ECOncrete's Response to the European Commission's Public Consultation on the Marine Strategy Framework Directive (MSFD)

In central environmental regimes, such as the EU Habitats Directive, impacts follow a **"mitigation hierarchy":** first, avoiding impacts where possible; second, minimising those that cannot be avoided; third, restoring affected ecosystems; and only as a last resort, compensating or offsetting residual harm. This ensures prevention at source is prioritised.

The MSFD does not currently incorporate an explicit hierarchy into its assessment of pressures (Arts. 8–11) or Programmes of Measures (Art. 13). In practice, development pressures are often addressed via mitigation or compensation after impacts occur, rather than through systemic avoidance and minimisation at source. This risks avoidable degradation and increasing reliance on offsetting disconnected from the impacted site.

With the increase in marine and coastal infrastructure development, the EU should prioritise and incentivise nature-inclusive design and bio-enhancing infrastructure, as measures for minimisation at source.

Comparative practice shows that a structured approach is feasible and advantageous. In the **Netherlands**, recent tenders (e.g., Hollandse Kust West and IJmuiden Ver) **included nature-inclusive design as permit obligations**, with scoring systems rewarding **biodiversity enhancement**. The State conducts ex-ante environmental and cumulative impact assessments and embeds biodiversity conditions in tender rules. This illustrates how ecological considerations are embedded upstream in project design.

France provides another example through its statutory Éviter–Réduire–Compenser (ERC) framework. Developers must show that impacts are first avoided before compensation is considered. Offshore wind tenders (e.g., Brittany floating wind auction) include commitments to ERC measures and monitoring, embedding the mitigation sequence in procurement structures.

A parallel exists in EU climate governance. The Climate Law and the CSRD/ESRS framework require emissions reductions to be reported separately from offsets; offsets cannot substitute for direct decarbonization. Reductions at source are prioritised, with offsetting as a last resort.

THE MSFD REVISION PROVIDES AN OPPORTUNITY TO:

- Explicitly incorporate a structured mitigation sequence (avoid–minimise–restore–offset) in Articles 8–13;
- Clarify that nature-inclusive infrastructure, specifically bio-enhancing design embedded in the structure itself, can function as impact minimisation within the project footprint, reducing pressures on seabed integrity, biodiversity, and ecosystem functioning, and is recognized as such in EIA or appropriate assessment processes.
- Encourage Member States (MS) to prioritise measures that minimise environmental pressures at source, including project design, materials selection, construction, and spatial planning in Programmes of Measures under Article 13.
- Encourage (MS) to create incentives for implementation of NID and other design-based minimisation measures through EIAs, tender specifications, and permitting conditions of marine and coastal infrastructure;
- Ensure restoration or offsetting addresses only residual impacts.

Integrating ecological functionality into marine infrastructure can reduce impacts at the project level while maintaining socio-economic activities. This aligns with the ecosystem-based management principle in Article 1(3) and can reduce cumulative pressures under Annex III.

There is also a growing trend toward measurable biodiversity enhancement. In England, the Biodiversity Net Gain requirement under the Environment Act 2021 requires new developments to deliver at least a 10% increase in biodiversity value. While enhancement must not replace avoidance, it may complement the hierarchy.

The MSFD revision should therefore embed an avoid–minimise–restore–offset sequence and include biodiversity enhancement as an additional layer. This would improve coherence with maritime spatial planning and nature restoration policies, provide regulatory clarity, and support durable delivery of GES.