
Exemptions under the WFD and the Natura Directives

Angela Klauschen, WWF
WFD-Natura Workshop
Podgorica, Montenegro
4-5 July 2011

Contents

- What are the exemptions under the WFD and the BHD and why do they matter?
 - Which exemptions under the WFD can be applied in Natura 2000 sites?
 - How do the specific provisions of WFD Art. 4.3 apply to Natura 2000 sites?
 - Is there a relationship between the Habitat Directive Art. 6.3 and 6.4 and WFD Art.4.7?
-

Exemptions under the WFD

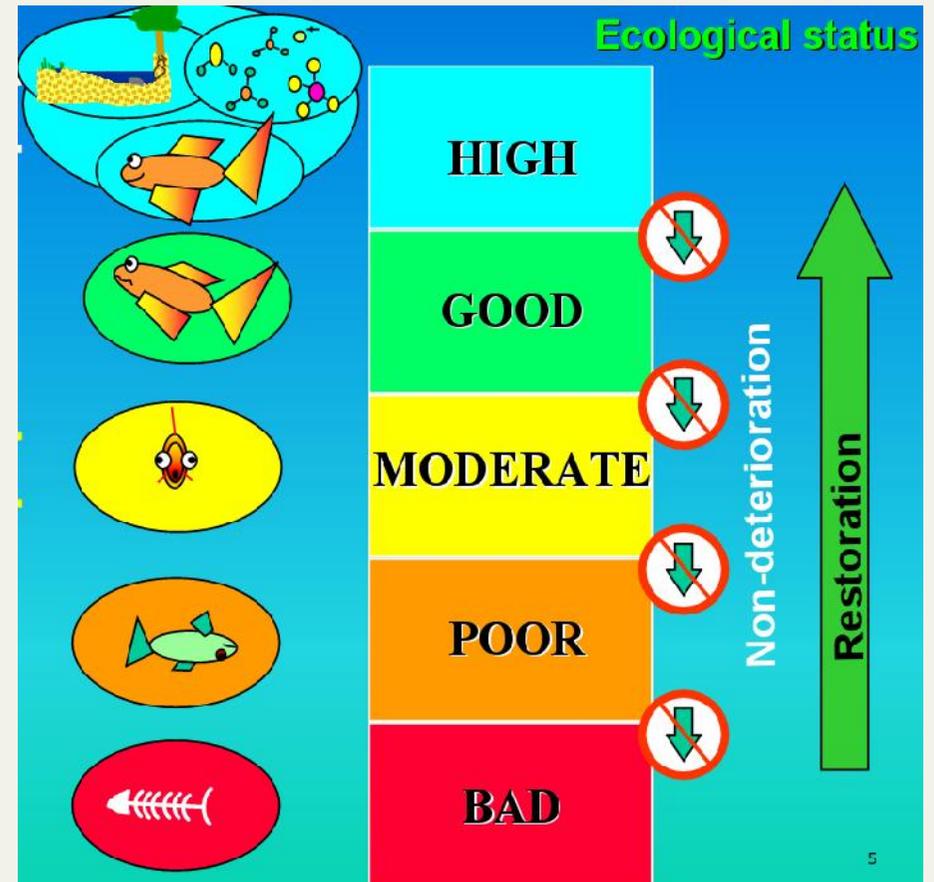
Objective of WFD:

Good status of water bodies in 2015 :

- Ecological status
- Chemical status
- Quantitative status (GW)
- No deterioration

→ In principle, WFD only allows **improvement** of the status or at least **statu quo**.

