

# Note sur la proposition de règlement européen sur la restauration de la nature.

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Cette note est rédigée à la demande de la DGAMPA dans le cadre d'une saisine en date du 30 mai demandant à l'Ifremer une analyse du projet de règlement et une évaluation des conséquences sur les pêcheries françaises de son application ; cette deuxième partie faisant l'objet d'une réponse séparée.

## Avertissement

L'analyse qui suit se base sur la version modifiée (cf annexe 1) par la Présidence suédoise du texte original

NB. Les habitats concernés par ce projet de règlement sont listés dans son annexe II ; lorsque, dans cette note, il est question 'des habitats' il s'agit bien 'des habitats listés à l'annexe II. Il faut noter que tous les habitats marins sont définis selon le référentiel européen EUNIS et réunis en 7 principaux groupes. Dans le cadre d'une interaction avec les pêcheries, quelques habitats de l'annexe I (« Coastal and salt habitats ») peuvent aussi être concernés (« Estuaries », « Mudflats and sandflats not covered by seawater at low tide », « Coastal lagoons »).

## Introduction

La proposition de règlement s'appuyant largement sur la DCSMM avec de nombreuses références au Bon Etat Ecologique des habitats (Descripteur 6), il est utile de rappeler que la définition pratique/opérationnelle du BEE du D6 (mais pas que) n'est pas encore clarifiée, en l'absence de seuils de référence qui permettraient de statuer sur l'état des habitats.

En effet si la communauté scientifique (voir l'annexe 2) s'accorde sur le fait qu'il existe, pour les états des habitats benthiques, un gradient entre 'pristine - faiblement dégradé - dégradé - fortement dégradé - perdu', la frontière entre 'bon état' et 'mauvais état' fait toujours l'objet de débats. S'il est certain que cette frontière se trouve entre 'pristine' et 'dégradé', la position du curseur est plus politique que scientifique entre 'le plus proche possible de l'état pristine' ou en acceptant un certain niveau de dégradation ne remettant pas en cause la résilience, ce qui serait la définition d' 'acceptable' ('good enough')<sup>1</sup>.

## Analyse de l'article 3

L'article 3 (3) donne une définition de la restauration, d'abord générale : 'process of actively or passively<sup>2</sup> assisting the recovery of an ecosystem in order to improve its structure and function with the aim of conserving and enhancing biodiversity and ecosystem resilience' ; outre le fait que cette définition est 'lourde' (l'utilisation successive de 'in order to' et de 'with the aim' apporte plus de confusion que de clarification), il est à la fois question de 'recovery' (sans définition de ce terme), d'amélioration ('improve', 'enhancing') mais curieusement, également de conservation ('conserving').

L'objectif de ce règlement est la restauration d'habitats dégradés ; ajouter 'conserving' n'a donc pas de sens dans ce cadre, même si la conservation d'habitats non dégradés est nécessaire par ailleurs.

La deuxième partie de la définition donne l'interprétation qui prévaut dans le cadre du règlement, sous forme de plusieurs objectifs :

- 'improving to good condition of a habitat type,
- reestablishing to favourable reference area,
- improving to sufficient quantity and quality of a habitat of a species [articles 4, 5],
- fulfilling targets and obligations [articles 6 to 10]<sup>3</sup>
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Les formulations 'improving to' et 'reestablishing to' devraient être précisées car elles entretiennent le doute entre la possibilité que toute amélioration par rapport à l'existant satisfasse l'objectif, ou que l'objectif qui doit être atteint est 'good condition' / 'favourable reference area' / 'sufficient quantity and quality'.

Les définitions 4, 5, 6 et 7 tentent de clarifier les termes utilisées dans la définition de la restauration :

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<sup>1</sup> C'est cette approche qui a prévalu dans la définition du bon état écologique pour le descripteur D3 (espèces exploitées) qui dispose d'une définition 'chiffrée' (c'est-à-dire avec des seuils), le 'bon état écologique' consiste en un compromis entre conservation et exploitation avec la notion de 'rendement maximal durable', qui s'apparente au 'good enough', avec des biomasses qui ne sont qu'une fraction de la biomasse pristine, mais qui ne remet pas en cause les capacités reproductrices du stock considéré.

<sup>2</sup> C'est un détail, mais il est possible de s'interroger sur l'utilisation du terme 'passively' dans un règlement qui fixe des objectifs en termes d'action ; une définition serait bienvenue.

<sup>3</sup> Ces articles 6 à 10 ne concernent pas le milieu marin

La définition de 'good condition' pour un habitat considère à la fois sa structure et ses fonctions, ce qui est pertinent, ainsi que 'its typical species or typical species composition'<sup>4</sup> ce qui pourrait être considéré comme redondant avec les 'fonctions', même si le maintien de la biodiversité est facilitatrice. L'objectif défini est que l'état de l'habitat 'reflect the high level of ecological integrity, stability and resilience necessary to ensure its long-term maintenance... contributing to achieving or maintaining good environmental status', sans que soit précisé ce qui caractérise le 'high level' ni ce qu'est la 'long-term maintenance'. Quant au 'bon état écologique', voir plus haut.

