions. For example, in the case of Art. 4.5 (less stringent objectives) the objectives may be lowered, if a water body is so affected by human activity or its natural condition is such that reaching the objectives is infeasible or disproportionately expensive and all of the following conditions are met:

- a) the environmental and socio-economic needs served by that activity cannot be achieved by other means which are a significantly better environmental option not entailing disproportionate costs,
- b) the highest ecological and chemical status possible is achieved given the impacts that could not reasonably have been avoided,
- c) no further deterioration occurs in the status of the affected water body, and
- d) the reasons for establishing less stringent objectives are specifically mentioned in the river basin management plans (these are reviewed every six years).

The exemptions of Art. 4.4 to 4.7 WFD apply within the context of the WFD itself. This means that they "are applicable to all environmental objectives of Article 4.1 WFD and thus also to its Article 4.1(c),

which describes the objectives for protected areas"¹³. Art. 4.8 and 4.9 WFD however put additional conditions for using the exemptions. They must be:

- consistent with the implementation of other existing community environmental legislation, and
- guarantee at least the same level of protection as existing Community legislation.

This means that:

- (i) if the exemption would significantly affect the conservation status of a bird / HD species or natural habitat, then it would not be possible to apply the exemption under WFD unless it can also be justified under Art. 6.3 and 6.4 HD;
- (ii) if the exemption would not significantly affect the conservation status of a bird / HD species or natural habitat, it still needs to be coherent with the measures taken by the Member State under Art. 6.2 of the HD (+ Art. 6.1 when a SCI is designated as such by the Member State) for SPA and SCI and Art. 4.1 and 2 of the BD for SPA.

Member States must ensure, under Art. 4.9 WFD, that the WFD as a whole, including exemptions are implemented in such a way as to ensure the meeting of the level of protection to be met by virtue of other EC directives, including the BHD. Therefore, the implementation of the BHD objectives must be seen as the minimum that must be achieved independently of ecological status/potential.

It should be taken into account that the BHD does not provide for setting "less stringent objectives" or allow for "temporary deterioration". Nonetheless, certain parallels between Article 4.4 to 4.7 WFD and Art. 6.3 and 6.4 exist (see more in detail FAQ No. 4.3).

In summary, the WFD in itself does not allow derogating from the requirements set under the BHD, and vice-versa. The impact of the use of an exemption under the WFD must take account of the possible impact on the objectives of the BHD, and vice versa. This implies – where needed – coordination and consultation between the different stakeholders.

4.2 How do the specific provisions of WFD Art. 4.3 apply to Natura 2000 sites?

Art. 4.3 WFD gives the possibility to classify water bodies as heavily modified (HMWB) or artificial water bodies (AWB). This is the case i.a. when

- a) the changes to the hydromorphological characteristics of that body which would be necessary for achieving good ecological status would have significant adverse effects on certain human activities such as navigation (including port facilities) and flood defence; and
- b) the beneficial objectives served by the AWB or HMWB cannot reasonably be achieved by other means, which are a significantly better environmental option, for reasons of technical feasibility or disproportionate costs.

For AWB and HMWB the good ecological *potential* needs to be reached, not good ecological *status*. The definition of good ecological potential includes the effects of the given hydromorphological alterations that cannot be changed without significant adverse effects on the specified use or the wider environment. This means that the environmental objectives can be changed taking into consideration the water use that has led to the hydromorphological alteration. Nonetheless, appropriate measures need to be taken if the water body is not in good ecological potential.

A water body can be designated as a HMWB if it fulfils the conditions in Article 4.3 WFD. The designation of a water body as heavily modified is done regardless whether that water body is part of a Natura 2000 site. Designation of a water body as heavily modified, and thus aiming to achieve good ecological potential instead of status, does not change the conservation objectives under the Habitats Directive. By way of example, although designated under the WFD as heavily modified, it may nevertheless be necessary to restore the natural dynamics of a water body designated under the BHD in order to reach favourable conservation status of the species and habitats protected under the BHD.