→ However, a number of **exemptions** may be made under **Art. 4.4, 4.5, 4.6 and 4.7**





Exemptions under the WFD

Exemptions under Art. 4.4

Art 4.4 allows for **extension of deadlines** «for the purpose of **phased achievement** of the objectives» of the WFD

Conditions:

- **no further deterioration** in the status of affected water body
- **not possible to achieve improvements** in status of water body “**within the timescales**” because:
 - technical feasibility and/or
 - disproportionately expensive and/or
 - natural conditions don't allow improvement in time

Extension of the deadline, and the reasons must be explained in the **river basin management plan (RBMP)**

Extensions **limited to a maximum of two further updates** of the RBMP except in cases with natural conditions



Exemptions under the WFD

Exemptions under Art. 4.5

Art 4.5 allows for **less stringent environmental objectives** when water body is so affected by human activity or its natural condition that objectives achievement is infeasible or costs disproportionate

Conditions:

- **no “significantly better environmental option** not entailing disproportionate costs” available to achieve environmental & socio-economic needs
 - for **surface water**, the highest ecological and chemical status possible is achieved, given non avoidable impacts
 - for **groundwater**, the least possible changes to good groundwater status, given not avoidable impacts
 - **no further deterioration** in status of the affected water body
 - less stringent environmental objectives, and the reasons for it, are mentioned in **river basin management plan** and **reviewed every 6 years**.
-



Exemptions under the WFD

Exemptions under Art. 4.6

Art 4.6 allows for exemptions with reg. to “temporary deterioration” in case of circumstances of natural cause or "force majeure“ exceptional and unforeseeable – severe floods, prolonged droughts, accidents

Conditions:

- all practicable steps are taken to **prevent further deterioration** in status and in order not to compromise the achievement of the objectives of this Directive in other bodies of water
 - exceptional unforeseeable **conditions are declared**, incl. adoption of **appropriate indicators**, and are **stated in the RBMP**;
 - measures on exceptional circumstances included in the **programme of measures** and don't compromise recovery of the quality of water body once the circumstances are over;
 - **effects of circumstances reviewed annually** and all practicable measures taken to **restore water body to its prior status** as soon as reasonably practicable, and
 - a **summary of effects of circumstances** and such measures taken or to be taken **included in the next update of the RBMP**.
-

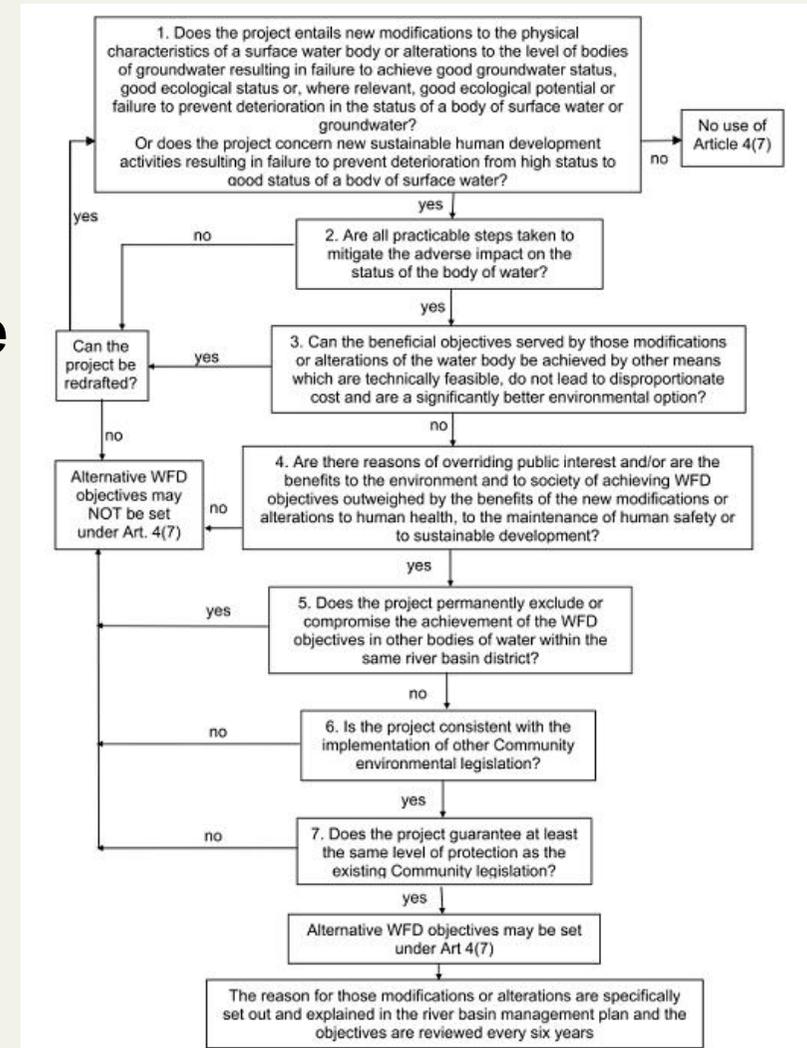


Exemptions under the WFD

Exemptions under Art. 4.7

Art. 4.7 allows for **new modifications** affecting water bodies, if:

