

# SEA USE PLANNING SYSTEM AND MANAGEMENT SYSTEM OF THE SEA SPACE – GERMANY

(blue print prepared by Dipl. Ing Katarzyna Scibior, s.Pro)

## 1. General information

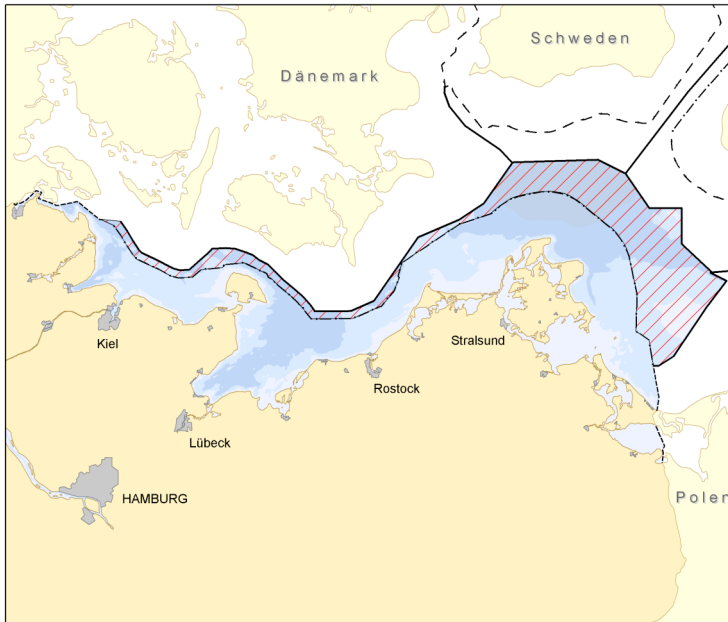


Fig. 1 German Baltic Sea EEZ

German sea waters include the territorial sea (12-sea mile zone) and the Exclusive Economic Zone (EEZ), which is an international territory managed by Germany.

The German EEZ is split into a narrow stripe of 4.500 km<sup>2</sup> on the Baltic Sea (Fig. 1.) and a bigger patch of 28.600 km<sup>2</sup> on the North Sea (Fig. 2).

Light blue coloured on the Fig. 1 and 2 are the territorial waters of the coastal federal states of Germany. On the North Sea these are Lower Saxony, Hamburg, Bremen (both city-states) and Schleswig-Holstein. On the Baltic Sea these are the federal states of Schleswig-Holstein and Mecklenburg-Vorpommern.

The intensity of use in the German sea space is relatively high, with growing tendencies. Especially the shipping traffic and the associated harbour development is expected to increase rapidly.

NATURA 2000 areas were notified by Germany to the Commission in 2004 on the basis of the EU Habitats and Birds' directives. Currently 31% of the EEZ and 38% of the territorial waters are covered by NATURA 2000 sites.

German sea bottom is covered by a dense network of telecommunication cables. In the North sea several pipelines for gas are laid, three of them (Norpipe, Europipe 1 and 2) have their landfall point in German harbours. Also in the Baltic new gas pipelines are planned. New off-shore uses such as energy generation create additional demand for cables and pipelines.

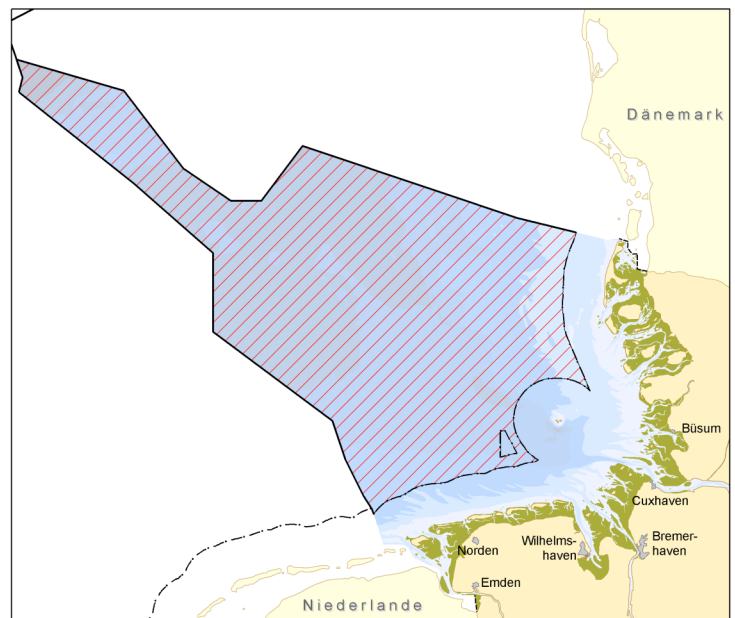


Fig. 2 German North Sea EEZ

A relatively new sea-use with much potential for Germany are the off-shore wind parks. 20 sites have been recently approved in the German EEZ, other approval procedures are running. In the coastal sea of Mecklenburg-Vorpommern and Schleswig-Holstein smaller wind parks have been licensed. Other relevant uses are sand dredging for artificial nourishment of the beaches, military training, recreation and fishery.

