Authorisation, permitting and licensing of navigation-related activities

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...see http://www.pianc.org/euwfd.php
Waterborne transport (i.e. shipping, vessels including recreational)
- An activity, mainly regulated at international level
- Takes place across the marine environment
- Flag state and port state controls
- UN Convention on the Law of the Sea: right of innocent passage
- Not licensed, not subject to EIA NOT COVERED FURTHER HEREIN ...

Waterborne transport infrastructure (ports, dredging, reclamation)
- Maintenance of existing infrastructure plus new development projects
- Majority within WFD coastal water bodies
- Subject to international, regional (EU) and national regulation
Introduction

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- Waterborne transport infrastructure (ports, dredging)
  - Maintenance of existing infrastructure plus new development projects
  - Majority within WFD coastal water bodies
  - Subject to international, regional (EU) and national regulation
  - Capital (new) projects including dredging and disposal
  - Maintenance activities including dredging and disposal
Coastal water bodies WFD vs. MSFD

- MSFD Preamble 12: coastal waters, including their seabed and subsoil, are an integral part of the marine environment, and as such should be covered by this Directive insofar as particular aspects of the environmental status of the marine environment are not already addressed through [the WFD] or other Community legislation, so as to ensure complementarity whilst avoiding unnecessary overlaps.

- In other words, duplication should be avoided: coastal waters are relevant in MSFD only where not already addressed by WFD.

- The majority of navigation infrastructure activity is located (or takes place) in coastal water bodies as defined by WFD, and activities and developments are assessed as such...
OSPAR: ICES has produced detailed maps showing the intensity of fishing activity: like navigation dredging, fishing can damage sea floor integrity and can change local hydrographical conditions.
Fishing effort by dredges in the OSPAR regions 2012 ... and with navigation dredging outside WFD coastal water bodies also shown
Potential environmental impacts

* Capital (new) navigation infrastructure development projects
  * Can modify physical coastal processes, usually locally
  * Can damage or destroy habitats locally
  * Potential to re-suspend contaminated sediments

* Disposal of dredged material
  * Dispersive vs. retentive site, usually selected for local processes
  * Local smothering, habitat disturbance or loss
  * Sediment must be suitable for sea disposal

* Maintenance activities including maintenance dredging
  * No change in physical coastal processes
  * Temporary, local disturbance of already modified habitats
  * Sediment quality reflects current water quality
Licensing in coastal water bodies
... maintenance dredging

- Maintenance activities including maintenance dredging
  - Not usually subject to EIA or SEA; may be covered in port Master Plan
  - Habitats Directive e.g. Maintenance dredge protocol in England
  - WFD e.g. Clearing the waters in England
  - Good practice to assess, but impacts are not usually significant
  - May be exempt from licensing regime e.g. Marine and Coastal Access Act England

N.B. WFD NAVI TG does not agree with the statement in Section 3.2.2 of the background document i.e. ‘Most activities with potentially important environmental impacts are covered by the EIA Directive, but some are not, although their potential impacts might be substantial. This is the case for maintenance dredging ...’.

The reason that maintenance dredging does not require an EIA is that it rarely has a significant impact, even locally. THIS STATEMENT CANNOT THEREFORE BE SUBSTANTIATED
Licensing of new projects, capital dredging and disposal

- New navigation infrastructure development projects including capital dredging
  - Require EIA, often SEA
  - Habitats Directive ‘appropriate assessment’ including Article 6(4)
  - WFD compliance assessment including Article 4(7)
- Disposal of dredged material
  - EIA, maybe SEA
  - Habitats Directive ‘appropriate assessment’ including Article 6(4)
  - WFD compliance assessment if coastal water body
  - Also requirements under Regional Seas Conventions; London Protocol; Waste Framework Directive
- No equivalent of WFD 4(7) or HD 6(4) in MSFD
Existing compliance assessments

- New navigation infrastructure
- WFD assessment at element level: biological, physico-chemical, hydro-morphological, priority (hazardous) substances
- Consider footprint of (effect of) activity at scale of water body
- If no effect at water body level, unlikely to affect GES
- If water body status is affected by physical modification, Article 4(7) applies; if tests are not met, development cannot proceed
- Noise, litter, etc. not covered in WFD, but should be included in EIA
- Licence conditions can reflect these and other MSFD constraints
- Especially in light of C-461/13 (Weser) ruling CJEU 2015, WFD and EIA plus Habitats Directive where appropriate existing compliance assessment regime covers MSFD interests for majority of projects
- Shouldn’t use MSFD to fix poor implementation of other Directives
- Possible exception: major projects’ cumulative effects
Cumulative (in-combination) effects

* **Scale**
  * Need to understand which Descriptors are prone to in-combination effects at scale of relevance to MSFD (contaminants; hydrographical conditions)
  * Need sound science and technical understanding at Descriptor level
* **Responsibility for assessment**
  * Practical considerations: EIA developer responsible for identifying and assessing local cumulative effects, but at marine sub-region level is this realistic? Proportionate?
  * How to identify (proposed) developments in other countries? Access to information at international level?
  * Resource implications?
* **Difficult questions requiring careful consideration**
Key conclusions

- Shipping not licensed, so consider only navigation infrastructure
- Maintenance dredging impacts not usually significant even locally: consider new infrastructure projects, capital dredging and disposal
- Also need to consider scale issues: footprint of (effect of) activity ...
- Relevant navigation related activities are already well regulated
- Existing assessment regime (SEA, EIA and WFD plus Habitats Directive where appropriate) adequately covers MSFD compliance for the vast majority of navigation infrastructure projects
- No equivalent of WFD 4(7) or Habitats Directive 6(4) in MSFD
- MSFD should not duplicate for WFD in coastal water bodies
- MSFD should not be used to ‘fix’ poor implementation of other Directives
- Major projects’ cumulative effects: some potentially difficult questions requiring careful attention