- Practicable steps taken to **mitigate adverse impacts**
- **No other significantly better option**
- **Overriding public interest**
- Other water bodies can achieve WFD objectives
- **Consistent with other EU environmental legislation + same level of protection guaranteed**





Exemptions under the WFD

Principles to infrastructure development under WFD:

- **Stepwise approach/hierarchy** to infrastructure development: **prevention, restoration, mitigation**
 - For **new infrastructure developments**:
 - > **prevent deterioration** of 'status'.
 - > where this is not possible, apply **mitigation measures**
 - For **existing physical modifications**:
 - > **restoration** to 'good ecological status'.
 - > where restoration is not possible, **mitigate** with the aim to **meet 'good ecological potential'** (GEP)
-

Exemptions under Art. 4.7

Examples of HP impacts on water bodies

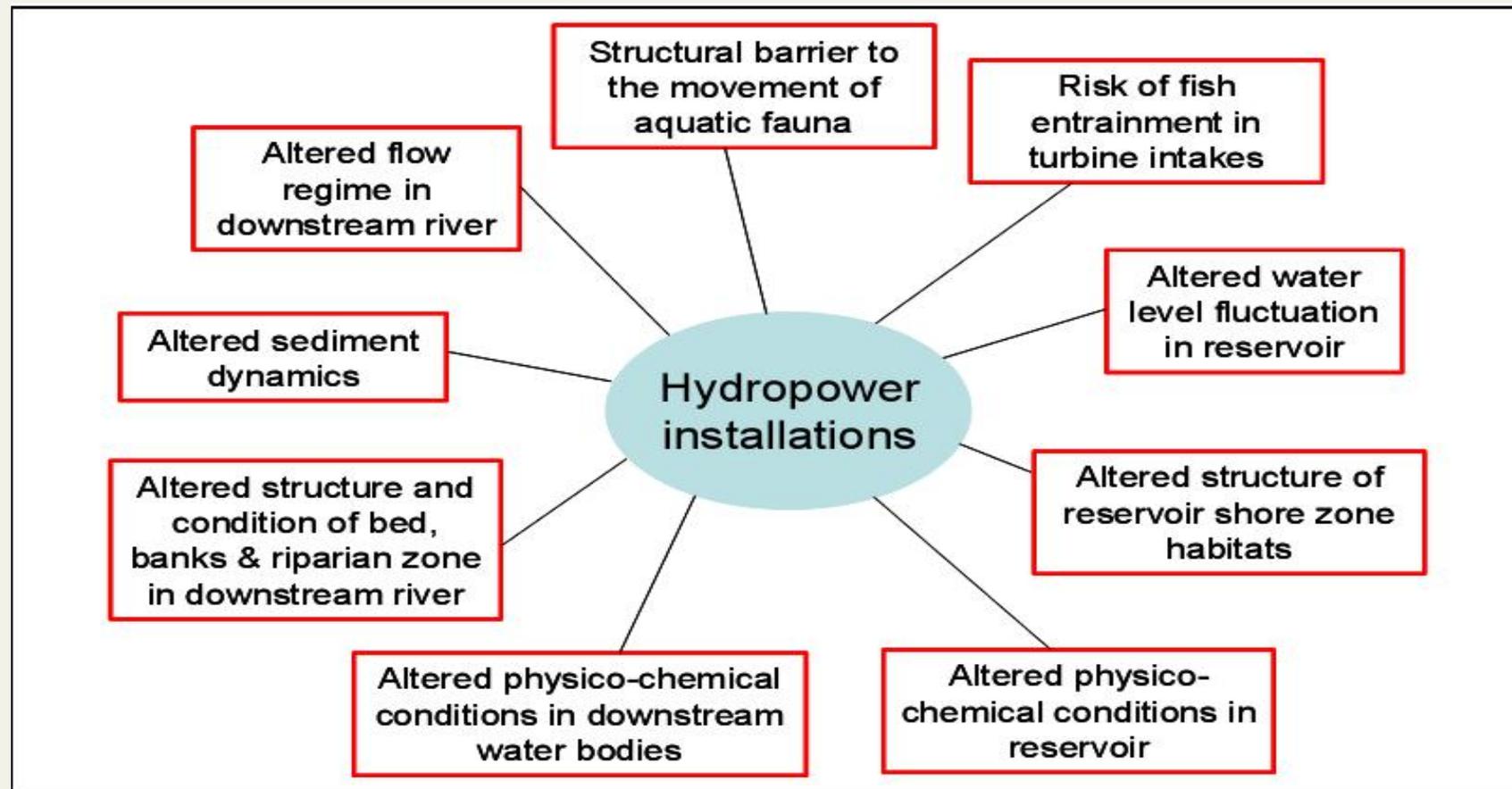
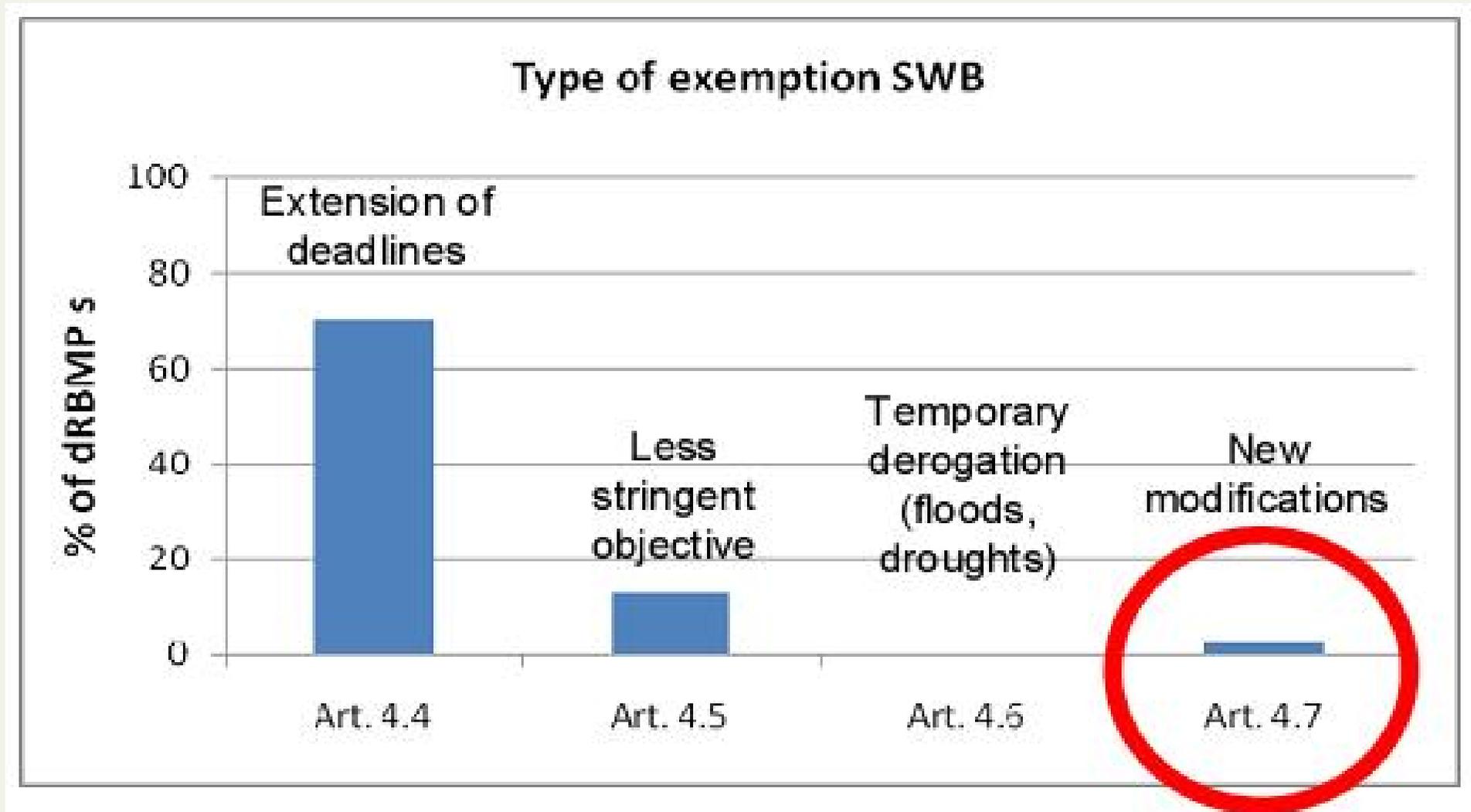


