

Coordination of sectorial policies

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Acronyms

CBD	Convention on Biological Diversity
CFP	Common Fisheries Policy
CIEM	Interministerial Commission of Marine Strategies [<i>Comisión Interministerial de Estrategias Marinas</i> , in Spanish]
DSF	Strategic Sea Basin Documents [<i>Document Stratégique de Façade</i> , in French]
EMEPC	Mission Structure for the Extension of the Portuguese Continental Shelf
EMODnet	European Marine Observation and Data Network
GES	Good Environmental Status
IEO	Spanish Institute of Oceanography [<i>Instituto Español de Oceanografía</i> , in Spanish]
IPMA	Portuguese Institute for the Atmosphere and Sea [<i>Instituto Português do Mar e da Atmosfera</i> , in Portuguese]
MSFD	Marine Strategy Framework Directive
MSP	Maritime Spatial Planning
NEAFC	North-East Atlantic Fisheries Commission
SAC	Special Areas of Conservation
SEA	Strategic Environment Assessment
SPA	Special Protection Areas
UNCLOS	United Nations Convention on the Law of the Sea
WFD	Water Framework Directive

1. Relevant sectorial policy instruments regarding MSP implementation process

Several maritime activities are dependent on national, regional and international obligations. Considering Internal Waters and Territorial Sea, the States have almost total control and decision on what can happen in those areas. Concerning Continental Shelves, States can govern all the activities related to exploration, exploitation, conservation and management of living and non-living natural resources. However, when it comes to other activities such as navigation, laying of cables and pipelines, scientific research and fisheries, States have to be aligned with international conventions and regional obligations regarding sectorial activities. This takes greater importance when States have the intention to develop a Maritime Spatial Plan (MSP), especially considering a transboundary approach.

The tridimensionality of the ocean, its fluid nature and the movement of marine resources across administrative borders make imperative a transboundary approach. Several initiatives to promote transboundary MSP were taken around European waters, which were mainly promoted and supported by funded projects.

In 2006, the European Commission launched the Green Paper “Towards a future Maritime Policy for the Union: a European vision for the oceans and seas” referring, among others, to the necessity to develop new tools to manage our relations with the oceans, namely maritime spatial planning systems and common principles.

The Integrated Maritime Policy (EC, 2007) shows the European Commission view on maritime spatial planning as one fundamental tool for the sustainable development of marine areas and coastal regions, and for the restoration of Europe’s seas to environmental health.

The increase demand for ocean space, the need to manage the resulting conflicts, the development of offshore economic sectors (offshore energy, aquaculture, etc.), the necessity to integrate information and regional decision making, the need to a multi-sector management, the need to meet conservation objectives and also the objectives of each country (that could be conservation, economic development, maintenance existing uses, etc.) are the main reasons driving the growing need for MSP.

The given reasons and the policy instruments available draw the legal framework of the MSP.

In the international context, many agreements deserve highlight, namely the United Nations Convention on the Law of the Sea (UNCLOS), the Convention on Biological Diversity (CBD) and the Espoo Convention on Environmental Impact Assessment in a Transboundary Context (UNECE, 1991).

The UNCLOS (UN, 1983) does not explicitly refer to MSP but grants coastal states with necessary maritime duties, responsibilities and jurisdiction to engage MSP processes. The specific maritime zones (internal waters, territorial sea, archipelagic waters, exclusive economic zone and continental shelf) have

their own legal regime and consequently they set limits for national planning processes. The division of oceans into maritime zones is particularly important in the scope of MSP processes.

The Convention on Biological Diversity invites Parties, by Decision X/29, to raise efforts to *“apply marine spatial planning tools, as appropriate, in accordance with Parties’ national planning and strategies”* (CBD, 2016). The same Decision also addresses the MSP as an important tool to establish marine protected areas and integrate these areas with other human uses. The Parties also recognized that MSP facilitates the progress towards achieving the Aichi Biodiversity Targets in marine and coastal areas.

The ESPOO Convention, or Convention on Environmental Impact Assessment in a Transboundary context (UNECE, 1991), which entered into force in 1997, provides Environmental Impact Assessment procedures prior to a decision concerning activities that may cause a significant negative transboundary impact and highlights that Parties should notify and consult each other, in major projects that are likely to have significant adverse environmental impacts across borders.

