



**eMSP
NBSR**

Emerging Ecosystem-based
Maritime Spatial Planning
Topics in the North and Baltic
Sea Regions



**Co-funded by
the European Union**

BACKGROUND

Ocean governance & maritime spatial planning in the NBSR

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1. Introduction

This background report on ocean governance (OG) was prepared to provide a foundation and common understanding among the eMSP NBSR project OG Learning Strand Community of Practice and the overall participants in the project, on what ocean governance is, to describe its multi-scale dimensions, to highlight the challenges inherent in its implementation, and to discuss its relationship to maritime spatial planning (MSP), specifically in the Baltic and North Seas regions.

2. What is ocean governance?

We do not, at this time, have a universally accepted definition and common understanding of what ocean governance (OG) is, exactly. We do know, however, that governance, in the ocean and elsewhere, does not equate to government alone.

Starting with governance itself, published definitions broadly and variably describe it as ‘the relationship between a society and its government’, ‘the rules of collective decision making’, or ‘the process of interactions through the laws, norms, power or language of an organised society over a social system’. Governance refers to the structures, systems, and practices an organisation has in place to:

1. assign decision-making authorities, define how decisions are to be made, and establish an organisation’s strategic direction,
2. oversee the delivery of its services,
3. implement its policies, plans, programs, and projects;
4. monitor and mitigation of its key risks, and
5. report on its performance in achieving intended results and use performance information to drive ongoing improvements and corrective actions.

The United Nations suggests that ‘good governance’ has eight key characteristics or elements.¹ It is:

1. Participatory
2. Consensus-based
3. Accountable
4. Transparent

¹ [About good governance](#), OHCHR

5. Responsive
6. Effective and efficient
7. Equitable and inclusive
8. Follows the rule of law

More specifically for ‘ocean’ governance, the process must be integrated horizontally across sectors and the land/water-sea interface because it requires the participation of governmental institutions and non-state actors (such as diverse stakeholders, the private sector, NGOs, academics, scientists and more) as well as vertically across all of levels of governance within an integrated system with reciprocal collaboration and coordination. Collaborative governance is therefore an essential process to bring together diverse stakeholders in collective regional seas forums such as HELCOM and OSPAR, to engage in consensus-oriented decision-making.

In practical terms, we can understand ocean governance as both a concept and a process. The concept is one of managing the ocean and its resources in a way that ensures specific goals such as ecological status, health, productivity and resilience. In principle, it encompasses all ocean uses and users and a set of official rules involving formal and informal institutions and their interactions and a negotiating process between them, which function at different levels to ensure effective integrated management. It is a process of decision making and the means by which decisions are implemented. However, ocean governance faces the challenge of reflecting the multi-dimensional and interconnected role that the ocean plays in environmental health, economic prosperity and human well-being, including justice and equity.²

3. Law vs. nature

We divide the world ocean into comprehensible and manageable pieces, perhaps helping us to grasp and understand the immense vastness of the ocean and to put in place legal frameworks that ensure rights, minimise conflict, and provide predictable regulatory and policy regimes. We do this in two ways, one legal and the other ecosystem-based.

Our ocean legal system draws nice straight lines from the coast – encompassing internal waters, territorial seas, contiguous zones, EEZs, and continental shelves, but nature draws its own. The former, born out of UNCLOS, sets distance-specific lines from the coast and defines national rights and obligations for what has become national jurisdiction. Legal clarity about rights and responsibilities in the ocean beyond national jurisdiction has recently been provided through the adoption of the High Seas Treaty.³

² Brodie Rudolph, T., Ruckelshaus, M., Swilling, M. *et al.* A transition to sustainable ocean governance. *Nat Commun* **11**, 3600 (2020). <https://doi.org/10.1038/s41467-020-17410-2>

³ [An historic achievement: Treaty of the High Seas is adopted](#), European Commission, Directorate-General for Maritime Affairs and Fisheries

Yet natural marine processes, species, and ecosystems are not confined to maritime legal boundaries. Many marine species live transboundary lives, ranging widely throughout and beyond national jurisdictions. This is the conundrum of law vs. nature in ocean governance (i.e., straight legal vs. fuzzy ecosystem boundaries). These two systems and management approaches coexist in space and time, and challenge our ability to work within two overlapping management systems.

