



## Water Framework Directive and Natura 2000:

# one battle?

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# Some questions to be met ... in “a quicky”

- Relevancy of the EU Water Framework Directive (WFD) for Natura 2000?
- Linking **environmental objectives** under WFD and favourable conservation status of the Habitats Directive (HD)?
- Linking **River Basin Management Plans/Programmes of Measures** under WFD and conservation measures/management plans of the HD?

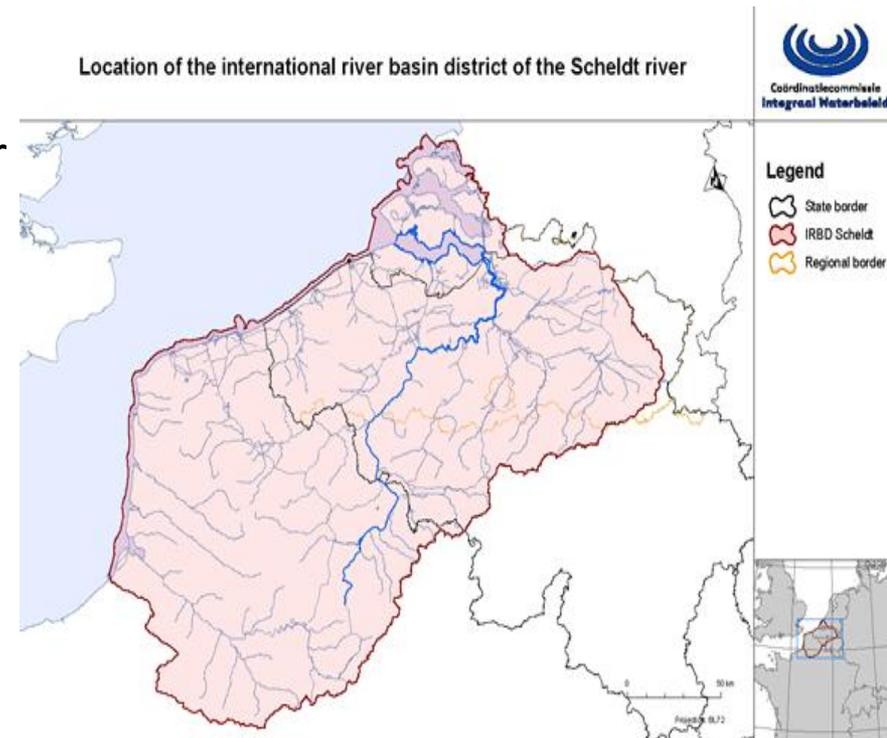
# Water Framework Directive (WFD)



- ❑ Directive 2000/60/EC came into force on **22 December 2000** and had to be put transported into national law before **22 December 2003**
  
- ❑ **Propose (Art. 1 WFD)**
  - **Water:** The WFD establish a framework for the protection of inland surface water, transitional water (estuaries), coastal water and groundwater
  
  - **Wetland:** The WFD also covers the protection of aquatic ecosystems and, with the regard to their water needs, terrestrial ecosystems and wetlands directly dependent on the aquatic ecosystem

# River basin approach

- ❑ The WFD adopts a **holistic approach** to water that is reflected in the **river basin approach**:
  - Water does not stop at administrative or political boundaries, so the best way to protect and manage water is within the **natural geographical and hydrological unit** of the river basin (= bringing together all interests upstream and downstream)
  - The ‘working unit’ for integrated water management = **(international) river basin districts**
  - River basin includes Natura 2000 sites (cf. Register of protected areas)



# Integrated approach



❑ **Wet habitats** by the edges of lakes and rivers, including fen, bog, marsh, floodplain or grazing marsh, **have to be considered in the context of river basin management** according to the WFD

❑ The WFD provides in **coordination with other EU legislation, e.g. HD**

— The WFD requires the establishment of a **register of protected areas** which includes Natura 2000 sites

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

# Structure of the WFD

□ The WFD can be simplified as follows:

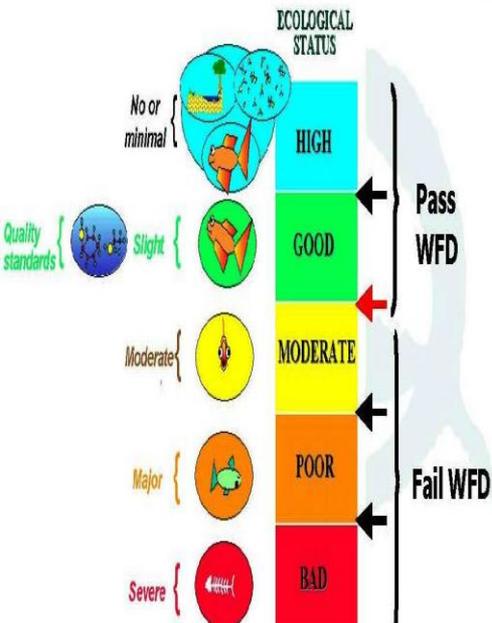
- **Environmental objectives** to be met, but exemptions
- **Instruments** for achieving the objectives
  - ✧ river basin plans (RMBPs)
  - ✧ programme of measures (POMs)