Where a water site has already been designated under the BHD it will already contribute to maintaining the population of the protected species or the habitats, even in its present state. The obligation to avoid deterioration and make progress towards favourable conservation status under the HD applies and

¹³ CIS Guidance Document No.20: Exemptions to the Environmental Objectives, chapter 3.2.2

continues to apply after designation as heavily modified under the WFD. Designation as heavily modified under the WFD in this respect makes no difference. However, Member States will need to take measures under WFD after designation of the water body as heavily modified so that the water body achieves good ecological potential. In general, measures needed to reach good ecological potential will also benefit maintaining/reaching favourable conservation status. In some cases it may be that the present status of the water body satisfies the required good ecological potential, but does not allow (progress towards) favourable conservation status under the HD. If this is the case, the Member States are still required to take additional measures under BHD. Such measures should be inserted in the management plan of the site and, as far as water related measures is concerned, also be reflected in the river basin management plan, as will be measures to achieve the objectives under WFD Article 4.1.c.

4.3 Is there a relationship between HD Art. 6.3 & 6.4 and WFD Art. 4.7?

This question addresses possible impacts arising from the implementation of '*plans or projects not directly connected with or necessary for the management of a Natura 2000 site*' (Art. 6.3 HD) and '*new modifications changing the physical characteristics of a water body*' (Art. 4.7 WFD), and the possibility of using derogations/exemptions for their implementation.

In the **Habitats Directive** Article 6.3 provides for an appropriate assessment of the impacts of such a plan or project and sets up a general rule by which authorisation can only be granted if the plans or projects do not adversely affect the integrity of the Natura 2000 site(s). The appropriate assessment of the impacts of a plan or project enables the competent authorities to arrive at conclusions regarding the consequences of the initiative. If no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of the site, the competent authorities can give their consent. In case of doubt, or where it is certain that the plan or project will affect the integrity of the site, then the precautionary and preventive principles need to be applied and the plan or project cannot go ahead, unless Art. 6.4 requirements are met..

The decision to go ahead with a plan or project must meet the requirements of Art. 6.4. In particular, it must be documented that:

- 1) There is no alternative solution with less or no adverse effects on the integrity of a Natura 2000 site.
- 2) There are imperative reasons of overriding public interest, including 'those of a social or economic nature'¹⁴.
- 3) The Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.
- 4) Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest. Compensatory measures have to be adopted and the opinion of the Commission has to be recorded.

A plan or project within the meaning of Article 6.3 Habitats Directive or a management measure as referred to in Article 6.1 or 6.2 of that Directive could have an impact on a water body. The question is, whether the authorities also need to apply Art. 4.7 WFD before they may authorise a project or measure?

The reply is, that Art. 4.7 WFD only comes into play where the project or measure is likely to cause a deterioration of the ecological status of the water body or affect the ability of the water body to meet its WFD objective. If such an impact is likely / cannot be excluded (for instance on the basis of the assessment carried out under Article 6.3 Habitats Directive), the authorities should assess whether conditions of Article 4.7 WFD are fulfilled. Plans/projects directly related to the conservation management of the Natura 2000 site are generally not subject to the requirement in Article 6.3.

In accordance with Art. 4.7 **WFD** less stringent objectives may be applied for *new* sustainable human development activities where the physical characteristics of a surface water body (or alterations to the

¹⁴ Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC, section 1.2.1.

level of groundwater bodies) have been modified and certain conditions are met. Art. 4.7 identifies two different cases:

- 1) where a Member State fails to reach good status (good ecological status/potential of surface water or good groundwater status) or fails to prevent deterioration in the status of a water body;
- 2) where a Member State fails to prevent deterioration of a surface water body from high to good status.

If a new development is proposed that would cause deterioration of the status of the water body as well as a failure to achieve the objectives for a Natura 2000 site, then the criteria for the use of exemptions of both the WFD and the Habitats Directive must be fulfilled:

- a) the relevant conditions set out in Article 4.7 (a-d) of the WFD for allowing deterioration of status would have to be met to the extent that it is a water body; and
- b) the conditions set out in Article 6 of the Habitats Directive (92/43/EEC) for authorising plans or project with significant adverse effects on a Natura 2000 site would have to be met.