4. Multi-scale ocean governance

Ocean governance exists simultaneously at multiple, nested scales, from international, regional, national and local, with many different, but interconnected components in a complicated mix. The following discussion focuses on the international, EU, and regional seas dimensions of OG.

5. International ocean governance

Ocean governance's overarching legal framework derives from the United Nations Convention on the Law of the Sea (UNCLOS). While UNCLOS provides the constitution for the ocean and established international norms for virtually all ocean uses and enables and supports national legislation and policy, it provides little guidance to nations on how to govern ocean resources in an integrated way, how to deal with the effects of one use on the other uses, or how to bring ocean, coastal, and water management together.

International coordination is not defined in international agreements, however, the obligation to cooperate on a global or regional basis is provided under UNCLOS and several other treaties. Article 197 of UNCLOS further elaborates on this by determining that,

“States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organisations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.”

The International Ocean Governance Forum⁴ (IOG Forum) provides a platform for ocean actors and stakeholders within and beyond Europe to share understanding, experiences and good

⁴ [International Ocean Governance Forum](#), European Marine Board

practices on ocean governance. The IOG Forum supports the further development of the EU policy on *International Ocean Governance: An Agenda for the Future of our Oceans*.⁵ The IOG agenda brings 50 cross-cutting actions to ensure clean, healthy, safe, secure, and sustainably used oceans.

In 2022, the European Commission and the EU's High Representative set out a new joint communication on international ocean governance: *Setting the course for a sustainable planet, Joint Communication on the EU's International Ocean Governance Agenda*.⁶ The joint communication is an integral part of the EU's implementation of the United Nations' 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 14 on Life Below Water. The updated agenda has an important role in delivering on the blue part of the European Green Deal (discussed below).

6. Regional ocean governance

The EU has developed a comprehensive set of rules for protection of the marine environment, promotion of sustainable 'blue growth' and efficient use of marine space. Three main legal instruments make up this regulatory framework, i.e., the Water Framework Directive (2000), the Marine Strategy Framework Directive (2008), and the Maritime Spatial Planning Directive (2014).⁷ The immediate implications of some marine environmental objectives were also strengthened by the 2015 ruling of the Court of Justice of the EU (CJEU) in the so-called *Weser case*. In this case, the CJEU established that the core environmental objectives of the WFD are binding in relation to individual projects, including many industries, infrastructure facilities and public utilities.

The Marine Strategy Framework Directive (MSFD) split European maritime space into four geographical regions, mainly coinciding with the geographical boundaries of the Regional Seas Conventions. Under the MSFD, all Member States were required to develop sea basin strategies by 2012 against which the achievement of the 'Good Environmental Status' (GES) would be assessed. Each Member State was then required to coordinate with other Member States to draw up a programme of cost-effective measures to achieve GES.

⁵ [International ocean governance](#), European Commission, Directorate-General for Maritime Affairs and Fisheries

⁶ [Setting the course for a sustainable blue planet - Joint Communication on the EU's International Ocean Governance agenda](#), European Commission, Directorate-General for Maritime Affairs and Fisheries

⁷ Langlet, D. 2023. *Legitimacy and EU Marine Governance: Paths Towards Effective Ocean Governance, Implementation and Compliance*. Cambridge University Press.

<https://www.diva-portal.org/smash/get/diva2:1739070/FULLTEXT01.pdf>

The Marine Strategy Framework Directive is emblematic of the delicate balance between setting common objectives and respecting national diversity. Indeed, the approach was to require EU countries to achieve a certain result, leaving them free to choose how to do so, that is, entrusting implementing mechanisms to Member States.

This approach challenged Member States that shared the same sea basin to cooperate and coordinate on the management of their seas and waters. It meant that new governance structures had to be developed or existing ones exploited, such as the Regional Seas Conventions. The first EU macro-regional strategy was approved by the European Council in 2009, the EU Strategy for the Baltic Sea Region (EUSBSR).⁸ It aimed to address environmental challenges, energy and transport related issues, economic growth potential, as well as safety and security issues. Today, we have such regional collaborative arrangements in place: HELCOM for the Baltic Sea and OSPAR for the North Sea.