The Strategic Environment Assessment protocol to the ESPOO Convention (also known as Kiev Protocol) sets a mandatory procedure for sustainable development and enlarges ESPOO Convention application. This protocol requires its Parties to evaluate the environmental consequences of official draft plans and programmes and fosters the public participation in government decision making.

In the European context, the maritime spatial planning is supported by some EU environmental instruments and a specific Directive (Directive 2014/89/EU) establishing a framework for maritime spatial planning, as part of the Integrated Maritime Policy, which provides a legal basis for national and transboundary maritime spatial planning initiatives. The Member States shall set up their maritime spatial plans up to 2021 and each plan must be reviewed at least every ten years and the requirements are mainly procedural rather the substantive content of the plans.

Plans and programmes likely to have significant environmental effects are subjected to a Strategic Environment Assessment (SEA). Within the European context the provisions of the Espoo Convention were transposed into EU law by the European Sea Directive 2001/42/EC, following the ratification by the EU of the Kiev (SEA) Protocol. The SEA Directive refers specifically to plans and programmes for fisheries, industry, energy, tourism and transport and those that require assessment pursuant to the Habitats Directive.

The Marine Strategy Framework Directive (MSFD, 2008/56/EC), the environmental pillar of the IMP, establishes a framework for community action in the field of marine environmental policy. MSFD requires Member States to achieve the good marine environmental status (GES) by 2020, applying an Ecosystem Approach and ensuring that human pressures are compatible with good environmental status. It is also a requirement that Member States cooperate where and when they share a marine region or sub-region and use existing regional structures for coordination purposes.

The inland surface waters, transitional waters, coastal waters (up to 1 nautical miles from the baseline) and groundwaters are managed under the Water Framework Directive (WFD, 2000/60/EC). The WFD

requires Member States to formulate their river basin management plans, based on the ecosystem-based approach considering hydrological units and not administrative boundaries. Besides their partial overlapping, WFD and MSP Directive should be coherent and their objectives aligned.

The Integrated Coastal Zone Management Recommendation (2002/413/EC) sets out a common principles including coherence of spatial planning across the land-sea boundary and calls on Member States to cooperate with their neighbouring countries.

Several projects and reports from the European Commission (as it is the Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU) set a list of guiding principles for MSP, to have the maximum performance and ensure the success of the initiative.

The most important Directives regarding nature conservation, Habitats (92/43/EEC) and Birds (Directive 2009/147/EC) Directives, were, since the beginning, key drivers for MSP development in Europe, fostering the identification and classification of Special Protection Areas (SPA) and Special Areas of Conservation (SAC), which constitute a network of protected areas across the European Union known as Natura 2000 Network for protection of habitats, animals and plants in both land and marine environment.

The Common Fisheries Policy (CFP), the European Union's instrument for the management of fisheries and aquaculture, created sets of rules for managing European fishing fleets and for conserving fish stocks. The CFP has in its genesis the concept of ecosystem-based approach to fisheries management. The sustainable management of fisheries in EU waters would benefit from coherent MSP.

The need for spatial planning is also acknowledged by the Commission in its Strategy for the sustainable development of European aquaculture (COM (2002) 511).

Concerning activities on the High Sea, the North-East Atlantic Fisheries Commission (NEAFC), a Regional Fisheries Management Organization, can impose restrictions in respect to fisheries activities.

The Regional Sea Conventions, like OSPAR (OSPAR,1992), represent an important platform to encourage and enhance transboundary MSP due to the dynamic and collaboration between Contracting Parties and the transboundary nature of the marine resources and activities.

The Bergen Declaration, signed in 2002 at the fifth North Sea Conference of Ministers, agreed on regional cooperation for MSP (Bergen Declaration, 2002). OSPAR was invited to explore the possibilities for further international cooperation in developing maritime spatial planning. NEAFC and OSPAR (2008) signed a Memorandum of Understanding that stated that they would cooperate regarding MSP and area management.

Considering the nature of the ocean itself and its mobile resources, which do not know about administrative boundaries nor legal frameworks, it is essential to address the transboundary

considerations and the interaction between neighbouring countries within their maritime spatial planning processes since marine resources and human activities are transboundary in nature.

The experiences on designing transboundary maritime spatial planning have been replicated, with different scales and scopes, throughout the world, mainly supported by scientific projects.

The European Commission Roadmap for MSP calls for *“cross-border cooperation and consultation”* and states that *“cooperation across borders is necessary to ensure coherence of plans across ecosystems”* (CEC, 2008).

