

The definition and application of MSP by the OSPAR Convention

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Acronyms

CIEM	Interministerial Working Group under the commission on Marine Strategies [Comisión Interministerial de Estrategias Marinas, in Spanish]
DGRM	General Directorate for Marine Resources [<i>Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos</i> , in Portuguese]
DSF	Strategic Sea Basin Documents <i>Document Stratégique de Façade</i> , in French]
EEZ	Exclusive Economic Zone
GES	Good Environmental Status
ICCAT	International Commission for Conservation of Atlantic Tunas
ICG	Intersessional Correspondence Group
IMO	International Maritime Organization
MPA	Marine Protected Area
MSFD	Marine Strategy Framework Directive
MSP	Maritime Spatial Planning
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North East Atlantic Fisheries Commission
PSOEM	Situation Plan [<i>Plano de Situação do Ordenamento do Espaço Marítimo Nacional</i> , in Portuguese]
PSSA	Particularly Sensitive Sea Areas
TUPEM	Private use titles [<i>Títulos de Utilização Privativa do Espaço Marítimo</i> , in Portuguese]
UNCLOS	United Nations Convention on the Law of the Sea

1. Literature review

The convention for the Protection of the Marine Environment of North-East Atlantic, or OSPAR Convention (OSPAR, 1992), has been signed in 1992 by fifteen European Countries and the European Union and it is divided among five regional areas. OSPAR Convention does not explicitly refer to Maritime Spatial Planning (MSP) however, it calls for the need for protection of marine areas by means of appropriate programs and sets out common objectives and principles to which Member States must adhere.

For OSPAR Contracting Parties, the definition of what spatial planning is has not been yet developed therefore, it is essential to agree on common understanding between Contracting Parties of what are the main elements of maritime spatial planning.

The political commitment for MSP by OSPAR and the cooperation in the process of maritime spatial planning in the North Sea and the potential conflicts between the requirements for marine restoration and conservation and human activities were addressed in the Bergen Declaration, assigned in 2002, in the Fifth International Conference on the Protection of the North Sea. The Declaration invites OSPAR:

- to improve arrangements for the exchange of information and national experiences in the spatial planning processes of the North Sea States;
- to investigate the possibilities for further international cooperation in planning and managing marine activities through spatial planning of the North Sea States taking into account cumulative and transboundary effects; and
- to consider the possibilities for improving environmental assessment of human activities in the marine environment, taking into account existing legal requirements.

The questions about MSP, specially the development of spatial planning tools for maritime area, had been addressed by the First Joint Ministerial Meeting of the Helsinki and OSPAR Commissions (OSPAR, 2003), Bremen June 2003, where a Intersessional Correspondence Group (ICG) Working Group on MSP had been established. This working group is designing a set of guidelines to implement MSP in the North Atlantic Region (HELCOM/VASAB, OSPAR and ICES, 2012) and in which all Contracting Parties agreed to pursue strategies that would promote cooperation in spatial planning between competent authorities. These guidelines and strategies still in preparation.

In order to organize and manage an area it is essential to have the knowledge about the extent of that area. The OSPAR maritime area is defined as *“the internal waters and the territorial seas of the Contracting Parties, the sea beyond and adjacent to the territorial sea under the jurisdiction of the coastal state to the extent recognized by international law, and the high seas, including the bed of all those waters and its sub-soil”* (OSPAR, 1992), within a defined limits. Under the OSPAR maritime area prevails international agreements (binding and non-binding) that, without prejudice of Contracting Parties, have to be fulfilled.

The overarching instrument for ocean governance, the United Nations Convention on the Law of the Sea, UNCLOS (United Nations, 1983) and its provisions have to be applied in the OSPAR Maritime Area.

Also the International Convention for the Prevention of Pollution from Ships (IMO, 2011) modified by the Protocol of 1978 relating thereto and by the Protocol of 1997, which prohibits release and disposal of garbage and other domestic wastes from ships.

A non-binding, but important action is the Particularly Sensitive Sea Areas (PSSA), which are designated by the International Maritime Organization (IMO) due to its significance for recognized ecological, socio-economic, or scientific reasons and which may be vulnerable to damage by international maritime activities (IMO, 2005). The Western European Waters, Part of the OSPAR Maritime Areas, are the largest of the PSSAs. They extend northwards from the northern coast of Scotland, out into the Atlantic and south almost to the southernmost tip of Spain. It came into force in 1 July 2005 and in that areas all oil tankers of more than 600 tonnes deadweight and carrying cargoes of heavy crude or fuel oils or bitumen and tar and their emulsions are obliged, under the mandatory ships reporting system, to report when they enter into the area, leave a port within the area, deviate from their original declared route and leave the area covered by the PSSA.