Both WFD and BHD allow for the use of exemptions for socio-economic reasons under certain conditions, although there are some differences in the procedures. In the case where the plan or project is of an imperative reason of overriding public interest and impacts on the integrity of a Natura 2000 site cannot be avoided, Art. 6.4 HD foresees compensatory measures in order to maintain the overall coherence of Natura 2000. Art. 4.7(d) WFD requires demonstration that there is no other technically viable alternative providing the same benefits which is a better environmental option and does not entail disproportionate costs.

The presence of a protected area or protected species in a water body, where Art. 4.7 is being applied, might influence the extent to which the public interest needs to be 'overriding' or the margin by which benefits will need to exceed costs. Overriding public interest could also vary depending on the size of the project and the expected impacts and benefits (e.g. if they are relevant at the local, regional or national scale). What 'overriding public interest' means will need to be defined on a case by case basis and is ultimately up to the Member State. Generally, the reasons of overriding public interest¹⁵ refer to situations where plans or projects envisaged prove to be indispensable within the framework of:

- actions or policies aiming to protect fundamental value for citizen's lives (health, safety, environment)
- fundamental policies for the state and the society
- carrying out activities of an economic or social nature, fulfilling specific obligations of public services.

Article 6.4 HD specifically comes into play only in the absence of alternative solutions. Although Article 6.3 does not contain a strict obligation to assess alternatives the guidance on this provision (and also on Article 6.4 HD) clarifies the need for an assessment of alternatives before evoking imperative reasons of overriding public interest. The guidance states that the assessment of alternatives, although formally not part of the 6.3-stage, can be done in the overall context of the appropriate assessment and search of mitigation measures to avoid adverse effects on the integrity of the site.

In addition, under Article 6.2 HD preventive measures have to be applied to avoid the deterioration of the habitat or the species concerned. With regard to measures needed for the maintenance or restoration of the habitats and species at favourable conservation status the Member State concerned has to establish priorities in accordance with the provisions under Art. 4.4. HD and this needs to be done within six years at most after designation as a Natura 2000 site. Similarly, the WFD contains the obligation to ensure that "all practicable steps are taken to mitigate the adverse impact on the status of the body of water" (Art. 4.7(a)).

In any case Art. 4.9 WFD is clear in its obligation that when applying the exemptions of Art. 4, the same level of protection should be given as in existing Community legislation. This means that exemptions from the WFD environmental objectives cannot be used to deviate from objectives and obligations set by the Birds and the Habitats Directive, and vice-versa.

¹⁵ See also CIS Guidance Document 'Exemptions to the Environmental Objectives': http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/guidance_documents/documentn20_mars09pdf/_EN_1.0_&a=d

Case study

Draft guidance framework for marine navigation dredging and disposal decision making (UK)

Navigation-related dredging and disposal activities have the potential to affect the ability of a water body to meet its objectives under the WFD or BHD.

The 'Marine Navigation Dredging and Disposal Framework' (MNDF) was developed as a joint initiative by the Environment Agency (the WFD competent authority in England and Wales) and the ports and navigation sector, with input from their regulators. A key aim of this decision making framework was to draw on and clarify the links with various other existing assessment methodologies, including both environmental impact assessment and the 'Maintenance Dredging Protocol'. The latter helps to ensure that maintenance dredging activities meet the requirements of the BHD by providing assistance to operators and regulators seeking, or giving, approval for such activities where they could potentially affect European designated sites around the coast of England.

The WFD decision making framework for marine navigation dredging and disposal comprises an initial 'screening' exercise, which is first carried out to establish whether the dredging or disposal activity could potentially cause deterioration in status or otherwise affect the ability of the water body to meet its WFD objectives, including any protected area objectives. Thereafter, a 'scoping' exercise is undertaken to confirm which WFD parameters could be affected; the anticipated type and scale of effect; the scope of assessment required; and possible assessment approaches.

As part of this scoping exercise, account is taken of any other forms of assessment (likely to be) required for the proposed activity, and how coordination and rationalisation can most effectively be achieved in data collection, evaluation/assessment, and reporting. In areas protected under the BHD, it is intended that synergies with the Habitat Regulations Assessment (HRA) will be identified and exploited from this point. However, the methodology also recognises that there are some important differences between the various Directives, including between Articles 6.3 and 6.4 of the WFD and Article 4.7 of the WFD, and makes provision for the separate evaluation of the assessment results.