## PLANNING

### 2. Administrative organisation of sea-use planning

Unlike most other countries, in Germany the significant administrative and legal borderline for sea use planning is not between land and sea, but between the 12 sea mile zone and Exclusive Economic Zone (EEZ).

The 12 smz of the German sea area are within the competence of the coastal states (*Bundesländer*) and in particular their ministries responsible for spatial planning. For these areas the 'ordinary' terrestrial spatial planning system is extended.

The German EEZ is entirely under responsibility of the federal government, represented by the Federal Ministry of Transport, Building and Urban Affairs (*Bundesministerium für Verkehr, Bau und Stadtentwicklung*, short *BMVBS*). Its executive arm responsible for management in the EEZ (a.o. permit issuing, cartography, navigation support) is the Federal Maritime and Hydrographic Agency (*Bundesamt für Seeschifffahrt und Hydrographie*, *BSH*). In terms of sea use planning in the EEZ, the *BMVBS* provides the legislation, carries out the approval process with other ministries and neighbouring countries. The *BSH* drafts the plan and carries out the preparatory procedural stages, particularly the Strategic Environmental Assessment (SEA) and the public participation.

The German Federal Agency for Nature Conservation (*Bundesamt für Naturschutz*, *BfN*) is the authority responsible for the designation and management planning of NATURA 2000 sites in the EEZ on behalf of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (*Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit*, *BMU*).

### 3. Sea-Use Planning Legislation

#### 3.1 Sea-Use Planning Legislation in the 12smz

In Germany there is no specific legal act dealing with sea use planning. Sea use planning is incorporated into the federal Spatial Planning Act<sup>1</sup> of 1998, last updated in 2006 (*Raumordnungsgesetz*, in short *ROG*).

Sea-use planning in the 12 smz is additionally ruled by the state spatial planning legislation of the federal states, eg.:

- Mecklenburg-Vorpommern State Planning Act (*Landesplanungsgesetz Mecklenburg-Vorpommern*, *LPIG-MV 1998*),
- Schleswig-Holstein State Planning Act (*Landesplanungsgesetz Schleswig-Holstein*, *LPIG-SH 1996*)
- Lower Saxony Spatial Planning Act (*Niedersächsisches Gesetz über Raumordnung und Landesplanung*, *NROG 2007*)

As indicated above, Germany is a federal republic of sixteen states (*Bundesländer*). They are entitled to produce their own legislation, are however at the same time subject to legislation of the federal government in certain specific areas. Federal legislation is either directly binding or binding with framework character, i.e. to be concretised by the *Bundesländer* with more detailed regulations.

Until recently the *ROG* was a good example of such **framework law**. It laid down the all-German principles and objectives of spatial planning thus providing the framework, within which the *Bundesländer* created the legal basis for spatial planning within their respective areas, as long as they were in line with the federal spatial planning law.

Since the Federalism Reform of 2006, spatial planning has been proclaimed a sole state-affair, and thus subject of the so-called **concurrent legislation**. The new federal *ROG* planned for

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<sup>1</sup> All terms translations according to COMMIN BSR spatial glossary ([www.commin.org/en/bsr-glossaries](http://www.commin.org/en/bsr-glossaries))

end of 2008 will have a guiding character only, instead of providing binding objectives for the federal states. The *Bundesländer* have been thus given the **right of exemption** from provisions the federal ROG<sup>2</sup>. In this way the traditional fixed hierarchy of the German spatial planning system has been destabilised and important co-ordination mechanism on the federal level will be missing.

The Federal Building Code (*Baugesetzbuch, BauGB* last updated in 2006), is the basis for spatial planning at the most local level i.e. urban planning (*Bauleitplanung*) which is without relevance for sea use planning and therefore will not be further elaborated.

The authorities responsible for sectoral planning, as well as other public bodies are involved in the plan preparation procedure at every level. The binding effects resulting from this are defined in the Federal Regional Planning Ordinance (*RoV*) and the Federal Building Code (*BauGB*). The strategic environmental assessment, as defined by *Directive 2001/42/EC* (which by the way must be performed also to evaluate the environmental effects of state development programmes and regional plans as well), is ruled by the Act on Environmental Impact Assessment (*UVPG 2005*).