Fisheries in the OSPAR area are regulated through a combination of different arrangements: national policies and regulations, the EU Common Fisheries Policy, which is the European instrument for the management of fisheries and aquaculture, bilateral and multilateral agreements between countries with shared stocks, and measures adopted by the three regional fisheries management organisations: the North East Atlantic Fisheries Commission (NEAFC), the International Commission for Conservation of Atlantic Tunas (ICCAT), and the North Atlantic Salmon Conservation Organization (NASCO) (OSPAR, 2010).

It must be highlighted that a Memorandum of Understanding between OSPAR and NEAFC was signed in 2008 and it addresses that *“NEAFC and the OSPAR Commission will cooperate regarding marine spatial planning and area management”*.

The Natura 2000 sites (Special Protection Areas designated under the Habitats Directive (Directive 92/43/EEC) and the Special Protection Areas, designated under the Birds Directive (2009/147/EC) were also designated throughout the OSPAR Maritime Area.

Regarding Marine Protected Areas (MPA), OSPAR has its own MPA Network, which covers 5.9% of the OSPAR Maritime Area. From that percentage, 16.7% are inside coastal waters, 2.3% within the Exclusive Economic Zone (EEZ) of OSPAR's countries and 8.9% are in areas beyond national EEZs.

2. MSP in OSPAR region – Guiding principles

Among the country partners of SIMNORAT project (France, Portugal and Spain) there are different approaches and stages regarding the maritime spatial planning processes.

Spain has transposed the Directive and created an Interministerial Working Group under the commission on Marine Strategies (CIEM). In Portugal, the MSP process is ongoing and the geographic approach includes all Portuguese maritime zones (territorial sea, EEZ and continental shelf). In France, the MSP process is ongoing and four maritime spatial plans will be established on the all French sea basins (Eastern Channel and North Sea, Northern Atlantic and Western Channel, Southern Atlantic, Mediterranean).

Regarding the principles that should guide the MSP process most of the OSPAR Contracting Parties stated that the Sustainable Development should be the most important one, taking into account inter alia, the social, economic, cultural, and ecological functions of the marine environment, even if each of the OSPAR Contracting Parties attributed different weights to such functions (OSPAR, 2009)

OSPAR recommends further cooperation between Contracting Parties when developing their maritime spatial plan. OSPAR Biodiversity's Series publication (OSPAR, 2009) also states that OSPAR should continue working on the development of a joint regional maritime spatial planning perspective. This might include the development of OSPAR-region specific, tailor-made principles for maritime spatial planning. Questions as transboundary and regional aspects should be also identified by the organization. The same document refers that OSPAR should develop mechanisms for early transnational consultation, exchange of information on difficulties experienced and topics where Contracting Parties can cooperate on MSP.

The main strategic direction defined by the Strategy of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic 2010–2020, is the development and implementation of different tools, namely maritime spatial planning and others, like impact assessment and socio-economic assessment, whose goals are to reduce the negative impacts that affect the marine environment and promote the sustainable use of the ecosystems goods and services. For the implementation of the strategy (OSPARb, 2010), OSPAR also intends to develop appropriate measures, as **guiding principles**, in line with the Ecosystem Approach, to facilitate maritime spatial planning in the OSPAR maritime area, taking into account:

- Cooperation in transboundary issues arising from MSP;
- Additional mechanism for transnational consultations on MSP;
- Region specific, tailored-made approaches to applying MSP to support Ecosystem Approach;
- Exchange of best practices and experiences regarding MSP.

OSPAR represents 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.

3. Gap analysis regarding the main characteristics of “MSP in OSPAR” for each SIMNORAT country

A questionnaire was sent among SIMNORAT project partners in order to analyse the main characteristics of “MSP in OSPAR” for each SIMNORAT country. The answers result in the sum of what was found in literature 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. Coordination of OSPAR with MSP process

Question 1: Does your country coordinate OSPAR with MSP process at national level or sub-national level? How your country deals with OSPAR’s aims in the MSP process?

The Portuguese MSP (hereafter Situation Plan or PSOEM) has been coordinated by General Directorate for Marine Resources (DGRM) and is now close to the end. Regarding the coordination of OSPAR with Situation Plan, the Portuguese government does not directly consult the OSPAR’s Convention secretariat, however in the planning process the OSPAR guidelines and OSPAR MPAs, have been taken into account.

As an example, in the case of the aquaculture sector, the Situation Plan defines potential aquaculture new areas ensuring that they are not coincident with defined OSPAR’s priority habitats.