It is also important to distinguish between transboundary activities and those built by national authorities but which are dependent on the interaction with other States.

In that perspective, the transboundary issues can be divided into:

- Management of shared resources;
- Transboundary activities (requiring transboundary movement like navigation, tourism and recreational activities or the use of maritime space under jurisdiction of other states, e.g., laying of pipelines and cables);
- Transboundary impacts resulting from national activities.
- Exploration of not shared resources in areas of national jurisdiction that could impact areas of jurisdiction of another state. These impacts can be environmental (addressed by Espoo Convention), economic or social.

2. Common and shared principles about coordination of sectorial policies in an MSP implantation process and transboundary context and in accordance with EBA

A transboundary approach requires looking to the overall national policies of the countries involved regarding environmental conservation priorities and the priorities regarding the economic development.

Between all European countries, there is a significant variance in the size methodologies, orientations, tools, goals and objectives in each MSP initiative.

Also, the actions of coordinating, consulting and informing in a MSP process demands different levels of engagement in a cross-border situation. Differences between national interests, governance structures, institutional arrangements and planning traditions are the main challenges in a transboundary approach. Indeed, both the different degrees of cooperation between authorities and the cultural and social contexts make addressing transboundary issues a very challenging task.

These differences require stakeholder engagement activities tailored to each context. Resulting from the TPEA project, a set of principles to guide stakeholders' engagement have been identified (Jay *et al.*, 2016):

- Inclusivity - include all those who are interested in participating;
- Equity - equal opportunity was given to everyone to voice their input and opinion;
- Flexibility;
- Transparency - the concept of the project should be communicated clearly to all parties and stakeholders;
- Integration - foster communication vertically and horizontally and within and across jurisdictions.

These principles foster a positive engagement of stakeholders enhancing their cooperation (for data provisions, identification of challenges and pressures, knowledge sharing and evaluations). Other aspects are more difficult to overcome since most of the times between neighbouring jurisdictions are at different stages of MSP and capacity and awareness amongst stakeholders could be at different levels.

Regarding the coordination of sectorial policies in a MSP process there are also key principles to enhance their effectiveness as well as the MSP process success, such as:

- Integration between all existing marine policies contributing to the improvement of the coherence among countries;
- Regional knowledge exchange, enhancing the connexion and coherence between policies;
- Coordination between and among stakeholders responsible for policies implementation;
- Vertical and horizontal cooperation among administrations, technical agencies and stakeholders;
- Knowledge of the implications and requirements for the various sectorial policies, regarding MSP¹.

With respect to SIMNORAT project, country partners have to join efforts to carry out a concrete, cross-border MSP cooperation between the three Member States and the relevant authorities and the coordination across sectorial policies implementation.

3. Coordination among the MSP process and sectorial policies

A questionnaire was sent among SIMNORAT project partners in order to analyse the coordination among the MSP process and sectorial policies. The answers result in the sum of what was found in literature

¹ <http://msp-platform.eu/faq/msp-sectors>

review within each country and their knowledge of the process. Therefore, they do not reflect the overall undergoing projects or processes led by the planning authorities and they cannot be seen as exhaustive. The results are summarized below.

3.1. How key principles of transboundary are being considered in your MSP process?

Principle 1: Integration with existing marine policies contributing to the improvement of the coherence among countries

Portuguese and French MSP processes join all binding policies (UNCLOS, CBD, IMO, OSPAR, Natura 2000, etc.) which cover, in a transversal way, their entire national maritime space, and that will, direct and indirectly, contribute to the improvement of the coherence among countries that signed those regulative norms.

Both countries are also aware about European Commission recommendations regarding the marine environment and maritime activities.

The key principles sustaining the Situation Plan (Portugal) and sea-basin strategy (France) are aligned with MSFD ones, whose final aim is to maintain or achieve the good environmental status in the European maritime space. Since each country has to develop its own Marine Strategy according with the region and sub-region where is placed, it is expected that their strategies are aligned.

Regarding the integration of the MSFD and the MSP Directive in Spain, the link was established since they were both transposed to the Spanish legal system. The MSFD was transposed by the law no. 41/2010, of December 29, of Protection of the Marine Environment. This law already mentioned the concept of MSP as one of the common guidelines to all marine strategies and it also established some criteria and objectives that MSP should consider in order to keep coherence with the Marine Strategies objectives, within the marine region.

