

# **Regulatory Impact Assessment for the European Marine Thematic Strategy and Possible Marine Directive**

Evaluation of the European Commission  
Impact Assessment

prepared for  
Defra

***RPA***

in association with

**ABPmer**

**October 2005**



# ***Regulatory Impact Assessment for the European Marine Thematic Strategy and Possible Marine Directive***

Evaluation of the European Commission Impact Assessment – October 2005

prepared for

Department for Environment, Food and Rural Affairs

by

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<b>RPA REPORT – ASSURED QUALITY</b>	
Project: Ref/Title	J470/MarStrat
Approach:	In accordance with the Specification
Report Status:	Evaluation of the European Commission Impact Assessment
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Date:	28 October 2005

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## TABLE OF CONTENTS

	<u>Page</u>
<b>1. BACKGROUND</b>	
1.1 Background	1
1.2 Organisation of the Report	1
<b>2. THE SCOPE, ACCURACY, RELEVANCE AND ROBUSTNESS OF THE IMPACT ASSESSMENT</b>	
2.1 Introduction	3
2.2 Scope of the Impact Assessment	3
2.3 Accuracy	5
2.4 Robustness	9
2.5 Relevance	13
2.6 Differences in Conclusions for the UK	14
<b>3. CONCLUSIONS</b>	
3.1 Introduction	15
3.2 Need for a Legislative Underpinning	15
3.3 A Directive as the Most Suitable Legal Instrument	15
<b>4. REFERENCES</b>	
4.1 References	17
<b>ANNEX : DETAILED COMMENTARY ON THE COMMISSION'S IMPACT ASSESSMENT</b>	



## **1. INTRODUCTION**

### **1.1 Background**

The Thematic Strategy for the Protection and Conservation of the Marine Environment is one of seven thematic strategies stipulated as priority actions within the European Commission's 6<sup>th</sup> Environmental Action Programme. The Commission published proposals for the Strategy<sup>1</sup> (which takes the form of a Communication) and a Marine Strategy Directive<sup>2</sup> on 24 October 2005. It also published an impact assessment of its proposals as an Annex to the published proposals.

RPA and ABPmer have been commissioned by Defra to prepare a Regulatory Impact Assessment (RIA) for the Strategy and Directive. This includes a full evaluation of the impact assessment that has been prepared by the Commission.

The focus of the evaluation is on:

- the scope, accuracy, robustness and relevance of the analysis and the underlying data on which it is based;
- any areas where conclusions on impacts for the UK may be different to the general conclusions drawn; and
- whether, on the basis of the evidence presented, a legislative underpinning is the best way to implement the Strategy and whether a Directive is the most suitable legal instrument.

### **1.2 Organisation of the Report**

Section 2 of the report provides an overall evaluation of the scope, accuracy, robustness and relevance of the Commission impact assessment and the validity of its conclusions for the UK. Section 3 draws conclusions whether a legislative underpinning is the best way to implement the strategy and whether a Directive is the most suitable legal instrument.

A detailed commentary on the impact assessment is provided in the Annex.

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<sup>1</sup> Communication from the Commission to the Council and the European Parliament. **Thematic Strategy on the Protection and Conservation of the Marine Environment** {SEC(2005)1290}, Brussels, 24 October 2005.

<sup>2</sup> **Directive of the European Parliament and of the Council establishing a Framework for Community Action in the Field of Marine Environmental Policy** (Marine Strategy Directive) {SEC(2005)1290}, Brussels, 24 October 2005.



## **2. SCOPE, ACCURACY, RELEVANCE AND ROBUSTNESS OF THE IMPACT ASSESSMENT**

### **2.1 Introduction**

The European Commission's Impact Assessment Guidelines<sup>3</sup> require an impact assessment to be prepared for all items on the Commission work programme, including all regulatory proposals.

The aim of the impact assessment prepared by the Commission services is to provide information on the problem that the Community Thematic Strategy for the Protection and Conservation of the Marine Environment is designed to tackle, the options that were considered and their impacts.

The Annex to this report provides a detailed commentary on the Commission's impact assessment. This section draws on the findings of this detailed analysis.

### **2.2 Scope of the Impact Assessment**

#### **2.2.1 Policy Options Examined**

The Impact Assessment focuses on two main Options:

- Option A: a voluntary approach based on a Communication setting non-binding recommendations; and
- Option B: a flexible legal instrument combined with non-binding recommendations of a Communication.

These Options are contrasted with a baseline of 'no action'.

The Impact Assessment focuses on the broad attributes of the options. No detailed description of Option A is provided, although the Commission indicates that Member States would be recommended to adopt an ecosystem approach and to prepare Marine Strategies at the regional level, as envisaged under Option B. The Commission's proposed Strategy and Marine Strategy Directive (which broadly follows the format of the Water Framework Directive) comprise Option B.

The Impact Assessment notes that a number of other options, in addition to 'no action', were examined but rejected, including:

- tightening up existing legislation;
- a prescriptive legal instrument;
- a purely national approach or loose co-operation;

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<sup>3</sup> European Commission (2005): **Impact Assessment Guidelines** {SEC 2005 (791)}, Brussels, European Commission 15 June 2005.

- a binding decision; and
- a sub-option of Option A, a Recommendation outlining in greater detail the steps to be taken to implement a voluntary Strategy.

The reasons put forward in the Impact Assessment for rejecting these options are the lack of flexibility and the absence of sufficient data and knowledge of the marine environment (in the case of a prescriptive legal instrument), failure to achieve the Strategy's objectives and achieve integration of policies. The analysis would benefit from further explanation of how the rejected options fail to address these issues. It would be helpful if, as suggested in the Commission guidelines, the attributes of all the policy options were described and then screened in terms of effectiveness, efficiency and consistency. This would make clearer the basis for rejection or acceptance of all the potential options.

The Impact Assessment would also be improved if the requirements of the Options A and B were set out clearly, and alternative approaches within the Options (such as different forms of the Strategy, different types of legal instrument or different forms of the Directive) were examined in more detail. The precise form of the Directive, for example the requirement to achieve 'good environmental status', the definition of good environmental status (which will only be established after the Directive has entered into force) and the timetable for achieving it, can have a significant impact on both benefits and costs.

In particular, the potential impacts of the definition of good status should be examined. The EU's Impact Assessment Guidelines notes that "objectives should be precise and concrete enough not to be open to varying interpretations" (CEC, 2005, pp 20). At the very least, the definition of good status is likely to require working group discussions, guidance and further explanation to ensure that it is robust (in line with experience on the Water Framework Directive). It would be helpful if these issues were discussed in the Impact Assessment.

### **2.2.2 The Baseline**

The Impact Assessment defines the baseline in terms of the problem which the Strategy is designed to address. This includes an examination of the main pressures on the marine environment and the current institutional framework.

The Impact Assessment lists current EU policies relevant to the marine environment and notes that effective implementation of these policies is assumed to be part of the baseline, 'no action' Option. However, it does not provide an analysis of the potential impact that policies adopted but not yet implemented, such as the Water Framework Directive, could have on the status of marine environment. The 2004 Partial Regulatory Impact Assessment<sup>4</sup>, prepared for Defra, concluded that measures such as the Water Framework Directive could have significant benefits for the marine environment. These could be even greater if, for instance, Member States set the

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<sup>4</sup> RPA and ABPmer (2004): **Partial Regulatory Impact Assessment for the EU Marine Thematic Strategy**. Prepared by RPA and ABPmer for Defra, May 2004.

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seaward extent of coastal waters at three nautical miles (nm) rather than 1 nm for the purposes of implementing the WFD, as in the case of Scotland, although there would also be costs associated with this, especially with regard to monitoring<sup>5</sup>.

The scope of the Impact Assessment would be improved if the baseline for comparison of the options examined in detail was set out more clearly.

### **2.2.3 Comparison of the Options**

The Impact Assessment describes the benefits and costs of Option A and Option B separately, in terms of their environmental, economic and social impacts. Although the text of the analysis makes some comments on the relative advantages and disadvantages of Options A and B, and some comparison with the 'no action' baseline, there is no systematic presentation of the actions required under the Options, the impacts of these and how the benefits and costs differ between the two Options and the baseline.

Such a comparison would be helpful in clarifying the relative strengths and weaknesses of each Option, thus providing background to the Commission's decision. This is recommended in the Commission's Impact Assessment guidelines.

## **2.3 Accuracy**

### **2.3.1 Introduction**

The accuracy of the Impact Assessment can be evaluated in terms of:

- the use of relevant data; and
- accurate interpretation of information.

