



Seanergy 2020

Transnational maritime spatial planning: recommendations

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December, 2011

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| Agreement n.: | IEE/09/898/SI2.558294 |
| Duration | 24 months |
| Co-ordinator: | European Wind Energy Association |
| Supported by: |  |

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Document information

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|-------------------------|--|
| Document Name: | Transnational MSP: recommendations |
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| Date: | 1 st December 2011 |
| WP: | 4 |
| Task: | D4.4 Recommendations |

EXECUTIVE SUMMARY

The objective of the SEANERGY 2020 project is to formulate and to promote concrete policy recommendations on how to best deal with and remove maritime spatial planning (MSP) policy obstacles to the deployment of offshore renewable energy (ORE) generation. It seeks to promote a more integrated and coordinated approach to MSP, facilitating the implementation of the RES Directive (2009/28/EC) and creating an enabling environment for the deployment of ORE beyond the 2020 timeframe.

Work Package 4 (WP4) represents the third phase of SEANERGY 2020, and has focused on the challenges and opportunities of combining national and transnational MSP approaches to support the promotion of ORE sources. There are important interdependencies between the national and transnational MSP levels, e.g. national planning decisions have an impact on other countries that share the same marine region or sub-region. Likewise, many issues and sea uses transcend national borders. MSP approaches at national level need to be compatible with a cross-border perspective, and vice-versa, to ensure that together they can deliver the best basis for decision making and planning.

This report, the final deliverable of WP4, provides recommendations aimed at improving coordination of MSP between Member States, along with a better level of European integration, in support of improved conditions for the deployment of ORE.

As a tool for planning and integrating different uses of the sea, MSP has a strong foundation of support within current legislation, organisations and initiatives. MSP is promoted within the EU's Integrated Maritime Policy, the Marine Strategy Framework Directive and the Strategy for the Baltic Sea Region as well as the work of UNESCO, HELCOM and OSPAR amongst others. It's value with respect to ORE is referenced in the EU's Roadmap for MSP and principles "MSP can play an important role in mitigation, by promoting the efficient use of maritime space and renewable energy" (European Commission, 2008a).

The simple observation that many maritime activities and values, including ORE, have a cross-border dimension suggests that a more coordinated transnational approach to MSP could benefit decision making. Of most relevance to ORE is the potential added efficiency of cross-border coordination along with expanded opportunities for deployment and/or cost savings that could arise from cooperation on shared infrastructure. In particular transnational approaches to MSP could offer advantages in terms of:

- More efficient governmental coordination that results in improved decision making;
- Reduced transaction costs (for search, legal, administrative, and opportunity costs) for maritime activities;
- Enhanced certainty on exploitation potentials resulting in an improved investment climate;
- Improved ability to address nature conservation at an ecosystem level; and
- Improved opportunities to collaborate on the type of cross-border infrastructure, such as offshore grid, that can open new areas of a sea to development.

Previous work done within the SEANERGY 2020 project had shown that current national MSP efforts are largely fragmented with little emphasis on cross-border consultation or planning. Furthermore, new or existing international instruments were found to have limited possibilities for encouraging transnational coordination. For this reason, EU level action on MSP was determined to be the most appropriate way forward.

With this starting point, this report discusses a number of options for the EU to promote transnational cooperation on MSP. It is argued that a Directive – focussed on encouraging cross-border cooperation – would require Member States to open direct communication on the details of their national MSP without dictating outcomes. This would give cross-border cooperation a firm legal footing, whilst leaving implementation to the Member States. Such an approach comes closest to satisfying the understanding of planning competences that exists within the EU. At the same time, the corresponding recommendations leave open the possibility of implementing a similar approach through less binding interventions such as guidelines, working groups or regional sea basins.

The specific recommendations focus on the following seven aspects and are listed in detail over the page.

- i) the recommended role for the EU in relation to MSP,
- ii) the scale at which action on transnational MSP is most appropriate,
- iii) a possible structure for an instrument for EU intervention in MSP,
- iv) the planning horizon that should be adopted,
- v) key steps in the process of fostering transnational cooperation on MSP,
- vi) additional content surrounding MSP that could be a focus during cross-border coordination and
- vii) the relationship of transnational MSP to other EU legislation and initiatives.

They are aimed at providing an appropriate framework for promoting cross-border cooperation on MSP – as well as indicating something of the desirable content of these discussions – in order to support deployment of ORE beyond the 2020 timeframe and balance this with the needs of other sea uses and conservation goals.

EU role and intervention

- A focus on encouraging cooperation, rather than prescriptive approaches to national practices, is the most appropriate form of EU intervention
- National MSP is a pre-condition of successful transnational cooperation on marine planning and should be promoted
- The EU should ideally seek to implement an MSP Directive (or if this cannot be achieved, guidelines or approaches based on regional sea conventions or working groups) that focuses on two aspects:
- requiring Member States to implement national MSP legislation or amend existing legislation to cover MSP over an agreed time-frame - the content and form of the MSP should be decided by each Member State
- promoting cross-border cooperation and coordination on MSP and maritime development
- National MSP should be designed in an integrated way, according to non-restrictive best practices, the existing Roadmap and new, more detailed, guidelines that support a non-prescriptive MSP Directive

Scale / aggregation

- Macro-regional or regional action is the most appropriate starting point for successfully and usefully employing transnational MSP practices.
- There should be flexibility to allow sub-regional and bilateral approaches where this would be beneficial.
- Where possible, transnational cooperation approaches should be aligned with those regions and sub-regions defined in the MSFD.

Structure

- Regional sea basins should be defined when a sea basin covers the territory of more than one Member State.
- Regional sea basins should ideally be aligned, as appropriate, with either the top level regions defined in the MSFD (i.e. Baltic, North-East Atlantic, Mediterranean and Black Seas) or sub-regions agreed by Member States.
- The Commission could arbitrate in assigning regional sea basins where Member States cannot reach agreement
- Each Member State should identify a central responsible authority within each regional sea basin for any MSP Directive.
- Existing regional institutions should be encouraged to engage at the sea basin level with these new forums

Horizon

- Regional sea basins should define clear environmental, sea research, social and economic objectives
- Regional forums should have a long term perspective in relation to the objectives they seek to attain - for example 20 year or longer time frame

Process

- Where practicable, common MSP procedural timelines and planning timeframes should be used by Member States.
- Member States should prepare a preferred spatial management plan (vision) - in the form of predicted growth of different uses, management measures, targets and zoning maps.
- National sea basin management plans should be coordinated at international borders for the whole of the relevant sea basin.
- There should be a provision for sharing of information; i.e. Member States send copies of their coordinated sea basin management plans to the Commission and to any other Member State concerned with that basin
- Monitoring of objectives should be agreed regionally and build on, or if possible be part of, regional monitoring and assessments carried out by regional organisations
- The frequency of transnational MSP meetings/forums and updates of national plans should be agreed - possibly subject to some minimum. Triggers for non-regular discussions should also be agreed.
- National MSP should be aligned with (i.e. provide sufficient zones for) national ORE ambitions in the medium and long term (for example NREAPs)
- Longer-term EU RES targets should be implemented to encourage cross-border cooperation on ORE and grid infrastructure, as well as allow longer-term transnational MSP coordination to occur.
- The Commission should act to arbitrate in situations where cross-border aspects cannot be agreed

Content

- Regional forums should address all sea uses of significance in a sea basin
- Regional forums should discuss options for agreeing on a common understanding of sea use interactions
- Regional forums should be used to improve data quality, commonality and availability, building on the INSPIRE Directive and linking to the EMODNET initiative.
- Regional forums should seek to harmonise, where feasible, spatial management measures including elements of permitting requirements and regulations.
- Regional forums should share current research efforts and seek to agree on research priorities and responsibilities within a sea basin.

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1 INTRODUCTION

The objective of the SEANERGY 2020 project is to formulate and to promote concrete policy recommendations on how to best deal with and remove maritime spatial planning (MSP) policy obstacles to the deployment of offshore renewable energy (ORE) generation. It seeks to promote a more integrated and coordinated approach to MSP, facilitating the implementation of the RES Directive (2009/28/EC¹) and creating an enabling environment for the deployment of ORE beyond the 2020 timeframe.

The project is targeted towards regional and national authorities, EU decision-makers, planners, regulators, transmission system operators and ORE project developers. It takes into account the specifics of different sea basins (defined within the project as the North Sea, the Baltic Sea, the Atlantic coast and Irish Sea, and the Mediterranean Sea) while trying to identify common successful elements and approaches.

Work Package 4 (WP4) represents the third phase of SEANERGY 2020, and has focused on the challenges and opportunities of combining national and transnational MSP approaches to support the promotion of ORE sources. There are important interdependencies between the national and transnational MSP levels, e.g. national planning decisions have an impact on other countries that share the same marine region or sub-region. Likewise, many issues and sea uses transcend national borders. MSP approaches at national level need to be compatible with a cross-border perspective, and vice-versa, to ensure that together they can deliver the best basis for decision making and planning.

This report, the final deliverable of WP4, provides recommendations aimed at improving coordination of MSP between Member States, along with a better level of European integration, in support of improved conditions for the deployment of ORE. It builds on a number of pieces of prior work within the project:

- WP2 and WP3 provided recommendations on best practices and possible improvements to MSP processes at national and international levels, respectively;
- Deliverable 4.1 identified the additional barriers that arise from possible transnational approaches to planning;
- Deliverable 4.2 looked at the expected increase in, and degree of, conflict arising from increasing spatial demand in the future for each of the project sea basins. This gave a better understanding of the benefits, and specific features required, of cross-border MSP for promoting ORE; and
- Deliverable 4.3 developed a specific case study of the Dutch German EEZ border to demonstrate the benefits (and costs) of a greater degree of cross-border cooperation on MSP.

Building on the outputs of these prior WPs along with the work done within WP4, this report examines how to liaise national MSP best practices with transnational MSP needs. Furthermore, it presents recommendations on how to improve cross-border cooperation on MSP with a view to accommodating the development of ORE.

1.1 Background

Before diving into the detail of ORE and transnational MSP in the EU it is first informative to introduce a number of terms and concepts that relate to MSP. For example, i) what are the adopted definitions of the different levels of MSP that are discussed within SEANERGY 2020 (national versus international versus transnational), ii) what is the rationale for pursuing increased cooperation and coordination on MSP in the form of transnational approaches and iii) what is the status of transnational MSP in the EU today.

¹ Directive 2009/28/EC of the European Parliament and Council of 23 April 2009 on the promotion of the use of energy from renewable sources

In its broadest and most basic sense, MSP has been defined as (Ehler and Douvère, 2007):

Analyzing and allocating parts of three-dimensional marine spaces to specific uses or non-use, to achieve ecological, economic, and social objectives that are usually specified through a political process.

Such a definition lays out the basic tenants of MSP – the mapping or zoning of different parts of a maritime space for different uses and purposes – but says little of the level on which it can be carried out. MSP can be conducted on a number of scales, ranging from near shore waters of a local municipality to the marine jurisdiction of a given country including its EEZ, and further to transnational/transboundary regions (Backer, 2011). Throughout SEANERGY 2020 a number of terms are used to give additional clarity on the level of MSP that is being discussed.

| | |
|--------------------------|---|
| National MSP | refers to planning processes that are carried out by a Member State (or external state) that cover their nationally declared portion of a sea space. Typically, but not always, including both territorial waters and any claimed exclusive economic zone (EEZ). Although this process may consult with other countries that share a border or an interest, it is a nationally governed exercise in accordance with national legislation and any international instruments that a country is party to. |
| Transnational MSP | a level of MSP that involves a number of different Member States (or external states) – bilaterally or multilaterally. Here the focus need not be on a truly integrated, or common, MSP process, but rather on cooperation or coordination of aspects of national MSP that have a relevance across borders. |
| EU MSP | Refers to the level at which the EU could be involved, but does not declare any particular role for the European Commission. EU MSP could range from guidelines, up to more binding measures, but is described here distinctly and should not be confused with the term international MSP. EU MSP is largely the focus of this report. |
| International MSP | This level of MSP is unlikely to be a true planning process (whereby the international community zone or map an area of common interest). If specific zoning does occur it is sector specific, for example the shipping lanes of the IMO. However, many international MSP related instruments can be observed that influence other levels of MSP regime. For example the UN Convention on the Law of the Seas (UNCLOS) provides the basis for a number of governing rules and regulations in regards to different sea uses that must be observed by signatory parties. It also provides the basis for defining territorial waters (out to 12 nautical miles) and exclusive economic zones (EEZs). |

1.1.1 Benefits of MSP and transnational approaches

As a tool for planning and integrating different uses of the sea, MSP has a strong foundation of support within current legislation, organisations and initiatives. MSP is promoted within the EU's Integrated Maritime Policy, the Marine Strategy Framework Directive and the Strategy for the Baltic Sea Region as well as the work of UNESCO,

“Between 3 and 5% of Europe’s Gross Domestic Product (GDP) is estimated to be generated by maritime industries and services, some with high growth potential. A stable planning framework providing legal certainty and predictability will promote investment in such sectors, which include offshore energy development” (European Commission, 2008a)

HELCOM and OSPAR amongst others. Its value with respect to ORE is referenced in the EU's Roadmap for MSP and principles “MSP can play an important role in mitigation, by promoting the efficient use of maritime space and renewable energy” (European Commission, 2008a).