Figure 4a: Illustrative range of possible alterations typically associated with hydropower dams with subsequent biological alterations (More information available in Annex III).



Exemptions under the WFD

Rate of exemptions requested under WFD





Exemptions under the WFD

Explanations from Member States

Not many new projects, and no need to apply Art 4.7. No or insignificant potential for new large hydropower, focus limited to modernisation and upgrading.

Art 4.7 successfully applied as part of the RBM planning, pre-selection exercise – does not come to 4.7 tests.

Some States indicate they have experienced **difficulties in applying Art. 4.7 requirements**.

Pre-planning helpful: assessment of hydropower potential as part of (or parallel to) RBM planning, listing **potential sites for acceptable new projects** and for «no go areas».

Exemptions under the “Natura” Directives (BHD)



Exemptions under the “Natura” Directives

**Birds and Habitat Directives (BHD or “Natura Directives”)
= Cornerstone of EU nature conservation policy**

2 pillars:

- N2K network of protected areas
- Strict system of species protection

Total:

> 1.000 animals & plant species

> 200 "habitat types"

(e.g. forests, meadows, wetlands)
of «**European importance**»





Exemptions under the “Natura” Directives

Objective of Natura 2000 :

Conservation = Sustainable development

- Measures are designed to maintain or restore, at **favourable conservation status** natural habitats and species of wild fauna and flora of Community interest.
 - “This Directive makes a contribution to the general objective of sustainable development”
 - “Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics”
-



Exemptions under the “Natura” Directives

Habitat Directive, Art. 6.3:

«Any **plan or project** (...) likely to have a **significant effect** thereon, either **individually or in combination** with other plans or projects, shall be **subject to appropriate assessment** of its implications for the site in view of (...) conservation objectives.

(...) the **competent national authorities** shall **agree to the plan or project only after having ascertained that it will not adversely affect the integrity** of the site concerned and, if appropriate, after having obtained the **opinion of the general public.**»



Exemptions under the “Natura” Directives

Habitat Directive, Art. 6.4:

If a plan/project must be carried out:

- **in spite of a negative assessment** of the implications for the site and
- in the **absence of alternative solutions**, and
- for reasons of **overriding public interest** (e.g. social/ eco.),

MS must take **all compensatory measures necessary** to ensure overall coherence of Natura 2000. **EU Commission must be informed of compensatory measures** adopted.

If site hosts a **priority natural habitat type and/or a priority species**, only considerations which may be raised = **human health or public safety**, important **beneficial consequences** for the environment or, further to an **opinion from the Commission**, to other imperative reasons of overriding public interest.



Exemptions under the “Natura” Directives

Birds Directive, Art. 4.1 and 4.4:

Art. 4.1.: «The species mentioned in Annex I shall be the subject of **special conservation measures concerning their habitat** in order to ensure their survival and reproduction in their area of distribution.
(...)