La surface favorable de référence ('favourable reference area') est définie comme 'the minimum necessary to ensure the long-term viability of the habitat type', sans qu'il soit précisé ce qu'est la 'long-term viability' ni comment on la mesure. Comme la définition précédente, la contribution de cet objectif à l'atteinte ou au maintien du bon état écologique est mentionné. L'utilisation du terme 'minimum' semble signifier qu'un seuil chiffré peut être estimé pour chaque type d'habitat, sans que ces seuils ne soient précisés. L'article 11 indique que la surface favorable de référence doit tenir compte de la distribution maximale historique [au lieu de 'taking into account records historical distribution', la version originale mentionnait 'the documented losses over at least the last 70 years']. Cette référence historique semble indiquer que la viabilité à long-terme (mentionnée dans la définition) était historiquement assurée et – a contrario – ne l'est pas, en aucun cas, aujourd'hui.

Les définitions 6 et 7 ('sufficient quality and quantity of habitat of a species') sont également vagues puisqu'il n'est pas précisé ce que signifie 'maintaining itself on a long-term basis as a viable component of its habitat'. Là aussi, la référence au bon état écologique semble apporter une justification à cet objectif.

La notion d'habitat d'espèce repose sur la définition donnée dans la directive FFH : « le milieu défini par des facteurs abiotiques et biotiques spécifiques où vit l'espèce à l'un des stades de son cycle biologique ». Cette définition, très large, peut couvrir, pour des espèces pélagiques largement distribuées (e.g. requin pèlerin) une grande partie de l'océan, ce qui interroge sur les aspects opérationnels génériques de la prise en compte de cet objectif et sur les connaissances disponibles pour ce faire (connectivité et comportement).

## Analyse des articles 4 et 5

L'alinéa 1 des articles 4 et 5 précise bien que les mesures de restauration concernent les habitats (de l'annexe I) qui ne sont pas en bon état. Cet alinéa précise les objectifs chiffrés en termes de surface concernée, avec une progressivité tant en termes de pourcentages qu'en termes de zones concernées : 30% de la surface totale des zones dégradées de tous les habitats en 2030 [ce qui laisse la possibilité de se concentrer sur certains habitats, tant que cela concerne 30% de la surface totale dégradée], puis 60% en 2040 et au moins 90% en 2050 de la surface dégradée de chaque groupe d'habitat.

Les surfaces concernées, comme le règlement dans son ensemble, nécessite de disposer d'une cartographie non seulement des habitats concernés mais également des surfaces estimées dégradées pour chacun d'eux. Cette dernière estimation repose sur la définition du seuil au-delà duquel on considère un habitat dégradé (cf plus haut).

Les objectifs chiffrés proposés pour la totalité des habitats (30%) ou pour chacun (60, 90%) ne semblent pas reposer sur les exigences annoncées dans les définitions de l'article 3 car rien n'indique que des pourcentages inférieurs ne permettraient pas d'atteindre le 'bon état', ni, à l'inverse, que ces pourcentages soient suffisants pour ce faire.

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<sup>4</sup> Cette double précision ne se comprend que si 'composition' se réfère à des pourcentages déterminés d'espèces

Les mêmes objectifs chiffrés (mais pour chaque type d'habitat quelle que soit l'échéance) sont proposés à l'alinéa 2 pour le rétablissement des habitats ('to reach their favourable reference area').

Il faut noter que l'article 5 ('restoration of marine ecosystems') comporte un alinéa supplémentaire (1a) spécifique aux habitats meubles (Groupe 7 de l'annexe II) qui prévoit la possibilité de pourcentages inférieurs à ceux proposés à l'alinéa 1, sans précision sur ce que ces pourcentages plus faibles seraient, mis à part qu'ils doivent être en conformité avec les exigences de l'article 11(2b), qui spécifie que les Etats membres doivent fixer ce pourcentage inférieur. Il convient de noter que la justification de cette dérogation n'apparaît que dans le considérant 37 ('The group of marine soft sediment habitat types [...] are widely represented in marine waters of several Member States. Therefore Member States should be allowed to limit the restoration measures, ...').

Cette dérogation s'appuie probablement sur la notion "d'originalité" des habitats qui caractérise la rareté ou au contraire la large distribution des habitats considérés (c'est l'un des critères définis notamment dans le cadre d'OSPAR pour identifier les habitats d'intérêt). Elle s'applique dans le cas d'habitats fréquents et communs à plusieurs Etats membres ce qui est le cas pour certains fonds meubles. Il est par contre surprenant de caractériser ces « soft sediment habitats » comme un seul groupe homogène. Il est sans doute possible de voir cette dérogation comme la traduction d'un compromis entre les exigences environnementales qui motivent ce règlement et les considérations socio-économiques (impact sur les pêcheries) ce qui s'inscrit dans la logique du développement durable et de ses trois piliers. Il est néanmoins possible de s'interroger sur l'application de cette logique à ce seul article et non à l'ensemble du règlement.