More explicitly, with regards to ORE, MSP can enable development and influence investment in a number of important ways. Broadly these advantages are related to either a reduction of risk for developers or an increase in investment opportunities. Firstly, if MSP includes the designation of zones for ORE development, this gives project developers greater certainty of access to deployment sites (and the timeframes for this access), allowing stronger business cases to be

developed and helping to create bankable projects. Secondly, MSP promotes efficient use of space, potentially allowing more projects to found within a given search area through integrated planning with other uses and nature values. Thirdly, the marine management measures that implement MSP outcomes can help to provide transparency in permitting and licensing procedures for project developers; ideally making expected outcomes clear at the beginning of the project planning process (Ehler and Douvere, 2009).

Of course, implementing national MSP has benefits beyond encouraging ORE. Other sectors and uses, as well as environmental conservation and planning, can benefit from an MSP framework and process (Table 1). Although these other benefits are important, they are not the focus of MSP as it is examined within the SEANERGY 2020 project, whose primary objective is to study MSP from the perspective of creating an enabling environment for ORE. However, these other benefits are still mentioned where relevant, as any framework for MSP would not be widely accepted if it did not address the needs of other sea uses.

| | |
|--|---|
| Ecological/ Environmental Benefits | Identification of biological and ecological important areas |
| | Biodiversity objectives incorporated into planned decision-making |
| | Identification and reduction of conflicts between human use and nature |
| | Allocation of space for biodiversity and nature conservation |
| | Establish context for planning a network of marine protected areas |
| | Identification and reduction of the cumulative effects of human activities on marine ecosystems |
| Economics Benefits | Greater certainty of access to desirable areas for new private sector investments, frequently amortized over 20-30 years |
| | Identification of compatible uses within the same area of development |
| | Reduction of conflicts between incompatible uses |
| | Improved capacity to plan for new and changing human activities, including emerging technologies and their associated effects |
| | Better safety during operation of human activities |
| | Promotion of the efficient use of resources and space |
| Social Benefits | Streamlining and transparency in permit and licensing procedures |
| | Improved opportunities for community and citizen participation |
| | Identification of impacts of decisions on the allocation of ocean space (e.g., closure areas for certain uses, protected areas) for communities and economies onshore (e.g., employment, distribution of income) ² |
| | Identification and improved protection of cultural heritage |
| | Identification and preservation of social and spiritual values related to ocean use (e.g., the ocean as an open space) |

Table 1: Examples of benefits of MSP (Ehler and Douvere, 2009)

Extending this examination of benefits beyond the national perspective is important in justifying transnational approaches to MSP. As a starting point for such an assertion is the simple observation that many maritime activities have a cross-border dimension. From an economic standpoint, various uses, including shipping, fisheries, cables and pipelines, oil and gas industry have, or can have, impacts across boundaries (Douvere and Elher, 2009). At the same time, when considering environmental values, a sea is observed to be a complex and dynamic ecosystem that cuts across administrative borders that are defined in terms of territorial waters or EEZs, as these are largely political outcomes (European Commission, 2008a; Maes, 2005).

“National marine spatial plans should be translated into international spatial policies in which sea uses and biodiversity protection measures are planned to complement one another on an international, or regional scale” (Douvere and Elher, 2009).

There is widespread agreement across EU policy documents that cross-border cooperation can lead to improved benefits and outcomes and is likely to, in fact, be necessary for successful MSP implementation nationally. Starting with the Integrated Maritime Policy (IMP) – that acts as an overarching framework

for maritime policy in the EU – this is hinted at, *“many aspects of an integrated maritime policy can best be addressed at regional sea basin level”* (European Commission, 2008c). The Marine Strategy Framework Directive (Directive 2008/56/EC²) is built around the idea of ecosystem approaches to managing the environment, *“Programmes of measures and subsequent action by Member States should be based on an ecosystem-based approach to the management of human activities”* European Parliament and Council (2008). Transnational coordination of, and cooperation on, national MSP plans are arguably key criteria to enable ecosystem level environmental management to happen in a meaningful way, rather than an *ex post* evaluation of

² Directive 2008/56/EC of the European Parliament and Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)

impacts. The Commission's Roadmap states justifications for cooperation more explicitly *“National decisions have an impact on adjacent countries. Member States sharing a common approach to the management of marine space in the same sea basin will find it easier to meet these challenges”* and notes that, *“joint work on MSP...increases the effectiveness and coherence of EU and national policies, reducing economic costs of non-coordination”* (European Commission, 2008a). It includes within its ten key principles guidance on cross-border MSP:

“Cooperation across borders is necessary to ensure coherence of plans across ecosystems. It will lead to the development of common standards and processes and raise the overall quality of MSP.”

A recent communication from the EU on the topic of MSP concludes that, *“MSP is crucial for legal certainty, predictability and transparency, thus reducing costs for investors and operators, in particular those operating in more than one Member State”* (European Commission, 2010).

Furthermore, the need to include cross-border cooperation and consultation as an integral part of national MSP is echoed across a wide body of literature from a range of organisations and experts (see Gee et al., 2011; Gold et al., 2011; Maes, 2005; HELCOM/VASAB, 2011; MSPP Consortium, 2006; Douvere and Elher, 2009; Gee, 2007; North Sea Commission, 2011).

Of most relevance to ORE is the potential added efficiency of cross-border coordination along with expanded opportunities for deployment and/or cost savings that could arise from cooperation on shared infrastructure. In particular transnational approaches to MSP could offer advantages in terms of³:

- More efficient governmental coordination that results in improved decision making; *ex ante* cooperation reduces the need for iterative approaches to planning based on *ex post* cross-border consultation, and a cooperative approach would provide Member States who apply MSP with an opportunity to share their expertise with others.
- Reduced transaction costs (for search, legal, administrative, and opportunity costs) for maritime activities; for example sharing of data and research responsibilities could reduce costs of monitoring and compliance, while harmonising of elements of permitting processes could reduce administrative burdens on project developers.
- Enhanced certainty on exploitation potentials resulting in an improved investment climate, projects close to EEZ boundaries can proceed in the knowledge that developments on the other side of the border are less likely to impact them (for example, new parks introducing turbulence or legal challenges from cross border activities/uses such as shipping, cables or pipelines)
- Improved ability to address nature conservation at an ecosystem level, offering a greater certainty on environmental impacts and reducing possible resistance to development due to concerns about cumulative impacts and the precautionary principle.
- Finally, and perhaps most significantly for ORE, improved opportunities to collaborate on the type of cross-border infrastructure, such as offshore grid, that can open new areas of a sea to development, reduce onshore grid congestion and increase the contribution that ORE can make to generation.

1.1.2 Status of transnational MSP

Although territorial cross-border cooperation has a long history within the EU⁴, there are few examples of cross-border approaches to transnational MSP. It is observed that even among those countries that are relatively advanced in the implementation and application of national MSP legislation – such as Belgium, the Netherlands and Germany – there is a lack of transnational perspective. To date, MSP initiatives in Member States have, generally, not sufficiently integrated or addressed this broader international context nor do they have suitable frameworks in place to encourage cooperation in the future (Douvere and Ehler, 2009).

³ Adapted and expanded to a transnational approach from Gold et al. (2011) who list a reduced set of advantages for national MSP.

⁴ There are currently thirteen areas for territorial cooperation, which together cover all areas of the EU (in addition there are some fifty cross-border cooperation schemes) (Bengtsson, 2009)

After examining MSP regimes across 17 maritime Member States, Work package 2 reached a similar conclusion. MSP efforts are typically nationally focussed and fragmented, and different administrative structures and legal systems have resulted in a variety of policies and large variations in the governance system for MSP (Gold et al., 2011). International elements of Member State MSP have largely consisted of either consultation on MSP plans after their creation or bilateral sectoral cooperation efforts.

Current initiatives

That being said, there have been a number of regional or localised initiatives that seek to develop transnational cooperation on the subject of MSP. In particular, the Baltic Sea region has been a front-runner in transnational MSP through the Helsinki Commission⁵ (HELCOM) and Visions And Strategies Around the Baltic⁶ (VASAB) Joint Working Group on MSP that focuses on long-term sustainable management and planning of the Baltic Sea. The group seeks to coordinate and integrate MSP related actions and projects implemented within the framework of the EU Strategy for the Baltic Sea Region and its Action Plan. Work to date has included the publication of a set of broad-scale transboundary MSP principles, which explicitly refers to the need for ecosystem approaches to biodiversity preservation and cross-border coordination (Box 1).

Box 1: HELCOM-VASAB MSP principles focused on transnational MSP approaches (HELCOM-VASAB, 2011a)

Ecosystem approach

The ecosystem approach, calling for a cross-sectoral and sustainable management of human activities, is an overarching principle for Maritime Spatial Planning which aims at achieving a Baltic Sea ecosystem in good status – a healthy, productive and resilient condition so that it can provide the services humans want and need. The entire regional Baltic Sea ecosystem as well as sub-regional systems and all human activities taking place within it should be considered in this context. Maritime Spatial Planning must seek to protect and enhance the marine environment and thus should contribute to achieving Good Environmental Status according to the EU Marine Strategy Framework Directive and HELCOM Baltic Sea Action Plan.

Transnational coordination and consultation

Maritime spatial planning should be developed in a joint pan-Baltic dialogue with coordination and consultation between the Baltic Sea states, bearing in mind the need to apply international legislation and agreements and, for the HELCOM and VASAB EU member states, the EU *acquis communautaire*. Such dialogue should be conducted in a cross-sectoral context between all coastal countries, interested and competent organizations and stakeholders. Whenever possible maritime spatial plans should be developed and amended with the Baltic Sea Region perspective in mind.

By providing a forum for regular meetings focussed on MSP, the HELCOM-VASAB joint initiative can facilitate discussions on specific transnational issues beyond the broad-scale principles it defines. However, to date, progress has centred around sharing the status of national MSP efforts and relevant projects in the region. While there does not seem to be active use of this forum to identify localised issues and go into detail on individual plans, this is likely due to the varying progress on MSP within the member countries. Still, such a forum provides a ready departure point for bilateral or multilateral discussions and helps to make regional MSP efforts a priority of government.

A number of individual projects – largely concentrated in the Baltic Sea – are also looking at transnational aspects of planning or transnational MSP pilot programmes. The most prominent of these is BaltSeaPlan⁷. Its 2030 Spatial Vision for the Baltic Sea Region is based on three aspects – environmental, socio-cultural and economic considerations – and has a large focus on transnational cooperation (Gee et al., 2011). This is visible in its promotion of the concept of ‘connectivity thinking’ and a recognition that cooperation is necessary on a number of different levels; these are methodological, strategic and operational. An objective of the project is that

⁵ <http://www.helcom.fi/>

⁶ <http://www.vasab.org/>

⁷ <http://www.baltseaplan.eu/>

Baltic Sea countries will make use of this overarching vision in the development of national and transnational plans.

Another project, Plan Bothnia⁸, aims to test MSP in the Bothnian Sea area as a transboundary case study between Sweden and Finland. Included within this project is an ongoing study on the necessary common minimum requirements for transnational MSP cooperation in the Baltic Sea. Thus the aim of the study was to come up with proposals for how to improve the transnational cooperation in MSP by defining those elements of MSP that require transnational binding agreement. Minimum requirements are focussed on the aspects of: necessary preparation tools, content and scope of transnational MSP, the institutional framework and supporting measures.

Of particular relevance are the draft conclusions on cooperation needs which propose that planned zoning – with possible transnational or cross-border effects – will need to be coordinated/reconciled, and that elaboration of joint (transnational) plans may be necessary in certain instances (Heinrichs, 2011). While the project examines minimum requirements for cooperation, providing an overarching framework promoting such cooperation appears to be beyond its scope.

Beyond these two main projects focussing on transnational MSP, there are a number of other projects that consider aspects of MSP, cross-border MSP or ecosystem approaches to marine resources⁹. Where relevant they are referred to in the remainder of this report.

