

**Marine environment protection – revision of EU rules**  
**Call for evidence**

**Submitted online**

March 2026

1. Environmental Standards Scotland (ESS) welcomes the opportunity to respond to the European Commission’s Call for Evidence on a possible revision and simplification of the Marine Strategy Framework Directive (Directive 2008/56/EC). The Commission’s recent evaluation of the Directive indicates that Good Environmental Status (GES) was not achieved in EU marine waters by 2020, and that improved, more operational and evidence-based approaches are required to support progress.
2. ESS is a non-ministerial office directly accountable to Scottish Parliament. Since October 2021, ESS has been a component of the system of environmental governance in Scotland following the UK’s exit from the European Union and the end of oversight of implementation of European Union environmental law by the European Commission and the European Court of Justice. ESS’ remit is to:
  - ensure public authorities, including the Scottish Government, public bodies and local authorities, comply with environmental law
  - monitor and take action to improve the effectiveness of environmental law and its implementation
3. ESS is currently scrutinising how effectively Scottish public authorities discharge their statutory obligations under the UK Marine Strategy Regulations 2010, which transpose the Marine Strategy Framework Directive (Directive 2008/56/EC). Our scrutiny includes an evaluation of the Scottish Government’s development and implementation of the 2015 Programme of Measures required under the Regulations, which was prepared while the UK was an EU Member State. Following the UK’s withdrawal from the

European Union, the Marine Strategy Regulations 2010 were preserved as retained EU law, and the statutory duties placed on Scottish Ministers, reflecting the MSFD framework for assessment, monitoring and Programmes of Measures, continue to apply.

4. As part of our scrutiny, ESS is examining the Scottish Government's implementation of the Directive's requirements to demonstrate how identified measures contribute to achieving environmental targets within a Programme of Measures, as well as the related Commission guidance from 2014 which recommends that Member States "assess how far the existing spatial protection measures solely or in combination with other non-spatial measures applicable inside and outside of MPAs and targeting, for example, certain pressures, are sufficient to meet the MSFD environmental targets". We note that the Commission's 2018 assessment of Member States' Programmes of Measures under the Marine Strategy Framework Directive repeatedly found that Programmes lacked sufficient detail to explain how measures contribute to achieving GES.
5. The UK's 2015 Programme of Measures includes high-level statements on the contribution of measures to achieving GES for Seafloor Integrity. For example, it states that "Marine Protected Areas [...] will make a significant contribution to achieving GES for benthic habitats." However, ESS has found that there are limited recognised methods available to produce quantitative evidence on the potential contributions of measures - specifically spatial protection measures - to GES for the Seafloor Integrity descriptor. This lack of quantitative contribution estimates undermines Competent Authorities' ability to assess whether measures are sufficient to achieve GES targets and limits independent scrutiny of how Governments develop Programmes of Measures. The Commission's evaluation similarly highlights a need for more operational, measurable and enforceable approaches, including clearer pressure-reduction targets and harmonised assessment tools.
6. As part of our ongoing scrutiny, ESS has sought to understand whether quantitative assessments of the contribution of spatial measures to GES, as per the Commission's guidance, are feasible and reasonable. To this end, we developed an approach to quantify the contribution of proposed marine protected areas on physical disturbance targets (criterion D6C2 under the MSFD). This criterion is one of the few Seafloor Integrity indicators with a quantitative target for GES under the UK Marine Strategy.
7. Our method adapts an existing, internationally recognised framework (the BH3a indicator under the OSPAR Convention and UKMS) to provide a practical method for producing

quantitative estimates of the contribution of spatial restrictions on fisheries to achieving physical disturbance targets for GES. Our assessment focuses on measures identified in the UK's 2015 Programme of Measures in Scottish waters and examines the potential contribution they would make if fully implemented. By drawing on OSPAR methods, the approach strengthens regional coherence, which the Commission identifies as essential for improving the effectiveness of future MSFD implementation.

8. Our analysis demonstrates that the established BH3a assessment framework used by OSPAR (and EU Member States which are contracting parties to the OSPAR Regional Sea Convention) can be used in a practical and transparent way to provide quantitative estimates of the potential contribution of spatial protection measures to physical disturbance targets for benthic habitats. In particular, the method can be used to highlight where spatial measures are most and least likely to influence indicator outcomes (for example, we found marked reductions in the Northern Celtic Seas versus modest changes in North Sea sub-regions within our case study). This can help Competent Authorities identify where additional spatial or alternative (non-spatial) measures may be required. Additionally, where site-level details are uncertain when developing a Programme of Measures, the method could be used to define the minimum spatial footprint required to achieve percentage-based GES thresholds. The application of this approach aligns with the Commission's objective to make the MSFD more operational, more enforceable, and more closely linked to evidence-based policy design.
9. This method should be treated as indicative rather than a definitive assessment of the sufficiency of measures or a prediction of realised outcomes. However, we believe it provides valuable evidence to support the development and assurance of measures and to fulfil statutory duties under MSFD, including the assessment of the contribution and technical feasibility of measures. Increased use of quantitative contribution estimates could improve evaluation of whether proposed measures can reasonably be considered sufficient to deliver stated targets. Overall, ESS' method, if used with appropriate caveats and sensitivity testing, could substantially improve the evidence base for the development and subsequent scrutiny of measures under a revised Marine Strategy Framework Directive, and provide a more robust assurance case for the sufficiency of measures in achieving GES for Seafloor Integrity.
10. Our work directly aligns with the Commission's aim to modernise and operationalise the MSFD through clearer, more quantifiable, and more consistent assessment methodologies. This is particularly relevant given the Commission's finding that "the

degree of coherence of the measures is higher where Member States have developed tools to support the assessment of the gap between their current status and GES, and the measures required to close this gap.” ESS’ method demonstrates one example of a tool, which could help to clarify the expected contribution of measures, strengthen coherence, and support more evidence-based and enforceable implementation under a revised Directive.

11. Full details of ESS’ method will be available as a technical paper at [this link](#) on 19<sup>th</sup> March 2026. We bring this upcoming paper to the Commission’s awareness due to its relevance for this Call for Evidence on a possible revision and simplification of the Marine Strategy Framework Directive, particularly in relation to the Commission’s proposed areas of action to:

- draw up guidelines to increase the harmonisation of national targets and improve the links to Programmes of Measures
- harmonise monitoring/ocean observation and improving data quality and access.