Une autre spécificité de l'article 5 est l'exigence pour chaque Etat membre d'amélioration des connaissances (alinéa 4a) 'shall ensure, by 2030 at the latest, that the condition is known for at least [60%] of all areas of habitats'. Il est ajouté que les zones d'habitats dont l'état reste inconnu après 2030 seront considérés en mauvais état et que la condition de toutes les zones de tous les habitats devra être connue avant 2040. Cette alinéa ne précise pas la façon d'appréhender, en 2030, les zones dont la condition n'est pas connue lorsqu'elles dépassent les [40%] mentionnés.

Ainsi en 2030, l'exigence de restauration de 30% du total des zones dégradées de tous les habitats, ne pourrait se baser que sur une surface dont la condition est connue qui ne représente que [60%] de la surface des habitats concernés.

Il faut garder à l'esprit que même s'il a été possible de définir un état de référence, la restauration pour atteindre cet objectif n'est pas toujours possible. Les processus écologiques présentent une grande part d'effets aléatoires qui ne sont pas maîtrisables et les conditions locales peuvent être la conséquence de pressions anthropiques s'exerçant à bien plus large échelle (ex. changement climatique). L'article « Introductif/35 » décrit ainsi les conditions de non atteinte des objectifs et les dérogations envisageables. Cet article évoque en outre un compromis avec certaines activités économiques qui peuvent être développés ou maintenus si elles répondent à certains critères de « nécessité ».

L'alinéa 5 de l'article 5 rajoute une exigence sans en préciser les modalités : 'shall consider the need for improved ecological coherence and connectivity between the habitats and take into account the ecological requirements of the species referred to [] that occur in those habitats'. Par ailleurs, les définitions de l'article 3 ne mentionnent pas ce qu'est la cohérence écologique (connectivité et organisation spatiale des habitats protégés).

Enfin, l'alinéa 6 de l'article 5, mentionne l'obligation d'une amélioration continue de la condition des habitats (jusqu'à l'atteinte du 'bon état') et d'une amélioration continue de la qualité des habitats d'espèces concernées (jusqu'à ce que la qualité suffisante de ces habitats soit atteinte).

La deuxième partie de l'alinéa 6 et l'alinéa 7 visent à s'assurer que des mesures sont prises pour éviter la détérioration<sup>5</sup> des habitats. Ces propositions sont entre [] dans le projet de règlement et devraient donc être supprimées car il s'agit de conservation et non de restauration.

Il n'apparaît pas clairement comment les objectifs chiffrés des alinéas 1 et 2 des articles 4 et 5 (restauration de 30% des surfaces dégradées en 2030, 60% en 2040 et au moins 90% en 2050) s'articulent avec ce qui est affiché comme objectif dans l'article 1, alinéa 2 : couverture de 20% des eaux européennes en 2030, 100% en 2050 pour tous les écosystèmes qui nécessitent une restauration.

## Conclusion

La prise en compte des habitats marins dans ce projet d'arrêté pourrait être interprétée comme un constat d'échec de la DCSMM, les objectifs, fixés pour 2020, de bon état écologique des eaux communautaires étant considérés comme non atteints.

Lorsque des habitats sont estimés dégradés, viser leur restauration est nécessaire. Pour autant, le projet de règlement fixe des objectifs quantitatifs pour la restauration des habitats dégradés, sans que la définition de ce qu'est la restauration soit clairement précisée, ou plus exactement si la définition est précisée elle repose elle-même sur des concepts encore flous, comme le bon état écologique.

La définition opérationnelle de 'dégradé' (et réciproquement de 'bon état') devrait donc devancer la mise en œuvre d'un règlement sur la restauration des habitats marins, afin de limiter les risques d'interprétations potentiellement partisans.

Néanmoins, des mesures doivent être prises pour éviter de nouvelles détériorations et favoriser la restauration. Afin d'éviter que l'absence de définition/ de seuil soit prétexte à ne rien faire, des objectifs chiffrés provisoires pourraient être fixés et revus lorsque les connaissances le permettront.

Les objectifs chiffrés ne semblent pas reposer sur une analyse scientifique. La prise en compte, pour les milieux meubles, de considérations socio-économiques s'inscrit dans la logique du développement durable, mais on peut s'interroger sur le pourquoi de cette dérogation pour ces seuls milieux et pas pour l'ensemble des habitats (ou pour aucun).

Enfin, la mise en œuvre de ce règlement nécessitera une cartographie détaillée non seulement des surfaces occupées par chaque type d'habitat mais aussi, et surtout, des surfaces pour lesquelles l'habitat est considéré comme dégradé.