We have a complex governance/management regime for our relationship with the coastal and marine environments in the Baltic and North Seas. One of the more advanced cross-border collaborations in MSP has developed in the Baltic Sea region since the early 2000s, between HELCOM, the governing body of the Helsinki Convention, and VASAB, the regional cooperation body for spatial planning.

The HELCOM-VASAB MSP Working Group provides guidelines, training, and fora to enhance transboundary cooperation in the region. Several MSP-related projects, involving partners from the Baltic Sea region, have been undertaken, seeking ways maritime spatial planning can contribute to and address ocean governance. The new Baltic Sea MSP Roadmap 2021-2030⁹ recognises this transition and sets the goal of the ocean decade, emphasising sustainable development of the region and building a sound basis for a new cycle of maritime spatial planning. Objectives of the Roadmap are closely linked to the key goals of the HELCOM Baltic Sea Action Plan¹⁰ and VASAB (Strategic) Vision until 2040.¹¹

Despite the broad geographic scope of regional ocean governance and MSP, there is a persistent dichotomy between ocean and water policies and management regimes. Highlighted in the Mission Starfish 2030 report¹², EU ocean governance and policy would benefit from a holistic water cycle approach. Indeed, the persisting segmentation of the instruments, policy frameworks and institutional arrangements between maritime affairs, on the one hand, and water policy, on the other, is at odds with the functioning of the water cycle. It is now

⁸ [EU Strategy for the Baltic Sea Region](#), European Commission, Directorate-General for Regional and Urban Policy

⁹ [Regional Baltic MSP Roadmap 2021-2030](#), the European MSP Platform, European Commission.

¹⁰ [Baltic Sea Action Plan](#), HELCOM

¹¹ [Vision 2040](#), VASAB

¹² European Commission, Directorate-General for Research and Innovation, Lamy, P., Citores, A., Deidun, A., et al., *Mission Starfish 2030 : restore our ocean and waters*, Publications Office, 2020, <https://data.europa.eu/doi/10.2777/70828>

established that the health of the ocean and seas is highly dependent on the quality of inland waters. Pollution is a case in point, with land-based sources estimated to account for 80% of plastic in the ocean. Mission Restore our Ocean and Waters by 2030 (Starfish) is key to ensuring this transformation benefits the EU's hydrosphere.

In its 'Roadmap for MSP'¹³, published in 2008, the European Commission refers to MSP as a tool for achieving sustainable use of marine resources and as providing legal certainty and predictability. However, the strong framework character and very general obligations of the MSPD as eventually adopted leave the attainment of such effects almost entirely to the individual Member States. The Directive is explicitly 'without prejudice to the competence of Member States to determine how the different objectives are reflected and weighted' in their plans and its implementation should also to the greatest extent possible build on existing rules and mechanisms. Not surprisingly, it has been questioned whether the MSPD has the ability to steer relevant spatial planning practices in a sustainable direction.

A further important limitation of the effect of the Directive is that coastal waters that are subject to a Member State's town and country planning are exempted from its purview, provided that this is communicated in the relevant national maritime spatial plans. Since coastal waters are where most maritime activities occur, this can significantly limit the effect of the Directive. However, if MSP is to be ecosystem-based and consider land-sea interactions, as required by the MSPD, close coordination between existing town and country planning processes and planning undertaken according to the Directive is evidently needed. While the MSPD most explicitly recognises the need for considering multiple interests and objectives in marine governance, none of the marine directives is particularly clear on how to address the 'wicked' aspects of marine governance.¹⁴

7. Ocean and coastal uses and their management in the NBSR

There are numerous ocean and coastal industries and activities in the North and Baltic Seas; some are well established, others are emerging in the context of developing a sustainable blue economy. These regional seas are busy with

1. fish and shellfish harvesting,

¹³ [MSProadmap](#), MSPglobal.