EU level

At the EU level there is strong support for cross-border cooperation on MSP. However, there is little to no firm guidance on how this should be achieved. Recognising this, Commission is currently carrying out an impact assessment to determine what further actions or intervention may be needed at the EU level (European Commission, 2010). This assessment is carried out jointly by DG Environment and DG MARE as well as with stakeholder involvement. This joint approach addresses the overlap in roles for these agencies on the topics of MSP and integrated coastal zone management (ICZM), both of which are included in the assessment.

Four different options examined are investigated: to do nothing (business as usual), the “soft approach” (in the form of supporting actions), adopting nonbinding measures, or adopting a binding measure. Among the key things considered within the assessment are: a general need for the Member States to implement MSP, a common framework to enhance cross-border cooperation, the importance of subsidiarity. An initial online consultation confirmed the perceived need for EU action, but there was no clear indication as to whether a binding or non-binding EU instrument would be preferred (HELCOM-VASAB, 2011b).

This position from stakeholders – that EU action is needed – is born from a recognition that the most that national MSP legislation can do in terms of transnational cooperation is to direct decision-makers to take into consideration relevant MSP activities in neighbouring States, and possibly to confer the necessary powers on officials to negotiate to that end. However, there is no supra-national instrument under EU or international law that is concerned with MSP in general, or transboundary cooperation relating to MSP in particular (Payne et al., 2011).

This is the departure point for this report, which seeks to provide recommendations on how transnational cooperation and coordination of MSP could be promoted, recognising that such cross-border collaboration could have important benefits for ORE.

1.2 Approach and structure

Previous work within SEANERGY 2020 has provided a number of key inputs that have been used to help develop the recommendations in this report. These include:

- An inventory of practices and gaps across national MSP regimes, including any current cross-border consultation;
- An analysis of the linkages between international MSP instruments and ORE;

⁸ <http://planbothnia.org>

⁹ These include:

BALANCE project - <http://www.balance-eu.org/>,

CHARM project - http://www.ifremer.fr/defimanche_eng/Projects/Current/CHARM-phase-III2,

MASPNOSE project - <https://www.surfgroepen.nl/sites/CMP/maspnose/default.aspx>

- An estimate of the level of demand for space in each of the sea basins in the future, part of a justification of transnational approaches;
- A case study demonstrating the potential benefits of transnational cooperation for ORE, in terms of cost and risk reductions; and
- A characterisation of the barriers to transnational MSP cooperation.

From this the most appropriate level and type of intervention for enhancing cross-border cooperation and transnational coordination on MSP can be examined. In particular, different possible approaches are tested against the framework of barriers from deliverable 4.1, to see whether the recommended approach would indeed alleviate them. Some approaches for encouraging cooperation also come closer than others to meeting the recommendations from previous work packages on national MSP and international instruments. This is also taken into account when developing recommendations.

The report is structured so this first chapter provides a broad introduction to the topic of MSP and transnational approaches to MSP. Chapter 2 describes relevant aspects of the previous work conducted in the SEANERGY 2020 project that is built upon in this report. Chapter 3 provides detailed discussion of how transnational cooperation can best be promoted, along with specific recommendations for achieving this. Chapter 4 presents concluding remarks and a summary of these recommendations.

2 PRIOR WORK

This report builds on the conclusions of two previous work packages, as well as the findings of three previous deliverables within work package 4. Each of these pieces of work is summarised in this chapter, with a particular focus on those elements that are most relevant to cooperative transnational MSP approaches and that have been used in developing the recommendations.

2.1 National MSP: work package 2

Work package 2 of the project analysed and compared Maritime Spatial Planning (MSP) regimes in 17 EU Member States around four sea basins:

- the Baltic Sea – Estonia, Finland, Latvia, Lithuania, Poland and Denmark–East;
- the North Sea – Belgium, Denmark–West, Germany, the Netherlands and United Kingdom–East;
- the Atlantic coast (including the Irish Sea) – France, Ireland, North Spain, Portugal and the United-Kingdom; and
- the Mediterranean Sea – Southern France, Southern Spain, Italy and Greece in relation to ORE generation.

A set of seven criteria were developed to evaluate the different MSP regimes across these 17 EU Member States:

- 1) policy and legal framework;
- 2) data and information management;
- 3) permitting and licensing;
- 4) consultation;
- 5) sector conflict management;
- 6) cross-border cooperation; and
- 7) implementation of MSP.

Based on these criteria, a series of national reports were commissioned to establish the current status of MSP within each EU Member States. These reports detail the specific arrangements within the different countries and provide an in-depth summary of the above seven elements. They also summarise to what extent MSP has been, or is planned to be, implemented. These national reports served as basis for a comparative analysis of national MSP regimes according to the seven criteria. This analysis led to a series of general characteristics of national MSP practices, general recommendations and a series of good practices for MSP in relation to ORE deployment.

It's key findings, with regards to transnational MSP cooperation, can be summarised as:

- There are three basic models for providing a legislative framework for national MSP: i) extension of the basic (land-use) spatial planning regime out to sea; ii) creation of a specific legal framework for MSP within an overall legal framework for marine management; and iii) amendment to related legislation such as an existing Water Act.
- The particular set-up of MSP is context specific. It depends on factors such as how planning has traditionally been addressed within a Member State, the needs of MSP for that Member and the institutional framework that underpins MSP efforts.
- Within these three broad approaches there is no obvious 'winner', in the sense that any of these three approaches can be effective in enabling ORE deployment when well designed and managed. This is significant as it has potential repercussions for any argument to try and harmonise national MSP approaches between Member States.
- There are a number of potential sources of guidance on MSP process and best practice (Box 2). This could lead to a lack of clarity on approach and, moreover, there is a large degree of

overlap in the basic principles they espouse. A more definitive and detailed set of guidance on national MSP best practices could be of use to Member States.

Box 2: Examples of available guidelines and principles on MSP

- *Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU (European Commission, 2008a)*
- *UNESCO and the Intergovernmental Oceanographic Commission guidelines on Maritime Spatial Planning (Ehler and Douvere, 2009);*
- *HELCOM-VASAB (2011) Baltic Sea MSP Principles*
- *BALANCE project guidelines for Maritime Spatial Planning in the Baltic Sea (Ekeboom et al., 2008)*
- *Nordic experience in Maritime Spatial Planning (Blæsbjerg et al., 2009)*
- *Plancoast Handbook on Integrated Maritime Spatial Planning (Schultz-Zehden et al., 2008)*

- Many existing frameworks for national MSP approaches do not have a large explicit focus on transnational cooperation (example in Figure 1). Furthermore, the available ‘principles’ tend to deal with the issue of transnational cooperation in only a peripheral or basic way - typically by mentioning that it is important but giving few details on how it might best be structured or when¹⁰.

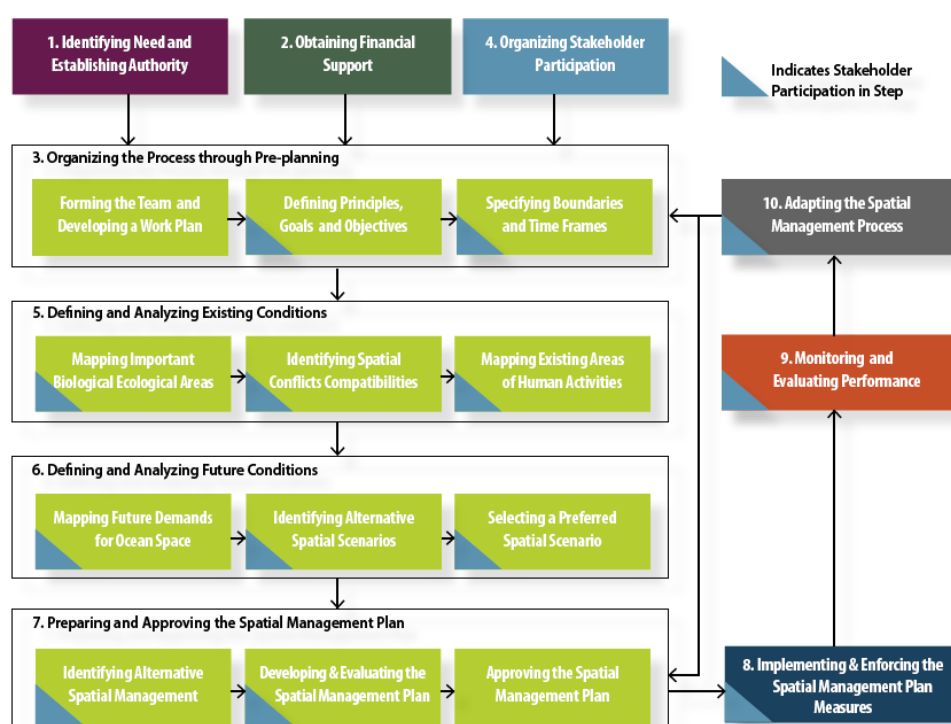


Figure 1: Example of a step-by-step approach to MSP (Ehler and Douvere, 2009)

- A number of the identified best practices in national MSP – for example the need to be transparent throughout the process, the need to involve stakeholders, or the need to take a longer term perspective on marine development and conservation – are equally applicable at the transnational level, or may even benefit from a more international perspective.

¹⁰ The exception to this is the work done in the BALANCE project that describes a systematic approach, structured similar to an EU Directive, the so-called BALANCE template for marine spatial planning. However, as discussed in the subsequent sections of this report, the top-down regional planning approach required for the implementation of such a template creates significant challenges.

- Finally and most importantly, it is observed that for most countries, cross-border cooperation is limited, often in the form of relatively late consultation only. This can even result in neighbouring country governments commenting on proposed MSP zoning as a general stakeholder.

2.2 International MSP: work package 3

Work package 3 analysed existing international MSP instruments with the objective to identify the critical elements within these instruments that impact on a coordinated development of ORE. It also included two further aspects. Firstly, an analysis the different existing national zoning plans of the 17 Member States covered by the SEANERGY2020 project compared to International MSP instruments, in order to highlight possible inconsistencies and to qualify the effect of International MSP instruments on the deployment of ORE. Secondly, an examination of offshore grid infrastructure and cable routing for a pan-European grid at sea, for which a strategic planning at international level is necessary. From this work a number of recommendations and conclusions were developed with regards to how International MSP instruments might support ORE.

With respect to cooperative transnational approaches to MSP within the EU, work package 3 delivered a number of relevant findings:

- There is no international MSP instrument that attempts to deal with MSP more broadly. There is also no international MSP instrument that considers ORE specifically.
- Furthermore, international MSP instruments do not generally take into consideration any specific features of ORE.
- International MSP instruments do not have a strong direct influence on ORE, but can have an indirect impact through their translation to national MSP. Arguably, current international MSP instruments do not stand in the way of the development of ORE.
- There are limited opportunities to change, modify or create international instruments in regards to MSP and ORE. These processes are lengthy and resource intensive. Additionally, any truly international MSP approach would have to build a very broad consensus which is likely to 'water down' its efficacy.
- Existing international structures should be used where possible. For example, current regional environmental conventions should be engaged with.
- Finally and most importantly, the numerous barriers to truly international MSP approaches strongly suggest that EU level action on transnational cooperation is the most appropriate way forward.

2.3 Barrier analysis: deliverable 4.1

Deliverable 4.1 provided an inventory of barriers to coordinated transnational MSP approaches, as well as outlining broad options to address these barriers. It built on the premise that effective transnational MSP will be beneficial for the deployment of ORE, as it could both reduce ORE deployment costs and lead to more maritime space becoming available for ORE development.

It was determined that barriers to transnational MSP stem either from existing disconnects between national and international MSP approaches, or from countries' possible objections towards specific elements of a possible transnational MSP approach. Building on the work of work packages 2 and 3, it was concluded that there were no fundamental barriers, or disconnects, between national and international MSP approaches. The report therefore focused on the elements of possible transnational MSP approaches that may result in reluctance towards participation.

The report identified three categories of possible barriers (Table 2):

1. Barriers relating to power: Who gets the ultimate power to decide; Who is involved in the negotiation process?
2. Barriers relating to interests: Are individual (state's or stakeholder's) interests best served by participation or non-participation in a cooperative approach?

3. Barriers relating to capacity: Political and functional readiness and ability to participate in negotiation process

For a transnational approach towards MSP to be embraced by the EU member states, it needs to be set up in such a way that most of the barriers are overcome or avoided.

Some of the barriers are chiefly linked to the cooperation *structure*, others have to do mainly with the *content* of maritime spatial planning itself. The options presented in this report, Deliverable 4.4, to address these barriers thus target these two aspects of the MSP approach. Barriers related to power and, to a lesser degree, those related to interests, mainly fall within the group that can be addressed by setting an appropriate cooperation structure. The issues related to capacity, but also some of those related to interests, may be addressed by setting the appropriate agenda, and offering support for planning itself.