MS shall **classify in particular the most suitable territories in number and size as special protection areas** for the conservation of these species in the geographical sea and land area where this Directive applies. »

Art. 4.4.: In respect of the protection areas referred to in par. 1 and 2, MS shall take appropriate steps to **avoid pollution or deterioration of habitats or any disturbances affecting the birds**, in so far as these would be significant (...) to the objectives of this Article. **Outside these protection areas**, MS shall also strive to avoid pollution or deterioration of habitats.»



WFD exemptions applicable in Natura 2000 sites



WFD exemptions applicable in Natura 2000 sites

FAQ: Which exemptions under WFD can be applied to Natura sites?

The following exemptions are possible:

- **extension of deadlines** - by 2021 or 2027 at the latest; Art. 4.4. (NB: disagreement from NGOs on the basis of Art. 4.1.C and legal advice corroborating)
 - **less stringent objectives** (Art. 4.5)
 - **temporary deterioration** (Art. 4.6) and
 - **new modifications/new sustainable human developments** (Art. 4.7)
-



WFD exemptions applicable in Natura 2000 sites

- Exemptions of Art. 4.4 to 4.7 WFD are applicable to all environmental objectives of Article 4.1 WFD and thus to protected areas (Art 4.1c)
 - Exemptions must be consistent with the implementation of other existing EU environmental legislation, and guarantee at least the same level of protection (Art. 4.8 and 4.9 WFD)
 - if exemption would significantly affect the conservation objective for a Natura 2000 then it would not be possible to apply the exemption under WFD unless it can also be justified under Art. 6.3 and 6.4 HD
-

Applicability of WFD Art. 4.3 provisions to Natura 2000 sites



Applicability of WFD Art. 4.3 provisions to N2K sites

FAQ: How do the specific provisions under WFD Art. 4.3 apply to Natura 2000 sites?

Art. 4.3 WFD gives possibility to classify water bodies as heavily modified (HMWB) or artificial water bodies (AWB) when:

- the changes to the hydromorphological characteristics of that body which would be necessary for achieving good ecological status would have significant adverse effects on certain human activities such as navigation (including port facilities) and flood defence; and
- the beneficial objectives served by the AWB or HMWB cannot reasonably be achieved by other means, which are a significantly better environmental option, for reasons of technical feasibility or disproportionate costs

For AWB and HMWB the good ecological potential needs to be reached, not good ecological *status*. (NB: for PAs use of pragmatic « Prague method » looking at possible mitigation measures without too much impact on the use by industry etc.)