Other legal acts of relevance for sea-use planning are the Federal Zoning Ordinance (*BauNVO 1990*) and the federal and state nature conservation acts (*NatSchG*) (read more in section 14).

Planning principles and objectives as well as the right of designation of special areas stated in the *ROG* apply both to terrestrial and marine spatial planning, therefore deserve a closer look at this point.

- **Principles of spatial order** (*Grundsätze der Raumordnung*): general statements describing the intended development, organisation and protection of areas as standards to which the subsequent judgements and policy papers have to obligatory comply.
- **Objectives of spatial order** (*Ziele der Raumordnung*): binding standards in the form of texts or drawings in regional plans which are governed by or can be reconstructed on the basis of area-specific or functional features and which have been finally decided upon by state authorities responsible for regional or subregional planning

The guiding principle is sustainable spatial development that harmonises the social and economic with ecological functions of space and steers it towards a balanced development of the greater region. In this process, the natural resources must be protected and ‘developed’ i.e. improved, the operational conditions for economic development must be created and the possibilities for shaping spatial use must be secured.

However, in the new planned federal *ROG* the principles of spatial order will be replaced with ‘guidelines for spatial order’ (*Leitbilder der Raumordnung*) and will not be legally binding for the federal states planning. Similarly, exemptions from the objectives will be allowed for a good reason.

Next important instrument of the German spatial planning system, also applicable on the sea, is the possibility of designation of special areas:

- (1) **Priority areas** (*Vorranggebiete*): intended for certain spatially significant functions or uses and excluding other uses in this area where inconsistent with the priority functions, uses or objectives of regional planning. Priority areas of different types are only allowed to overlap where this does not give rise to conflicts of use.
- (2) **Reserve areas** (*Vorbehaltgebiete*): where special importance is to be attached to certain functions or uses when compared with competing spatially significant uses.
- (3) **Suitable areas for development** (*Eignungsgebiete*): particularly recommended for certain uses, such as wind farms. The implication of such a designation, is that these uses will not be permitted outside the suitable areas. This is a difference to priority and reserve areas, where a certain use is granted privileged status over others without be-

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<sup>2</sup> BMVBS online

ing prohibited outside the designated area<sup>3</sup>.

As early as 2001, a decision of the Conference of the Federal and state ministers responsible for regional planning (*MKRO*) requested the German coastal states to extend the scope of their state spatial planning to Germany's territorial sea (12 sea miles zone) and to adapt their regional planning objectives and principles to the specific conditions at sea. This laid an important foundation for integrated offshore/onshore planning with particular regard to available surface area and competition between uses.

Within the framework of **United Nations Convention on the Law of the Sea (UNCLOS)** the planning targets and principles for the EEZ have been produced, concerning:

- economic activities and scientific research,
- safety and efficiency of shipping
- protection of the marine environment

In addition, important recommendations concerning Maritime Spatial Planning and ICZM in the Baltic Sea were provided by the INTERREG project **BaltCoast**, to which Mecklenburg-Vorpommern was a lead partner.

The § 18a of the *ROG*, amended in 2004, rules the spatial planning in the German EEZ.

- (1) "The Federal Ministry of Transport, Building and Urban Affairs (BMVBS) settles the objectives and principles of spatial order for the EEZ, taking into consideration the economic and scientific use, the safety and efficiency of shipping and for the protection of the marine environment.
- (2) The Federal Maritime and Hydrographic Agency (*Bundesamt für Seeschifffahrt und Hydrographie* in short BSH) carries out with permission of the BMVBS the preparatory measures for a sea use plan, in particular the Strategic Environmental Assessment and public participation. The BMVBS establishes the cross-border cooperation.
- (3) When, in accordance with (1), priority areas for wind parks are settled as principle of spatial order, their approval process in relation to the location choice and SEA is still a subject to a approval procedure due to the Marine Facilities Ordinance (*Seeanlagenverordnung, SeeVO*)"<sup>4</sup>

#### 4 Plans

Besides the designation of special areas, the most important instrument for implementation of the above-mentioned all-German spatial order principles prescribed by the Federal Spatial Planning Act (ROG) is the quite sophisticated hierarchical system of correlated spatial and regional plans. Although there exists no single plan on federal level, by law the entire territory of Germany is covered by some sort of plans. The most important plans in context of sea-use planning are:

- The **state development programme / plan** (*Landesentwicklungsprogramm, -plan*<sup>5</sup>, LEP) is the key planning instrument on the *Bundesland* level. It covers the entire state territory and through the definition of the state spatial planning goals both in text and graphic form, it is the basis of all subsequent planning in the given state.

