

Joint NGO position on:

The EU Proposal for Directive on Maritime Spatial Planning and Integrated Coastal Management

(MSP-ICM Directive)

May 2013



Summary

The recently published European Commission proposal for a MSP-ICM Directive¹ will require Member States to establish and implement maritime spatial plans (MSPs) and integrated coastal management strategies (ICMSs), according to a set of common objectives and basic minimum requirements.

NGOs support MSPs and ICMs as tools to ensure that marine ecosystems, and their component habitats and species, are fully considered in decisions that affect the use of coastal and marine space and ecosystem services. This would be a considerable improvement on the traditional *ad-hoc* and unsustainable sectoral approach to marine management, which has led to over-exploitation of marine resources and significant environmental decline.

NGOs therefore welcome the requirement in the proposed Directive to apply an ecosystem-based approach to planning and to ensure coordinated and coherent planning across administrative boundaries. The requirement for Strategic Environmental Assessment (SEA) is particularly crucial, to ensure that environmental impacts are appropriately assessed, environmental authorities involved, public and stakeholders are consulted, plans are monitored and alternative plans and cumulative and synergistic effects are considered.

NGOs are concerned, however, by the potential misinterpretation of the MSP-ICM Directive as a tool for driving the EU's 'Blue Growth' agenda² on economic growth and employment and by the lack of any mention of the precautionary principle. Planning must not be a wish list for future development at any costs, and sustainable development does not automatically mean "growth". Europe's coastal and marine environment is in a perilous state and continues to be threatened by a wide range of human pressures.

NGOs are equally concerned by the fact that the MSP-IMP Directive puts environmental objectives on par with sectoral growth objectives. The Directive must ensure that MSP and ICM are first and foremost geared towards achieving the targets, implementation strategies and timelines under EU environmental legislation. This includes reaching Good Environmental Status (GES) by 2020 under the Marine Strategy Framework Directive (MSFD), related objectives under the Water Framework Directive and the full implementation of the Birds and Habitats Directives. The Directive should ensure that ecosystem considerations are at the heart of all sector-based planning decisions.

Our recommendations can be summarised as follows (and are detailed further in next sections):

1. The ecosystem-based approach to planning means that Good Environmental Status under the MSFD should be the overarching objective of the MSP-ICM Directive
2. The Directive should recognise that sustainable development implies limits to blue growth and should apply the precautionary principle
3. The establishment of a coherent and well-managed network of coastal and marine protected areas should not be further delayed by the Directive
4. The Directive's requirement for public participation should be brought in line with the SEA directive
5. The Directive should clarify the role of regional sea conventions and should include the requirement for a long term spatial vision for the regional seas in which MSP-ICM should be embedded.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0133:FIN:EN:PDF>

² http://ec.europa.eu/maritimeaffairs/policy/blue_growth/index_en.htm

1. The ecosystem-based approach to planning means that good environmental status should be the overarching objective of the MSP-ICM Directive

Healthy ecosystem services are a prerequisite for sustainable development and therefore lasting economic benefits. Article 5 of the Directive must therefore confirm the achievement and maintaining of GES under the MSFD as an overarching primary objective. GES cannot be put on par with objectives for economic sectors, but must form the base of all planning decisions. This is fundamental to taking an ecosystem-based approach.

The proposed Directive interprets the ecosystem-approach too restrictively, by implying that its purpose is “to facilitate the co-existence and prevent conflicts between competing sector activities in marine waters and coastal zones”.

The MSFD and Water Framework Directive provide more detailed provisions for the application of the ecosystem-approach in coastal and marine waters. Article 1 of the MSFD in particular specifies that *“Marine strategies shall apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations.”*

In the 2008 Roadmap on MSP³, the European Commission also expressed that GES is the key objective for ecosystem-based management, stating that *“[f]or balanced long-term management, the whole ecosystem and its determining factors must be taken into account. Planning must seek to protect and enhance the marine environment.”*

The Directive should ensure that ecosystem considerations are at the heart of all sector-based planning decisions. The sector-specific objectives in Article 5 should be without prejudice to the obligation to achieve GES under the MSFD, as well as related objectives under other environmental legislation.

This also has important implications for the legal basis for the Directive. The Commission has proposed four Treaty Articles as legal bases in its proposal, i.e. Article 43 (Fisheries), Article 100 (Transport), Article 192 (Environment) and Article 194 (Energy). With GES being established as the primary objective, **the environment chapter (Article 192) should be the prime legal basis** (e.g. Case C-36/98 Spain v Council) and the Directive should be negotiated in the appropriate environment configurations of the Council and the Parliament.

It should also be made clear that the list of sectoral objectives in Article 5 is not an exhaustive one. Tourism and industry for instance, are important sectors in many coastal regions, and will also have to be fully considered in MSP-ICM.

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:DKEY=483715:EN:NOT>

Recommendation 1: applying the ecosystem-based approach and what it entails for the Directive’s legal basis and hierarchy of objectives

- Environment (Article 192 of the TFEU) should be the Directive’s prime legal basis.
- Article 5 should express clearly that as a consequence of the ecosystem-based approach to planning, GES is the overarching objective of the Directive.
- Article 5 should make clear that the list of sectoral objectives is a non-exhaustive one.
- Article 3 should include a definition of the ecosystem approach that is equal or equivalent to the definition adopted in the MSFD.

