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# Links between the Water Framework Directive (WFD 2000/60/EC) and Nature Directives (Birds Directive 79/409/EEC and Habitats Directive 92/43/EEC)

## Frequently Asked Questions

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*Disclaimer: The views expressed in this document do not necessarily reflect the official opinion of DG Environment.*

# **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. 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 Natura 2000 and D.1 Water).

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

## Discussions at workshops:

- 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 in Bonn, Germany. 29-30 October 2008: '*Biodiversity of surface waters, floodplains and groundwater*'
- Workshop Eurosite/Natural England Peterborough, United Kingdom. 17-18 September 2008: '*Integration of the Water Framework Directive and Natura 2000*'
- Workshop Paralia Nature, Brussels. 9-10 April 2008: '*Natura 2000 Management plans in development: timing, nature restoration measures and project licensing*'
- Workshop Paralia Nature, Brussels. 7-8 October 2008: '*Natura 2000, the Water Framework Directive and the EU Marine Strategy*'
- Paralia Nature, Brussels. 18 November 2008, meeting with DG-ENV Nature unit
- Synergies in WFD implementation in the Wadden Sea - Report from the trilateral workshop, Hamburg; 24-25 October 2007 Version 31.10.2007, Prepared by: 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, Lebus (Brandenburg State "Education Centre for Conservation") (8-11/05/2005). Integration of the Water Framework Directive and Natura 2000

Guidance documents and other EC information sources:

- CIS Guidance Document No.12: The Role of Wetlands in the Water Framework Directive<sup>1</sup>
- CIS Guidance Document No.13: Overall Approach to the Classification of Ecological Status and Ecological Potential<sup>1</sup>
- CIS Guidance Document No. 2: Identification of Water Bodies<sup>1</sup>
- CIS Guidance Document No. 4: Identification and Designation of Heavily Modified and Artificial Water Bodies<sup>1</sup>
- CIS Guidance Document No.20: Exemptions to the Environmental Objectives<sup>1</sup>
- Commission Guidance Document on the management of Natura 2000 sites under Article 6 of the Habitats Directive<sup>2</sup>
- Commission Guidance Document on the implementation of the protection regimes under Article 12 of the Habitats Directive<sup>3</sup>
- 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, 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).

Any Natura 2000 site with Annex I aquatic habitat types or Annex II aquatic species under the Habitats Directive or with water-dependent bird species of Annex I 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. 6<sup>4</sup>. These areas are summarised as "water-dependent Natura 2000 sites". For these Natura 2000 sites, the objectives of BHD and WFD apply.

Sites that have been designated as protected areas only for national purposes should not necessarily be included in the register as the BHD does not apply to them.

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<sup>1</sup> 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](http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/guidance_documents&vm=detailed&sb=Title)

<sup>2</sup> See: [http://ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm)

<sup>3</sup> See: [http://ec.europa.eu/environment/nature/conservation/species/guidance/index\\_en.htm](http://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm)

<sup>4</sup> See CIS Guidance No. 12 on wetlands, section 5.1.

## 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 are to reach good ecological status and good chemical status in all surface waters and to prevent the deterioration of any status. This refers to all 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.*"

As 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 includes of 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 needs 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.

In order to make Article 4.1.(c) 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 favourable conservation status of the protected area 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 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 could also be included in the management plans of the Natura 2000 sites.

## 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 measures 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 favourable conservation status, then the latter applies (for examples 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 objectives refer to species and habitat types, 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.

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

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

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*" of the WFD entering into force, unless specified otherwise in the source directive. This means that all standards and objectives of the WFD, including those water-related objectives linked to the achievement of favourable conservation status in water-dependent Natura 2000 sites, need to be implemented as a rule by 2015.

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. The Member States must show progress in achieving favourable conservation status. The conservation objectives and conservation measures for Natura 2000 sites have to be established within six years, at most, after a site of Community importance has been adopted. Member States should plan the necessary measures and include those for water-dependent Natura 2000 sites also in the river basin management plans under the WFD.

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-law<sup>5</sup> 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 every 6 years at the biogeographical level. The first assessment was established in 2007 and the status has to be improved for the next assessment in 2013. Progress must be made. The BHD also contains certain deadlines for water-dependant Natura 2000 sites.

Therefore, whichever deadline comes first (2015 or the relevant deadline under HD) will be valid. The WFD allows for extension under certain conditions (see FAQ 2.5). Other non-water related BHD objectives falling outside the scope of the WFD are not affected by the deadlines of the WFD.

## 2.5 Is there a possibility to phase the achievements of BHD to 2021 or 2027 as in WFD?

As mentioned for FAQ 2.4 there is no specific date mentioned in the Birds and the Habitats Directives to reach the conservation objectives. Nevertheless, the conservation status of species and habitats under the HD has to be maintained and improved for the next assessment in 2013. The aim is to ensure favourable conservation status. The WFD objectives 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.

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),

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<sup>5</sup> ECJ-Ruling of 14 September 2006 (Bund Naturschutz Bayern - C-244/05)

- "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.