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<sup>3</sup> ROG 2004 Art. 7 § 4

<sup>4</sup> ROG 2004 §18a translation and simplification by K.S.

<sup>5</sup> Different terms are used by some of the *Bundesländer* e.g. 'Landesraumordnungsprogramm' in Lower Saxony or 'Landesraumentwicklungsprogramm' in Mecklenburg-Vorpommern

- The **regional plan** (*Regionalplan*<sup>6</sup>) is drawn for defined sub-regions within a state. Regional plans are drawn up on the basis of the state development plan. The most important purpose of regional plans is to set concrete spatial planning goals for the given region. City-states of Bremen, and Hamburg are not required to draw up regional plans.

Further two kinds of local plans will be mentioned here, which are important for terrestrial planning, but not for sea-use planning:

- The **preparatory land-use plan** (*Flächennutzungsplan, F-Plan*) is drawn for the whole territory of one or more municipalities. It is only internally binding.
- The **binding land-use plan** or local development plan (*Bebauungsplan, B-Plan*) is the legally binding plan for parts of the municipal territory, implementing the regulations of the *F-Plan* by creating direct regulations with for the utilisation of parcels. It determines a.o. the type, height and other parameters of building structures.

Parallel to the above-listed spatial planning instruments, the peculiarity of the German planning system is the 1976 introduced **landscape planning** (*Landschaftsplanung*). It is a cross-sectional planning instrument for attaining the goals of nature conservation and landscape management in both settled and natural areas. The Federal Nature Conservation Act (*Bundesnaturschutzgesetz, BNatSchG*), which rules landscape planning requires to describe and assess the current and desirable future state of nature and landscapes and to lay down the necessary measures to be taken, both text and thematic maps, e.g. on soil, climate, water conditions, flora and fauna etc. The provisions of the landscape plans have to be integrated into the spatial plans of the respective level. Full account of landscape plans has to be taken while weighing public against private interests in day-to-day decision-making.

As like comprehensive spatial planning, landscape plans of the following three levels cover the entire country territory:

- (1) **Landscape programme** (*Landschaftsprogramm*) covers the entire territory of a state
- (2) **Landscape outline plan** (*Landschaftsrahmenplan*) covers sections of the state territory (regions)
- (3) **Landscape plan** (*Landschaftsplan*) covers the territory of one municipality.

Level	Scale	Overall planning	Landscape planning
<b>Federal + EEZ</b>	1: 400 000	<i>Spatial plan for the EEZ</i>	-
<b>Bundesland + 12smz</b>	1: 200 000	<i>State development programme</i>	Landscape programme
<b>Part of Bundesland</b>	1: 100 000	<i>Regional plan</i>	Landscape outline plan
<b>Local</b>	<1: 50 000	Preparatory land-use plan	Landscape plan
	<1: 10 000	Binding land-use plan	Green structures plan

Tab. 1 Hierarchy of spatial plans in Germany, with indication of sea-use-plans

Landscape plans and programmes are relevant for the 12 smz, in combination with the adequate spatial plans and programmes (see table 1). Although in the EEZ there is no obligation of a landscape plan, the German Federal Agency for Nature Conservation (*Bundesamt für Naturschutz – BfN*) has voluntary worked out a contribution regarding nature protection

<sup>6</sup> or *Regionaler Raumordnungsplan* - terminology differs from state to state

planning to the draft spatial plan<sup>7</sup>. The *BfN* is also collaborating on the environmental report for the SEA procedure.

As mentioned in section 3, sea use planning within the 12 smz has recently become an option for the German coastal states. In consequence, the federal states of and Mecklenburg-Vorpommern in 2005, Lower Saxony in 2006 have extended their state development programmes into the 12 smz.

Land Schleswig-Holstein has elaborated in 2005 a spatial planning report on coast and sea (*Raumordnungsbericht Küste und Meer*), results of which are going to be incorporated into the a new extended to the territorial waters of North Sea and Baltic Sea state development programme, scheduled for end of 2009.

The city-states Hamburg and Bremen have only a small proportion of Germany total coastal sea area. Nevertheless, both are involved in various projects dealing with ICZM and marine planning in cooperation with the neighbouring states. Thus, for example, Bremen was involved in the development of Lower Saxony's spatial planning concept for its part of the territorial sea (*ROKK*).