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<sup>5</sup> Sans qu'il soit précisé par rapport à quelle référence

## Annexe 1 : projet de règlement



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HAVE ADOPTED THIS REGULATION:

### CHAPTER I GENERAL PROVISIONS

#### Article 1

##### *Subject matter*

1. This Regulation lays down rules to contribute to:
  - (a) the continuous, long-term and sustained recovery of biodiverse and resilient nature across the Union's land and sea areas through the restoration of ecosystems;
  - (b) achieving the Union's overarching objectives concerning climate change mitigation, ~~and~~ climate change adaptation **and land degradation neutrality**;
  - (c) meeting the Union's international commitments.
2. This Regulation establishes a framework within which Member States shall put in place, ~~without delay~~, effective and area-based restoration measures ~~which together shall~~ **with the aim to jointly** cover, by 2030, at least 20 % of the Union's land and **20 % of the Union's** sea areas and, by 2050, all ecosystems in need of restoration.

#### Article 2

##### *Geographical scope*

This Regulation applies to ecosystems referred to in Articles 4 to 10:

- (a) in the territory of Member States;
- (b) in waters, the seabed and subsoil on the seaward side of the baseline from which the extent of the territorial waters is measured extending to the outmost reach of the area where a Member State **has or** exercises ~~has~~ sovereign rights **and or jurisdiction**, in accordance with the 1982 United Nations Convention on the Law of the Sea.

#### Article 3

##### *Definitions*

The following definitions apply:

- (1) 'ecosystem' means a dynamic complex of plant, animal, **fungi** and microorganism communities and their non-living environment, interacting as a functional unit, and includes habitat types, habitats of species and species populations;





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- (2) 'habitat of a species' means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle means habitat of a species as defined in point (f) of Article 1, point (f) of Directive 92/43/EEC;
- (3) 'restoration' means the process of actively or passively assisting the recovery of an ecosystem towards or to good condition in order to improve its structure and functions with the aim of conserving or enhancing biodiversity and ecosystem resilience; the restoration of ecosystems for the purposes of this Regulation is done through improving to good condition of a habitat type, to the highest level of condition attainable and to its re-establishing to favourable reference area, and improving to sufficient quality and quantity of a habitat of a species to a sufficient quality and quantity in accordance with Article 4, paragraphs 1, 2 and 3 and Article 5, paragraphs 1, 2 and 3, and fulfilling targets and obligations under Articles 6 to 10 including reaching or of species populations to satisfactory levels of indicators referred to in Articles 8(1), 9(2) and 10(2) as a means of conserving or enhancing biodiversity and ecosystem resilience;]
- (4) 'good condition' of a habitat type means a state where the its key characteristics of an ecosystem, namely, in particular its physical, chemical, compositional, structural and functions and its typical species or typical species composition al state, and its landscape and seascape characteristics, reflect the high level of ecological integrity, stability and resilience necessary to ensure its long-term maintenance and thus contribute to reaching and/or maintaining favourable conservation status according to Article 1, point (e) of Directive 92/43/EEC, where the habitat type concerned is listed in Annex I of that Directive, and, in marine ecosystems, contribute to achieving or maintaining good environmental status according to Article 3(5) of Directive 2008/56/EC;
- (5) 'favourable reference area' means the total area of a habitat type in a given biogeographical region or marine region at national level that is considered the minimum necessary to ensure the long-term viability of the habitat type and its typical species or typical species composition, and all its significant ecological variations in its natural range, and which is composed of the area of the habitat type and, if that area is not sufficient, the area necessary for the re-establishment of the habitat type; where the habitat type concerned is listed in Annex I of Directive 92/43/EEC, such re-establishment contributes to reaching favourable conservation status according to Article 1, point (e) of that Directive and, in marine ecosystems, such re-establishment contributes to achieving or maintaining good environmental status according to Art 3(5) of Directive 2008/56/EC;
- (6) 'sufficient quality of habitat' means the quality of a habitat of a species which allows the ecological requirements of a species to be met at any stage of its biological cycle so that it is maintaining itself on a long-term basis as a viable component of its habitat in its natural range, contributing to reaching and/or maintaining favourable conservation status of species according to the Article 1, point (i) of Directive 92/43/EEC for species listed in Annex II, IV or V of that Directive and securing populations of wild bird species covered by Directive 2009/147/EC and, in addition, in marine ecosystems, contributing to achieving or maintaining good environmental status according to Article 3(5) of Directive 2008/56/EC;
- (7) 'sufficient quantity of habitat' means the quantity of a habitat of a species which allows the ecological requirements of a species to be met at any stage of its biological cycle so that it is maintaining itself on a long-term basis as a viable component of its habitat in its natural range, contributing to reaching and/or maintaining favourable conservation status of species according to the Article 1, point (i) of Directive 92/43/EEC for species listed in Annex II,



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**IV or V of that Directive and securing populations of wild bird species covered by Directive 2009/147/EC and, in addition, in marine ecosystems, contributing to achieving or maintaining good environmental status according to Article 3(5) of Directive 2008/56/EC;**