Later, the MSP Directive was transposed by the Royal Decree 363/2017, of April 8, as regulatory development of the act mentioned before, which proves not only their integration but that MSP is legally subordinated to MSFD in Spain (being, a Royal Decree, a norm of lower rank).

Leaving aside the regulatory issues and focusing on more technical and procedural areas, the Law 41/2010, of December 29, created the Interministerial Commission of Marine Strategies (CIEM - for its initials in Spanish) under which was created the MSP-Working Group (GT-OEM-for its initials in Spanish) for the national process. Moreover, the knowledge and data to be used in the MSP plans will be produced by the research conducted under the Marine Strategies program.

In summary, considering the needed coherence of marine strategies in each marine region and the integration between them and MSP in Spain, it is expected that the plans will be coherent in their objectives along the marine regions in which Spain has jurisdictional waters.

Principle 2: Regional knowledge exchange, enhancing the connexion and coherence between policies

The Portuguese EMEPC (Mission Structure for the Extension of the Portuguese Continental Shelf) supported the elaboration of a geoportal with all marine available and dispersed data. This geoportal facilitates the access and contributes to the MSFD implementation, enhancing data sharing and research. This is a good example of centralization of marine data, which is accessible to all. SNIMAR geoportal is fed by information gathered from different public institutions and allows information sharing, contributing to the implementation and coherence on marine policies implementation.

Another good illustrative measure concerning the coordination among Member States concerning marine policies implementation are the European projects MarSP (about MSP in Macaronesia region) and MysticSeas (about MSFD in Macaronesia region). Both contribute to the regional implementation coherence, promoting marine resources sustainable use.

Portuguese and Spanish representatives also share insights about MSP within the European MSP Expert Group.

It is worth to note that there are European projects about marine data sharing that contribute to a regional knowledge. Some examples are:

- The EUCISE 2020 is a project on Security Research, which aims to achieve the pre-operational Information Sharing between the maritime authorities of the European States. EUCISE 2020 supports the development of the Blue Economy of the European Union and is a key innovation of the European maritime governance, is an element of the European Digital Agenda, and, finally, is a pillar of the European Action Plan for the European Maritime Security Strategy;
- The WISE-Marine is a web-based portal for sharing information on the marine environment at EU level. It makes available data and information products according to common standards, and contributes to better decision-making around conservation and sustainable use of the marine environment. WISE-Marine capitalizes on existing marine data, information and assessments at the national, sub-regional and European scale from EU Member States, Regional Sea Conventions and other EU marine information systems. It will provide a hub for environmental information in European seas in support of policy making and measuring progress towards achieving good environmental status as set out in the EU's Marine Strategy Framework Directive policy framework and other related policies;
- The European Marine Observation and Data Network (EMODnet) is a network of organizations

supported by the EU's integrated maritime policy. These organizations work together to observe the sea, process the data according to international standards and make that information freely available as interoperable data layers and data products.

A main gap identified by Portugal is the lack of forums and/ or workshops to raise awareness of Portuguese and Spanish administrations and stakeholders about the importance and the interlink between policies and the benefits of a jointly action aiming to improve the coherence between the two countries.

Concerning relationships with other Member States, France has organized some meetings have been conducted between countries as a starter of further discussion between countries regarding MSP national processes.

For Spain, since the process is still at the beginning, the fulfilment of this principle is supported by the Spanish collaboration in the SIM projects.

Principle 3: Coordination between and among stakeholders responsible for the policies implementation

Due to the different stages of Portugal and Spain MSP processes, the coordination is sometimes challenging. Regarding this, the European projects mentioned above and other like INTERREG projects take an important role, favouring and enhancing the coordination among responsible institutions for policies implementations. At least these projects pave the way and facilitate the coordination framework that could be adopted by authorities responsible for MSP implementation.

In Spain, despite of being in an early stage, an interministerial MSP working group was already created, where all ministries with interest in the marine environment are represented. This interministerial group exist in France too.

The main gap shared by SIMNORAT partners is that is missing a way to consolidate the networks established within the European projects. Since Maritime Spatial Plans development and implementation is a central administration driven process it is very difficult to consolidate and operationalize the coordination.

Principle 4: Vertical and horizontal cooperation among administrations, technical agencies and stakeholders

In Portugal, the elaboration of the Situation Plan implied an effort of coordination between the Portuguese central and regional administrations, as well as the consultation to technical bodies and institutions with responsibilities in the maritime space.