Table 2: Sources of reluctance towards transnational approach

| Power | Interests | Capacity |
|---------------------------|------------------------|------------------|
| Sovereignty | Criteria and weighting | Need / urgency |
| Governance level | Flexibility | Timing |
| Challenge to EU community | Benefits | Monitoring |
| External states | Approach | Readiness / data |
| Stakeholder engagement | | |

These barriers serve an important role for developing the recommendations in this report on how to promote cooperation on transnational MSP. They act as a framework against which different cooperation structures and content can be tested in order to assess the most appropriate way forward, that is most likely to satisfy the need to increase cross-border coordination as well as the interests of Member States. While not all barriers can be overcome with any particular approach – indeed many can only be mitigated and never absolutely removed – the recommendations for intervention in EU MSP should address the most important barriers listed above.

2.4 Spatial demand: deliverable 4.2

Spatial demand from the different sea uses in the different European sea basins largely defines the need for integration and coordination of MSP. As most maritime activities are not restricted to a single national EEZ, spatial demand will also determine the need for liaising national MSP and transnational approaches. Deliverable 4.2 examined the level of conflict/synergies in the different sea basins that is likely to arise from current and future spatial demands.

The key findings in relation to transnational cooperation included:

- There are significant differences in priorities, use patterns, intensity of use and plans for ORE between the different sea basins.
- In addition to ORE, a number of important cross-border sea uses are expected to increase their use of the sea and demand for space, particularly shipping, pipelines and cables.
- The current intensity of sea use – certainly in the sea basins that are of the most interest for ORE – along with a desire to deploy ORE in areas that provide lower cost energy, already create a conflict for space
- There are significant concepts and plans for cross border infrastructure projects in a number of sea basins, and these can be expected to increase in the medium to long term future.
- Overall, there is a strong need for an integrated forward-looking planning approach across the sea basins considered in support of sustainable development.

2.5 Transnational MSP case study: deliverable 4.3

One of the objectives of WP4 was to evaluate the benefits of cooperation on transnational MSP. In order to do this a case study was analysed to determine what benefits, if any, cross-border cooperation on MSP could have for offshore wind energy development in terms of costs, risks and planning. Although the results are specific to the case study area and associated assumptions, they are likely to be illustrative for coordinated MSP in other border areas.

The case study area was selected based on the criteria of relevance and data availability. The chosen study area extends 30 km on either side of the EEZ border between Germany and the Netherlands, and from 22 km to 300 km offshore (Figure 2). The study considered seven constraints from other activities that were found to be relevant in the study area: i) cables, ii) conservation areas, iii) military areas, iv) oil and gas pipelines, v) oil and gas platforms, vi) shipping lanes and buffers and vii) existing and planned wind farms.

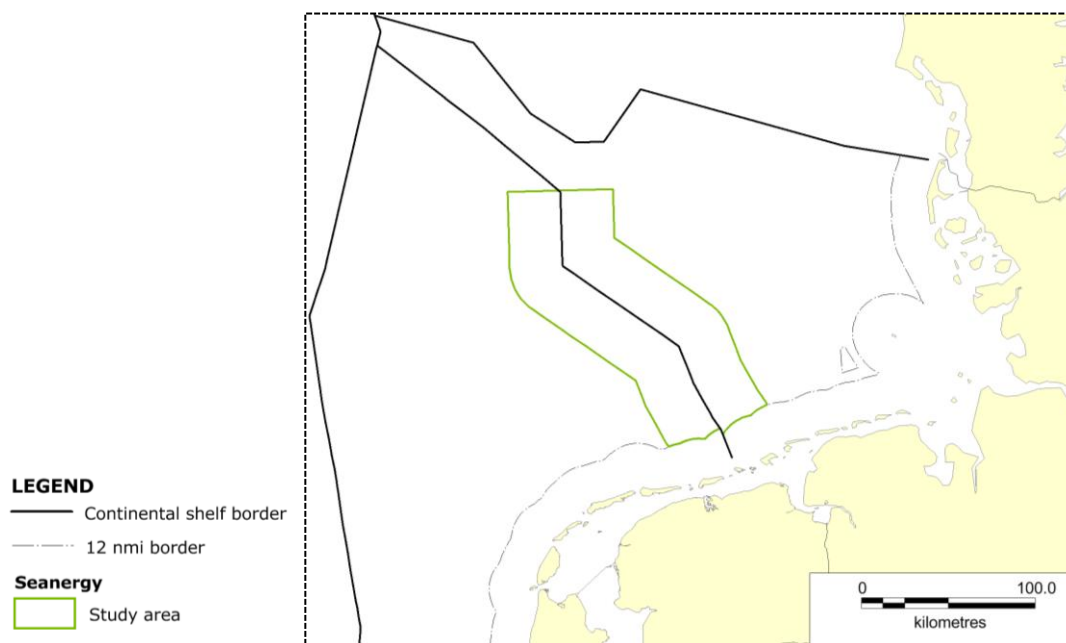


Figure 2: Case study area along the German/Dutch EEZ border

The starting point for the case study was the observation that current usage patterns and MSP plans are, in effect, a constraint on the amount of offshore wind energy that can be developed in this region and its proximity to shore. From this starting point, the benefits of coordination on issues related to MSP were examined using a scenario approach. Three scenarios were defined, each with a different level of cooperation in relation to MSP and cross-border issues. A theoretical maximum 'scenario' was also considered in which the optimum deployment of offshore wind was examined with other sea uses largely removed. This was included only to illustrate an upper limit to the study, but it not considered as a credible scenario.

Scenario 1: Baseline, or business-as-usual: This represented the current status of constraints to offshore wind farm development as observed in the national MSP plans of Germany and the Netherlands.

Scenario 2: Initial stage of cross-border MSP cooperation: This scenario provided an example of an initial level of transnational MSP, where some constraints are relaxed in order to encourage more offshore wind farms. This assumed cooperation would include some changes to the existing spatial plan.

Scenario 3: Aggressive MSP cross-border cooperation: This scenario assumes far-reaching cross-border cooperation on MSP aimed at offshore wind energy, in response to a shifting balance in perceived importance of offshore wind energy. It is assumed that the spatial plan is re-designed with a priority for designating offshore wind clusters, requiring changes to several aspects of the existing MSP.

Theoretical maximum: Only existing fixed infrastructure is considered as a constraint to offshore renewables. Illustrates a hypothetical maximum deployment.

To distinguish the scenarios a number of possible cooperation aspects, or outcomes, were defined. These cooperation aspects were assigned to the different scenarios depending on the perceived level coordination required for each outcome. These cooperation aspects related to areas such as i) mutually agreed changes to shipping lanes (both non-IMO and IMO), ii) cooperation on aspects related to grid connections, iii) cooperation on large common/shared offshore wind hubs and iv) increased coordination of certain other sea uses.

In each scenario, the potential and cost for offshore wind development was evaluated, based on the site-specific conditions throughout the case study area. In order to determine the development costs a bottom-up cost model is used that includes the procurement, fabrication, installation, electrical infrastructure and operations & maintenance costs at each location in the study area.

The analysis found that significantly lower costs of energy can be achieved by encouraging and making space for wind energy clusters through integrated spatial plans and cooperating on offshore grid (summarised in Figure 3).

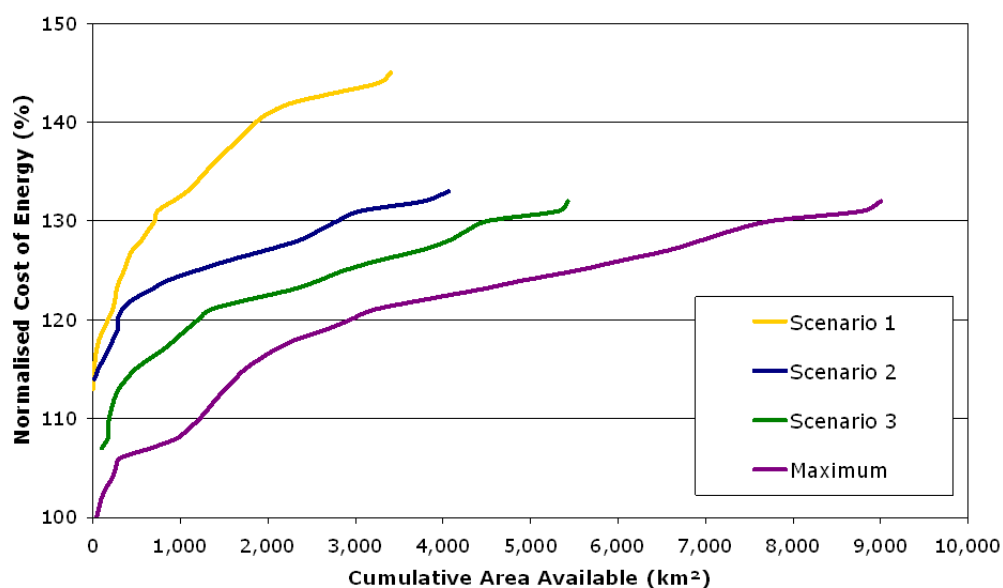


Figure 3: Cumulative area available for offshore wind development versus normalised cost of energy per scenario

The study also discussed other less easily quantified aspects, such as possible benefits in regards to risks and planning. These largely relate to certainty on zoning and common or accelerated permitting procedures, as introduced in Section 1.1.1.

The most important message from deliverable 4.3 is that cross-border cooperation on MSP has the potential to deliver real cost reductions for ORE and improve the investment environment for developers. While the case study considers one particular region of the North Sea with certain assumptions about what cooperation outcomes could be anticipated, it hints at the broader benefits of a transnational approach.

3 LINKING NATIONAL AND TRANSNATIONAL APPROACHES

Cooperation has become a central tenant of the EU stance on MSP. Yet to date, an approach to cooperation on MSP has not been formalised in any piece of legislation or guideline. Certainly the desire is there for transnational MSP, but there is little firm guidance to be found as to how it can be promoted.

In attempting to answer this question, WP4 has drawn on the results of prior work done within SEANERGY 2020. WP2 analysed and compared MSP regimes in 17 EU Member States around the four sea basins. It led to a number of relevant conclusion with regards to transnational cooperation, including:

- The particular set-up of national MSP is context specific. It depends on factors such as how planning has traditionally been addressed within a Member State, the needs of MSP for that Member and the institutional framework that underpins MSP efforts. There is no single 'best' framework that would be most appropriate for all Member States.
- A number of the identified good practices in national MSP - for example the need to be transparent throughout the process, the need to involve stakeholders, or the need to take a longer term perspective on marine development and conservation - are equally applicable at the transnational level, or may even benefit from a more international perspective.
- Finally and most importantly, it is observed that for most countries cross-border cooperation to date has been limited, often in the form of relatively late consultation only.

Work package 3 looked at international MSP instruments and their interaction with ORE. There are a number of reasons why transnational MSP is not something that is best achieved through truly international approaches.

- Firstly, existing international instruments do not have strong links to ORE as they were, by and large, brought into existence prior to the relatively recent interest in ORE. ORE does not have an obvious 'home' amongst these instruments.
- Secondly, international MSP instruments are typically sectoral in nature; focusing on one, or a limited subset of, sea uses or values. This makes integrated approaches to MSP difficult.
- Finally, international instruments have higher barriers to change or introduction. This is due to: i) the increased number of stakeholders and countries involved when taking a global approach, ii) the difficulties in reaching consensus at such a high level, iii) the increased likelihood that such an approach would result in little firm guidance to individual countries on cross-border cooperation and iv) the extended time-frames that such an approach would require.

This is not to say that international instruments are not important to consider in the development of ORE. It is argued that existing international organisations and instruments with links to MSP provide a strong starting point for interaction and engagement for any new regional approaches to MSP. For example: an existing regional agreement on nature conservation – say, OSPAR – can most effectively engage with a regional approach to MSP, rather than individual countries.

“The only way that a complete mechanism for supra-national cooperation in terms of MSP can be established is at the international level or at the European level” (Payne et al., 2011)

Work package 3 concluded that transnational MSP is not something that is best achieved through truly international approaches due to large barriers in implementation. Instead, EU level action on transnational MSP was considered to be the most viable and effective approach. This, in itself, is no great surprise; the European Commission is currently in the process of undertaking an impact assessment, including a recent public consultation, to explore a range of options to promote and develop MSP at an EU level (European Commission 2010; 2011). However, the key question is not whether EU level action is most appropriate, but rather what form this should take.