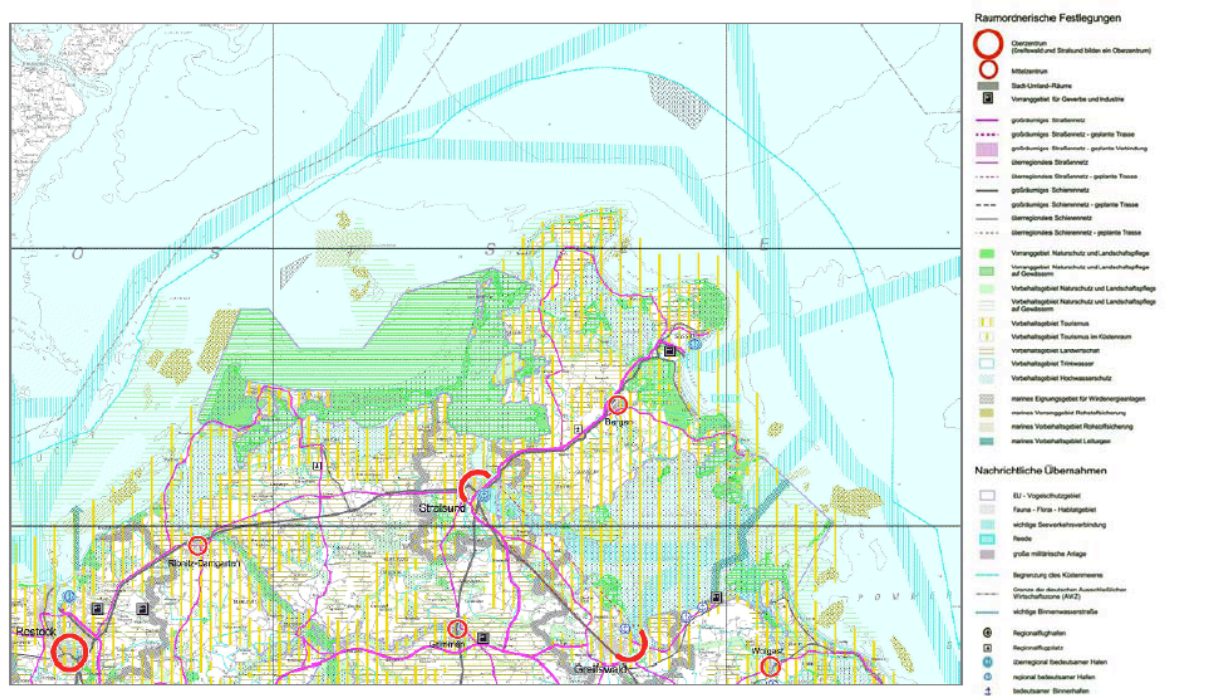


Fig. 3 State development programme (*LEP*) of Mecklenburg-Vorpommern 2005

Analogue to the 12smz and the entire German spatial planning system, in the Spatial Planning Act (*ROG 2006*) the spatial plan in the EEZ is paraphrased with the term “objectives and principles of spatial order”. The objectives & principles, together the special areas ruled by *ROG* art. 7 §4 (priority, reserved and suitable) and areas designated by other laws (e.g. conservation areas) should be presented in both graphic and text form.

The first German Plan for the EEZ is also currently under preparation. At the moment the draft is under negotiation between the federal ministries. . It will contain zones designated for shipping (priority and reservation areas), pipelines (priority and reservation areas), marine scientific research (reservation areas) and wind energy generation (priority areas). Overall, the designated areas and zones comprise for around 50% of the German EEZ territory<sup>8</sup>.

<sup>7</sup> in the framework of the HABITAT MARE project, BfN 2008 online

<sup>8</sup> OSPAR Overview on National Spatial Planning. Questionnaire

## **5. Main rules of co-ordination and public participation and cross-sectoral co-ordination of the plan**

A public consultation process is mandatory both in the EEZ and the territorial sea according to the SEA directive and the federal spatial planning legislation<sup>9</sup>, as well as, more detailed, to the states' own spatial planning legislation.

Rules and practice of public participation of spatial plans differ slightly among the federal states. In Schleswig-Holstein for example a broad public consultation process for the new state development plan including the 12smz started in early 2008 and will take at least 6 months. All relevant federal, state, regional and local authorities and institutions, non-governmental organisations, associations, neighbouring states and countries will receive a draft which they can comment upon. It will be also, for the first time, possible to do it via internet. Number of information events were planned for February and March 2008.