In addition, the Portuguese administration involved the stakeholders in the Situation Plan design, through the organization of sectoral working groups to know about their spatial demands – National vertical cooperation.

Looking to the transboundary dimension, a good example is the recognition by the Situation Plan (therefore by the Portuguese government) of possible transboundary MPAs, which final aim is the marine protection, the coherence on management measures and a co-management action, illustrating in a positive way the willingness to cooperate – Cross-border horizontal cooperation.

Another example is the collaboration in research projects between IPMA (Portuguese Institute for the Atmosphere and Sea) and IEO (Spanish Institute of Oceanography) – Cross-border horizontal cooperation between technical bodies.

It had been signed the Memorandum of Understanding on Cross-border Logistics between Portuguese and Spanish administrations. This cross-border cooperation will link the ports of southern Portugal to the Iberian Peninsula, south-west Europe and Europe, completing that of the Atlantic Corridor in the TEN-T trans-European transport network – Cross-border horizontal cooperation between national administrations.

In the case of France, the elaboration of the first phase of the sea-basin strategy document implied an effort of coordination between the French central and regional administrations and the consultation of technical bodies and institutions with responsibilities in the maritime space.

In parallel with the institutional process, a consultation with the large audience was organized from January to March 2018 (mandatory procedure, decision of the French «national commission for public debate»). Citizens could contribute according two ways:

- A participatory website: www.merlittoral2030.gouv.fr
- 20 local workshops.

In addition, SIM projects (SIMNORAT, SIMWESTMED and SIMCELT) enhance sharing of information and methodology among Spain, Portugal and France.

One of the main gaps is the recognition of the outputs and outcomes of these projects could and should be capitalized and shared between and among national administrations and stakeholders.

In Spain there are two forums of national cooperation (related to MSP implementation) at two different levels: the Interministerial Commission of Marine Strategies (CIEM) and the MSP-Working Group (GT-OEM) – National vertical cooperation

The first one is formed by representatives of the different ministries with competences and/or interests in the marine area with rank of Director-General, while the second one has members from the ministries

of a more technical level, and includes representatives of the main technical agencies with competences in the sea, CEDEX and IEO – National horizontal cooperation

Moreover, in the framework of the Marine Strategies, there were created Monitoring Committees for each Marine District, which represent an important forum for discussion between the central government and the coastal Autonomous Communities, and have proved their usefulness in coordinating the different phases of Marine Strategies – Coordination central government and regions

Consultations with stakeholders and with neighbouring countries in a transboundary context is expected but not developed yet.

Principle 5: Knowledge of the implications and requirements for the various sectorial policies, regarding MSP

For Portugal and France, since the sectorial policies were transposed into national law and/or national strategies, and most of principles are coincident with Portuguese and French MSP principles, their requirements and implications are assured.

For Spain the knowledge of the implication of the various sectorial policies are assured by the Interministerial MSP-Working Group.

A general gap is that all these principles are unlikely to be implemented at the same stage. The time constraint could prevent their application in order to comply with deadlines, which could be the case of Spain, that is still in the very early stage of the MSP process development.

4. Recommendations and guidelines to achieve an optimal coordination among the policy instruments

MSP is an instrument to improve decision-making and in parallel has the objective to balance sectoral interests, achieve sustainable use of marine resources and optimize the use of marine space.

The supporting background of this task is the Integrated Maritime Policy as it is the European Commission approach to address and coordinate all policies related with maritime affairs and an attempt to integrate the ecological and economic resources in a holistic way.

Maritime sectorial policies are used to define their own development objectives, which follow mainly a single-sector related interest, and most of the times are not coordinated with objectives of other sectorial policies.

One of the first recommendations is that it is important to take both the horizontal coordination (between sectorial policies) and vertical coordination (between different governance levels) into account.

In addition, the marine and maritime management is completely dependent on international cooperation through well-functioning multilateral organizations.

Regarding the transboundary dimension of the MSP commons, standards between neighbouring countries is another important issue to be considered but this requires relevant normative framework, as well as the cooperation and coordination between and among the various levels of decision-making.

Another key recommendation is the promotion and fostering of the Sea Basin Strategies, in this specific case, the Atlantic Strategy and its Action Plan, since this Strategy contributes to the success of the Integrated Maritime Policy and it is focused in the promotion of maritime spatial planning as a tool.

In general, the coordination of all relevant sectorial policies depends also on the coordination and cooperation between the departments that largely work independently of one another.

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