The following sections outline:

- 3.1 the recommended role for the EU in relation to MSP,
- 3.2 the scale at which action on transnational MSP is most appropriate,

- 3.3 a possible structure for an instrument for EU intervention in MSP,
- 3.4 the planning horizon that should be adopted,
- 3.5 key steps in the process of fostering transnational cooperation on MSP,
- 3.6 additional content surrounding MSP that could be a focus during cross-border coordination and
- 3.7 the relationship of transnational MSP to other EU legislation and initiatives.

In each section, corresponding recommendations are bulleted.

3.1 EU role and intervention

What opportunities are there for the EU in encouraging cooperation on MSP across borders? The European Commission (2008a) has stated that *“the role of the EU is to promote a common approach among Member States that takes account of cross-border impacts.”* This promotion has so far been in a few main forms:

- high-level guidance on the need for transnational cooperation, for example within the EU MSP Roadmap;
- a requirement for some degree of cross-border consultation within other legislation such as the SEA Directive;
- endorsing an ecosystem approach to biodiversity preservation, for example within the IMP and MSFD;
- adoption of the EU Strategy for the Baltic Sea Region with accompanying Action Plan that lists a common approach for cross-border cooperation as one of its horizontal actions;
- support specific projects related to cross-border cooperation, for example BaltSeaPlan and Plan Bothnia; and
- support of and participation in a number of other related transnational working groups and initiatives such as the Member State Expert Group on Integrated Maritime Policy, the North Seas Countries’ Offshore Grid Initiative (NSCOGI)

The potential value of moving beyond these current approaches has been discussed earlier in this report. To do this it is important to first consider what practical tools, or interventions, are available to the Commission. The broad types of intervention that are open to the Commission range from what could be described as “suggestive” approaches, to those with stricter or binding requirements (Table 3).

Table 3: Options for the EU to exercise competences

| Name | Implementing Body | Legally binding |
|----------------|------------------------------------|---|
| Guideline | Commission | No |
| Recommendation | Parliament & Council | No |
| Directive | Parliament & Council | yes, but transposed to national legislation |
| Regulation | Commission or Parliament & Council | yes, directly binding |

These different approaches tell one how the Commission could intervene or facilitate, but little of what role the Commission could or should actually play. It is important to understand what specific objectives or outcomes should be sought in order to accommodate ORE deployment. There are many different ways in which the above approaches can be exercised and, in particular, what the scope of any option includes (for example, which aspects of MSP it addresses). There are also complimentary approaches that the EU can take to encourage cooperation. In particular, the Commission can facilitate and/or finance different cooperation platforms. Current examples of this include financing for Concerted Action on the RES Directive (CA-RES) through the Intelligent Energy Europe (IEE) programme, and support and participation in the NSCOGI.

Where the competence for a particular topic lies - in this case planning - largely dictates the choice of intervention and limits its scope; a fundamental tenant of the Treaty of the EU. An insight into the positions of many Member States, in regards to how the EU should be involved in MSP, can be gained from responses (Box 3) that were submitted to two rounds of consultation on its maritime policy Green Paper (European Commission, 2006).

Box 3: Member State positions on EU involvement in MSP

- *“a European framework of guidelines for the regulation of marine areas”* (Spanish Government, 2007)
- *“general principles and guidance”* (Dutch Government, 2006)
- *“a basic understanding of marine spatial planning [...] across the EU [that allows] individual Member States to manage their own maritime space and resources”* (UK Government, 2007)
- *“EU guidelines ensuring the harmonized implementation of MSP between EU Member States”* and *“Promotion of experience exchange and best practice among EU Member States”* (Government of Italy, 2007)
- *“increased cooperation between Member States, especially around the same regional waters”* and *“fora within the EU for discussions on these issues”* (Government of Sweden, 2007)

The common theme amongst these positions - that EU intervention on MSP should be non-prescriptive and focussed on cooperation - is clearly echoed by the European Commission, *“Implementation of MSP is the responsibility of the Member States. The subsidiarity principle applies, but action at EU level can provide significant added value”* (European Commission, 2008a).

The assumption that cooperating Member States have implemented some form of national MSP is, to a certain degree, implicit in any EU approach that attempts to foster cooperation. Without this, cross-border consultation and coordination is unlikely to add much value as compared to national approaches, as one of the parties involved has little or no framework for providing input. This leads us to the conclusion that any EU intervention should further encourage or require Member States to implement national MSP - a prerequisite for transnational coordination - but leave the form and substance of such MSP to be decided by each Member State. This is not to say that the EU should have no involvement in national MSP, but only that this is most appropriately achieved through non-binding options such as mechanisms to exchange best practices; support for pilot cross-border projects, studies and research; and guidelines and/or recommendations.

“MSP needs to take account of political realities in the respective implementing countries. Rather than being imposed from outside, MSP should be allowed to take on different forms in different contexts, without however neglecting the basic principles.” (Gee, 2007)

WP2 highlighted that even in those sea basins where MSP is the most well established, the level of cross-border coordination and cooperation between Member States was low. This suggests

that approaches which are entirely voluntary in nature, with little active promotion of a transnational perspective, may be ineffective in promoting cooperation on MSP and ORE. An improved situation would be one in which there was more active promotion of, or a requirement for, cooperation and consultation across borders, yet set in a relatively loose framework that allowed for some flexibility in approach. Three broad approaches, that move beyond guidelines, were identified: i) the use of regional sea conventions, ii) MSP working groups, and iii) an MSP Directive.

Regional sea conventions

It has been proposed that the cooperation framework in the Baltic Sea – that has been promoted by HELCOM and regional ministers through a regional strategy and action plan along with a working group on MSP – may be an appropriate approach to achieving the necessary transnational perspective (HELCOM-VASAB, 2011b). This could, in theory, be extended to other sea basins, using regional sea conventions (for example the Barcelona and Helsinki Conventions) to encourage cooperation. However, such an approach is open to two important criticisms. Firstly, and most significantly, these conventions have been put in place with specific mandates in relation to protection of the environment. It is unclear how these institution arrangements would deal with the challenge of balancing the additional perspectives of social and economic development. Arguably, these conventions may not provide an appropriate prioritisation of sustainable development and biodiversity protection given their historical roles and focuses. Secondly, the evidence to date suggests that, although HELCOM and VASAB have been successful in creating a forum for the discussion and evolution of MSP, transnational cooperation has been hampered by the varied readiness of national MSP regimes in many of the countries involved. Self evidently, without national MSP frameworks in place there is little opportunity to enhance transnational cooperation on MSP. Yet regional sea conventions have no authority to enforce or require national MSP initiatives to be developed.

Working groups

An alternative approach could use EU MSP working groups as a way to enhance cooperation. This has a history in relation to EIA and SEA, with expert groups at the EU level¹¹ and at the United National Economic Commission for Europe (UNECE)¹² which established the Espoo Convention and the Protocol on Strategic Environmental Assessment. In the short term establishment of a MSP expert group within the EU has been requested, as a sub-group to the Integrated Maritime Policy Group, which meets every three months (HELCOM-VASAB, 2011b). However, this type of approach is arguably not well suited to the details of transnational MSP cooperation. In particular, the benefits associated with cross-border cooperation on MSP are only likely to be realised when countries discuss and coordinate on specific areas of common interest, that will differ depending on the border in question.

Broader working groups, without a clear mandate for countries to practically work together on areas of possible conflict or synergy in their future plans, may not achieve the benefits that are sought from transnational MSP. At the same time, this approach would suffer from the same disadvantage as one based on regional sea conventions; Member States are at different stages of implementing MSP and a working group would not provide a particularly effective tool to encourage this work to progress.

MSP Directive

An MSP Directive, arguably, offers a way to overcome the stumbling blocks observed in other approaches; for example:

- Current guidelines have largely failed to indoctrinate cross-border cooperation in national MSP processes. An MSP Directive could require some form of cooperation or coordination.
- Regional sea conventions have a mandate that is focussed on one aspect of planning; good environmental status. An MSP Directive could take a broader scope to also include economic and social development aspects. Regional sea conventions would become an important pillar of these efforts.

¹¹ <http://ec.europa.eu/environment/eia/home.htm>

¹² <http://www.unece.org/env/eia/workinggroup.html>

- Entirely non-prescriptive approaches (for example, working groups) are limited in their ability to encourage Member States to adopt and progress National MSP practices. An MSP Directive could set timeframes for Member States to implement national MSP regimes.

Although politically challenging, an MSP Directive that was focussed on encouraging cross-border cooperation – supported by national MSP – would oblige Member States to open direct communication, without dictating outcomes. This option gives cross-border cooperation a firm legal footing, whilst leaving implementation to the Member States, and comes closest to satisfying the understanding of planning competences that exists within the EU.

Having said that, the practical constraints of introducing a new directive are recognised. They can be difficult and time consuming for Member States to agree on. It is, therefore, important that any directive is designed in such a way as to minimise Member State objections and expedite the process. These aspects are taken into account when framing recommendations in this report.

Should the concept of a directive on MSP prove to be unacceptable to Member States then the many of the recommendations given here could – possibly with some loss of efficacy – be implemented in the form of guidelines, regional conventions or working groups as described above. The overall objectives, in terms of content and outcomes, should not change from those described in the following sections, but some forms of intervention are more likely than others to guarantee strong outcomes in regards to cooperation.

The following sections will focus on how such a cooperation focussed directive/approach could be designed and at what transnational scale it should be targeted.

Recommendations:

- **A focus on encouraging cooperation, rather than prescriptive approaches to national practices, is the most appropriate form of EU intervention**
- **National MSP is a pre-condition of successful transnational cooperation on marine planning and should be promoted**
- **The EU should ideally seek to implement an MSP Directive (or if this cannot be achieved, guidelines or approaches based on regional sea conventions or working groups) that focuses on two aspects:**
 - 1) **requiring Member States to implement national MSP legislation or amend existing legislation to cover MSP over an agreed time-frame – the content and form of the MSP should be decided by each Member State**
 - 2) **promoting cross-border cooperation and coordination on MSP and maritime development**
- **National MSP should be designed in an integrated way, according to non-restrictive best practices, the existing Roadmap and new, more detailed, guidelines that support a non-prescriptive MSP Directive**

3.2 Scale / aggregation

The scale for action within any EU intervention is an important aspect to consider. At the most local level, cooperation can be performed on bilateral basis (as much of the limited cross-border consultation on MSP is currently conducted) while at the other extreme, cooperation could be considered as an EU-wide approach involving all Member States.

Somewhere in between lies a regional, or sea basin, approach, which is the approach that has been adopted by the European Commission in implementing the Integrated Maritime Policy. They conclude that a similar regional approach is equally relevant for MSP (European Commission, 2010). Likewise SEANERGY 2020 recommends that a regional approach for promoting cooperation be implemented within any MSP Directive or guidelines, as it recognises that there is a need to take account of different regional realities, including ecological characteristics and the structure and intensity of maritime activities (Gee, 2007).

A regional approach satisfies a number of important aspects. Firstly, it recognises the ecosystem approach to maritime environmental management; the fact that ecosystems do not heed

national borders and, as such, to manage them most effectively a cross-border approach is necessary. A similar sentiment is echoed by a joint NGO response to consultation on the IMP ('NGO contribution to the EU's Integrated Maritime Policy', 2010) "...MSP must support the delivery of the Marine Strategies proposed under the Marine Strategy Framework Directive (MSFD), and preferably be based at the scale of the marine regions and sub-regions created under the MSFD".

Secondly, in a similar fashion to nature preservation, fishing activities have for some considerable time been managed at a regional level through the Common Fisheries Policy. A regional approach to transnational MSP would 'dove-tail' nicely with this existing approach for fisheries management; allowing regional fishery restrictions to be discussed alongside regional MSP issues.

Thirdly, a regional approach acknowledges the barriers to cooperation discussed by Hekkenberg et al. (2011). In particular, those of:

- community challenge: it is easier to make a case to the European Community for action on MSP on a regional level rather than an overall EU level
- stakeholder engagement: while not, in itself, resolving the challenge of large scale stakeholder consultation, a regional approach could at least allow those with local stakes to be included more easily than an EU wide approach.
- differences in approach: although not guaranteed, there is more likely to be some observable degree of regional identity or cultural homogeneity, to use the terms of Bengtsson (2009), when adopting a regional approach
- differences in readiness/capacity: within regions, there is typically, though not always, similar levels of preparation, readiness and familiarity with national MSP
- differences in need/urgency: there are better opportunities and more plans for ORE in some sea basins than other

Finally, and perhaps most importantly for ORE, it is only on a regional scale that major multinational infrastructure projects, such as an offshore meshed grid, can be coordinated and planned effectively. Bilateral approaches to cooperation run the risk of being too locally focussed while an EU-wide approach would not sustain the focus of Member States on regional projects. This aspect is already recognised with the creation and functioning of the North Seas Countries Offshore Grid Initiative (NSCOGI).