In case of the amendment of the Lower Saxony state development plan (i.e. its extension to the 12smz) started in Feb 2005 with the announcement of planning intentions. Then, the plan was drafted and in November 2006 the stakeholder and public participation process begun. Within the next three months public and stakeholders could take a position to the draft, which was by far longer than the statutory in Lower Saxony one month<sup>10</sup>. The received statements were taken into account. During the process of elaborating the plan and the related decision making procedures by an intensive political consultation process took place as well. Here also internet participation (e-government) is gaining on popularity.

As mentioned in section 3 of this paper, the §18a of the German Spatial Planning Act regulates, among other issues related to sea use planning in the EEZ, also the conditions for public participation and transboundary coordination. It is said that the first one is within responsibility of the Federal Maritime and Hydrographic Agency (BSH) and the latter one within responsibility of the federal ministry of transport (BMVBS)<sup>11</sup>.

The draft spatial plan for the German EEZ as well as its environmental report shall be subject to both national and cross-border public participation. This process will start in the first half of 2008. It shall be accomplished by publishing the draft spatial plan and environmental report on the internet and making them available for public inspection in the BSH offices.

The cross-sectoral co-ordination shall be achieved by sending the above-mentioned documents to the affected ministries/authorities, non-governmental organisations and stakeholders, including the German coastal states and the neighbouring countries. All stakeholders will have a certain period of time prescribed by the SEA regulation (*UVPG 2005*) to take a position on this draft. Furthermore it is planned to schedule a public hearing after the expiration of this period to allow all stakeholders to present their statements to the plan and the environmental report.

## **6. Trans-national co-ordination of the sea use plans with neighbours**

Since the German EEZ is an international planning area that is not part of the sovereign territory and borders on the EEZs of several neighbouring countries, an international transboundary consultation process is deemed necessary. Also the good planning practice and international regulations such as the Espoo Convention require efforts for cross-border co-operation. The German spatial planning act states that trans-national co-ordination of sea use plans in the EEZ should be commenced by the federal ministry for transport (ROG 2006, §18a (2)). There is however no prescribed procedure for such co-ordination, therefore what takes place at the moment it is to large extend a 'learning-by-doing' process.

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<sup>9</sup> ROG 2004 § 15 (6)

<sup>10</sup> e.g. NROG § 5

<sup>11</sup> ROG 2004, §18a (2)

In Schleswig-Holstein there is a tradition of close relationship with Denmark, a.o. through partnership agreements between Schleswig-Holstein and region of South Denmark.

The consultations are habitually conducted in English language, although translations into national languages are sometimes necessary.

### **7. Instruments for co-ordination of sea use plans and terrestrial spatial plans**

As said before, in Germany the greatest division and thus also the co-ordination challenges appear between the border of the 12smz and the EEZ plans. According to the federal ROG these have to be harmonised on the 'mutuality and equivalency principle'<sup>12</sup>. The coastal states and the Federal Hydrographic Agency are meeting on regular terms to in order to harmonise their sea-use plans.

The question of co-ordination of 12smz plans and terrestrial plans appears obsolete, since they are both integral parts of a single plan, i.e. the state development plan/programme. Harmonisation of land and sea is here one of the main planning tasks. The so-called regional plans for part of the state territory, either land or sea, have naturally to be based on the overarching state development plan.

### **8. Main policies taken into consideration when preparing sea-use plans**

As listed in section 3 of this paper. New specific regulations are planned for shipping, resource exploitation, laying and operation of pipelines and submarine cables, marine scientific research, power generation including wind energy, fishing and mariculture, protection of the marine environment<sup>13</sup>.

### **9. Approval/concordance of sea use-plans**

Sea use plans for the 12smz, as part of the state development plan, are approved by the ministry responsible for spatial planning. For example in Schleswig-Holstein it is the Ministry of Interior, in Mecklenburg-Vorpommern it is the Ministry of Transport, Building and Regional Development.

Sea use plans for the EEZ are approved by the Federal Ministry of Transport, Building and Urban Affairs.

### **10. Validity of the sea-use plans, legal impact and duration**

Sea use plans both in the EEZ and the territorial sea are formally adopted legal documents (see above).

The objectives of the state development plan have the character of legal regulations, although there is no definite legal form for it. According to § 4 ROG they are legally binding for public authorities on federal, state, regional and local level. Also, in some cases, they could be legally binding for specific private persons.