Difficulties were encountered due to differences relating to compensation and to in-combination effects. Whilst compensation is a requirement under Article 6.4 of the HD where an effect on integrity is identified (assuming that various other criteria are met), there is no such requirement under Article 4.7 of the WFD. Similarly, whilst Article 6.4 of the HD makes explicit reference to effects 'individually or in combination with other plans or projects', there is no equivalent provision in Article 4.7 of the WFD.

Further information available at: <http://www.environment-agency.gov.uk/marinedredging>

So, if a measure or project fulfils the conditions of one directive, but not the other, then the authorities may not authorise it under either directive. In such a case, the project or measures cannot be carried out under the one directive without infringement of the other. In such case it should be assessed whether amendments can be made to the measure or project so that it satisfies the requirements of both directives.

5 Coordination of WFD and BHD implementation

5.1 Can the monitoring schemes of WFD and HD be integrated?

The Habitats Directive contains an obligation for Member States *"to undertake surveillance of the conservation status of the natural habitats and species ... with particular regard to priority natural habitat types and priority species"* (Art. 11) without specifying in more detail the type of monitoring that needs to be undertaken. Art. 8 WFD contains very detailed monitoring requirements for surface waters in terms of types of monitoring, elements to be monitored, monitoring frequencies, etc.. In addition, Art. 8 mentions that these monitoring programmes *"shall be supplemented by those specifications contained in Community legislation under which the individual protected areas have been established"* (Art. 8.1, 3rd indent, and Annex V, 1.3.5).

Generally, the biological quality elements or organism groups that need to be monitored under WFD and BHD will differ as the scope of the two directives also differ (compare point 3.2). Yet, there may be some biological quality elements where a joint monitoring is beneficial. For example, fish could be jointly monitored as their monitoring is costly and time-consuming and requires the same methods.

Wherever possible, a joint monitoring should be arranged in order to save resources and to allow an assessment based on a common data set. This is also advisable in a transboundary context.

Case study

Intertidal flora and fauna inventories and monitoring in Pays de Caux (France)

The authorities and organisations responsible for monitoring coastal waters in Normandy (Seine Normandy Water Agency (Agence de l'Eau Seine Normandie), the Regional Department for the Environment (DREAL Haute Normandie) and the Cellule de Suivi du Littoral Normand, a local NGO involved for 25 years in environmental studies on the Seine estuary and local coastal waters) have cooperated to integrate the monitoring requirements for the intertidal zone under the WFD and HD.

The surveillance monitoring network was set-up in 2007 in France to meet the requirements of the WFD. In coastal waters, the following biological quality elements need to be monitored in coastal waters (Annex V, WFD): phytoplankton, macroalgae and angiosperms, and benthic invertebrate faunas.

The Pays de Caux coastline is part of a Site of Community Interest (SCI) under the HD (FR2300139 – Littoral cauchois)¹ characterised by an extensive intertidal area extending into the sub-littoral underlain by limestone. This zone supports a diverse community of macroalgae including kelp forests in the sub-littoral which, in turn, provide habitats for a wide range of benthic invertebrates, fish and mammals.

The organisations responsible for monitoring undertook a series of fauna and flora inventories on 17 sites along the Upper Normandy region's coastline (170km long). These inventories have been performed every 5 years since 1997. At each site, a transect of 5 to 7 sampling stations covers the intertidal zone from its upper to its lower limit at sampling dates during spring tides in the spring and summer. On the southern part of this coastline, complementary investigations were performed on a zone hosting a *Laminaria* (kelp) habitat of major ecological importance, in order to characterise this habitat more precisely (longitudinal and offshore extension) and the associated macroalgae population (including genetic characterisation). An extensive coverage of rocky intertidal zones was also performed, with airborne hyper-spectral sensors, to build a complete cartography of macroalgae belts.