The definition of 'region' used in the above is not firmly linked to any particular level of regional aggregation. One could envisage times when macro-regional, for example, the entire Mediterranean Sea basin, or sub-regional approaches, for example, the Bothnian Sea in the Baltic Sea basin, may be most appropriate for cooperation on MSP and ORE infrastructure planning. Ideally any approach to transnational cooperation on MSP should be flexible enough to account for varying levels of regional definition, as required. This has been recognised in the early planning experiences in the Baltic Sea, where sub-regional and bilateral planning is considered when the characteristics and special conditions of the different sub-basins would recommend it (HELCOM/VASAB, 2011).

Recommendations:

- **Macro-regional or regional action is the most appropriate starting point for successfully and usefully employing transnational MSP practices.**
- **There should be flexibility to allow sub-regional and bilateral approaches where this would be beneficial.**
- **Where possible, transnational cooperation approaches should be aligned with those regions and sub-regions defined in the MSFD.**

3.3 Structure

As argued earlier, the most effective form of intervention by the EU would be an MSP Directive that required Member States to implement national MSP regimes according to their own preferences and encouraged or mandated cooperation on transnational aspects. However, this

does not address the important question of how such transnational cooperation could or should actually be promoted within such a mechanism. There is limited experience in this regard within the field of MSP. The BALANCE project attempted to provide a transnational marine management template based on zoning (Ekebom et al., 2008). A basic premise of the template was that high level zoning is done at a regional level. However, although such an approach could have advantages in terms of top-down planning, it would be likely to lack Member State support for its adoption as it moves too far from the division of competences between the EU and Member States discussed earlier.

Given this lack of experience in transnational frameworks within MSP, it is advisable to look at approaches to cross-border cooperation on other topics in the EU. The most obviously applicable of these is the Water Framework Directive (WFD; Directive 2000/60/EC¹³). Within the WFD, water management is based on Member State defined River Basins. Where a river basin includes more than one Member State or crosses from the EU to neighbouring countries, the WFD calls for the creation of an international river basin district. The primary focus of the WFD is specific, the achievement of 'good environmental status' in 2020, yet at the same time it offers a number of highly relevant ideas for creating cooperation structures without dictating the final approach on national water management to Member States.

In designing an MSP Directive that was focussed on cooperation, a number of aspects within the WFD could be broadly paralleled including:

i) International/regional sea basins

Just as international river basins form the basis for transnational cooperation within the WFD, then international or regional sea basins could be defined in relation to MSP in those situations where a sea was shared by a number of Member States or countries outside the EU community. These basins would provide the region underpinnings of any MSP Directive, or less prescriptive EU approach in the instance when a directive could not be agreed.

It also makes sense to mimic the approach within the WFD such that in instances where Member States cannot agree on defining sea basins, then the Commission could act as facilitator to assign them. However, it seems logical that any defined regions should be aligned with those given in the Marine Strategy Framework Directive (MSFD), Article 4; namely (a) the Baltic Sea; (b) the North-east Atlantic Ocean; (c) the Mediterranean Sea; and (d) the Black Sea.

However, there is also the possibility to use a more localised sub-regional level beneath these given both the large ranges of the North-East Atlantic and Mediterranean regions in the MSFD, and also the fact that these two macro-regions cover a number of different OSPAR¹⁴ and ICES Ecoregions¹⁵. This is an advantage of a regional MSP approach, decision making or negotiations at the regional level are more closely aligned with existing regional conventions, such as OSPAR, HELCOM or the Barcelona Convention. This could allow those regional bodies to interact more coherently with all relevant Member States at a common forum that is directly linked to the planning processes in each Member State.

The idea of a forum is hinted at in the European Commission (2009) Roadmap, "*work on MSP at EU level provides an appropriate forum for Member States to discuss and develop a holistic approach to the management of maritime activities in line with ecosystem requirements*", but how this should come about is not substantiated. At present there are very few dedicated forums for discussing transnational MSP issues at the EU or regional level. The most relevant example is the recently convened Vision and Strategies Around the Baltic (VASAB) initiative that aims to promote cooperation on spatial planning and development between the countries around the Baltic Sea¹⁶. The BaltSeaPlan project's vision for 2030 sees VASAB as a natural precursor to an eventual formal body responsible for endorsing pan-Baltic MSP. This *formal ministerial body* would be complemented by *transnational coordinating body* that would work on practical transnational aspects (Gee et al., 2011). This is an idea that seems broadly analogous to the planning forum proposed within SEANERGY 2020. However in the BaltSeaPlan, this transformation towards a cooperative structure is based on the mutual willingness of Baltic Sea countries to be involved. This has risks in terms of i) how quickly such a transformation may take place, ii) how fully individual countries are willing to engage with any future bodies and iii) the

¹³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

¹⁴ <http://www.ospar.org/content/regions.asp>

¹⁵ <http://www.ices.dk/aboutus/icesareas/Ecoregions.pdf>

¹⁶ <http://www.vasab.org/>

ability of this voluntary approach to be extended to other sea basins effectively. By placing cooperation within a stronger EU framework, SEANERGY 2020 attempts to overcome these potentially significant barriers.

It is important to note that a regional approach does not preclude the possibility of bilateral or multilateral cooperation occurring in parallel. There will still be instances where specific issues will be most appropriately addressed with the attention of a subset of the Member States involved in a particular Sea Basin. For example, there may be a desire to coordinate MSP activities to a larger degree in certain areas of common interest, analogous to the transnational pilot programmes that are currently observed under the BaltSeaPlan¹⁷ or Plan Bothnia¹⁸ projects.

How international sea basins could act as a forum for MSP and what could be achieved through their creation is discussed further under “marine management plans” below and in the following section on “Content” (Section 3.6).

ii) Responsible authorities

The WFD recognises the value of having a particular national authority as responsible for involvement each international basin. Something analogous could be included within any MSP Directive in order to provide a central authority in each Member State that can report on MSP for that sea basin. This is important, as it ensures that there is coherence in the way in which any particular Member State interacts with a defined sea basin. It also improves the ability of the group of authorities concerned with that sea basin to discuss and cooperate expediently without the involvement of other parties that may, or may not, need to be present.

iii) Marine Management Plans

MSP is one element of a broader suite of measures that is described through an overarching marine management plan that also includes aspects such as permitting requirements and monitoring plans. It is anticipated that Member States will bring MSP zoning and other management aspects for discussion and coordination when meeting in regards to a certain sea basin. There is no requirement to harmonise or agree on an overall management plan in the WFD and there should also not be any strict requirement to harmonise within any MSP Directive. This is due to the potentially different nature of the MSP practices in each Member State. However, there is still significant value in sharing national perspectives at the forum that an international sea basin would provide. The desirable time-frame and details to be included in such ‘national perspectives’ are described further in the sections below on process, content and scope.

Framing the WFD as a template for promoting cooperation and cooperative structures has a key advantage in the sense that this approach to Member State engagement is proven and more likely to be acceptable for a new directive. The WFD was the result of over five years of discussions and negotiations (European Commission, 2003), so there is some degree of common sense in using its approach to cross-border aspects as a starting point. Put simply, this level of intervention has been demonstrated to be acceptable to all parties and is a compromise between mandatory cooperation practices or fully voluntary guidelines.

Recommendations

- **Regional sea basins should be defined when a sea basin covers the territory of more than one Member State.**
- **Regional sea basins should ideally be aligned, as appropriate, with either the top level regions defined in the MSFD (i.e. Baltic, North-East Atlantic, Mediterranean and Black Seas) or sub-regions agreed by Member States.**
- **The Commission could arbitrate in assigning regional sea basins where Member States cannot reach agreement**
- **Each Member State should identify a central responsible authority within each regional sea basin for any MSP Directive.**

¹⁷ <http://www.baltseaplan.eu/>

¹⁸ <http://planbothnia.org/>

- Existing regional institutions should be encouraged to engage at the sea basin level with these new forums

3.4 Horizon

A large part of the value a MSP Directive (or equivalent guidelines) – that promotes cooperation in the manner described above – is in the creation and agreement of a regional vision for future marine use. Moreover, the time-frame of this vision – how far in the future activities are forecast – is important, as this determines how far in advance issues can be anticipated and planned for.

Veum et al. (2011) note that significant changes in the intensity and pattern of many sea uses can be expected across the different sea basins, with a trend towards increasing competition for space in the medium to long term, often in areas that have cost advantage for ORE. For this reason it is important to have a planning horizon that can take these trends into account. To date most national planning activities have been driven by the rapid expected growth of ORE. In turn, this growth has been driven by the need for Member States to meet their assigned 2020 targets under the Renewable Energy Directive.

While a 2020 horizon may be suited for identifying immediate, or short term, conflicts it is unlikely to capture conflicts or interactions that will only become important in the longer term. In particular, the deployment of ORE is likely to increase after 2020, yet this is typically not captured in government forecasts and rarely accounted for in national MSP. As ORE continues to expand there will be more need to identify potential cross border conflicts and possible areas for cooperation/synergy. In this regard, an example is a shared offshore electrical infrastructure such as an offshore meshed grid.

This suggests that, although current, shorter-term national approaches can be suitable at the Member State level, longer term planning is more useful when discussing cross-border issues at the regional sea-basin level. It can give a better basis for identifying widely agreed, common scenarios for the future taking account of the best available forecasts such as identifying which targets are likely to change significantly over time (UK-MSP Working Group, 2005). Long-term planning allows a more strategic approach to MSP, one that is more forward-looking, that anticipates conflicts and ensures that sufficient space is available for difference sea uses in support of other policy goals. While this report considers long-term planning important in the context of ORE and their future growth, a longer horizon can also assist in setting realistic goals for development that together fit within the capacity boundaries of the ecosystem.

This call for longer term future-oriented planning of the maritime space is well recognised in current literature and guidelines in regards to MSP, but to date has rarely been put into practice (UNESCO, 2006; WWF, 2010; MSPP Consortium, 2006; HELCOM/VASAB, 2011; UK-MSP Working Group, 2005).

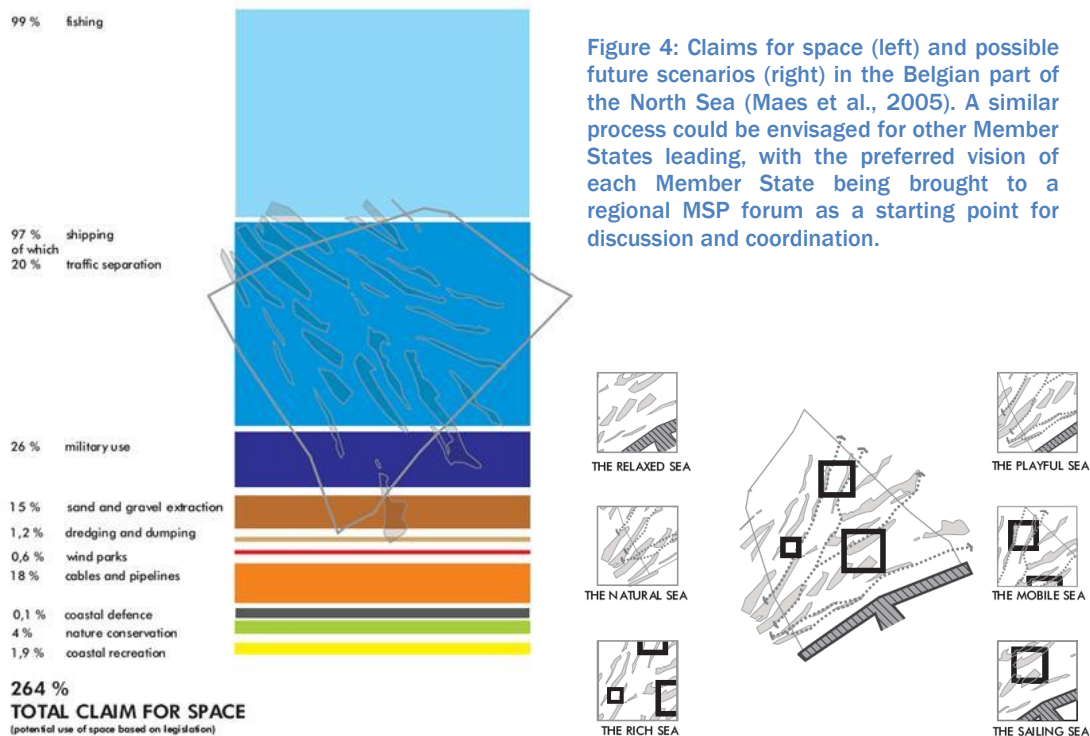


Figure 4: Claims for space (left) and possible future scenarios (right) in the Belgian part of the North Sea (Maes et al., 2005). A similar process could be envisaged for other Member States leading, with the preferred vision of each Member State being brought to a regional MSP forum as a starting point for discussion and coordination.