# Objectives of the WFD



- Restore** the status of water bodies with the aim of achieving a good status by **2015** (“as rule”)
- No deterioration** (stand still obligation)

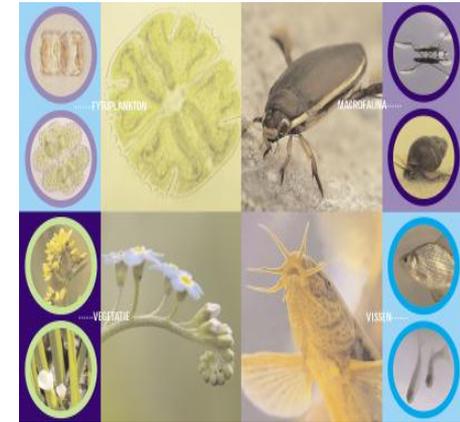
# Environmental objectives (art. 4.1 WFD)



<p><b>Good surface water status</b></p>	<ul style="list-style-type: none"> <li>— Good <b>chemical</b> status</li> <li>— Good <b>ecological</b> status</li> <li>— <b>Good ecological potential</b> for artificial and heavily modified surface water bodies)</li> </ul>
<p><b>Good groundwater status</b></p>	<ul style="list-style-type: none"> <li>— Good chemical status</li> <li>— Good <b>quantitative</b> status</li> </ul>
<p><b>Protected areas</b></p>	<ul style="list-style-type: none"> <li>— Good (water) status</li> <li>— More <b>stringent</b> rules</li> </ul>

concrete environmental objectives must be **set out in RBMP**

# Is there a relationship between the ecological status under the WFD and favourable conservation status under the HD?



- “Ecological status”** is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, based on *inter alia* (see WFD Annex 5, section 1.1. for de complete list):
  - the composition and abundance of aquatic flora
  - the composition, abundance and age structure of fish fauna
  
- Reaching the “good ecological status” (WFD objective) will generally improve the conditions for species and habitats and so **help to achieve the “favourable conservation status”** (HD objective)...

# Which objective applies within conflicts?



❑ First of all, MS are bound by the provisions of the WFD and the HD , so they should achieve all the objectives of these directives

❑ There are cases in which good ecological status (potential) may not be sufficient to meet the specific objectives of the HD

❑ Art. 4.2 WFD: **“the most stringent shall apply”**

—Where the good ecological status is not sufficient to reach the objectives of HD additional measures will need to be included in the river basin management plans.



❑ ... but but there are also cases where protected species or habitat be in a favourable conservation status even if the ecological status is not good :

—What exactly is meant by “most stringent”?

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



- ❑ **No specific date** in the HD to reach the conservation objectives
  
- ❑ But: Art. 4.1 (c) FWD: **WFD objectives for protected areas need to be reached by 2015:**
  - All WFD objectives linked to the achievement of favourable conservation status of species and habitats in water-dependent Natura 2000 sites need to be implemented by 2015
  - Non-water related HD objectives outside the scope of WFD are not affected by the deadline of the WFD
  
- ❑ Is there a possibility to **phase the WFD objectives** in protected areas? This question relates to the application of exemptions under the WFD.

# Exemptions to objectives under WFD



## Which exemptions?

- Extension of the deadline (maximum until 2027, Art. 4.4 WFD)
- Less stringent objectives (Art. 4.5 WFD)
- Derogation for exceptional circumstances (Art. 4.6 WFD)
- Derogation for new activities and changes (Art. 4.7 WFD)

The WFD attaches **stringent criteria** to the use of exemptions

Exemptions and the reasons for it must be **set out in the RBMPs**

# Are exemptions under WFD applicable in Natura 2000 sites?



## NO (NGOs):

- Art. 4.1 (c) WFD: in contrast to Art. 4 (a) and (b), Art. 4.1 (c) WFD doesn't refer to the exemptions under WFD
- Art. 4.2 WFD : 'priority rule' (most strength level of protection) confirms high level of ambition of the WFD
- Jurisprudence Court of Justice: strict interpretation of derogations



## YES (EU Commission)

- The exemptions of Art. 4.4 to 4.7 WFD apply within the context of the WFD itself