- (8) ‘pollinator’ means a ~~wild animal~~ insect which transports pollen from the anther of a plant to the stigma of a plant, enabling fertilisation and the production of seeds;
- (9) ‘decline of pollinator populations’ means a decrease in abundance or diversity, or both, of pollinators;
- (9a) ‘native tree species’ means a tree species occurring within its natural range (past or present) and dispersal potential (i.e. within the range it occupies naturally or could occupy without direct or indirect introduction or care by humans).**
- (10) ‘local administrative unit’ or ‘LAU’ means a low-level administrative division of a Member State below that of a province, region or state, established in accordance with Article 4 of Regulation (EC) No 1059/2003 of the European Parliament and of the Council<sup>70</sup>;
- (10a) ‘urban centres’ and ‘urban clusters’ means territorial units classified in cities and towns and suburbs using the grid-based typology established in accordance with Article 4b.2 of Regulation (EC) No 1059/2003;**
- (11) ‘cities’ means LAUs where at least 50 % of the population lives in one or more urban centres, measured using the degree of urbanisation established in accordance with Article 4b.3, point (a), of Regulation (EC) No 1059/2003;
- (12) ‘towns and suburbs’ means LAUs where less than 50 % of the population lives in an urban centre, but at least 50 % of the population lives in an urban cluster, measured using the degree of urbanisation established in accordance with Article 4b.3, point (a) of Regulation (EC) No 1059/2003;
- (12a) ‘peri-urban areas’ means areas adjacent to urban centres or urban clusters, including at least all areas within 1 kilometre measured from the outer limits of those urban centres or urban clusters, and located in the same city or the same town and suburb as those urban centres or urban clusters;**
- (13) ‘urban green space’ means ~~the total area of all trees, bushes, shrubs, permanent herbaceous vegetation, lichens and mosses, ponds and watercourses~~ ~~green urban areas; broad-leaved forests; coniferous forests; mixed forests; natural grasslands; moors and heathlands; transitional woodland shrubs and sparsely vegetated areas~~ as found within cities or towns and suburbs calculated on the basis of data provided by the Copernicus Land Monitoring Service as established by Regulation (EU) 2021/696 of the European Parliament

70 Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).





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and of the Council<sup>71</sup>, and, if available, other appropriate supplementary data provided by the Member States;

- (14) 'urban tree canopy cover' means the total area of tree cover within cities and towns and suburbs, calculated on the basis of the Tree Cover Density data provided by the Copernicus Land Monitoring Service as established by Regulation (EU) 2021/696 of the European Parliament and of the Council, and, if available, other appropriate supplementary data provided by the Member State;-
- (14a) 'free flowing river' means a river or a stretch of river whose longitudinal, and lateral and vertical connectivity is not hindered by artificial structures forming a barrier and whose natural functions are largely unaffected;-
- (14b) 'rewetting peatland' means the process of changing a drained peat soil into a wet soil a deliberate action that aims to bring the water table of a drained peatland back to that of the peat forming peatland; the peatland is rewetted when the mean annual water table is near or at the soil surface;-
- (15) 'renewables go-to area' means renewables go-to area as defined in point 9(a) of Article 2 of Directive 2018/2001/EU of the European Parliament and of the Council<sup>72</sup>.

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71 Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).

72 Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, COM(2022)222 final.



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## CHAPTER II RESTORATION TARGETS AND OBLIGATIONS

### Article 4

*Restoration of terrestrial, coastal and freshwater ecosystems*

1. Member States shall put in place the restoration measures that are necessary to improve to good condition areas of habitat types listed in Annex I which are not in good condition. Such measures shall be in place on the following area as quantified in the national restoration plan referred to in Article 12: on at least 30 % of the area of each group of habitat types listed in Annex I that is not in good condition, as quantified in the national restoration plan referred to in Article 12, by 2030, on at least 60 % by 2040, and on at least 90 % by 2050  
(a) on at least 30 % by 2030 of the total area of all habitat types listed in Annex I that is not in good condition;  
(b) on at least 60 % by 2040 and on at least 90 % by 2050 of the area of each group of habitat types listed in Annex I that is not in good condition;
2. Member States shall put in place the restoration measures that are necessary to re-establish the habitat types listed in Annex I in areas not covered by those habitat types with the aim to reach their favourable reference area. Such measures shall be in place on areas representing at least 30 % of the additional overall surface needed to reach the total favourable reference area of each group of habitat types listed in Annex I, as quantified in the national restoration plan referred to in Article 12, by 2030, at least 60 % of that surface by 2040, and 100 % of that surface by 2050.
3. Member States shall put in place the restoration measures for the terrestrial, coastal and freshwater habitats of the species listed in Annexes II, IV and V to Directive 92/43/EEC and of the terrestrial, coastal and freshwater habitats of wild birds covered by Directive 2009/147/EC that are, in addition to the restoration measures in accordance with paragraphs 1 and 2 of this Article, necessary to improve the quality and quantity of those habitats, including by re-establishing them, and to enhance connectivity, until sufficient quality and quantity of those habitats is achieved.
4. The determination of the most suitable areas for restoration measures in accordance with paragraphs 1, 2 and 3 of this Article shall be based on the best available knowledge and the latest scientific evidence of the condition of the habitat types listed in Annex I, measured by the structure and functions which are necessary for their long-term maintenance including their typical species, as referred to in Article 1(e) of Directive 92/43/EEC, and of the quality and quantity of the habitats of the species referred to in paragraph 3 of this Article, making use of information reported under Article 17 of Directive 92/43/EEC and Article 12 of Directive 2009/147/EC. Areas where the habitat types listed in Annex I are in unknown condition shall be considered as not being in good condition.
  - 4a. For areas where habitat types listed in Annex I are in unknown condition, Member States shall, in addition to the restoration measures in accordance with paragraph 1, put in place appropriate restoration measures on 30 % of the area of each group of habitat types listed in Annex I in unknown condition and ensure, by 2030 at the latest, that the condition is known for all areas of habitat types listed in Annex I all knowledge