### **2.3.2 Use of Relevant Data**

The majority of the analysis in the Impact Assessment is qualitative. This is largely inevitable, given the state of knowledge of the marine environment and the nature of the Commission's proposals. No attempt is made to quantify the overall costs and benefits of the options. However, quantitative data are provided on:

- the value of the marine environment (as part of the assessment of pressures);
- the extent of pressures on the marine environment;
- the administrative costs of Option B;
- the potential administrative costs of Marine Protected Areas under Option B;
- the potential costs of ship recycling under Option B;
- the benefits of marine ecotourism (discussed under Option B);
- the benefits of ICZM activities (discussed under Option B); and

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<sup>5</sup> The mini-RIA conducted by Shaw & Stone & Webster identified costs for the: aggregate dredging, navigational dredging, dumping and fish farming sectors (Shaw & Stone & Webster, 2003).

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- the value of new uses of marine species (discussed under Option B).

### ***Value of the Marine Environment***

The Impact Assessment presents data on the overall value of UK marine ecosystems, global environmental services and EU coastal waters from a number of sources. The uncertainty of these estimates is recognised and they are taken only as a broad indicator of the potential economic importance of seas and oceans. This is an appropriate use of the data, given the uncertainties.

Data on the economic importance of maritime activities, and of individual sectors, is also presented as part of the discussion on who is affected by the pressures on the marine environment. Again, examples are given from a range of published studies. The focus is on the current value of activities, rather than trends, although note is made of the increase in value of EU fish product exports since 1993.

An analysis of the impacts of the ‘no action’ baseline on maritime activities is provided in Section 4 of the Impact Assessment. Examples of problems are given, for example costs of stock depletion to the North American fishing industry, impacts of degradation of the marine environment on tourism, health implications of fish and seafood contamination. A number of the examples provided are for non-EU areas and thus not necessarily relevant to the EU policy context. Others relate to issues which the Strategy cannot address directly (e.g. loss of coastal wetlands due to sea level rise or effects of climate change on species composition and distribution).

### ***Pressures on the Marine Environment***

A range of data is presented on the pressures currently faced by the EU marine environment. This includes data related to fisheries, climate change, eutrophication, oil pollution, introduction of non-native species, hazardous substances and litter pollution. The data are partial, giving examples of impacts rather than a comprehensive analysis of the extent of pressures.

As one of the issues to be addressed by the Strategy is the shortage of data on the status of the marine environment and the causes of trends, it seems reasonable that a comprehensive assessment of the current status is not provided. However, as the Impact Assessment states that pressures are becoming increasingly severe, it would have been helpful to have included some trend data and an analysis of the impacts of policies adopted but not yet implemented.

### ***Potential Costs of Option B***

No firm cost data are presented for Option A; these costs are assumed to be negligible in the short term, as no binding measures are foreseen to implement the Strategy. This is not necessarily an accurate reflection of the costs of the Option, though, as measures determined at Member State level in response to the Strategy still incur costs. However, it reflects the Commission assumption that, under a voluntary Strategy, no integrated framework would be set up and no implementation plans

developed. This assumption is addressed further in discussion of the robustness of the Impact Assessment.

An assessment is made of the administrative costs of Option B. This is possible because, under this Option, Member States will be mandated to take certain actions, including:

- data collection, mapping and monitoring;
- assessment of the environmental status and socio-economic context;
- identification/mapping of important marine areas and features;
- identification of conservation and protection objectives; development of follow-up programmes of measures; and
- engagement of stakeholders and awareness-raising.

The cost of these activities is estimated at around €90 million per year for the first two years and €70 million per year after this period. The analysis undertaken is detailed in Annex 8 of the Impact Assessment. The estimation is based on an analysis of the costs of the Irish Sea Pilot programme and a report from the US Commission on Ocean Policy. It makes the assumption that the administrative requirements of the Irish Sea Pilot and Option B are similar.

However, there are a number of factors that may raise questions about such an assumption. The Irish Sea Pilot was a voluntary initiative. As such, data-gathering could be geared to the critical areas necessary for decision-making. By contrast, Option B mandates Member States not only to implement and report on monitoring and assessment programmes in line with common principles, but also to demonstrate that good environmental status has been achieved or to justify why it cannot be achieved within the timescale. There is also a requirement to carry out cost-benefit assessments of proposed programmes of measures. These requirements of Option B are much closer to the monitoring and assessment regime required under the Water Framework Directive. It would have been helpful to have a detailed analysis of the administrative requirements of Option B to provide a more accurate indication of potential costs<sup>6</sup>.

The Impact Assessment notes that, because implementation measures will be set at regional level, these cannot be fully anticipated or costed. However, indications are given of the types of measures that may need to be considered, with two examples of quantification. These are for the administrative costs of marine protected areas (based on analysis in the RCEP 'Turning the Tide' report) and the costs of ship recycling, based on data from the US, and EU study and work in the Netherlands. No cost is derived for the EU as a whole of administering marine protected areas; the aim of the example is primarily to indicate that any costs are likely to be offset by benefits. On ship recycling, the EU costs quoted are those associated with the Erika packages and IMO regulations, which are already committed. Whilst there are clear difficulties in quantifying the costs of implementation of Option B, a more systematic

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<sup>6</sup> An assessment of the likely scale of costs for the UK, with a broad estimate of total EU costs, is provided in the Partial Impact Assessment of the Strategy and Directive, prepared by RPA and ABPmer.

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analysis of the likely additional costs of the Option, beyond those associated with existing commitments (which are part of the baseline) would be helpful.

### ***Potential Benefits of Option B***

As with the costs of Option B, the benefits will depend upon the implementation measures introduced at regional level. The Impact Assessment describes the potential benefits primarily in qualitative terms, although quantification is provided for some benefits.

Data are provided on the rate of growth of marine ecotourism worldwide, together with the rate of growth of cetacean watching in the UK and its contribution to the west of Scotland's tourism. There is no estimate, though, of the extent to which Option B might contribute to an increase in this rate of growth. The Impact Assessment also quotes data on the net economic benefits of ICZM initiatives, without indicating how these might be affected by Option B. Although the uncertainty over benefits is acknowledged, an indication of the potential scale of impacts of Option B could have added to the value of the Impact Assessment.

In considering the impacts of Option B on research, the Impact Assessment quotes data on Japanese investment on marine bioprospecting, the possible health market for marine bacteria and the turnover of the nutraceuticals dietary supplements market. A clearer indication of the link between these figures and the impacts of Option B would be helpful.

### **2.3.3 Accurate Interpretation of Information**

In general, the Impact Assessment quotes information directly from the sources on which it draws, rather than interpreting the information. There is therefore little scope for inaccuracy. Nevertheless, certain of the conclusions drawn appear to go beyond the scope of the information sources quoted. This is discussed further in Section 2.4 below.

One example of misinterpretation of information occurs in Section 7.2 of the Impact Assessment, on the economic impacts of Option A. The Impact Assessment notes that, under Option A, current discrepancies and lack of coordination between existing measures to protect the marine environment would be maintained, leading to gaps and overlaps, potentially entailing costs for Member States. It notes that "this risk was underlined in the Partial Regulatory Impact Assessment on the EU Marine Strategy which the UK's Defra commissioned in 2004". However, the cited reference concerns the risks of the 'existing commitments' baseline, in contrast to the two 'voluntary action' options assessed in that Partial RIA.

## **2.4 Robustness**

### **2.4.1 Introduction**

The robustness of an impact assessment can be expressed in terms of:

- whether it complies with best practice in impact assessment; and
- the extent to which the conclusions drawn are supported by the data and analysis presented.

### **2.4.2 Compliance with Best Practice**

Best practice in impact assessment is set out in the Commission's Impact Assessment Guidelines. The most recent version of the Guidelines was published on 15 June 2005, and replaced the earlier version of the guidance (dating from 2002). It is possible that the Commission's Impact Assessment was prepared before the 2005 guidelines were published. Nevertheless, an accurate Impact Assessment should be in line with its main requirements.

The Impact Assessment on the marine thematic strategy does not strictly follow the format set out in the Guidelines. However, most of the elements required by the guidelines are included. There are a number of areas, though, where the Impact Assessment could benefit from following the guidelines more closely. The most significant of these concerns the comparison of options, discussed in Section 2.2.3. Others include:

- the consultation process;
- description of the institutional framework;
- assessing consistency with other policies; and
- monitoring and evaluation.