Still the question remains as to how a long-term vision can ensure compatibility of activities across borders, provide ecosystem based marine management while also taking into account social and economic issues and objectives, and create an enabling environment for transnational infrastructure projects. Only by taking the elements of these national visions and turning them into clear and, as far as is possible, agreed objectives for the sea basin or individual borders can coordination be sought.

There still remain a number of additional questions in relation to the process that is used to bring countries together and what content they have as a mandate to discuss, these are addressed further in the following sections.

Recommendations

- Regional sea basins should define clear environmental, sea research, social and economic objectives
- Regional forums should have a long term perspective in relation to the objectives they seek to attain – for example 20 year or longer time frame

3.5 Process

It is considered that the details of the coordination process - the specific discussions of cross-border use with potential conflicts and synergies – will be different between regions and will be largely defined by the sea basins in question. It is not foreseen that this kind of detailed process could be successfully described in any type of MSP Directive or even MSP guidelines. However, there are a number of important aspects on which guidance or direction could be valuable to enhancing the cooperation process and the opportunities for ORE. These include i) the timing of national MSP plans, ii) the way in which stakeholder consultation is undertaken, iii) the monitoring of coordinated sea basin plans, iv) the intervals between successive meetings/coordination-efforts between Member States and v) an approach to conflict resolution.

3.5.1 *Timing*

The process of enacting MSP legislation and conducting the planning process has proceeded to different stages in the many Member States. Some countries have completed MSP zoning and are implementing this, while others are still at earlier stages or sometimes have scarcely begun. This can be seen not only across regions, but also within them (for a good example one need only think of the Baltic Sea). These differences in timing and preparedness are noted as a barrier to transnational cooperation by Hekkenberg et al. (2011).

In particular, differences in the timing of target setting and ORE zoning can act as barriers to the development of cross-border electrical infrastructure. Transnational grid solutions are challenging to design in the absence of agreement on future generation locations and capacities, as well as the timing of deployment at those locations.

Thus there is a need for some level of alignment of timing of national MSP processes. As a minimum requirement, some level of flexibility in national MSP plans needs to be allowed for if meaningful coordination is to be possible. This is critical as discussions of future marine visions is only valuable when there is room for flexibility in the planning processes of participants. Without this, the situation is not markedly different from that seen today; where cross border discussions are often a case of consultation late in national processes or mere sharing of plans. Where possible, discussions of future visions needs to happen early at a transnational level so that cooperation requirements can drive the national planning process rather than react to it.

3.5.2 *Stakeholder consultation*

There are two broad approaches that could be envisioned for the engagement of stakeholders within transnational MSP. The first involves individual stakeholders interacting directly with any transnational forum and giving feedback at the regional level, while the second would see stakeholders engaging at the national level as they currently do, and this feedback and input taken to regional forums by each Member State. The challenge is to balance the value of a regional approach for transnational coordination, without losing a connection to stakeholders.

Considering the former - consultation on a regional level - this could disadvantage those sectors or groups that don't have a strong regional association or voice. It could also create a duplication of efforts, whereby national MSP is consulted upon and then this is, in some sense, repeated at the regional level. Finally such an approach would have practical problems in terms of how to engage with such a potentially large number of stakeholders, a barrier to some forms of cooperative approach noted by Hekkenberg et al. (2011).

It is suggested that the second of the two possible approaches is adopted. Consultation on visions and plans is done at a Member State level through national MSP. Preferred visions for each Member State's portion of an sea basin are then brought to central sea basins forum for discussion, with outcomes being reflected back to stakeholders in instances where there is significant changes made during any coordination/cooperation process.

3.5.3 *Monitoring*

Transnational MSP cooperation does not end once national plans have been discussed and necessary coordination has taken place. It will also be important to agree on reporting metrics and formats for recording individual Member State progress towards achieving their individual plans. It is proposed that this aspect is largely left to Member State preferences, with each sea basin discussing and agreeing some set of objectives on which they would like to report that reflect on the progress of their MSP plans and results.

What is monitored over time and how progress towards individual visions will be assessed will both need to be defined as this could set some minimum data collection requirements for all parties. Outcomes are the most interesting and important results for governments and stakeholders to measure. Moreover, a focus on outcomes could help to build the knowledge base of the types of management measures that work, that do not work, and why (Ehler and Douvere, 2009). In particular aspects relating to the deployment of ORE could be set as objectives to be monitored over time, possibly including capacity of different forms of ORE that is

zoned, permitted, or operational, as well as average permitting times achieved, incidents involving navigation or other indicators.

| | |
|---------------------------|--|
| Readily Measurable | On the time-scales needed to support management, using existing instruments, monitoring programs and available analytical tools |
| Cost-effective | Monitoring resources are usually limited |
| Concrete | Indicators that are directly observable and measurable (rather than those reflecting abstract properties) are desirable because they are more readily interpretable and accepted by diverse stakeholder groups |
| Interpretable | Indicators should reflect properties of concern to stakeholders; their meaning should be understood by as wide a range of stakeholders as possible |
| Grounded in Theory | Indicators should be based on well-accepted scientific theory, rather than on inadequately defined or poorly validated theoretical links |
| Sensitive | Indicators should be sensitive to changes in the properties being monitored (e.g., able to detect trends in the properties or impacts) |
| Responsive | Indicators should be able to measure the effects of management actions to provide rapid and reliable feedback on their performance and consequences |
| Specific | Indicators should respond to the properties they are intended to measure rather than to other factors, i.e., it should be possible to distinguish the effects of other factors from the observed responses |

Table 4: Characteristics of good indicators (Ehler and Douvère, 2009)

3.5.4 Updates

Just as with national MSP, transnational approaches should reflect the fact that planning is a continuous process that will need to adapt to changing conditions and new knowledge (HELCOM/VASAB, 2011). The results of coordination in regional sea basins should have the capacity to be updated and revised. This could depend on a number of aspects, including the outcome of the above described monitoring of maritime plans and their environmental effects, as well as the possibility of regularly defined intervals for iteration. This will be especially relevant for those sectors that may experience faster changes in their proposed level of activity and its location, such as ORE. Changes in aspects such as the location of future sites for ORE deployment, plans for their connection and/or interconnection and the results of environmental monitoring of ORE installations, are all potential reasons to open new discussions at the regional sea basin level. The frequency and triggers for updates could either be decided by individual sea basins during initial discussions, or included in any EU guidelines or directive.

3.5.5 Linking MSP to ORE targets

It will be important the Member States can transparently demonstrate the source of their future use visions and their reliability as a basis for transnational planning. To do this it will be important that national MSP processes are aligned with broader Member State policies and targets. Of particular relevance for this project, is the need to align MSP zoning practices to Member State ORE ambitions. It was observed in WP2 that in some instances this is not currently the case, with zoning of space conducted separately from the setting of ORE targets in

a country's NREAP and vice versa. This creates uncertainty for project developers, who have conflicting sources of information. On the one hand, when capacity targets exceed zoning provisions, they cannot be sure of government commitment to ORE and if future areas will be made available in a timely fashion. On the other hand, when zoning provisions exceed targets, then this can create competition for support and raises the spectre of sunk assets when permits for sites are held without commitment from government to support their development. This is additionally complicated by the medium-term nature of renewable energy target setting in the EU, with Member State efforts primarily driven by 2020 objectives in the RES Directive.

Given the need for longer term MSP visions, as described in Section 3.4, there is likewise a need for longer-term renewable energy objectives and, in particular, Member State ambitions for the specific ORE component of these objectives. These ORE ambitions, for example in the form of possible 2030 NREAPs, would need to be linked back to Member State MSP plans. Thus longer-term RES targets are not only important in encouraging renewable energy deployment and cross-border exchange of renewable energy (Veum *et al.*, 2011), but also support transnational MSP by allowing long-term visions to be defined for different sea basins.

Recommendations

- Where practicable, common MSP procedural timelines and planning timeframes should be used by Member States.
- Member States should prepare a preferred spatial management plan (vision) – in the form of predicted growth of different uses, management measures, targets and zoning maps.
- National sea basin management plans should be coordinated at international borders for the relevant sea basin.
- There should be a provision for sharing of information; i.e. Member States send copies of their coordinated sea basin management plans to the Commission and to any other Member State concerned with that basin
- Monitoring of objectives should be agreed regionally and build on, or if possible be part of, regional monitoring and assessments carried out by regional organisations
- The frequency of transnational MSP meetings/forums and updates of national plans should be agreed – possibly subject to some minimum. Triggers for non-regular discussions should also be agreed.
- National MSP should be aligned with (i.e. provide sufficient zones for) national ORE ambitions in the medium and long term (for example NREAPs)
- Longer-term EU RES targets should be implemented to encourage cross-border cooperation on ORE and grid infrastructure, as well as allow longer-term transnational MSP coordination to occur.
- The Commission should act to arbitrate in situations where cross-border aspects cannot be agreed

3.6 Content

In addition to coordinating different Member State visions for the future of a sea basin, a regional MSP forum can be used to address many other topics that relate to MSP and the cross-border implications of ORE. A number of these are discussed below including grid planning (particularly offshore grid infrastructure), harmonizing definitions of sea use interactions, coordinating research programs, agreeing data formats/availability and common marine management measures, such as permitting procedures, amongst others.

However, it remains important to reduce barriers to cooperative approaches and minimizing any possible impingement on Member State solidarity. Therefore, it is recommended that the considered scope of this additional content is determined at the regional or sea basin level.

Some aspects, for example coordinated offshore grid planning, are more relevant for one sea than another.

3.6.1 Grid planning

Having ORE plans collated at a central forum offers an excellent opportunity for the discussion of offshore grid development and transmission capacity expansion. These are issues that only be dealt with adequately in consultation with neighbours. In the most basic sense, the size of interconnection between countries (both onshore and offshore) directly depends on the capacity expansions plans of each country and the type of generation, as these impact on the anticipated cross-border flows and support services. Even more importantly, investment and operation of common infrastructure, for example in the form of offshore grid, must be shared between those parties on the basis of the costs and benefits each party will see from this development. Finally, the geographic planning of offshore grid will require reliable information on the location and timing of ORE deployments as well as commitment from national authorities and the market to develop in accordance with those plans.

Much of this information could be made available through regional sea basin MSP forums that could allow parties to agree on a master plan for grid connection in the medium term. These forums could also offer the opportunity to engage with TSOs or even a regional offshore TSO should such a role be defined in the future in a given sea basin. A similar approach is already observed through the North Seas Countries Offshore Grid Initiative (NSCOGI), which joins a number of North Sea countries in a collaboration to create an integrated offshore energy grid. However, the NSCOGI is not primarily concerned with MSP and, as such, it must refer back to member countries for information on their ORE plans and locations. Integrating these cooperative efforts on offshore grid into a broader MSP framework and forum could allow a more effective approach to planning offshore grids. It could also make it easier to address interactions with other sea uses and potential ecosystem impacts.

“...each country's territorial or jurisdictional waters are part of a dynamic global system connected by shifting winds, seasonal currents and migrating species. Therefore analysing the processes that govern the present state and future behaviour of these waters cannot rely exclusively on data collected within a country's own jurisdiction. Cooperation across borders is needed.” (European Commission, 2009)

3.6.2 Data and research

Given the history of data collection in the maritime zone and the different expertise required there are often a large number of institutions responsible for marine data collection. There is a need to improve the harmonisation, availability and efficiency of

collection of data regionally, and ideally between regions as well. In stakeholder consultations, this aspect of regional cooperation was voiced as offering significant benefits for ORE, and MSP in general, in terms of reducing costs of data collection (and thus project and planning costs) and improving the quality of information on which decisions are based. A regional MSP forum could provide benefits in a number of distinct areas (Payne *et al.*, 2011; Beck *et al.*, 2009):

- clear guidelines on who is responsible for the different data sets that should be collected (with the understanding that many dataset will likely remain the responsibility of Member States),
- guidelines on common data formats and minimum criteria for acceptance for MSP purposes, including checks with regards to meeting the INSPIRE Directive 2007/2/EC that establishes an infrastructure for spatial information in the EU,
- provide a point of interaction for efforts in relation to the Marine Knowledge 2020 initiative and, in particular, the European Marine Observation and Data Network¹⁹ (EMODNET) that recently completed an initial pilot phase.
- introduce data sharing efforts, including the identification who is responsible for MSP related data sets within each Member State to create a network of contacts, and
- provide a better distribution and efficiency to regional research efforts through sharing of current initiatives and cooperation on future relevant research in terms of equipment,

¹⁹ <https://webgate.ec.europa.eu/maritimeforum/category/162>

expertise, staff, data and methodologies. This would help to make data more comparable and avoid overlapping work (Policy Research Corporation, 2011).