Based on this historical monitoring, the approaches are now integrated in monitoring strategies for the WFD, and also contribute to the (HD condition assessment monitoring for the Natura 2000 site which covers a major part of this stretch of coastline.

This case study illustrates the mutual development of monitoring strategies to achieve objectives of both the WFD and the HD on the basis of historical monitoring. Such previous knowledge and background field experience contributed to the definition of national monitoring strategies for the determination of good ecological status of local coastal waters (WFD) and the favourable conservation status of the Natura 2000 site (HD). In particular, the integrated approach optimised the in situ monitoring work in terms of:

- Human effort and mobilisation of the required scientific expertise.
- Exploitation of a limited number of sampling opportunities to monitor a large number of sites despite the difficulty of access to these sites, and
- Overall cost-effectiveness.

¹ <http://natura2000.environnement.gouv.fr/sites/FR2300139.html>

5.2 How can the river basin management plans of WFD and the conservation measures / management plans of the HD be linked?

As rivers are continuous ecosystems, connected to groundwater, sometimes to lakes, and in any case to coastal waters, the **WFD** introduces the concept of managing pressures and impacts in river basin districts. River basin management plans (RBMPs) need to be developed for each river basin district integrating all relevant aspects of water management, including – where relevant – measures under other relevant EU legislation such as the BHD.

The core piece of the plan is the programme of measures which identifies the necessary measures to reach the environmental objectives for all surface waters and groundwater as a rule by 2015. The programme of measures (Art. 11 WFD) needs to include "basic measures" (consisting of Community legislation and other measures) and "supplementary measures" (any additional measures needed to reach the environmental objectives). The Birds Directive and the Habitats Directive are listed in Annex VI, Part A as basic measures that need to be implemented. The programme of measures must therefore include any measures necessary to achieve compliance with standards and objectives for Natura 2000 sites listed in the register of protected areas as far as their ecological status is concerned. Measures needed under BHD can be included either directly into the RBMPs or as a reference to the relevant Natura 2000 management plan or other conservation instruments containing Natura 2000 related conservation measures. In any case, the Programme of Measures must take into account the provisions of Art. 12 of the Habitats Directive on the strict protection of animal and plant species of Community Interest listed in Annex IV HD. It must be kept in mind that such measures may also apply outside a SCI.

As the WFD, the **Habitats Directive** also has an integrated approach as it recognises that ecological coherence of the Natura 2000 network is essential for the long-term survival of many species and habitats. Member States need to establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites (HD Art. 6.1) and shall take appropriate steps to avoid the deterioration of natural habitats and the habitats of species for which the areas have been designated (HD Art. 6.2). If needed, appropriate Natura 2000 management plans may specifically be designed for the sites or integrated into other development plans (e.g. the RBMP).

As many HD Annex I habitats are also aquatic areas or water-dependent systems, the measures proposed under BHD and WFD may be partly the same. As far as water bodies in water-dependent protected areas are concerned measures under both directives need to be coordinated between the responsible authorities for nature conservation and water management, and included in the WFD Programme of Measures. It is advisable to start dialogue on the programme of measures of WFD at an early stage in order to avoid conflicts that could arise from misconceptions of the objectives of WFD and BHD or to miss opportunities to achieve joint benefits.

The River Basin Management Plans need to be reviewed every 6 years. Where BHD related measures could not be included in the programme of measures of the first river basin management plan, they should, at the latest, be included in the second RBMPs¹⁶.

¹⁶ Some Member States may decide to revise their programme of measures in the middle of the RBMP cycle in order to ensure that the nature objectives are achieved in due time.

Case study

Sub-basin plans for the Freshwater Pearl Mussel (Ireland)

The Irish legislation (Statutory Instrument 272 of 2009) establishing environmental objectives for surface waters requires that a status of 'less than good' is assigned to surface water bodies in protected areas that fail to meet the water quality or hydrological standards necessary for their protected area objectives.