#### ***The Consultation Process***

The Impact Assessment describes the lengthy consultation process that has been carried out on the basis of the Commission's 2002 Communication on the marine thematic strategy. This was based on the concept of a voluntary strategy, however. The approach of Option B, including a Directive, was the subject only of an eight week internet consultation from March to May 2005.

Opinions were sought on the objectives and content of such a Directive, but not on the relative merits of a directive and a voluntary approach (Option A in the Impact Assessment). The Guidelines on Impact Assessment indicate that consultation can be carried out 'on different elements of the impact assessment', but it seems inappropriate to consult on one of the Options in isolation, especially as the previous two-year consultation programme had focused on the voluntary approach.

### ***Description of the Institutional Framework***

The Impact Assessment identifies a lack of coordination and a piecemeal approach to policy making as the main problems associated with the institutional framework. Issues at regional level include a lack of enforcement powers under regional conventions and the limited EU margin for action on shipping.

There is, of course, limited scope for the EU to take unilateral action where conventions include non-EU bodies. Equally, the powers of the EU with regard to shipping cannot be changed unilaterally. The Guidelines explicitly require analysis of the problem to identify whether action is within the Community's powers; it would be helpful if this was presented more clearly within the Impact Assessment.

### ***Assessing Consistency with Other Policies***

The Guideline indicates that objectives should be assessed for consistency with the objectives of other EU policies. Although a list of other EU policy initiatives is provided, these are not assessed in terms of consistency with the objectives set out in the Impact Assessment. This is potentially significant both in terms of potential conflicts (e.g. with fisheries policy) and overlaps (e.g. with the Water Framework Directive provisions to limit pollutants entering marine waters).

### ***Monitoring and Evaluation***

The Guidelines require the assessment to consider potential arrangements for monitoring and evaluation, including identification of key indicators and a broad outline of monitoring and evaluation measures.

The Impact Assessment focuses on the monitoring arrangements of Option B, which follow closely the requirements of the Water Framework Directive. No assessment is provided of how monitoring and evaluation would proceed under Option A.

## **2.4.3 Support for the Conclusions Drawn**

The overall conclusion of the Impact Assessment is that the impacts of Option A are unlikely to differ significantly from the no-action scenario and that the costs of no-action are potentially very high. Option B would have important social and economic costs for some sectors in the short term but potential benefits in the medium to longer term. The robustness of this conclusion will depend on the quality of evidence provided on:

- the high costs of no-action;
- the lack of impact of Option A; and
- the effectiveness of Option B.

### ***High Costs of No Action***

Much of the analysis of current pressures on the marine environment was included in the 2002 Communication, and has been endorsed in extensive stakeholder consultation.

The current analysis identifies poor enforcement of existing regulations as a source of pressure in several cases (e.g. discharges of oil at sea, microbial pollution, dumping of toxic substances at sea). Currently the Impact Assessment states that improved implementation of existing policy instruments would not be sufficient to address the costs of no action, but no analysis is presented to support this conclusion. Providing information on the potential impact of better enforcement in these areas on the costs of no action would have been helpful.

The Impact Assessment states that many of the current pressures on the marine environment are expected to continue and worsen under a no action scenario. Inclusion of trend data and the potential impacts of measures adopted but not yet implemented, such as the Water Framework Directive, would have made the analysis of the costs of no action more robust.

### ***Lack of Impact of Option A***

The Impact Assessment concludes that, while Option A is likely to lead to better coordination and therefore improved effectiveness of future regulations, the status of the marine environment would not or would only slightly improve as compared to the no action scenario. A number of arguments are advanced to support this conclusion:

- despite improved coordination and cooperation over the past two years, the state of the marine environment has not improved;
- a likely outcome of a voluntary approach is that no integrated framework would be set up and no regional strategies developed;
- if regional strategies were developed, they would be rhetorical and declamatory and thus not properly enforced.

The first of these arguments would have had greater robustness if it had been supported by trend data on the quality of the marine environment. This need not necessarily be complex. It could include, for example, the percentage change in bathing waters complying with mandatory and/or guidance values of the Bathing Water Directive, which can provide an indicator of the quality of the wider marine environment. Even if such data were presented and supported the argument that the marine environment has not improved, this would not necessarily indicate that a voluntary approach is ineffective, as water quality can change from one year to another due to weather events, for example. The Impact Assessment itself recognises that rates of change in the marine environment can range from a few years to several decades, so it would be unrealistic to expect a significant change within two years.

The argument that a voluntary approach would result in no integrated framework appears to be at odds with the statement, in the discussion of stakeholder consultation, that the approach set out in the Strategy had achieved wide support amongst

stakeholders, including representatives of Member States. Evidence that past voluntary approaches had been unsuccessful, for example data on the extent of implementation of international conventions related to the marine environment, would have provided a more robust basis for this argument. The argument also ignores the fact that regional strategies have already been set up on a voluntary basis or are in the process of being set up, such as the Ballast Water Management Strategy for NW Europe.

Similarly, the claim that voluntary regional strategies would not be enforced would be more robust if supporting evidence from past experience was provided. It could equally be claimed that the problem of enforcement applies to the marine environment as a whole and not just to voluntary agreements. More legislation, in the form of a Directive, could thus add to the burdens of the enforcement agencies.

The lack of a systematic comparison of the costs and benefits of the Options, with each other and with the no action scenario, would make it easier to assess the validity of the conclusions drawn by the Commission.

### ***The Effectiveness of Option B***

The Commission concludes that Option B will generate a range of benefits, including:

- more joined-up policy making at EU level;
- better integration of policy making at EU and international level;
- more consistent and swifter implementation of existing legislation; and
- a reversal of the impoverishment of marine ecosystems.

No explanation is provided of why a Marine Framework Directive will contribute more effectively to joined-up policy making at EU level than a voluntary strategy. The analysis would be more robust if there was an explanation of why a Directive is more influential on EU decision-making than a strategy. Similarly, the ability of a Directive to influence international policy development more effectively than a strategy is not explored.

The Impact Assessment accepts that implementation of existing legislation will proceed in the absence of Option B. It does not explain, though, why a Directive would accelerate implementation of existing legislation (which will generally have a fixed implementation timetable, with penalties for non-compliance). It could equally be argued that creating more legislation could also slow down implementation of the current directives.

If existing Directives are not effectively implemented, providing reasons why a Marine Strategy Directive would be effectively implemented would give support to this argument. This should include explanation as to why a more effective implementation of current Directives will not achieve the level of improvement needed.

To achieve the benefits of reversing the impoverishment of marine ecosystems and enhancing biodiversity, Option B would need to counteract changes arising not only from immediate human impacts, such as discharge of pollutants, but also wider effects such as global climate change and natural physical changes in the marine environment. The Impact Assessment does not discuss how Option B could achieve such benefits. Moreover, if a Directive resulted in penalties on Member States for non-compliance caused by such wider effects that are outside their control, this could have a negative effect on implementation.

## **2.5 Relevance**

The Impact Assessment can be judged as relevant if it addresses the significant features of the policy options identified in sufficient depth to enable an informed decision to be made between the options. There are two main areas in which the relevance of the Impact Assessment could be improved:

- a systematic comparison of the impacts, costs and benefits of the main options; and
- assessment of the detailed provisions of Options A and B.

As noted in Section 2.2.3, the Impact Assessment does not provide a systematic comparison of the impacts, costs and benefits of Options A and B with each other, and with the no action scenario. Such a comparison would have considerable benefits for the robustness of the Impact Assessment and its relevance to decision-makers.

The assessment of Option A currently provides little detail on how the option might work in practice. The proposed Strategy presented by the Commission contains little detail and is focused on the justification for a Marine Strategy Directive. The Impact Assessment indicates that, under Option A, Member States would be recommended to prepare regional marine strategies but does not explain what objectives might be set. A fuller explanation of the requirements of Option A would improve the quality of the Impact Assessment; a systematic comparison of the Options would be one way of presenting this information.

Similarly, most of the discussion of Option B focuses on the broad requirement to prepare regional marine strategies, comprising monitoring and assessment and programmes of measures. The types of actions that might be included in programmes of measures are discussed, but there is no evaluation of the impacts of detailed aspects of the proposed Marine Strategy Directive, such as the definition of good environmental status, the feasibility of the timescale for achieving it and the adequacy of extensions to this timescale. Experience with the Water Framework Directive has indicated that these aspects can have significant impacts on the impacts and costs of a Directive. The relevance of the Impact Assessment would be enhanced by a detailed discussion of these aspects.