Spatial planning scenarios and visions do not way replace scientific data, rather they are deeply dependent on the availability of quality data and its interpretation. By promoting regional forums for discussing data related issues in the context of MSP, the EU could help to improve current national efforts.

3.6.3 Management measures (including permitting)

Currently, maritime management measures – in particular permitting procedures for various activities including ORE – are nationally determined. Each Member State often has differences in the authorities or departments nominated for ORE permitting procedures, the number of authorities required for permitting, the process for obtaining permits and the requirements in terms of applying and monitoring. Some elements such as obtaining environmental impact assessments (EIAs) are partly harmonised between Member States through other legislation like the EIA Directive. However, there are significant opportunities for Member States to increase the level of harmonisation of permitting procedures should they so wish.

This could improve efficiencies and reduce costs for ORE project developers, particularly those studying their options in different Member States or applying for projects in a number of EEZs. It could also help to improve the ease with which cross-border projects (for example offshore grid) could be considered and approved. Finally there is the opportunity for Member States with harmonised procedures to share lessons learnt and experience over time to improve their permitting processes. Given the wide range of approaches to permitting observed in WP2 of this project, it would seem advisable that the possible harmonising of management measures is something that can be discussed at regional forums, and may even only be achieved on a bilateral or case-by-case basis in the near future. However, by meeting and putting this topic on the agenda, the possibilities for cooperation would be improved greatly from today's situation.

Related to this, regional forums may offer an ability more effectively engage with fishing legislation that is currently controlled at an EU level through the Common Fisheries Policy (CFP). Given the interaction of fisheries with the ecosystem and the mobility of fish stocks, sustainable management of fisheries in EU waters would benefit from coherent MSP (European Commission, 2008a). A revision of the CFP could offer the possibility to include MSP in the sustainable management of maritime resources, particularly if responsibility for its delivery is more closely tied to the regional sea-basin level (North Sea Commission, 2011).

3.6.4 Sea use interactions

Another area of possible coordination is on definitions of sea use interactions; what activities/uses are allowed to coexist or share space with one another and under what conditions. Although there is broad consensus between Member States on how many different sea uses are treated with respect to one another, there are still a number of instances where Member States take different positions. For example, fishing is generally not allowed within offshore wind parks in the North Sea, except in Denmark where certain types of fishing is permitted. Equally, some countries take different stances on the way in which their network of protected nature areas are considered with respect to ORE; in Germany there is little possibility of developing ORE within a protected area, while in other countries this position is not so stated so strongly.

There is an opportunity for regional MSP forums to agree on common principles for treating certain sea uses. This doesn't necessarily set weights or priorities for different sea uses, and zoning would still be up to Member States, but it could provide more clarity over what level of coexistence/co-use/shared-use is possible. This could have benefits for ORE project developers, in terms of having a common understanding within a sea basin of how their projects interact with different users, but also for other sectors and nature preservation, who similarly have a common regional understanding of allowable interactions.

Recommendations

- **Regional forums should address all sea uses of significance in a sea basin**

- Regional forums should discuss options for agreeing on a common understanding of sea use interactions
- Regional forums should be used to agree on timeframes for improving data quality, commonality and availability, building on the INSPIRE Directive and linking to the EMODNET initiative.
- Regional forums should seek to harmonise, where feasible, spatial management measures including elements of permitting requirements and regulations.
- Regional forums should share current research efforts and seek to agree on research priorities and responsibilities within a sea basin.

3.7 Interactions

New efforts to promote cooperation on transnational MSP will not exist in isolation. They must complement and work alongside relevant existing EU legislation and efforts. Of particular relevance are the EU initiatives with respect to integrated coastal zone management (ICZM) and the Marine Strategy Framework Directive (MSFD). Both of these overlap, in some sense, with the field of MSP.

Coastal zones are, in effect, the interface between terrestrial planning and MSP. Their unique characteristics means that specialised management techniques have been developed to manage this interface, in particular ICZM. ICZM was the subject of an EU recommendation in 2002, the effects of which expired in 2006. By tacit agreement, the Member States and the Commission (DG Environment) decided to continue implementing the actions and policies (Eckstein, 2011). Together DG Environment and DG MARE launched a review of the EU ICZM Recommendation in 2010 including an impact assessment and consultation. The review will be used to explore the need and options for future EU action, including the possibility to combine ICZM with MSP in some way, possibly through a single instrument. Eckstein (2011) points out that a significant hurdle is the fact that DG MARE focuses on the IMP, its actions and any resources (Fisheries Fund) on the sea, while DG Environment (backed by the maritime regions and NGOs) focuses on the 'land' dimension, represented by coastal zones. SEANERGY 2020 does not take a position on the need for a common instrument or approach to address both ICZM and MSP. On the one hand, it could be anticipated that, for example, planning of landfalls for offshore cabling could benefit from a more integrated approach. Alternately, a more complex or inclusive approach may introduce procedural delays, either in designing an instrument or administering it.

The interaction of any new efforts on MSP or possible MSP instrument with the MSFD also needs to be considered. A number of environmental NGOs have expressed the desire to see any binding requirement to apply MSP *“enshrined in the MSFD, perhaps as an annex to the existing Directive”* (MSP – Joint NGO position paper, 2011). They suggest that the MSFD already provides the basis for ecosystem approaches to maritime management and so could be extended to include MSP. However, the MSFD is designed for the purpose of achieving or maintaining a good environmental status by 2020 with a focus on preserving biodiversity. Given this underpinning environmental perspective, an MSFD centred approach to MSP may not offer the best balance of economic, social and environmental considerations. There is the potential that using the MSFD as the main framework for reviewing planning activities could be a barrier to economic development and, in particular, ORE. A dedicated instrument and forum for MSP, as proposed in this report, would provide a strong tool for achieving the goals of the MSFD, while balancing this with development objectives.

The same NGOs note that, if an MSP Directive is proposed, *“it should assist the MSFD in achieving Good Environmental Status by 2020”* (MSP – Joint NGO position paper, 2011). This is aligned to the recommendations of SEANERGY 2020, any new instrument would need to be closely linked to existing EU initiatives, and should act as a tool to achieve the parallel goals of those initiatives.

4 CONCLUSIONS

As a tool for planning and integrating different uses of the sea, MSP has a strong foundation of support within current legislation, organisations and initiatives. MSP is promoted within the EU's Integrated Maritime Policy, the Marine Strategy Framework Directive and the Strategy for the Baltic Sea Region as well as the work of UNESCO, HELCOM and OSPAR amongst others. Its value with respect to ORE is referenced in the EU's Roadmap for MSP and principles "MSP can play an important role in mitigation, by promoting the efficient use of maritime space and renewable energy" (European Commission, 2008a).

The simple observation that many maritime activities and values, including ORE, have a cross-border dimension suggests that a more coordinated transnational approach to MSP could benefit decision making. Of most relevance to ORE is the potential added efficiency of cross-border coordination along with expanded opportunities for deployment and/or cost savings that could arise from cooperation on shared infrastructure. In particular transnational approaches to MSP could offer advantages in terms of:

- More efficient governmental coordination that results in improved decision making;
- Reduced transaction costs (for search, legal, administrative, and opportunity costs) for maritime activities;
- Enhanced certainty on exploitation potentials resulting in an improved investment climate;
- Improved ability to address nature conservation at an ecosystem level; and
- Improved opportunities to collaborate on the type of cross-border infrastructure, such as offshore grid, that can open new areas of a sea to development.

Previous work done within the SEANERGY 2020 project had shown that current national MSP efforts are largely fragmented with little emphasis on cross-border consultation or planning. Furthermore, new or existing international instruments were found to have limited possibilities for encouraging transnational coordination. For this reason, EU level action on MSP was determined to be the most appropriate way forward.

With this starting point, this report discussed a number of options for the EU to promote transnational cooperation on MSP. It was argued that a Directive – focussed on encouraging cross-border cooperation supplemented by national MSP – would require Member States to open direct communication on the details of their national MSP, without dictating outcomes. This would give cross-border cooperation a firm legal footing, whilst leaving implementation to the Member States, and comes closest to satisfying the understanding of planning competences that exists within the EU. At the same time, the corresponding recommendations leave open the possibility of implementing a similar approach through less binding interventions such as guidelines, working groups or regional sea basins.

The specific recommendations focus on the following seven aspects and are listed in detail over the page.

- i) the recommended role for the EU in relation to MSP,
- ii) the scale at which action on transnational MSP is most appropriate,
- iii) a possible structure for an instrument for EU intervention in MSP,
- iv) the planning horizon that should be adopted,
- v) key steps in the process of fostering transnational cooperation on MSP,
- vi) additional content surrounding MSP that could be a focus during cross-border coordination and
- vii) the relationship of transnational MSP to other EU legislation and initiatives.

They are aimed at providing an appropriate framework for promoting cross-border cooperation on MSP, as well as indicating something of the desirable content of these discussions in order to create an enabling environment for the deployment of ORE beyond the 2020 timeframe.

EU role and intervention

- A focus on encouraging cooperation, rather than prescriptive approaches to national practices, is the most appropriate form of EU intervention
- National MSP is a pre-condition of successful transnational cooperation on marine planning and should be promoted
- The EU should ideally seek to implement an MSP Directive (or if this cannot be achieved, guidelines or approaches based on regional sea conventions or working groups) that focuses on two aspects:
- requiring Member States to implement national MSP legislation or amend existing legislation to cover MSP over an agreed time-frame - the content and form of the MSP should be decided by each Member State
- promoting cross-border cooperation and coordination on MSP and maritime development
- National MSP should be designed in an integrated way, according to non-restrictive best practices, the existing Roadmap and new, more detailed, guidelines that support a non-prescriptive MSP Directive

Scale / aggregation

- Macro-regional or regional action is the most appropriate starting point for successfully and usefully employing transnational MSP practices.
- There should be flexibility to allow sub-regional and bilateral approaches where this would be beneficial.
- Where possible, transnational cooperation approaches should be aligned with those regions and sub-regions defined in the MSFD.

Structure

- Regional sea basins should be defined when a sea basin covers the territory of more than one Member State.
- Regional sea basins should ideally be aligned, as appropriate, with either the top level regions defined in the MSFD (i.e. Baltic, North-East Atlantic, Mediterranean and Black Seas) or sub-regions agreed by Member States.
- The Commission could arbitrate in assigning regional sea basins where Member States cannot reach agreement
- Each Member State should identify a central responsible authority within each regional sea basin for any MSP Directive.
- Existing regional institutions should be encouraged to engage at the sea basin level with these new forums

Horizon

- Regional sea basins should define clear environmental, sea research, social and economic objectives
- Regional forums should have a long term perspective in relation to the objectives they seek to attain - for example 20 year or longer time frame

Process

- Where practicable, common MSP procedural timelines and planning timeframes should be used by Member States.
- Member States should prepare a preferred spatial management plan (vision) - in the form of predicted growth of different uses, management measures, targets and zoning maps.
- National sea basin management plans should be coordinated at international borders for the whole of the relevant sea basin.
- There should be a provision for sharing of information; i.e. Member States send copies of their coordinated sea basin management plans to the Commission and to any other Member State concerned with that basin
- Monitoring of objectives should be agreed regionally and build on, or if possible be part of, regional monitoring and assessments carried out by regional organisations
- The frequency of transnational MSP meetings/forums and updates of national plans should be agreed - possibly subject to some minimum. Triggers for non-regular discussions should also be agreed.
- National MSP should be aligned with (i.e. provide sufficient zones for) national ORE ambitions in the medium and long term (for example NREAPs)
- Longer-term EU RES targets should be implemented to encourage cross-border cooperation on ORE and grid infrastructure, as well as allow longer-term transnational MSP coordination to occur.
- The Commission should act to arbitrate in situations where cross-border aspects cannot be agreed

Content

- Regional forums should address all sea uses of significance in a sea basin
- Regional forums should discuss options for agreeing on a common understanding of sea use interactions
- Regional forums should be used to improve data quality, commonality and availability, building on the INSPIRE Directive and linking to the EMODNET initiative.
- Regional forums should seek to harmonise, where feasible, spatial management measures including elements of permitting requirements and regulations.
- Regional forums should share current research efforts and seek to agree on research priorities and responsibilities within a sea basin.

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