The freshwater pearl mussel, an HD Annex II species, is in Unfavourable Conservation Status (UCS) across Europe and has demonstrated rapid declines within and outside of Special Areas of Conservation (SAC) in Ireland. Despite the declines, Ireland continues to have very significant responsibility for the conservation of the species, holding approximately 46% of the EU population. This case study concerns the development of 27 WFD Sub-basin Management Plans (SBMPs) for populations of freshwater pearl mussel in SAC. The 27 populations are distributed along the western sea-board, and in the South and South East of Ireland. The Freshwater Pearl Mussel SBMPs supplement five Irish RBMPs and provide the more detailed programmes of measures required to restore the habitat of the pearl mussel to a condition that will support the long-term survival of the species. Consequently the SBMPs support the achievement of the HD objective of favourable conservation status (FCS) for the pearl mussel.

Without the catchment-based approach of the WFD, restoration of pearl mussel populations to FCS will not be possible. This project has brought nature conservation onto a broad national stage, engaging all relevant sectors and producing pressure-specific measures that can deliver both WFD and HD objectives.

Because the pearl mussel is one of the most sensitive water-dependent species, achievement of water conditions suitable for supporting pearl mussel FCS will also support the conservation of other sensitive water dependent habitats and species in the catchments and ensure the restoration and maintenance of good, and in particular, high water status.

The HD and WFD basis for these SBMPs was supplemented by the production of national legislation (Statutory Instrument 296 of 2009) that:

- Provided for the development of WFD SBMPs for the topographic catchments of those populations, rather than HD management plans for the SAC area (the Irish SAC areas typically encompass only a small fraction of the population's catchment and also stretch into adjacent catchments).
- Specified the criteria for assessing pearl mussel conservation status and set targets for relevant ecological elements (other macro-invertebrates, macroalgae, phytobenthos, macrophytes and fine sediment) in the species' habitat.

The development of the SBMPs involved two main work-packages: monitoring of impacts and identification of pressures. Historic HD and water quality monitoring data were supplemented through baseline monitoring of the elements listed in S.I. 296. Monitoring confirmed that the decline of the pearl mussel in Ireland was caused by sedimentation of the species' habitat, with eutrophication also a significant factor. Pressures were identified through desk studies (using data gathered for WFD, HD and other purposes), communication with relevant stakeholders and dedicated field surveys. Pressures were found to be complex, cover most catchment land-uses and variable among catchments. The most significant pressures were point sources (particularly discharges from quarries and waste-water treatment plants), agriculture, forestry and one-off houses. There was a strong geographical trend in the magnitude of pressures, with land-use intensity greatest in the South and South East, reflecting the status of the pearl mussel, which was poorest in those areas.

Further information is available at:

http://www.wfdireland.ie/docs/5_FreshwaterPearlMusselPlans/

5.3 Can public participation of management plans under BHD and river basin management plans under WFD be joined?

The WFD requests Member States to actively involve all interested parties in the implementation of the Directive, in particular in the production, review and updating of the River Basin Management Plans. There are three main steps to involve the public:

- publication and consultation of a time-table and work programme for the production of the plan, at the latest by 22 December 2006,
- publication and consultation of an interim overview of the significant water management issues identified in the river basin, at the latest by 22 December 2007,
- publication and consultation of the draft river basin management plans, at the latest by 22 December 2008.

In general, the BHD does not foresee consultation of the public when implementing the Directives, but in practice many Member States do involve the public on many aspects. These are particularly related to the designation of Natura 2000 sites (Art. 4.4 HD), to the establishment of the necessary conservation measures (Art. 6.1 HD) as well as regards the application of Art. 6.3 HD.

As explained in question 5.2 the River Basin Management Plans must include measures related to the implementation of the BHD in order to achieve compliance with standards and objectives for Natura 2000 sites as far as the ecological status of the water bodies is concerned. Therefore, measures needed in water-dependent Natura 2000 sites should be discussed jointly with the relevant stakeholders. Where public consultation occurs under the BHD, the scope of the consultation and the actors involved may be quite different from the ones needed for WFD implementation. Therefore, it may be necessary to have separate consultation events, but in any case it is important to ensure that the links are made between the processes under the WFD and BHD.

It shall also be noted that the public consultation and active involvement of interested parties under the FD shall be coordinated with that of the WFD, which provides for further opportunities to provide synergies also in this phase of preparation of the river basin management plans.