State development plans have different time spans according to state legislation. In Schleswig-Holstein the state development plan is intended to come into force at the end of 2009 and last until 2025. The Mecklenburg-Vorpommern plan duration is 2005-2020. According to Lower Saxony's Spatial Planning Act (*NROG*) there is no designated lifespan for spatial plans, and they can amended whenever 'situation requires this'. The process for amendments and revisions is basically the same as for the original adoption of the plan. Minor amendments can be conducted without a SEA, if negative impacts on the environment are not to be expected (only screening phase is required).

There are no legal requirements concerning the duration of sea use plan for the EEZ. Decisions on revisions and amendments will be made based on necessity due to developments in the EEZ.<sup>14</sup>

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<sup>12</sup> ROG 2004, §16

<sup>13</sup> OSPAR Workshop, MASMA 07/4/1 Add.1-E

<sup>14</sup> OSPAR Workshop, MASMA 07/4/1 Add.1-E



## 11. Disputes over plan provisions

Here again the federal states differ in their provisions. In Schleswig-Holstein all authorities and persons affected by the plan have the right to sue a judicial review procedure at the Superior Administrative Court. In Lower Saxony it is decided on case to case to basis<sup>15</sup>.

Concerning the EEZ plan, details are not clear yet, due to the current progress of the planning process. Experiences on land have shown though, that under certain circumstances, affected parties can appeal to the administrative court.

## 12. Obligation to monitor and review enforced plans

On the basis of the spatial planning legislation there is no obligation to monitor and review the enforced spatial plans in Germany. Amendments are to be made according to needs on ad-hoc basis. However, due to the SEA directive ratified by the Law on Environmental Impact Assessment (*UVP Gesetz 2004*), it is compulsory to monitor the serious effects of the spatial plan on the environment. This can be organised by using existing sources of information on the current state of the marine environment.

Since 1997 the marine environment is constantly monitored on the basis of Federal-State-Monitoring Programme for the North and Baltic Sea (*Bund/Länder-Messprogramm für die Meeresumwelt von Nord- und Ostsee, BLMP*)<sup>16</sup>.

## MANAGEMENT

### 13. Administrative organisation for sea use management

Besides the respective spatial planning authorities on federal and state level (see section 2) different technical authorities are responsible for the permissions of the different sectoral uses on the sea. In the EEZ is anticipated that in future these activities will be in line with newly adopted spatial plan. The Federal Maritime and Hydrographic Agency (*BSH*) – the same one who is responsible for drafting the EEZ plan – is responsible in the EEZ for giving permissions for underwater cables and pipelines (together with the state mining agencies), offshore wind parks as well as research activities<sup>17</sup>.

The regional Waterways and Shipping Directorate (*Wasser und Schifffahrtsdirektion, WSD*) is responsible for checking if the project does not impair the safety and efficiency of navigation, in accordance with Art. 6 of the *SeeAnIV* and the UN Convention on Law of the Sea.

### 14. Legislation on sea use management

The so-called **approval procedure** (*Planfeststellungsverfahren*) is the key tool in the German sectoral planning law. Its purpose is to determine whether a particular development project with spatial impacts (mostly infrastructural projects) is viable. This procedure involves weighing and balancing both the interests of the developer and any public or private interests which might be affected by the development project. It concludes with a legally binding decision.

In addition to planning approval procedure, sectoral planning law permits sectoral area designation according to **spatially relevant sectoral planning laws**.

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<sup>15</sup> OSPAR Workshop, MASMA 07/4/1 Add.1-E

<sup>16</sup> BSH 2008 online

<sup>17</sup> SeeAnIV Art. 2, and Art. 5 §1.4

A legal basis has been created for each of these types of sectoral planning (e.g. Federal Highways Act, Federal Nature Conservation Act, the Federal Water Act, the Federal Maritime Responsibilities Act etc.), laying down the tasks and competencies of each authority and regulating planning approval procedure. The relevant legislation contains what are referred to as “spatial planning clauses” with the purpose of safeguarding the requirements of federal and state spatial planning. The umbrella of state and regional planning is necessary, since sectoral planning generally goes beyond the territory of a single local authority<sup>18</sup>.

Laws guiding the approval procedure for construction and operation of installations in the EEZ for commercial purposes are:

- United Nations Convention on the Law of the Sea (UNCLOS) of 1982
- Art. 2 and 5 of the Marine Facilities Ordinance (*SeeAnIV*).
- Art. 1 § 10a of the Federal Maritime Responsibilities Act (*Seeaufgabengesetz, SeeAufG*)
- Federal Mining Act (*Bundesberggesetz, BBergG*) guiding the sand and gravel extraction.