## **2.6 Differences in Conclusions for the UK**

There appear to be no particular factors in the Impact Assessment that would make its conclusions different for the UK than for the EU as a whole. A considerable proportion of the data presented in the assessment is drawn from UK sources and many of the examples relate to the UK. The conclusions drawn above on the scope, accuracy, robustness and relevance of the Impact Assessment apply equally to the UK as to the EU as a whole.

### **3. CONCLUSIONS**

#### **3.1 Introduction**

This section draws conclusions on two key aspects of the Impact Assessment:

- whether, on the basis of the evidence presented, a legislative underpinning is the best way to implement the strategy; and
- whether a Directive is the most suitable legal instrument.

#### **3.2 Need for a Legislative Underpinning**

The Commission's conclusions on the need for a legislative underpinning are based on the assumption that a voluntary approach would not be effective in meeting the objectives of promoting the sustainable use of the seas and conserving the marine environment.

As noted in Section 2.2.2, only one option for a voluntary approach is adopted, a voluntary strategy, analysed as Option A. A purely national approach, or loose cooperation, are rejected because of the transboundary nature of the marine environment but are not examined in detail.

The Commission assumption that Option A would not achieve the objective has been discussed in section 2.4.3 above. The assumption is not supported by evidence in the Impact Assessment, and thus lacks robustness. In these circumstances, the Impact Assessment as currently presented does not provide sufficient evidence of the need for a legislative underpinning for the strategy.

#### **3.3 A Directive as the Most Suitable Legal Instrument**

The Impact Assessment discusses a number of legal instruments, specifically:

- tightening up existing legislation;
- a prescriptive legal instrument;
- a binding decision; and
- a Marine Framework Directive.

Tightening up existing legislation is rejected because it would not meet the mandate under the 6<sup>th</sup> EAP and would not deliver an integrated approach. Nevertheless, poor enforcement of existing policies and instruments was identified by the Commission as a significant contributor to poor quality of the marine environment in its problem definition and could thus have some merits. This option is not examined further, but would not address all of the pressures on the marine environment.

A prescriptive legislative instrument is rejected because of the difficulty of taking account of the diverse conditions and needs of the Community marine environment

and the absence of sufficient knowledge on the marine environment. This appears to be an appropriate conclusion, as the lack of knowledge and data could result in an overly-demanding regulation with potentially excessive costs. Nevertheless, the lack of data could also impact on the viability of other options.

A binding decision was rejected because the large number of maritime Member States, and the impact of land-locked states and non-members on the marine environment, would make targeting a limited number of addressees erroneous and because of the lack of flexibility of a decision. The reasoning behind the rejection of this option seems somewhat confused. A decision can be directed to as many or as few Member States as is necessary and could be combined with other instruments. The lack of flexibility, however, would restrict the scope of a decision in the context of the marine environment

Of the types of legal instrument examined, therefore, a Directive appears the most appropriate. A Directive can be drafted to enable considerable flexibility, especially if it takes the form of a Framework Directive. In circumstances where data are inadequate, a Framework Directive can mandate information gathering in order to set targets and measures, with these objectives and measures to be implemented through daughter directives once the data are available.

The Marine Strategy Directive drafted by the Commission, however, already includes a target (good environmental status) and a timescale for meeting it. It could be argued that the timescale is premature, given the state of knowledge of the marine environment, and poses considerable risks for the effectiveness and efficiency of the Directive. In addition, the lack of definition of the target (good environmental status will not be defined until some time after the Directive enters into force) provides considerable uncertainty over its feasibility and impacts. Under these circumstances, it is unfortunate that the implications of the target are not addressed within the Impact Assessment and that no alternative forms of Directive are assessed.

#### **4. REFERENCES**

- CEC (2005a) **Impact Assessment Guidelines** {SEC 2005 (791)}, Brussels, European Commission 15 June 2005.
- CEC (2005b): **Impact Assessment – Thematic Strategy on the Protection and Conservation of the Marine Environment**, {SEC(2005) 1290} Brussels, 24 October 2005, (available at <http://europa.eu.int/comm/environment/water/marine.htm>).
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*ANNEX*

*DETAILED COMMENTARY ON THE COMMISSION'S IMPACT  
ASSESSMENT*



## **A1 Compliance with the Commission Impact Assessment Guidelines**

The most recent version of the Commission's Impact Assessment Guidelines was issued on 15 June 2005, and replaced the earlier version of the guidance (dating from 2002). It is possible that the Impact Assessment of the Marine Strategy was prepared before the 2005 guidelines were issued. The Guidelines set out a mandatory format for the impact assessment, comprising:

- Executive Summary
- Section 1: Procedural issues and consultation of interested parties
- Section 2: Problem definition
- Section 3: Objectives
- Section 4: Policy options
- Section 5: Analysis of impacts;
- Section 6: Comparing the options; and
- Section 7: Monitoring and evaluation.

*Comment: The impact assessment on the marine thematic strategy does not strictly follow this format. However, most of the elements required by the guidelines are included.*

*Compliance with detailed requirements of the Guidelines is assessed in the sections below discussing individual sections of the Impact Assessment.*

## **A2 Procedural Issues and Consultation**

### **A2.1 Coverage in the Impact Assessment**

Procedural issues and consultation are addressed in different sections of the Commission's impact assessment:

- the Introduction (Section 2) addresses the policy context in broad terms;
- Section 8.6 analyses how the strategy will contribute to the future EU Maritime Policy; and
- Section 10 covers stakeholder consultation.

### **A2.2 Policy Context**

The impact assessment explains that the strategy arose from the request under the 6<sup>th</sup> Environment Action Programme (EAP) to develop a Thematic Strategy with the overall aim 'to promote sustainable use of the seas and conserve marine ecosystems' (p6, para 2).

*Comment: the 6<sup>th</sup> EAP specifically refers to 'promotion' of sustainable use of the seas. This could be read as indicating that a voluntary approach, rather than a Directive, was envisaged.*

It describes the 2002 Communication ‘Towards a strategy to protect and conserve the marine environment’ and notes that the action plan and work programme set out in this document was endorsed by the Council (p 6, para 3)

*Comment: the action plan and work programme contained in the 2002 Communication do not appear to have been taken forward in the Strategy or the proposed Directive, despite being endorsed by the Council. The Impact Assessment does not explain why not.*

### **A2.3 Links to the Future EU Maritime Policy**

The Impact Assessment indicates that the Marine Strategy will contribute directly to the future EU Maritime Policy (p 6, para 6). Section 8.6 describes the objective of the Maritime Policy as ‘responding to the need for an all-embracing maritime policy aimed at developing a thriving maritime economy and the full potential of sea-based activity in an environmentally-sustainable manner’(p 48, para 2 and 3). The Marine Strategy would provide the framework for delivering on the environmental pillar of sustainable development by safeguarding the resource base for marine-related human activities. However, the Marine Strategy “would not bring about the overall governance framework through which all users of the oceans and seas could be regulated”, because this goes beyond the mandate of the 6<sup>th</sup> Action Programme (p48, para 2).

*Comment: the Impact Assessment recognises that the Strategy cannot regulate all users of the oceans and seas, and that the Maritime Policy will provide the overarching framework for development of the marine environment. It thus seems somewhat pre-emptive to adopt a Directive, prescribing action to be taken by Member States, when their ability to deliver the actions required by the Directive might be constrained by the future Maritime Policy. Equally, the Directive might constrain action to be taken under the Maritime Policy.*

### **A2.4 Consultation of Interested Parties**

Section 10 of the Impact Assessment describes an ‘extensive stakeholder consultation process’ from 2002 to 2004, on the basis of the 2002 Communication. Reference is made to a closing stakeholder conference in November 2004 (p52, para 3).

*This conference concluded<sup>7</sup> that a regional approach to implementation of the European Marine Strategy was required and that the baseline should take account of existing legislative requirements such as the Water Framework Directive. There was no discussion at the Conference of a Marine Strategy Directive. Indeed, it was noted that “to deliver a truly sustainable development in the marine environment, a new governance and management structure is needed, that is a (regional) platform with representation of all actors. As this would go beyond the mandate of the 6<sup>th</sup>*

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<sup>7</sup> Outcome of the Second Stakeholder Conference on the Development of a European Marine Strategy; 10-12 November 2004

*Environmental Action Programme, the EC document does not contain any proposals for a new “governance approach”.*

The conference was followed by an internet consultation from 15 March 2005 to 9 May 2005, which received 133 replies. The Commission draws the conclusion from this consultation that the approach it proposes was broadly supported (p52, para 5,6).