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~~gaps that do not allow for habitat type condition assessment are removed by 2030 at the latest.~~

5. The restoration measures referred to in paragraphs 1 and 2 shall consider the need for improved connectivity between the habitat types listed in Annex I and take into account the ecological requirements of the species referred to in paragraph 3 that occur in those habitat types.
6. Member States shall ensure that the areas that are subject to restoration measures in accordance with paragraphs 1, 2 and 3 show a continuous improvement in the condition of the habitat types listed in Annex I until good condition is reached, and a continuous improvement of the quality of the habitats of the species referred to in paragraph 3, until the sufficient quality of those habitats is reached. ~~[Member States shall put in place necessary measures to prevent deterioration of ensure that ensure that areas in which good condition has been reached, and in which the sufficient quality of the habitats of the species has been reached, do not deteriorate, do not deteriorate.]~~
7. ~~[Member States shall, no later than 2 years after the entry into force of this regulation put in place necessary measures to prevent deterioration of ensure that areas where the habitat types listed in Annex I occur do not deteriorate.]~~
8. Outside Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs ~~6 and 7~~ is justified if it is caused by:
  - (a) force majeure including natural disasters, ~~in particular unplanned and uncontrolled wildfire; or~~
  - (b) unavoidable habitat transformations which are directly caused by climate change; or
  - (c) a plan or project of overriding public interest for which no less damaging alternative solutions are available, to be determined on a case by case basis.
  - (d) action or inaction [from third countries] for which the Member State concerned [is not responsible][does not have competence].
- 8a. Outside Natura 2000 sites, the obligation to put in place necessary measures to prevent deterioration set out in paragraph 7 does not apply to deterioration caused by:
  - (a) force majeure including natural disasters;
  - (b) unavoidable habitat transformations which are directly caused by climate change; or
  - (c) plans or projects of overriding public interest for which no less damaging alternative solutions are available.
9. For Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs 6 and 7, is justified if it is caused by:
  - (a) force majeure including natural disasters;
  - (b) unavoidable habitat transformations which are directly caused by climate change; or
  - (c) a plan or project authorised in accordance with Article 6(4) of the Directive 92/43/EEC.
10. Member States shall ensure that there is:





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- (a) an increase of habitat area in good condition for habitat types listed in Annex I until at least 90 % is in good condition and until the favourable reference area for each habitat type in each biogeographic region of ~~its territory~~ Member State concerned is reached;
- (b) an increasing trend towards the sufficient quality and quantity of the terrestrial, coastal and freshwater habitats of the species referred to in Annexes II, IV and V to Directive 92/43/EEC and of the species covered by Directive 2009/147/EC.

#### Article 5

##### *Restoration of marine ecosystems*

1. Member States shall put in place the restoration measures that are necessary to improve to good condition areas of habitat types listed in Annex II which are not in good condition. Such measures shall be in place on the following area, as quantified in the national restoration plan referred to in Article 12 on at least 30 % of the area of each group of habitat types listed in Annex II that is not in good condition, as quantified in the national restoration plan referred to in Article 12, by 2030, on at least 60 % by 2040, and on at least 90 % by 2050.
  - (a) on at least 30 % by 2030 of the total area of all habitat types listed in Annex II that is not in good condition, as quantified in the national restoration plan referred to in Article 12;
  - (b) on at least 60 % by 2040 and on at least 90 % by 2050 of the area of each group of habitat types listed in Annex II that is not in good condition, as quantified in the national restoration plan referred to in Article 12;
  - 1a. By way of derogation from paragraph 1, for group 7 of habitat types listed in Annex II, Member States may apply a lower percentage, identified in accordance with Article 11(2b), with regard to the obligation to put in place restoration measures by 2050 pursuant to paragraph 1, point (b), provided that this does not prevent good environmental status, as determined pursuant to Article 9(1) of Directive 2008/56/EC, from being achieved or maintained.  
If a lower percentage is applied, the obligations pursuant to paragraph 1, points (a) and (b), to put in place restoration measures shall be one third of that lower percentage by 2030, and two thirds of that lower percentage by 2040.
2. Member States shall put in place the restoration measures that are necessary to re-establish the habitat types listed in Annex II in areas not covered by those habitat types with the aim to reach their favourable reference area. Such measures shall be in place on areas representing at least 30 % of the additional overall surface needed to reach the total favourable reference area of each group of habitat types, as quantified in the national restoration plan referred to in Article 12, by 2030, at least 60 % of that surface by 2040, and 100 % of that surface by 2050.
3. Member States shall put in place the restoration measures for the marine habitats of species listed in Annex III and in Annexes II, IV and V to Directive 92/43/EEC and for the marine habitats of wild birds covered under Directive 2009/147/EC, that are, in addition to the