¹⁴ O'Hagan, A. M., Paterson, S., & Le Tissier, M. (2020). Addressing the tangled web of governance mechanisms for land-sea interactions: Assessing implementation challenges across scales. *Marine Policy*, 112, 103715.

2. shipping/marine transport and related infrastructure,
3. military operations,
4. coastal defence and flood protection,
5. aquaculture,
6. tourism and leisure,
7. marine conservation,
8. renewable energy generation,
9. offshore oil and gas production,
10. carbon sequestration,
11. biotechnology and bioprospecting, and
12. sand and salt extraction.

Given the complexity of the marine environment, the variety of related activities and threats, and overlapping jurisdictions, we have developed a dense and often confusing policy environment, with a patchwork of laws, regulations and responsible authorities, largely organised along sectoral lines that to date have not been well coordinated or integrated.

Each sector has its own specific jurisdictional, legislative, policy, strategic, and institutional framework for managing specific activities, habitats or species, operating largely in isolation, despite the systemic and interconnected nature of these ocean and coastal systems. Such a fragmented governance arrangement, with its legal and institutional gaps and a lack of full implementation and enforcement of current regulations, does not consider the impacts of management decisions on sea users as a whole, or their desired coexistence.

8. What role does maritime spatial planning play within the umbrella of ocean governance?

Over the last decades, MSP has been increasingly recognised as an important framework for integrated ocean governance. It is generally used as an approach to deal with complex, emerging, and strategic issues in the marine realm, and can function as an overarching coordination mechanism for marine and coastal policies established in a country. Indeed, maritime or marine spatial plans support country-specific environmental and socio-economic objectives to be implemented by various sectoral authorities through regulatory and non-regulatory frameworks.

Through MSP, the ecosystem-based approach (thoroughly explored in the EBA eMSP learning strand) can thus be operationalised in a tangible manner, focusing on its spatial and temporal aspects. This is more easily accomplished where MSP informs the operational outcomes and related management measures within each maritime and coastal sector.

As our ocean spaces become increasingly busy, with multiple spatial conflicts to be addressed, MSP has been recognised as an important integrated planning framework to promote sustainable ocean governance. Indeed, the MSP process moves away from sectoral management to take into account multiple economic, ecological, and social objectives, aiming to reduce conflicts and promote coexistence and synergies in the maritime domain.

As an approach intending to deal with complex, emerging, and strategic marine issues, MSP can function as an overarching coordination mechanism for marine and coastal policies established in a country or a transboundary region, and reduce conflicts and promote multi-use, coexistence, and synergies in the marine domain. UNESCO's 2021 Ocean Governance and Marine Spatial Planning Policy Brief¹⁵ provides a comprehensive understanding of this evolving relationship.

9. The EU Green Deal, ocean governance, and MSP

It is increasingly recognised that Europe's ocean and seas are under threat. The European Green Deal (GD)¹⁶ calls for a major transformation to reduce the environmental and climate footprint of the European economic model that must also benefit Europe's ocean, seas, and waters. Against the backdrop of the GD, we need to ensure the sustainable use of marine ecosystems, both economically and socially. A well-coordinated OG approach can help in implementing the GD targets in ways that foster synergies and increase efficiency.

As the European Green Deal aims to make the EU a model for global sustainability, the challenge is now for the EU to show leadership in shaping international ocean governance towards further ocean protection and sustainable management.

The Green Deal lays out over a dozen ambitious and urgent priorities for this transformation, most with direct relevance and agenda-setting for the 'blue' components of the Green Deal. Some of the GD priorities have direct relevance to the coastal and marine environments of the

¹⁵ Morf, A., Caña, M., & Shinoda, D. (2021). Ocean governance and marine spatial planning.

¹⁶ [Delivering the European Green Deal](#), the European Commission.

North and Baltic Seas and speak to improvements needed in our fragmented ocean governance regime and MSP. These include:

1. protecting at least 30% of the land and 30% of the sea in the EU with 10% of EU land and 10% of EU sea to be strictly protected,
2. habitats and species show no deterioration in conservation trends and status, and at least 30% reach favourable conservation status or at least show a positive trend by 2030,
3. improving water quality by reducing waste, plastic litter at sea, and microplastics released into the environment,
4. developing zero-carbon and low-impact aquaculture and promoting circular, low-carbon multi-purpose use of marine and water space, and
5. vastly expanding offshore wind and ocean energy capacity.