Exemptions/derogations for other reasons are explained in Chapter 4 of this document.

### **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 waters<sup>6</sup> and coastal waters<sup>7</sup> (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 status<sup>8</sup>.

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 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 taking into account their protection requirements in the geographical sea and land area where the Directive applies (see Art. 4.1 BD).

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<sup>6</sup> '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)

<sup>7</sup> '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)

<sup>8</sup> CIS Guidance Document No. 2: Identification of Water Bodies, section 3.3.2.

In the Habitats Directive, natural habitats are defined as terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features<sup>9</sup>. 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.

As all waters are divided into water bodies, all aquatic Annex I habitats of the Habitats Directive are part of water bodies. In a 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.

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

Examples of habitats listed in Annex I of the Habitats Directive	Relevant WFD category
<b>1. Coastal and halophytic habitats</b>	
<b>11. Open sea and tidal areas</b>	
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
<b>3. Freshwater habitats</b>	
<b>31. Standing waters</b>	
3160 - Natural dystrophic lakes and ponds	Lakes
<b>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</b>	
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

### 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 individual species but rather to use them as indicators of the ecological status of the aquatic ecosystem.

<sup>9</sup> 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'.

The **BHD** targets specific components of aquatic ecosystems such as species or habitats (sometimes ecosystems such as estuaries). The Habitats Directive sets the basic requirements 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.

Species of Community interest are targeted:

- through the protection of the habitat of specific species (Annex I of BD, Annex II of HD) including numerous aquatic and semi-aquatic species,
- through the obligation to include the conservation status of typical species (to be determined per habitat by the Member State) as conservation objectives of a site, and
- with a specific protection regime.

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 their obligations under 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 the whole of a Member State's territory and refer to the protection of individuals as well as their breeding sites and resting places. Natura 2000 sites form a coherent network and the aim should therefore be that habitat and species for which special areas of conservation (SACs) have been designated according to Article 4.4 HD have/will reach a favourable conservation status<sup>10</sup>. The national priorities, 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 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;

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<sup>10</sup> 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.

- 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 the presence of selected species and habitats of Community interest. This also means that the HD does not look at all species occurring in a water body, i.e. does not look at the aquatic community as a whole. The WFD does not look at presence or absence of specific species, unless their presence or 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).

### 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 in water-dependent Natura 2000 sites. 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. The following example illustrates such a case:

#### **Example:**

High nutrient concentrations feed large populations of shellfish which in turn feed large populations of birds. However, the water quality is bad. Which objective applies? Which objective is considered to be the more stringent? If improving the water quality is more important, is this a reason for neglecting the conservation objectives for the birds?

Under the WFD the aim is to reduce nutrients to the level compatible with good ecological status as the species occurring in good ecological status need certain abiotic conditions to survive. Under the HD the aim is to protect the presence of the protected species and the habitats occurring in the Natura 2000

site. Favourable conservation status is clearly linked to the species "*maintaining itself on a long-term basis as a viable component of its natural habitats*"<sup>11</sup>. This means measures under BHD should aim at the protection of sustainable populations of those species but should not be interpreted as meaning "as many birds as possible".

In addition, it is important to bear in mind that favourable conservation status does not necessarily always apply to the status of species and habitats in the individual site but to their status in the natural range (species) or distribution area (habitats) 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 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 reference conditions and protected areas as they serve different purposes and use different criteria.

## **4 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 2.5 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. 4.2).

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:

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<sup>11</sup> See definition of 'favourable conservation status' in Art. 1(i) HD

- 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"<sup>12</sup>. Art. 4.8 and 4.9 WFD however put 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. 4.2).

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

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<sup>12</sup> CIS Guidance Document No.20: Exemptions to the Environmental Objectives, chapter 3.2.2

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 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 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 a preliminary 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 affect the integrity of the Natura 2000 site(s). The preliminary 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 procedures under Art. 6.4 would follow.

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'<sup>13</sup>.
- 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,

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<sup>13</sup> Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC, section 1.2.1.

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. 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 related to the management of the Natura 2000 site are not subject to the requirement in Article 6.3.

In the **WFD** less stringent objectives may be applied for *new* sustainable human development activities where the physical characteristics of a surface water body have been modified and certain conditions are met. 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 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 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. 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 advantages to an assessment of alternatives. The guidance states that the assessment of alternatives should be done at the 6.3-stage.

In addition, under Article 6.2 HD preventive measures have to be applied to avoid the deterioration of the habitat or the species concerned. However, positive measures to restore a favourable conservation status of species or habitats are not mandatory by default as they depend on the priorities and conservation objectives established under Art. 4.4. HD. 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.

So, if a measure or project does fulfil the conditions of one directive, but not the other, the authorities may not authorise it under both directives. In such a case, the project or measures cannot be carried out under the one directive without infringement of the other directive. In such case it should be assessed whether amendments can be made to the measure of 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, 3<sup>rd</sup> 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.

## 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.