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restoration measures put in place in accordance with paragraphs 1 and 2 of this Article, necessary in order to improve the quality and quantity of those habitats, including by re-establishing them, and to enhance connectivity, until sufficient quality and quantity of those habitats is achieved.

4. The determination of the most suitable areas for restoration measures in accordance with paragraphs 1, 2 and 3 of this Article shall be based on the best available knowledge and the latest technical and scientific evidence progress in determining of the condition of the habitat types listed in Annex II, measured by the structure and functions which are necessary for their long-term maintenance including their typical species, as referred to in Article 1(e) of Directive 92/43/EEC, and of the quality and quantity of the habitats of the species referred to in paragraph 3 of this Article, making use of use-information reported under Article 17 of Directive 92/43/EEC, Article 12 of Directive 2009/147/EC and Article 178 of Directive 2008/56/EC. Areas where the habitat types listed in Annex I are in unknown condition shall be considered as not being in good condition.
  - 4a. For areas where habitat types listed in Annex II are in unknown condition, Member States shall, in addition to the restoration measures in accordance with paragraph 1, put in place appropriate restoration measures on 30 % of the area of each group of habitat types listed in Annex I in unknown condition and ensure, by 2030, at the latest, that the condition is known for at least 60% of all areas of habitat types listed in Annex II. Areas where the habitat types listed in Annex II are in unknown condition after 2030 shall be considered as not being in good condition. The condition of all areas of habitat types listed in Annex II shall be known by 2040, all knowledge gaps that do not allow for habitat type condition assessment are removed by 2030 at the latest.
5. The restoration measures referred to in paragraphs 1 and 2 shall consider the need for improved ecological coherence and connectivity between the habitat types listed in Annex II and take into account the ecological requirements of the species referred to in paragraph 3 that occur in those habitat types.
6. Member States shall ensure that the areas that are subject to restoration measures in accordance with paragraphs 1, 2 and 3 show a continuous improvement in the condition of the habitat types listed in Annex II until good condition is reached, and a continuous improvement of the quality of the habitats of the species referred to in paragraph 3, until the sufficient quality of those habitats is reached. [Member States shall put in place necessary measures to prevent deterioration of] ensure that ~~ensure that~~ areas in which good condition has been reached, and in which the sufficient quality of the habitats of the species has been reached, ~~do not deteriorate, do not deteriorate.~~
7. [Member States shall no later than 2 years after the entry into force of this Regulation put in place necessary measures to prevent deterioration of ~~ensure that~~ areas where the habitat types listed in Annex II occur ~~do not deteriorate.~~]
8. Outside Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs 6 ~~and 7~~ is justified if caused by:
  - (a) force majeure including natural disasters ~~causes~~;
  - (b) unavoidable habitat transformations which are directly caused by climate change; ~~or~~
  - (c) a plan or project of overriding public interest for which no less damaging alternative solutions are available, to be determined on a case by case basis; ~~or~~





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- (d) action or inaction [from third countries] for which the Member State concerned [is not responsible][does not have competence]
- 8a. Outside Natura 2000 sites, the obligation to put in place necessary measures to prevent deterioration set out in paragraph 7 does not apply to deterioration caused by
- (a) force majeure including natural disasters;
- (b) unavoidable habitat transformations which are directly caused by climate change;
- (c) plans or projects of overriding public interest, for which no less damaging alternative solutions are available; or
- (d) action or inaction [from third countries] for which the Member State concerned [is not responsible][does not have competence]
9. For Natura 2000 sites, the non-fulfilment of the obligation set out in paragraphs 6 and 7, is justified if caused by:
- (a) force majeure including natural disasters;
- (b) unavoidable habitat transformations which are directly caused by climate change; or
- (c) a plan or project authorised in accordance with Article 6(4) of the Directive 92/43/EEC.
10. Member States shall ensure that there is:
- (a) an increase of habitat area in good condition for habitat types listed in Annex II until at least 90 % is in good condition and until the favourable reference area for each habitat type in each biogeographic region of the ~~is Member State concerned territory~~ is reached;
- (b) a positive trend towards the sufficient quality and quantity of the marine habitats of the species listed in Annex III and in Annexes II, IV and V to Directive 92/43/EEC and of the species covered by Directive 2009/147/EC.
- 10a. By way of derogation from paragraph 10, point (a), for group 7 of habitat types listed in Annex II, a Member State that applies a lower percentage for these habitat types pursuant to paragraph 1a, shall ensure that there is an increase of habitat area in good condition for those habitat types until at least a share equivalent to the lower percentage is in good condition and until the favourable reference area for each habitat type in each biogeographic region of the Member State concerned is reached.