### **15. Procedures of issuing use permits and some proposals on improvement**

The procedure of issuing use permits in Germany will be described here on the example of the wind-farm projects approval in the EEZ. This procedure has proved to be adequate so far, so there are no significant proposals for improvement.

Approval for a wind farm project in the EEZ will be denied if it is likely to impair the safety and efficiency of navigation or poses a threat to the marine environment without there being any suitable measures, either in the form of a time limitation or by imposing requirements, to prevent or compensate the detrimental effects. In the absence of both of the above reasons, the applicant has a legal claim to approval<sup>19</sup>.

The permit issue procedure will be explained on example of an offshore wind farm approval procedure. According to the Marine Facilities Ordinance (*SeeAnIV*) it consists of several phases:

1. Upon receipt of a planning application, it is first checked for completeness. If that is not the case, the applicant has the opportunity to correct and complete it. At the same time, in the first round of participation, the competent authorities (including the regional Waterways and Shipping Directorates, mining authority, Federal Environmental Agency, Federal Agency for Nature Conservation) are informed about the project application and asked to comment.
2. After evaluation of the first comments, a larger number of stakeholders take part in the second round of participation. It also involves associations (e.g. nature protection, commercial and small craft shipping, fisheries, wind energy associations) and the public, which has the opportunity to inspect the planning documents.
3. An important aspect of the approval procedure is an early involvement of the German coastal states, which have to approve the laying of land feeder cables through the territorial sea for the transport of electricity to onshore substations. Offshore wind farms normally have to be connected to the onshore grid through feeder cables. Cables to be laid on the seabed in the territorial sea have to be approved by the competent German coastal state.
4. Subsequent to the second round of participation, an application conference is held dur-

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<sup>18</sup> COMMIN- Baltic Spatial Conceptshare online

<sup>19</sup> *SeeAnIV* Art. 3

ing which the applicant has the opportunity to give a presentation on the project. Conflicting interests and uses are discussed, and the scope of investigations required to study possible effects on the marine environment is determined. On the basis of the environmental studies, the applicant prepares an Environmental Impact Assessment (EIA). A risk analysis dealing with the probability of vessels colliding with wind farm installations is also mandatory.

5. After having received the documentation from the applicant, the *BSH* passes it on to the competent authorities and associations, asking them to comment. This is followed by a discussion, during which the comments and information concerning the marine environmental features to be protected, the subject of navigational safety, and other interests and uses are discussed with all stakeholders. Parallel to this, the documents are once more available for public inspection and comment at the *BSH*.
6. Then, the *BSH* reviews whether the requirements for granting approval have been met. At the same time, the competent regional Waterways and Shipping Directorate reviews whether consent can be granted with a view to the safety and efficiency of navigation.
7. In case the *BSH* has received several applications for the same site, application which first meets all requirements for approval (i.e. whose documents are completed first) is decided first.
8. After both authorities have consented to the application, a notification of approval is issued. An important part of each approval granted by the *BSH* for an offshore wind farm is the incidental provision, which is issued as a largely standardised form. It includes, among others:
  - a limitation of the approval to a 25-year period
  - requirement to start building the installations within 2,5 years after receiving the notification of approval,
  - requirements concerning safety in the construction phase,
  - requirement of a geotechnical study,
  - use of state-of-the-art methods in the construction of wind turbines,
  - prior to start-up, presentation of a safety concept,
  - installation of lights, radar, and the automatic identification system (AIS) on the turbines,
  - use of environmentally compatible materials and non-glare paint,
  - foundation design minimising collision impact,
  - noise reduction during turbine construction and low-noise operation,
  - presentation of a bank guarantee covering the cost of decommissioning.
9. The decision on the development application is published in the German notices to mariners (*NfS*) and in two national papers and is available at the *BSH* for public inspection. It is sent to all authorities and associations involved in the approval procedure<sup>20</sup>.

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<sup>20</sup> BSH 2008 online

## COMMENTS

### **18. Current situation and main problems in sea use planning and management**

The German legislation on sea-use planning is fairly new (since 2004). There has been hence not sufficient practical experience in this field yet to give a critical judgement on it. Time will show the gaps, especially after the first EEZ plan is approved and implemented.

More disturbing appears to be the lack of knowledge concerning some important marine parameters. In next years to come the most time and funds-consuming task will be probably still the data collection in order to thoroughly research and examine the effects of the sea constructions and activities on the marine environment. This information from the project level will be used for the monitoring of the spatial plan. Obtaining data from the commercial sea operators is reportedly among the biggest problems currently encountered<sup>21</sup>.

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<sup>21</sup> Heinrichs 2007, PlanCoast Berlin Documentation p.37