2. The Directive should recognise that sustainable development implies limits to blue growth and that planning should adhere to the precautionary principle

NGOs are concerned by the potential misinterpretation of the Directive as a tool for driving the EU’s ‘Blue Growth’ agenda⁴ on economic growth and employment.

In a joint position paper ‘Limits to Blue Growth’⁵, NGOs have already expressed concerns about the Commission’s new mantra for growth, which seems to side-line sustainability and the precautionary principle, Planning should be a tool to support the achievement of sustainable development, not of growth for the sake of growth.

The Directive must provide for safeguarding natural resources and the sustainable use of ecosystem goods and services, whilst ensuring that the collective pressure of all activities is kept within environmental limits, otherwise Member States will be failing their commitments under the MSFD.

NGOs are concerned that the objectives outlined in Article 5 are ill-defined and reminiscent of an undifferentiated ‘growth’ message, despite the fact that growth will not always be possible or advisable in the context of achieving sustainability. For instance, given the overexploited state of many European fish stocks and level of overcapacity in the EU fleet, it is inappropriate to suggest that MSP-ICM can foster local or regional growth in the fisheries and aquaculture sector irrespective of the state of fish stocks.

While planning should always rely on the best available data, as proposed in the Directive, there are still significant uncertainties and gaps in our understanding of ecosystem functions and the cumulative impacts of our activities. The Directive should therefore require the application of the precautionary principle in MSP-ICM as well as require the Member States to identify and fill gaps in environmental information and knowledge. The Commission should also provide resources to support Member States in filling these gaps.

Recommendation 2: sustainable development and the precautionary principle

- The sectoral objectives in Article 5 should be geared towards sustainable development rather than growth.
- The Directive should require the application of the precautionary principle in planning the use of marine and coastal space, in particular where evidence on the collective impacts of human activities on the environment is uncertain. These gaps in information and knowledge should be filled.

⁴ http://ec.europa.eu/maritimeaffairs/policy/blue_growth/index_en.htm

⁵ Joint NGO position paper, “Limits to Blue Growth”, 2012, http://www.seas-at-risk.org/news_n2.php?page=539

3. The establishment of a coherent and well-managed network of coastal and marine protected areas should not be further delayed by the Directive

A coherent and well-managed network of protected areas should be put in place now and form a key basis of MSP-ICM. The network must comply with existing obligations under the nature conservation legislation and consist of areas which require special protection, not of areas that appear as ‘white’ spots on the map, because no other use has been assigned to them.

Moreover, the Commission and Member States should not use the implementation of the Directive as an excuse to further delay the designation and protection of networks of marine protected areas, as required under the Birds and Habitats Directives (Natura 2000 sites) and Article 13 paragraph 4 of the MSFD.

The EU also needs to live up to its international biodiversity commitments. In 2010, the EU and its Member States committed at the Convention on Biological Diversity (CBD) COP10 in Nagoya to conserve 10% of marine areas by 2020. This process is already significantly delayed.

Recommendation 3: avoiding delays in the completion of an ecologically coherent and well-managed network of protected areas

- Articles 6 and 8 should require that Member States complete the designation and effective management of the network of Natura 2000 sites, as part of an ecologically coherent and well-managed network of protected areas, according to 2016 deadlines for operational measures under the MSFD.

4. Provisions for public participation and stakeholder participation should be strengthened and be consistent with the SEA Directive

NGOs strongly support the requirement for strategic environmental assessment (SEA) of MSPs and ICMSs in accordance with the SEA Directive (2001/42/EC). This should ensure that environmental impacts are appropriately assessed, environmental authorities involved, the public and stakeholders appropriately consulted, plans monitored, and alternative plans and cumulative and synergistic effects are considered.

It is important, however, to specify that the application of SEA is without prejudice to complying with the requirement to perform environmental impact assessments of specific plans or projects under the EIA Directive (2011/92/EU) and assessments of plans and projects under Article 6 (3) of the Habitats Directive.

As to stakeholder involvement and public participation (Article 9 of the MSP Directive), the minimum requirements in the Directive should be strengthened and brought in line with the SEA Directive.

Recommendation 4: strategic environmental assessment, public participation and monitoring

- Article 9: the requirements for public participation and stakeholder involvement should be brought in line with consultation requirements of Article 6 of the SEA Directive.
- Article 11 should include an explicit requirement on Member States to assess and address individual, cumulative and synergistic effects of human-induced pressures on the marine ecosystem (as required by Article 8 of the MSFD and Article 5(1) and Annex I of the SEA Directive).

- Article 11 should specify that the obligation to apply the SEA Directive to MPS-ICM is without prejudice to the provisions of Directive 2011/92/EU and Directive 92/43/EEC.
- Article 15 should include clearer wording for the obligation of Member States to monitor and report on the implementation and progress of MSPs and ICMSs.

5. The role of Regional Sea Conventions should be clarified and MSP-ICMs should be framed by a long term spatial vision for the regional seas

The Directive's requirements of regional coherence and cooperation should be clarified, through identifying, for example, the role of Regional Sea Conventions. In line with the environmental legal basis we support, we recommend that the Directive encourages Member States sharing the same marine sub-region to work within the Regional Seas Conventions to develop a shared long term spatial vision for that area, which will frame MSP-ICM at a national level.

Recommendation 5: the role of Regional Seas Conventions and the need for a long term vision

- Article 12 should include the role of the Regional Seas Conventions and a requirement that MSPs and ICMSs are established in a way that requires coherence and integration of approaches across sea basins, and encourages Member States to develop a shared long term vision for sea basins.

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