## Annexe 2 : extrait du rapport 2023 du groupe WKBENTH<sup>6</sup> :

### 8.3. From Pristine to Degraded

All indicators should describe the same type of pressure/state shape of relationship if using the same type of biological observations and metrics. An undisturbed ecosystem is expected to have many species present, with each species having a natural distribution of abundance and biomass over the different age and size classes, with ecosystem processes at high rates (stage 1). Initially, when pressure from human activity is introduced, the ecosystem is indistinguishable from undisturbed in biodiversity, structure (age, size, species) and function because any changes fall within the range of natural variation (2). When the pressure increases further, it is expected that the largest and oldest individuals in the community will be lost, but all species will be present and ecosystem processes are likely to continue at rates that are near natural (3). Sustainable human use of the ecosystem can involve intense activities and is likely to result in widespread changes in size, age and species composition, with values generally outside the range of natural variation (4). Progressing pressure may result in the loss of the largest and most-long-lived species, resulting in large drops in the total biomass of the community, and large drops in the rates at which ecosystem processes occur (5). With further pressure, more species will be lost, and therefore overall Species Richness continues to drop, and all parameters are likely to be much lower than in undisturbed systems (6). At some level of pressure, the ecosystem would not be able to recover to its undisturbed state on human time-scales, even if the pressure was totally removed (7), and at the highest levels of pressure, the ecosystem can be considered lost and transformed into another ecosystem altogether (8).

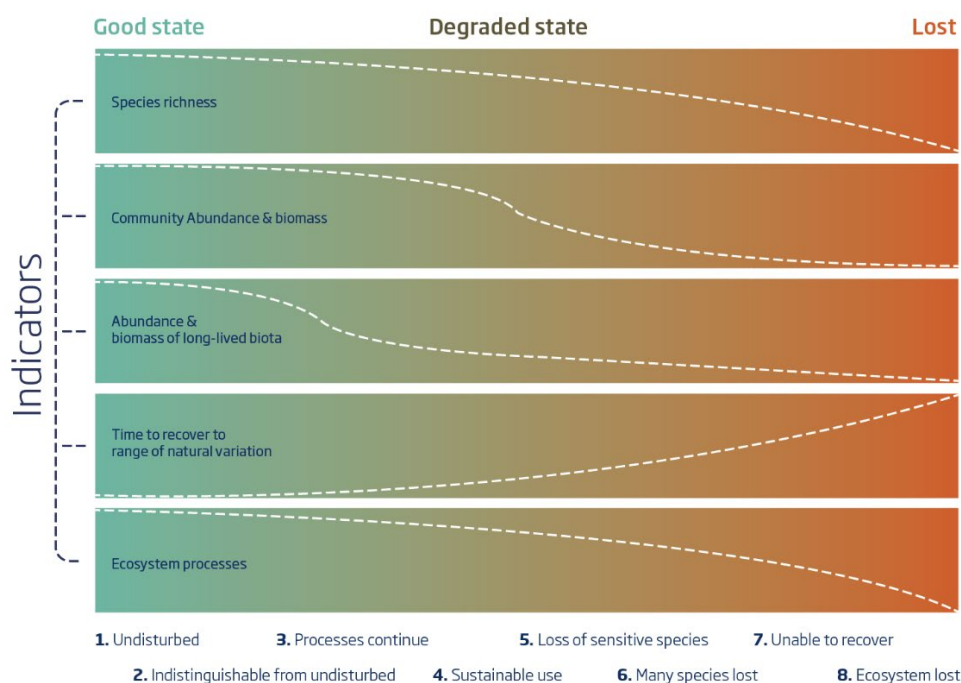


Figure 8.3.1. The indicator trends presented here assume a stochastic environment with no directional (and human-induced) environmental change. From: Hiddink JG, Valanko S, Delargy AJ, and van Denderen D. 2022. How to set thresholds for good status and significant adverse impacts in marine ecosystems? ICES Journal of Marine Science. Submitted.

The challenge is to manage the ecosystem so that ecosystems/communities/habitats are at a sufficiently 'good' state to ensure we sustain overall ecological integrity. The degradation from an undisturbed to a

<sup>6</sup> Le contenu des rapports d'experts ne représente pas nécessairement la position du CIEM

degraded and then lost ecosystem is described in Figure 8.3.1. Stage 1 and 2 both ensure biodiversity, structure, and function and can be considered 'good'. Most people would probably agree that stage 7 and 8 are degraded or even lost. Any changes from stage 3 to 6 may be considered as 'good enough' when part of a socio-economic trade-off and where a prioritization of the management actions is needed.