The Situation Plan also used the good practices formulated by OSPAR for several activities. It is the case of the immersion of dredged materials, whose sector-guiding sheet (the PSOEM has guiding sheets for several maritime sectors of activity) calls to the OSPAR Guidelines for the management of Dredged Material. It also refers that the national authority of dredged materials also has to follow and send an annual report to OSPAR Commission with all activities carried in Portugal during the year.

Considering the Scientific research activity, PSOEM does refer the OSPAR’s Code of Conduct for a responsible scientific research in the deep sea. This document establishes the procedures about the activity in order that the promoter carries its activities respecting and preserving the areas and considering the possible negative impacts.

The exploration activity of non-fossil energy it is also committed with the best practices established by OSPAR Commission for this activity. These are some examples of activities that calls for OSPAR’s guidelines and best practices.

Which concerns to private use titles (TUPEM) for the use of the maritime space, it is foreseen a previous consultation to legal competent authorities before the authorization. The DGRM, only approves and authorize the activity after the revision of the consultation’s results and the identification of incompatibilities or/and synergies regarding the private use for leisure, sports and

tourism with some easements and restrictions, namely nature conservation. This means that the OSPAR MPAs and/or sensitive habitats will be taken into account.

Another good example illustrating the Portuguese MSP commitment with the OSPAR's aims is the recognition of a possible logic ecosystem connectivity between Vigo Seamount (in the Portuguese EEZ and a possible future MPA to be designated by the Portuguese government) and the Galician Bank MPA (in the Spanish EEZ), in accordance with the ecosystem approach and precautionary principles, two of the aims/principles of OSPAR Convention.

Within the French MSP process, it was taken into account OSPAR's objective through Marine Strategy Framework Directive (MSFD) implementation. More specifically, the Good Environmental Status (GES) evaluation was made in accordance with OSPAR criteria and indicators, fostering coherence of environmental policies between regional and national scale. Several MSFD indicators are directly taken from OSPAR, others are partly similar (either assessment methods or threshold). These indicators are designed:

- To evaluate the state of biological diversity at sub-national level (marine sub-regions) : seals or cetaceans abundance and distribution, marine birds abundance and breeding success, recovery in the population abundance of sensitive fish species, condition of benthic habitat communities.
- Pressures from human activities were evaluated following the same coherent approach: non-indigenous species, plastics particles in fulmar stomachs.

The OSPAR priority habitats and species are also considered through the environmental stakes evaluation. This evaluation is the basis for the setting up of MSFD environmental targets and following program of measures.

On the other hand, OSPAR MPAs, which also have a national designation, are taken into account into the planning process. Either by directly integrating their boundaries into the plan or by taking into account their management objectives for zoning.

In the case of Spain, the MSP process is in a very early stage. So far, there has not been established any consultation with the OSPAR Secretariat regarding the process. However, the relation between OSPAR and the MSP process is intrinsic, the MSP process will feed from Marine Strategies information and objectives, whose monitoring program take as reference OSPAR protocols, obligations, indicators and objectives. Moreover, as in the French case, OSPAR MPAs, which also have national designation, will be taken into account in the MSP process.

3.2. Guiding principles in the MSP process

Question 2: Regarding the literature review principles guidelines (Cooperation in transboundary issues arising from MSP; Additional mechanism for transnational consultations on MSP; Region specific, tailored-made approaches to applying MSP to support Ecosystem Approach; Exchange of best practices and experiences regarding MSP) do you recognize them in the MSP process implementation of your country? Describe how. Which are the main gaps and shortcomings?

In Portugal, the Situation Plan takes into account the marine ecosystems dynamics recognizing the need of a transboundary approach.

The Situation Plan does also takes into account the maritime occupation occurring in the surroundings of the national maritime space regarding the existing infrastructures (cables), and easements and conditioned areas like MPAs or habitats and geologic resources distribution. The plan also considers a possible transboundary MPA designation between Portugal and Spain, which is one of the SIMNORAT case studies.

Objectively, regarding the four specific principles stated in the literature review only the region specific and tailored made approaches have been applied during Situation Plan process. Although the Situation Plan is single for the entire Portuguese maritime space, it adopted the subdivisions established for the implementation of the Marine Strategy Framework Directive: subdivision of the Mainland, subdivision of the Azores, subdivision of Madeira and subdivision of the Extended Continental Shelf, due to their hydrographic, oceanographic and biogeographic features.

The other three main principles (Cooperation in transboundary issues arising from MSP; Additional mechanism for transnational consultations on MSP; Exchange of best practices and experiences regarding MSP) are mentioned in the Situation Plan however, any mechanism has been created or is foreseen to be in practice during the Situation Plan implementation.