Other GD priorities require actions and investments taken beyond our two regional seas, including actions on land, but that have significant implications for needed transformation:

1. reducing net greenhouse gas emissions, including those from maritime economic activities, and sequestering emissions that cannot be avoided and achieving climate neutrality,
2. reducing the risk and use of chemical pesticides and fertilisers,
3. restoring free-flowing rivers, and
4. increasing transport by inland waterways and short-sea shipping.

The question, then: is our fragmented ocean governance regime and are our current MSP plans appropriately designed and do they have the capacity to support the realisation of the ambitious GD agenda? Realising all of these GD priorities will require strengthening the ocean governance regime (i.e., stronger integration of sectoral approaches, and updating MSP plans to be in compliance with the GD priorities).

In this endeavor, it has been recommended that the EU should follow four guiding principles: In addition to setting the protection of 30% of the ocean surface by 2030 and climate neutrality by 2050 as overarching targets, we must:

1. build bridges across all instruments to end the silos in ocean governance,
2. upgrade institutions to give them arms and teeth, and
3. ensure civil society is part of the decision-making process.

10. Evolving ocean governance

Over the past two decades, EU ocean governance has been developing at a steady rate, with significant progress at several levels and in many sectors. Yet, Europe's ocean and water governance remains complex and fragmented, rendering it not as efficient as it should be. It is also poorly understood and acknowledged by both decision makers and the public.

Governing EU ocean and waters requires an adequate combination of political vision, institutional involvement, and enforceable rules. Because marine ecosystems are fragile and complex, this is needed to resolve conflict and enhance coexistence among multiple users of the sea, to provide clarity and stability for investment, and to develop synergies across policy tools.

This comes in contrast to the major goals that the EU has set for itself with the Green Deal, which involves significant transformations to reduce the environmental and climate footprint of the European economic model and thus must benefit Europe's entire hydrosphere.

Contributing to the Green Deal's efforts, the "Mission Restore our Ocean and Waters by 2030", launched by the European Commission in September, 2021, sets ambitious objectives by 2030 for the protection and restoration of ecosystems, as well as the decarbonisation of the blue economy. Considered by many stakeholders as the "blue version" of the European Green Deal, the Mission's success will be highly dependent on better coordination and coherence at EU and Member State levels.

11. Points for consideration in ocean governance and MSP

We must now ask: are our existing ocean governance and management laws, policies, institutions, MSPs, and attitudes up to the dual challenge of contributing positively to a growing sustainable blue economy while, at the same time, maintaining and indeed restoring the natural ocean capital upon which our society depends? In order to overcome these challenges, a number of factors can be considered to strengthen ocean governance and MSP, including:

1. Connecting ocean governance to 'Nationally Determined Contributions' and 'National Adaptation Plans', net zero transition pathways, and climate change legislation,
2. Developing capacity and increasing the availability of resources such as funding, personnel, and technologies for planning,

3. Developing relevant knowledge and promoting ocean literacy among stakeholders and decision makers to enhance capacities and participation in the process,
4. Integration and collaboration across sectors and scales to address problems across socio-ecological systems and capitalise on coexistence and synergies,
5. Institutional development to strengthen linkages and establish a long-lasting framework for ocean management,
6. Establishing mandates and responsibilities to provide credibility for the planning process and the institutions and individuals with authority for planning,
7. Inclusion of a wide range of stakeholders, through transparent and fair processes and incorporating different types of knowledge,
8. Identifying and understanding common problems and collaboratively finding and applying solutions,
9. Creating conflict resolution mechanisms/processes as conflict will increase as sectors vie for space and resources, and human and species wellbeing rights are affected,
10. Learning by doing as well as evaluation and adaptation, through pilots and parallel evaluation, and
11. Transfer of solutions and good practices to inspire and apply, adapt or scale to other contexts.