*Comment: the Internet consultation was the only stage at which a possible Marine Strategy Directive was consulted upon. Opinions were sought on the objectives and content of such a Directive, but not on the relative merits of a directive and a voluntary approach (Option A in the Impact Assessment). The Guidelines on Impact Assessment indicate that consultation can be carried out ‘on different elements of the impact assessment’, but it seems inappropriate to consult on one of the Options in isolation, especially as the previous two-year consultation programme had focused on the voluntary approach.*

*The total of 133 responses appears a low number on which to base the Commission’s conclusions. No analysis is provided of the sectors from which the responses came (although half came from individuals), so it is impossible to judge their representativeness.*

## **A3 Problem Definition**

### **A3.1 Nature of the Problem**

Section 3 of the Impact Assessment defines the problem the Strategy is designed to address in terms of:

- the environmental importance of the marine environment (Section 3.1, although in practice the section covers its *economic* importance);
- increasing pressures on Europe’s marine environment (Section 3.2);
- an inadequate institutional framework for management of the seas (Section 3.3); and
- who is affected (Section 3.4).

### **A3.2 Importance of the Marine Environment**

The assessment quotes values for the marine environment based on the RCEP ‘Turning the Tide’ report estimation of the value of the UK marine environment, estimates by Constanza of the global value of the ocean environment and by the European Science Foundation of the value of European coastal waters (p 7).

*Comment: the uncertainty of the estimates is acknowledged and no value of the EU marine environment is made.*

### **A3.3 Pressures**

The main pressures on the marine environment are identified as (pp 8-14):

- fisheries;
- climate change;
- eutrophication;
- oil pollution;
- introduction of non-native species;
- pressures on coastal habitats;
- contamination with hazardous substances;
- litter pollution;
- microbial pollution;
- seabed disturbance;
- radionuclide discharges; and
- marine noise pollution.

These pressures were identified in the 2002 Communication, with the absence of marine noise pollution.

*Comment: as an analysis of pressures, there can be little argument with this description, most of which was included within the 2002 Communication and was broadly supported by stakeholders. However, there are implications in terms of the type of actions that could be taken under a Marine Strategy Directive. For example, fishing is regulated under the Common Fisheries policy and climate change by the EU's obligations under the Kyoto Protocol. There is also limited recognition of the potential impacts of policies which have been adopted but not yet implemented (such as the Water Framework Directive). Addressing this issue was one of the recommendations of the Rotterdam stakeholder conference..*

*Poor enforcement of existing regulations is identified as a pressure in several cases (e.g. discharges of oil at sea, microbial pollution, dumping of toxic substances at sea), without recognition that better enforcement, rather than new regulations, may be the most efficient solution.*

*It also needs to be borne in mind that certain activities are under the competence of particular organisations. Initiatives by these organisations could therefore have an impact on the marine environment. An example is shipping activities under the competence of IMO; initiatives by IMO may impact in areas such as oil pollution, non-native species, hazardous substances, litter and marine noise pollution.*

### **A3.4 Institutional Framework**

Problems associated with the institutional framework are identified primarily as a lack of coordination and a piecemeal approach to policy making (pp 15- 17). Issues at regional level include a lack of enforcement powers under regional conventions, the

range of EU policies affecting the marine environment but not specifically designed to protect it and the limited EU margin for action on shipping.

*Comment: this analysis may well be correct but there is limited scope for the EU to take unilateral action where conventions include non-EU bodies. Equally, the powers of the EU with regard to shipping cannot be changed unilaterally. The Commission Impact Assessment Guidelines explicitly require analysis of the problem to identify whether action is within the Community's powers.*

### **A3.5 Those Affected**

Those affected by the pressures and inadequate institutional framework (pp 17-21) are identified in terms of the economic value of marine activities as a whole, and of sectors particularly affected by the quality of the marine environment (fisheries/aquaculture/fish processing, ports/shipping/building, oil and gas extraction, dredging – sand and gravel, tourism and coastal development, other sectors).

*Comment: data on the overall economic value of these sectors provides interesting background information (in line with that presented in the introduction to this section of the Impact Assessment), but does not indicate the effect of the pressures identified above. Indeed, many of the sectors appear to have experienced significant growth (including fisheries), indicating that pressures on the marine environment have yet to impact on the economic value of these sectors.*

### **A3.6 Costs of Inaction**

Section 4 of the Impact Assessment (p 21-25) continues from the presentation of data on the economic value of sectors affected by the quality of the marine environment to assess the costs of inaction. This meets the requirements in the Commission Impact Assessment Guidelines to identify how the problem would evolve if the current approach were to continue and constitutes the baseline against which the options for action should be evaluated.

The Impact Assessment states that, under a no-action scenario, many of the current impacts on the marine environment are expected to continue and worsen (p20, para 3).

*Comment: only limited evidence is presented for this view, and no account appears to have been taken of the impacts of policies adopted but not yet implemented (in particular, the Water Framework Directive). The reformed Common Fisheries Policy is mentioned as an important contributor to securing sustainable exploitation of fisheries, and the ability of the reformed CFP to 'deliver' is assumed in the baseline, but its impacts on the estimated costs of 'business-as-usual' (p 21, para 3) are not evaluated.*

Examples of problems are given, including impacts of degradation of the marine environment on tourism (p23), health implications of fish and seafood contamination (p22). The Impact Assessment states that "while some may argue that these costs

could be tackled based upon improved implementation of existing policy instruments, this would not be sufficient” (p24, para 4).

*Comment: no evidence is provided for this statement, simply an assertion that, because sectoral policies address uses, impacts and ecosystem components in isolation, impacts beyond their specific management areas are not taken into account.*

The Impact Assessment also notes that “interpretations of ‘good environmental status of the marine environment’ or of ‘healthy marine ecosystems’ vary from one sector to another” (p24, last para).

*Comment: this has clear implications for the practicability of the possible Marine Strategy Directive, which is based on the concept of ‘good environmental status’.*

## **A4 Objectives**

### **A4.1 Overall Policy Objective**

The objective of the EU Marine Strategy, as set out in the 6<sup>th</sup> EAP and the 2002 Communication, is “to promote sustainable use of the seas and conserve marine ecosystems”. The Commission’s proposed strategy and Framework Directive now introduce the concept of ‘good environmental status’ as a means of making this objective operational (p25, para 3).

*Comment: the concept of achieving ‘good environmental status’ potentially imposes quite different requirements from promoting ‘sustainable use’ and conservation of marine ecosystems. ‘Promoting sustainable use’ implies an aspiration rather than a target. Achieving ‘good environmental status’ implies a requirement to meet set of measurable quality objectives that define what is necessary to sustain use and to conserve marine ecosystems. This is potentially more demanding in terms of both monitoring and measurement (to determine whether ‘good status’ is met) and measures required to achieve good status. It also assumes that what constitutes ‘good status’ can be defined for the EU marine environment.*

*The Commission’s Impact Assessment does not explain the reason behind the introduction of the concept of ‘good environmental status’, nor does it explore the implications. For instance, it is possible that adjacent Member States, or even sectors, could interpret the definition of ‘good environmental status’ differently, resulting in problems in agreeing on the current status of a marine region and thus the programme of measures necessary. This is particularly important since the maritime environment cannot easily be broken down into discrete water bodies. The implications of adopting a firm target for meeting ‘good environmental status’, in the absence of a definition, are not discussed in the Impact Assessment.*

## A4.2 Potential Benefits

The Impact Assessment identifies a number of benefits that could arise from the marine strategy (these are explored further in Sections 7 and 8 of the assessment) and describes the ecosystem approach that underpins the strategy. It notes that a range of current and forthcoming Community initiatives have a bearing on the marine environment (listed in Annex 6) but that most of these were not designed specifically for the protection of the marine environment and therefore ‘fall short of the requirements for effective protection of the marine environment’ (p26, para 4). In these circumstances what is needed is an integrated approach “establishing a clear overarching objective to be achieved within a given timeframe” (p26, para 5).

*Comment: the 2002 Communication, and stakeholder responses to the Communication, showed clear support for an integrated approach to protection of the marine environment. However, this is very different from a specific, time-limited objective.*

The Commission’s Impact Assessment Guidelines indicates that objectives should be SMART (specific, measurable, accepted, realistic and time-dependent). They should also be assessed for consistency with the objectives of other EU policies.