It is worth to note that despite there is not a specific mechanism for transnational consultation on MSP, the Portuguese responsible institution for the process made available a website with the "Reference Situation" showing where maritime activities can take place. This allowed the interested parties to participate and contribute in the planning phase with the objective to better allocate maritime activities to marine spaces.

France is deeply involved in several projects regarding transboundary MSP (SIMNORAT, SIMWESTMED and SIMCELT) and it is also involved in the OSPAR MSFD working group contributing to the Cooperation in transboundary issues arising from MSP.

Additional mechanism for transnational consultations on MSP concerning the transnational consultations France organized informal transnational workshops with national authorities (Italy, Monaco, Spain, Portugal and neighbouring countries of the Channel and North Sea) in 2018 to inform about the on-going process in France. The French authorities would also plan to organize more workshops to present the draft Strategic Sea Basin Documents (DSF).

Regarding the principle region specific, tailored-made approaches to applying MSP to support Ecosystem Approach, the French planning process was carried out through 2 subdivision into the OSPAR IV region: South Atlantic and North Atlantic and western channel. Down to this 2 main areas, a second step of zooming in is done by the identification of local territories and the setting up of "vocation areas" hosting different objectives regarding their contexts and stakes.

For France the principle, "Exchange of best practices and experiences regarding MSP" is tackled through involvement in SIM Projects of the technical institutions also involved in MSP

process implementation at national level. It results in indirect and/or future valuable inputs and improvements of this implementation.

In the Spanish MSP process there has not been transboundary cooperation events, although the competent authority did participate in transnational consultations organized by France. On the other hand, technical institutions that are part of the process as CEDEX and IEO are working in SIMNORAT and SIMWESTMED as well as they did in the TPEA project, with the MSP Authority (the General Sub-Directorate for protection of the Sea) in the Steering Committee. It is not also foreseen, however at this point, any additional mechanism for transnational consultations on MSP.

As it was done in Portugal, the Spanish MSP process will follow the MSFD organization for that country, being a good illustration of a region specific, tailored-made approach. The Spanish waters were divided in five Marine Districts from which, the North-Atlantic District is part of the SIMNORAT area. Each Marine District has their own Marine Strategy defining objectives and actions and no activity could be approved if they are not compatible with these objectives. However the legal system also foresees that the Government can approve common guidelines to all marine strategies in order to ensure the coherence of its objectives, in aspects such as the planning of the activities that are carried out or may affect the marine environment.

In the case of Spain, not formal exchange of best practices and experiences has been made, however, the participation in projects like SIMNORAT, SIMWESTMED and TPEA can be considered as a way of informal exchange. It could be said that they contribute indirectly to the national process through capacitating the public institutions involved in it, for instance. They also provide the appropriate context for the initial approach of stakeholder's relation with the concept of MSP in Spain.

3.3. OSPAR contribution to the national MSP process

Question 3: Does/did the OSPAR convention facilitates the MSP process in your country, namely in the transboundary context?

For Portugal and Spain, the OSPAR convention does not facilitate neither hampered the national maritime spatial planning. In the case of France, it can be considered that OSPAR facilitates the French MSP process since it is coupled with MSFD implementation.

4. Conclusion

The results from the answers show that OSPAR Convention does not have a direct role on MSP implementation neither a legal framework for MSP. Despite this fact, OSPAR has an important contribution setting baseline information and guidelines in key aspects to the success of the development of a joint regional maritime spatial planning perspective, especially in what concerns the development of OSPAR region specific, tailor-made principles for maritime spatial planning. In this context, OSPAR establishes guidance towards the ecosystem-based approach through the impacts assessment of different activities and MSFD monitoring protocols, obligations, indicators and objectives. OSPAR also develops mechanisms for early transnational consultation on spatial plans highlighting the interactions that could promote integration, early stakeholder involvement and the

introduction of MSP by all Contracting Parties. The benefit of the OSPAR proposal on a transboundary consultation procedure is that it creates the opportunity for the OSPAR Contracting Parties to comment on the environmental as well as on the social and economic effects of the proposed maritime spatial plans of each other.

OSPAR is also actively involved in, and supportive of, initiatives and projects in MSP undertaken by the European Commission under the Integrated Maritime Policy, for example pilot projects and workshops.

Therefore, in light of the transboundary nature of marine resources and activities as well as the importance of cross-border collaboration between neighbouring states, regional sea conventions such as the OSPAR Commission, serve as an efficient platform to encourage, facilitate a regional seas MSP approach, and provide comprehensive regional marine perspectives in cross-border cooperation, which is critical to sustainable development.

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