# Exemptions in Natura 2000 sites?

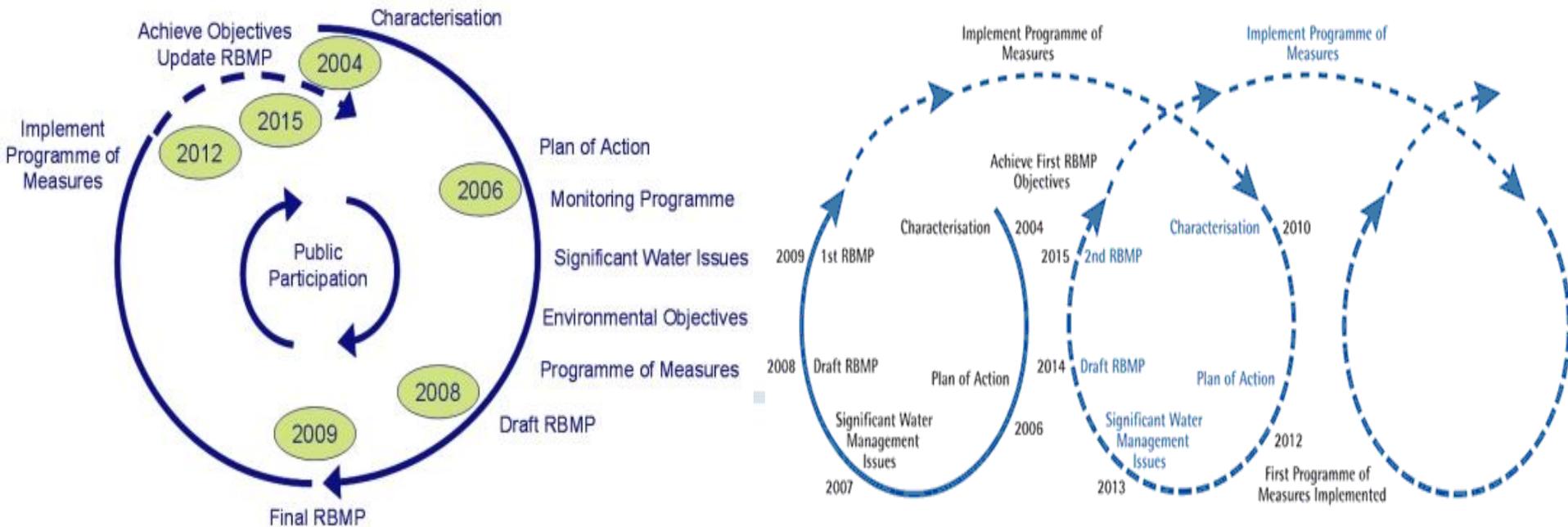


- ❑ The WFD in itself does not allow derogating from the requirements set under the BD!
  
- ❑ Exemptions under WFD cannot be used to deviate from objectives and obligations set by the HD (and vice-versa):
  - The use of exemptions must be consistent with the objectives and measures established under the HD (Art. 4.8 WFD)
  - Steps must be taken to ensure that at least the same level of protection of the HD is guaranteed (Art. 4.9 WFD)
  
- ❑ **Consequently:**
  - If the application of an exemption under WFD would significantly affect the conservation status of HD species of habitats: **the use of exemption can also be justified under Art. 6.3 and Art. 6.4 HD ('appropriate assessment')**
  - If the application of an exemption under WFD would not significantly affect the conservation status of HD species of habitats: **the use of it still needs to be coherent with the measures taken under Art. 6.1. HD and/or Art. 6.2. HD**

# River basin management plans (RBMP) and programme of measures (POM)



- ❑ **six yearly cycle** of river basin management planning.



# RBMP - POM



- ❑ RBMP for each river basin district: integrating all relevant aspects of water management (Art. 13 FWD)
  
- ❑ POM is **major part of RBMP**. Contains (Art. 11 FWD):
  - **‘basic’ measures** : includes measures that have to be taken in accordance with other Directives, e.g. HD!
    - ✧ POM must include measures necessary **to achieve objectives for Nature 2000 sites** (listed in register) as far as their ecological status is concerned
    - ✧ As many HD Annex I habitats are also aquatic areas or water-dependent, the measures proposed under BHD and WFD may be (partly) the same: coordination!
    - ✧ POM must also take Art. 12 HD into account: **measures also apply outside Natura 2000 sites**
  - **‘supplementary’ measures** : if necessary to achieve environmental objectives
  
- ❑ POMs and RBMPs could affect Natura 2000 sites (not only when exemptions are used, see *supra*): they need to be screened for **appropriate assessment** on a case by case basis

# One battle ... but different militias



- ❑ The integrated and ecologically oriented approach of the WFD is **coherent** to the objectives of the HD
- ❑ There are **many direct links** between the WFD and the HD (environmental objectives, programme of measures, ...)
- ❑ Nevertheless:
  - differences in scope, objectives and deadlines (integrated monitoring is not evident)
  - cumulative application of different assessment frameworks is very complex
  - ...
- ❑ A correct implementation of the WFD requires **profound coordination** with the HD (objectives, measures, management plans, ...)

# More information



- European Commission, 'Links between the Water Framework Directive (WFD 2000/60/EC) and Nature Directives (Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC)', Frequently Asked Questions (Dec. 2011)
- WFD Guidance Documents (N° 2, 4, 12, 13, 20)
- BENNETT, S., SHEATE, W.R., The Water Framework Directive, Assessment, Participation and Protected Areas: What are the Relationships?, 2007
- KEESSEN, A.M., van RIJWICK, H.F.M.W., Drinwaterwinning in een Natura 2000-gebied. Het juridisch regime voor beschermde gebieden, M&R, 2008
- ...