*Comment: the Impact Assessment does not present an analysis of the objectives in this form. The objective of achieving ‘good environmental status’ could be described as specific measurable and time-dependent (though potentially open to differences in interpretation) but the degree to which it is realistic, especially given the Commission’s comments on the paucity of current data on the marine environment, is not examined. By contrast, the objective of promoting ‘sustainable use’ and conservation of marine ecosystems is much less specific, and therefore less measurable. This objective would need to be supported by a series of sub-objectives, as in the 2002 Communication, to meet the SMART criteria.*

*Although a list of other EU policy initiatives is provided, these are not assessed in terms of consistency with the objectives set out in the Impact Assessment. This is potentially significant both in terms of potential conflicts (e.g. with fisheries policy) and overlaps (e.g. with the Water Framework Directive provisions to limit pollutants entering marine waters).*

## A5 Policy Options

### A5.1 Basic Approach

The Commission has concluded that a number of actions would be required to deliver an integrated, ecosystem approach to protection of the marine environment. These include (p27):

- creation of a framework for cooperation;
- EU-level agreement on objectives;
- agreement on the links to regional and international agreements;

- an improved knowledge base;
- improved mechanisms for monitoring and assessment;
- regional marine strategies;
- greater co-ordination between EU policies impacting on the marine environment.

## **A5.2 Policy Options Rejected**

A number of policy options for implementing these actions have been rejected by the Commission (p28-30):

- no action (this provides the baseline for assessment of the options considered by the Commission). *Comment: given the range of EU measures affecting the marine environment, not all of which have yet been fully implemented, it is important to recognise that the baseline is not static. This is not addressed in the Commission Impact Assessment;*
- tightening up existing legislation (rejected because it would not meet the mandate under the 6<sup>th</sup> EAP and would not deliver an integrated approach). *Comment: nevertheless, poor enforcement of existing policies and instruments was identified by the Commission as a significant contributor to poor quality of the marine environment in its Problem Definition (see Section 1.3);*
- a prescriptive legislative instrument (rejected because of the difficulty of taking account of the diverse conditions and needs of the Community marine environment and the absence of sufficient knowledge on the marine environment). *Comment: this lack of knowledge and data could also impact on the viability of other options;*
- a purely national approach or loose cooperation (rejected because of the transboundary nature of the marine environment). *Comment: this reasoning applies to 'purely national action' but not necessarily to 'loose cooperation';*
- a binding decision (rejected because the large number of maritime member states and the impact of land-locked states and non-members on the marine environment would make targeting a limited number of addressees erroneous and because of the lack of flexibility of a decision). *Comment: the reasoning behind the rejection of this option seems somewhat confused, and could apply equally to a Directive. A decision can be directed to as many or as few member States as is necessary and could be combined with other instruments. The lack of flexibility, however, would restrict the scope of a decision in the context of the marine environment.*

The Commission's Impact Assessment Guidelines suggest that the attributes of all policy options should be described. These can then be screened in terms of effectiveness (achievement of the objective), efficiency (cost-effectiveness) and consistency (limiting trade-offs across the, social, economic and environmental domains).

*Comment: the Commission's analysis appears to focus solely on the criterion of effectiveness and makes a number of assumptions on this criterion, with little supporting evidence.*

### **A5.3 Policy Options Considered**

The Impact Assessment considers two options (p30-32):

- Option A: a voluntary approach based on a communication setting non-binding recommendations; and
- Option B: a flexible legal instrument combined with non-binding recommendations of a Communication.

A sub-option of Option A, a Recommendation, outlining in greater detail the steps to be taken to implement the strategy is not examined, because the Commission considers that its effect would be strictly identical to a Communication (p31, para 2).

*Comment: this is not necessarily the case; a Recommendation could potentially provide further guidance to Member States and contribute to better implementation of the Strategy.*

Policy Option A would take the form of a Communication, following in general terms the form of the 2002 Communication, recommending the preparation of Regional Marine Strategies to implement an ecosystem-based approach (p30, para 3).

Policy Option B would consist of a Communication, adjusted to make the case for a legal instrument, and a legal instrument setting a legally-binding objective of achieving good environmental status in European seas within a defined time-period (p 31-32). Such an instrument would include:

- common principles and objectives and a commitment to a common monitoring and assessment process;
- preparation of a Regional Marine Strategy for each region, including an assessment of pressures and threats, identification of measures needed to achieve the objectives and an assessment of their environmental, social and economic costs and benefits; and
- extensions to the timescale for achieving good environmental status where meeting the timescale would be disproportionately expensive, not technically feasible or not allowed by natural conditions.

*Comment: only one option for a legal instrument, a Directive broadly following the structure of the Water Framework Directive, appears to have been considered. Other options, such as a two-stage Directive with an initial monitoring and assessment phase, followed by the setting of objectives, are not discussed (and were not included within the public consultation). No reason is given for this in the Impact Assessment.*

## **A6 Analysis of Impacts**

### **A6.1 Context**

The context for the assessment of impacts is provided in section 6.4 of the Impact Assessment (p 32). This recognises that the benefits will only be felt in the medium to long term, as the rate of changes in the marine environment can vary from a few years to several decades. Equally, assessment of the impacts of the proposed course of action – Regional Marine Strategies – can only be undertaken at regional level because the potential measures and their costs, benefits and impacts will differ greatly for each marine region. For this reason, the Commission proposes that each Regional Marine Strategy should be underpinned by a detailed cost-benefit analysis of the measures proposed.

*Comment: this is an important recognition of the constraints of the Commission's analysis, both of the current situation and of the proposed measures.*

The Impact Assessment considers the impacts of Option A and Option B separately (in Section 7 and Section 8 respectively). There is no overall comparison of the costs and benefits of the two options with each other or with the 'no action' baseline. The costs and benefits associated with the baseline are not presented.

*The Commission Guidelines note that "the ultimate aim of the impact analysis is to provide sufficient and clear information on the impacts of the various policy options..[for]..comparison of these options against each other and against the 'no policy option' or baseline scenario". The Impact Assessment does not appear to meet this requirement.*

### **A6.2 Impacts of Option A**

#### ***Environmental Impacts***

The analysis of the impacts of Option A is brief. The Impact Assessment notes that, despite improved coordination and cooperation since the 2002 Communication, the state of the marine environment has not improved (p 32, para 6). Whilst a new Communication would promote a new framework for action for more effective protection of the marine environment, it would necessarily repeat some of the same general orientations outlined in the 2002 Communication.

*Comment: In the light of the comment above, that the timescale for changes in the marine environment can take from a few years to several decades, it seems unrealistic to expect that the 2002 Communication yet to have had a significant impact, especially as it was only seen as an initial step in the development of a strategy.*

*This perceived failure of the 2002 Communication to achieve significant change in less than three years appears to be the main justification for the Impact Assessment's conclusion that a voluntary approach will have a limited benefit. At the very least, one would expect this conclusion to be supported by an analysis of any data on changes to*

*the marine environment over the past three years, a listing and evaluation of actions that have taken place over the past three years and an analysis of factors that have constrained further action.*

*The fact that a voluntary approach, in the form of a Communication, would repeat some of the general orientations of the 2002 Communication is not valid as a criticism of the approach. Indeed, a completely different Communication would indicate that the analysis and conclusions of the 2002 Communication which (as the Commission states) has been widely supported, was incorrect.*

The Impact Assessment concludes that, while Option A could deliver some important indirect benefits to the environment, these would be constrained because (p 33):

- existing gaps in the coverage of legislation would remain (*Comment: this could equally be the case under the proposed Directive*);
- the general statement of aspirations and general policy orientations in the Communication would not be adequate to prevent further loss of diversity and deterioration in the marine environment (*Comment: no evidence is provided for this conclusion; in addition, the previous Communication set out a series of concrete actions to achieve its objectives*);
- Member States invited to develop frameworks for protection of the marine environment may well take different, even contradictory approaches (*Comment: this issue will also have to be addressed under the proposed Directive*);
- The status of the marine environment would not, or only slightly, improve compared to the 'no action' scenario (*Comment: again, no evidence is presented for this conclusion*).

### ***Economic Impacts***

The economic impacts of Option A are concluded to be negligible in the short term, as no binding measures would be foreseen to implement the strategy. However, by fostering more consistent and swifter implementation of existing legislation, it could contribute to reducing disparities in costs between Member States (p33).