Applicability of WFD Art. 4.3 provisions to N2K sites

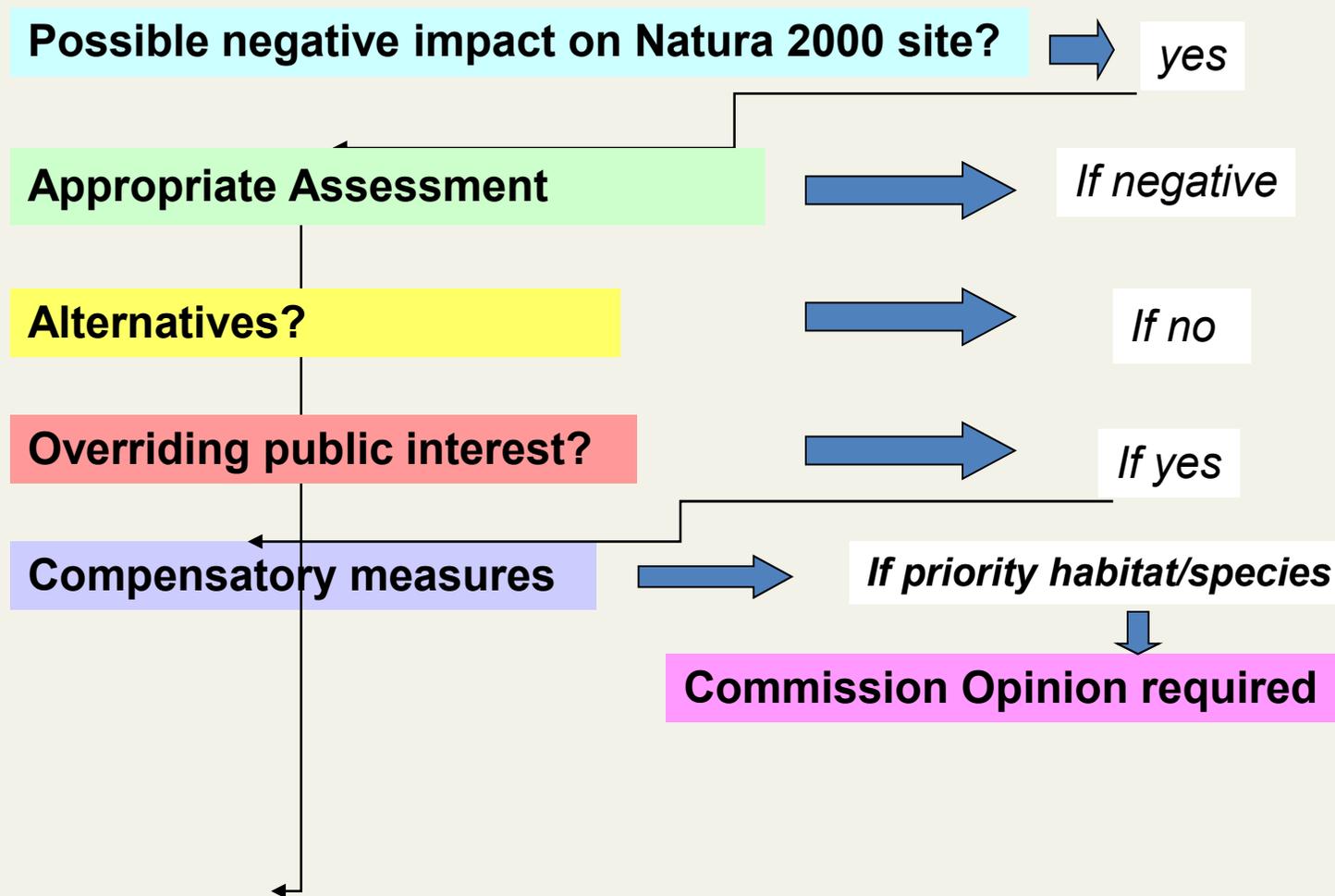
- Designation of a water body as heavily modified regardless of whether that water body is part of a Natura 2000 site.
 - Designation of a water body as heavily modified, (lowering the objective to achieving good ecological potential instead of status), does not change conservation objectives under Habitats Directive.
 - e.g. although designated under the WFD as heavily modified, it may still be necessary to restore natural dynamics/connectivity of Natura 2000 site to reach favourable conservation status of the species and habitats protected under the BHD.
 - Obligation to avoid deterioration and make progress towards favourable conservation status under the HD applies and continues to apply after designation as heavily modified under the WFD
-

Relationship between Habitat Directive Art. 6.3 and 6.4 and WFD Art. 4.7



Relationship between HD Art. 6.3 & 6.4 and WFD Art. 4.7

FAQ: Is there a relationship between HD Art. 6.3 and 6.4 and WFD Art. 4.7?





Relationship between HD Art. 6.3 & 6.4 and WFD Art. 4.7

WFD Art 4.7 allows for **deterioration** by new modifications only **under strict conditions**:

- No better environmental options available
 - Project is of “overriding public interest”/outweighing water protection benefits
 - All mitigation measures are taken
 - Project and reasons are reported in RBM Plan
 - Other water bodies are not impacted/other objectives not impaired
-



Relationship between HD Art. 6.3 & 6.4 and WFD Art. 4.7

- Art. 4.7 WFD only applies where project/measure would have a (negative) impact on the ecological status of the water body.
 - If such an impact is likely / cannot be excluded (for instance on the basis of the assessment carried out under Article 6.3 Habitats Directive), the authorities should assess whether conditions of Article 4.7 WFD are fulfilled.
 - If a new development is proposed that would cause deterioration of the status of the water body as well as a failure to achieve the objectives for a Natura 2000 site, then the criteria for the use of exemptions of both the WFD and the Habitats Directive must be fulfilled
-



Thank you!
Hvala!