*Comment: More consistent implementation of existing legislation is likely to have an economic impact, especially in terms of monitoring and enforcement. The fact that binding measures are not set at EU level under this Option does not mean that no measures will be introduced (instead, they will be determined at Member State level). Indeed, regional seas agreements and voluntary schemes are already or in the process of being implemented, with these having an impact on a range of sectors, e.g. Ballast Water Management Strategy. The Partial Impact Assessment prepared for Defra based on the 2002 Communication indicated that a range of additional measures might be required at EU level to meet the objectives set in the Strategy.*

*The statement that Option A could contribute to better implementation of existing legislation contradicts the conclusion that it would have little or no environmental impact. Section 3 of the Impact Assessment indicated that poor implementation of existing legislation was a major contributor to the current poor quality of the marine environment.*

The Commission envisages that Member States bordering marine regions would be invited to develop frameworks for protection of the marine environment. The Impact Assessment states that “there would be no guarantee that this would be done in a synergetic manner” and there would be a risk of duplication of effort and costs (p33, para 2).

*Comment: a Strategy such as that presented in the Commission’s 2002 Communication, which set out detailed objectives and possible actions to implement them, could encourage a synergetic approach.*

The Impact Assessment concludes that the “likely outcome is that no integrated framework would be set up and no implementation plans developed”. If regional Marine Strategies are developed “it is to be expected that they would be conceived as rhetorical and declaratory, and thus not properly enforced” (p33, para 1). This Option would inevitably generate significant negative impacts in the medium to long term and would undermine the sustainability of goods and services flowing from the oceans and seas (p34, para 2).

*Comment: in support of this conclusion, the Commission makes reference to the Partial Impact Assessment prepared for Defra in 2004. However the cited comment refers to risks associated with the ‘no action’ Option, not a voluntary approach.*

*It is not clear whether the statement that Option A would generate significant negative impacts is in comparison to the baseline situation, the objectives or Option B.*

### ***Other Impacts***

The **social** impacts of Option A are concluded to be similar to the ‘no action’ scenario (p34, para 3) and it is concluded to raise no difficulties in terms of **proportionality or subsidiarity** (p34, last para).

On **external impacts**, the Impact Assessment notes the importance of working effectively with non-EU countries (p 34, para 4).

*Comment: the Impact Assessment does not assess the ability of Option A to achieve such cooperation. An analysis of the distributional impacts, which is a requirement of the Guidelines, is also lacking.*

## **A6.3 Impacts of Option B**

### ***Environmental Impacts***

The short-term benefits of Option B are identified as (p35, para 1):

- more effective management of the marine environment;
- enhanced knowledge;
- further awareness-raising;

- increased political attention due to the need to transpose the Directive.

*Comment: the first three benefits could arguably be achieved equally by Option A.*

The longer term benefit is a framework to achieve ‘good ecosystem status’ of Europe’s marine environment, although the impact of the strategy would take some time to become apparent as marine ecosystems are slow to react to reduced pressures (p35, para 2).

*Comment: the recognition of the slow reaction time of marine ecosystems is correct, and has implications for the target date set in the possible Directive to achieve good environmental status.*

The compulsory development of regional implementation plans is indicated to have a number of benefits (p35-6):

- more joined-up policy-making in the EU (including more integrated strategies and legislation – reference is made to the CFP, CAP);
- ensure synergies between EU actions and regional conventions/international initiatives;
- more integrated policy-making at EU and global level;
- more consistent and swifter implementation of existing legislation (although the Impact Assessment recognises that such implementation would also proceed in the absence of the Strategy); and
- reversal of the impoverishment of marine ecosystems including conservation and enhancement of diversity, curbing the decline in fish stocks, reduction of problems associated with non-indigenous species and reduction of pollution.

*Comment: The Impact Assessment does not meet the requirements of the Commission Guidelines that links between the Options and their impacts should be clearly stated. No evidence is provided to explain how these benefits will arise from Option B but not Option A. It is not clear how Option B will influence the CAP or CFP not why it would make implementation of current measures more rapid or effective.*

*To achieve the benefits of reversing the impoverishment of marine ecosystems and enhancing biodiversity, Option B would need to counteract changes arising not only from immediate human impacts, such as discharge of pollutants, but also wider effects such as global climate change and natural physical changes in the marine environment. The Impact Assessment does not provide justification for the inclusion of such benefits.*

The Impact Assessment provides two examples of environmental benefits; from set-up of marine protected areas and from lowering the sulphur content of marine heavy fuels (p36).

*Comment: measures to lower the sulphur content of marine heavy fuel were taken in the context of clean air policy. Both OSPAR and other policies already include commitments to marine protected areas. It is not clear how Option B would make such measures more effective/more likely.*

### ***Economic Impacts***

The Impact Assessment addresses the administrative costs of Option B (p36-38), the benefits to be derived from an improved assessment and monitoring system (p37) and the impacts of implementation measures (p38-46). There is no assessment of the implications of specific aspects of the Directive, such as the definition of good environmental status and the timescale over which it is to be achieved.

*Comment: experience with the Water Framework Directive has demonstrated the potentially significant impact of detailed objectives and timescales on the costs and other impacts of a policy measure. Failure to analyse these in the Impact Assessment is a major omission.*

### ***Administrative Costs and Benefits***

Administrative costs (costs to Governments in developing Regional Marine Strategies) are estimated for the EU as a whole, on the basis of the Irish Sea Pilot and a report from the US Commission on Ocean Policy, at around €90 million for the initial phase and €70 million annually after this (p36-37). The analysis undertaken is detailed in Annex 8 of the Impact Assessment.

*Comment: the estimation relies on the fact that the administrative requirements of the Irish Sea Pilot and Option B are similar. However, there are a number of factors that may raise questions about such an assumption. The Irish Sea Pilot was a voluntary initiative. As such, data-gathering could be geared to the critical areas necessary for decision-making<sup>8</sup>.*

*By contrast, Option B sets mandates Member States not only to implement and report on monitoring and assessment programmes in line with common principles, but also to demonstrate that good environmental status has been achieved or to justify why it cannot be achieved within the timescale. There is also a requirement to carry out cost-benefit assessments of proposed programmes of measures. These requirements of Option B are much closer to the monitoring and assessment regime required under the Water Framework Directive.*

*The Impact Assessment considers that the costs of the Irish Sea Pilot are an over-estimate, since they assume that no previous spatial data is available, whereas this will not be the case for EU sea regions identified under the Strategy.*

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<sup>8</sup> The Pilot collated geophysical, hydrographical, nature conservation, ecological and human use data and used GIS analysis. While intertidal and near-coast biological information was found to be satisfactory, data were sparse for most offshore localities to a degree which would constrain good decision-making. Furthermore, some survey data were not available to the Pilot, either because they were held in an inappropriate format or because the data owner was unable or unwilling to release it (Joint Nature Conservation Committee, 2004).

A number of benefits are identified for the monitoring and information regime that will be developed under Option B, including (p37-38):

- elimination of current duplication of costs and efforts on assessment and monitoring;
- cost efficiencies for marine-related industries from the ability to plan more efficiently;
- reduced costs of regulation, policy and decision-making;
- benefits to scientific research.

The GIS developed for the Irish Sea Pilot is used as evidence of these benefits (p38, para 2). No estimate of the scale of benefits is given, but a number of studies are quoted to indicate that “the benefits of ocean observing and monitoring systems would significantly exceed their costs” (p38,para 3).

*Comment: this analysis assumes that no, or no coordinated, monitoring and assessment would take place under Option A. No justification is provided for this assumption. Indeed, a great deal of monitoring and assessment is either conducted for or provided to the regional seas conventions, e.g. OSPAR, HELCOM. It also assumes that any monitoring and assessment currently carried out for other purposes (e.g. Water Framework Directive or other EU measures, international conventions) could be subsumed within the programme required by Option B.*

The Impact Assessment notes that the measures that will emerge from regional implementation plans cannot be fully anticipated. It therefore examines the potential costs and benefits for a number of different sectors, based on the measures which could potentially be adopted. These are:

- fisheries/aquaculture/fish processing;
- ports/shipping/shipbuilding;
- oil and gas extraction;
- dredging – sand and gravel;
- tourism and coastal development; and
- research.

The most significant benefit identified is ‘avoiding the costs of no action’ (p 39, para 2), which are set out in Section 4 of the Impact Assessment. The experience of smaller scale integrated protection, and the Irish Sea Pilot, cited as evidence of positive economic benefits (p39, para 3).

*Comment: as drafted, this section lacks clarity in terms of the types of potential measures considered, their costs and benefits. The 2002 Communication identified a number of potential actions, these do not appear to have been used as the basis for analysis and no explanation is given for this. There is no analysis of the potential gap between current status of the marine environment and ‘good environmental status’ as defined in the possible Marine Framework Directive. Some of the measures identified are already required under existing EU policies (such as the reformed CFP, the Erika and Prestige packages and IMO conventions). There is little attempt to differentiate the impacts of Option B from the impacts of already-agreed policies.*

***Fisheries/aquaculture/fish processing***

A range of potential measures is identified to address the rate of depletion of commercial fish (p39-41), some of which are already envisaged in the reformed Common Fisheries Policy. Costs identified include an 8.5% reduction in fishing activities (p40, para1) and the administrative costs of Marine Protected Areas (box, p40).

*Comment: the costs of the reformed Common Fisheries Policy are already assumed to be part of the baseline (see p 21) so should not be allocated to Option B. No estimate is made of the EU-wide costs of Marine Protected Areas.*

A range of medium and long-term benefits is identified from measures under the reformed Common Fisheries Policy and additional measures to be called for as part of Regional Marine Strategies (p39, para 2).

*Comment: a number of these benefits would arise from the reformed Common Fisheries Policy. The additional benefits associated with Option B are not identified.*

***Ports/shipping/shipbuilding***

The Impact Assessment identifies a number of likely measures and recommendations, some of which are already being phased in as part of the Erika and Prestige packages introduced by the Commission (p41, para 4). It noted that the introduction of complementary measures as part of Regional Marine Strategies would generate additional costs for the sector (p41).

*Comment: Some examples of costs are given, for example for ship recycling, but no attempt is made to separate out the costs associated with measures under Option B from those already committed under existing policies. The Impact Assessment does not mention all measures currently being implemented or under discussion, such as ship recycling currently being discussed at IMO. If no progress is made at international level, it is difficult to see how any EU specific approach could be viable.*

Positive impacts from more stringent shipping regulations are identified, including increased shipbuilding demand (for double-hulled etc vessels) and the promotion of shipping as an environmentally friendly mode of transport (p42).

*Comment: The increased ship building demand is likely to be met by South East Asia, where there are reduced costs from less stringent regulation; so it seems unlikely that the positive impact will be noticeable.*

*No attempt is made to differentiate or quantify the benefits of Option B from those of already-agreed measures.*

### ***Oil and gas extraction***

The Impact Assessment notes that likely measures (stronger rules on drilling in marine protected areas, environmental impact assessments of drilling, waste management, pipeline standards more effective planning of well sites, decommissioning etc.) would impose additional costs (p42). However, there would be benefits in terms of encouraging sustainable economic development of the sector and reduced costs of producing ecological quality assessments and environmental impact assessments (p42-3).

*Comment: no indication of the scale of these costs or benefits is provided and the Impact Assessment does not explain how the Directive will be more effective than other approaches (e.g. monitoring at national level, for example in the context of Marine Spatial Planning, or regional agreements) in reducing the costs of EIA or ecological quality assessments through better data.*

### ***Dredging - sand and gravel***

Costs are identified, associated with increased constraints on operation (p43, para 3). The largest potential benefit is the stimulation to the strategic organisation of the sector, as it is currently handicapped by the lack of a strategic approach. Evidence for this benefit is provided by the ODPM 'development plan for marine aggregate extraction in the UK' (p43, para 4).

*Comment: no further information on costs or benefits is provided.*

### ***Tourism and coastal development***

Potential measures include improved and more systematic implementation of ICZM, with costs linked to potential restrictions on coastal development, tourism and recreational activities. The impacts would be greatest on beach tourism, but would be minimal compared to the costs of unrestrained growth under the 'no action' scenario (p43, last para). Long-term benefits would be high, because of the dependence of the sector on the quality of the marine environment. Benefits would also be expected for broader coastal development (p44, para 2).

*Comment: Unrestrained growth under the 'no action' scenario seems an unlikely possibility, as constraints upon development already exist in most countries. Addressing the impacts of development may therefore be a question of enforcement of existing regulation rather than a need for a new one.*

*Net benefits for ICZM are quoted from a 2000 Commission study, but the contribution of Option B to realising such benefits is not specified.*

### ***Research***

The potential benefits of research are identified as including opportunities for the development of biotechnology, with figures quoted for Japanese expenditure on

marine bioprospecting and the possible health market for marine bacteria (p45, para 3).

*Comment: no information is provided on the research activities envisaged in this assessment, to demonstrate why it would be relevant to marine bioprospecting or the marine bacteria health market.*

### ***Social Impacts***

The most significant long-term benefit is identified as “securing employment in marine related industries which would be considerably threatened under a no additional action scenario or a non-binding approach” (p45, para 5). It recognises, though, that Option B could have short-term negative effects on employment, particularly in fisheries (p45, para 6).

*Comment: again, the Impact Assessment assumes that the impacts of Option A would be the same as the ‘no action’ scenario. The conclusions depend on the assumption that Regional Marine Strategies would boost implementation of measures introduced under the reformed CFP, but no supporting evidence is presented.*

### ***Other Impacts***

The Impact Assessment concludes that Option B is “fully consistent with the subsidiarity and proportionality principles”, because a purely national approach cannot be applied to a transboundary context and the option “would not go beyond what is needed to achieve its objectives” (p47, para 2).

*Comment: the fact that a purely national approach cannot be applied is not a justification for a Directive, as opposed to a voluntary approach. Nor is the scope for other forms of Directive examined. Moreover, a Directive will not apply in trans-national waters, which are under UN/international competence.*

Synergies with other Community policies are examined, including the future EU Maritime Policy (p47-49), sectoral policies (p49-50) and external policies (p50). The analysis concludes that Option B would be strongly synergetic with the future EU Maritime Policy, would enable sectoral policies to become more mutually-supportive and will be instrumental to boost EU delivery on relevant international commitments.

*Comment: Links with the future EU Maritime Strategy are considered in Section A2.3 above. The analysis considers that Marine Spatial Planning (MSP) would bring considerable benefits in the context of maritime policy. However, MSP would not necessarily be a result of Option B, and could be introduced under other Options.*

## A7 Comparing the Options

The Commission's Impact Assessment Guidelines require the options to be compared to allow consideration of their strengths and weaknesses. This may then allow the conclusion to be drawn that one option stands out above the others.

*Comment: the Impact Assessment follows a different format. Section 10 (p 51) presents the Commission decision and justification, in the form of responses to a series of questions:*

- *What is the final policy choice and why?*
- *Why was a more/less ambitious option not chosen?*
- *Which are the trade-offs associated to the chosen option?*
- *In the case of poor data or knowledge at present, why is a decision to be taken now rather than be put off until better information is available?*
- *Have any accompanying measures to maximise positive and minimise negative impact?*

*There is no systematic comparison of the costs and benefits of the options considered, which would have been helpful.*

Section 11 of the Impact Assessment provides the Commission decision and justification. It concludes that Option A is not likely to differ significantly from the no-action scenario and that the costs of 'no action' are potentially very high (p53, last para). Option B would have important social and economic costs for some sectors in the short term but potential benefits in the medium to longer term.

*Comment: as noted above, only limited evidence is presented that Option A would not differ significantly from the 'no action' option in its impacts.*

In response to the question "in the case of poor data or knowledge at present, why is a decision to be taken now", the Impact Assessment points to the continued degradation and worsening of the situation under a 'no action' scenario (p55).

*Comment: this response does not take account of the potential for a form of strategy that would begin with data-gathering to assess the current situation more effectively, then develop objectives and time tables on the basis of this assessment.*

In order to maximise positive and minimise negative impacts, the Impact Assessment notes that extensions will be foreseen where measures to achieve good status would incur unreasonably expensive costs (p55-6).

*Comment: this does not address the situation where it is not feasible to achieve good status over any reasonable timescale, because the causes of poor status are outside the control of the member States (e.g. in the case of climate change) or not technically feasible at all (e.g. re-creation of certain ecosystems).*

## **A8 Monitoring and Evaluation**

The Commission's Impact Assessment Guidelines require the assessment to consider potential arrangements for monitoring and evaluation, including identification of key indicators and a broad outline of monitoring and evaluation measures.

Section 9 of the Impact Assessment indicates that the Regional Marine Strategies will be the main method of monitoring and assessment (p50-51). An assessment of the current status of each region will provide the basis of the strategies, monitoring programmes will be established as part of the strategies, to assess progress against 'regional environmental quality objectives selected through suitable indicators'. There will be obligations for reporting to the Commission. Regional Strategies and monitoring and assessment programmes would be updated when needed, and at least every five years (p51).

*Comment: this assessment focuses on the monitoring arrangements of Option B, which follow closely the requirements of the Water Framework Directive. No assessment is provided of how monitoring and evaluation would proceed under Option A.*