



STREAMLINING THE IMPLEMENTATION OF MARINE SPATIAL PLANNING

KEY ELEMENTS FOR LEGAL REFORM

SEPTEMBER 2017

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I. INTRODUCTION

The regulation of human activities at sea, and the environmental impact of these activities, have long been a source of frustration for domestic and international policymakers.

Ocean resources are like money in a bank account. If those who access the account know how the funds are managed, they will be aware of exactly how much money they can withdraw today and how much will be available for them in the future. If, on the other hand, there are no rules or control over the account, each user will try to withdraw as much money as possible, and sooner or later the account will be emptied. Unfortunately, to date ocean regulations in many coastal states have been unable to provide the necessary level of certainty. Regulation of marine resources has been characterized by a use-by-use approach that overlooks the way human actions at sea affect each other.

Looking at the failure of most national regulatory efforts, some ocean experts have argued that managing spatial areas of the sea in order to maximize one or a set of objectives might be more effective than the use-by-use approach. Implementing a comprehensive system of area-based management requires a two-step process of planning and zoning. Marine spatial planning (MSP) involves assessing ocean resources as well as current and future uses, identifying compatible and incompatible sets of uses, and developing a spatial plan that proposes types and locations of various management areas. After a plan has been developed, the ocean zoning (OZ) process translates the marine spatial plan into enforceable legal rules. This is how the process usually develops at the national level.

There are several different approaches that countries can follow to ensure adequate legal implementation of MSP. This document summarizes the key regulatory elements of four successful experiences: the Massachusetts Ocean Act of 2008, the Barbuda Coastal Zoning and Management Regulations of 2014, the 2009 United Kingdom Marine and Coastal Access Act (and the Marine (Scotland) Act of 2010), and Belgium's Royal Decree of 2014 adopting MSP for the Belgian North Sea.

II. APPROACHES TO IMPLEMENTING MARINE SPATIAL PLANNING

MODEL 1 – MASSACHUSETTS OCEAN ACT OF 2009

SUMMARY

In 2008, the Massachusetts Legislature enacted the Massachusetts Ocean Act (the Mass. Act) as baseline legislation to address “ocean waters and ocean-based development of the commonwealth.”¹ The Mass. Act is a concise document. It requires the creation of a Marine Management Plan, which shall begin with the Secretary of Energy and Environmental Affairs, who must consult with the Ocean Advisory Commission, as well as the Ocean Science Advisory Council in the development process.² As such, the Act initiates the marine planning process, requiring the Massachusetts government to conduct the baseline studies and establishing a broad roadmap for the creation of the Massachusetts Ocean Management Plan. The Ocean Plan was promulgated in December 31, 2009 and revised in 2015.

The Mass. Act stipulates that the ocean management plan be implemented through existing state review procedures, requires that the plan be revised and publicly reviewed at least every five years, establishes commercial and recreational fishing as allowed uses, allows for appropriate-scaled renewable energy development in ocean waters, and establishes an Ocean Resources and Waterways Trust Fund to restore or enhance marine habitat and resources or compensate for the impacts of ocean development.

The following sections include: A) an identification of the leading institutional agency designated for managing the MSP process, B) an explanation of the process leading to the enactment of the Mass. Act, C) a brief discussion of substantive law on each of the topics of the Mass Act, and D) a summary of the Massachusetts Ocean Plan of 2009.

A. INSTITUTIONAL FRAMEWORK

The Massachusetts Act places the “state ocean waters”³ under the oversight of an already existing state agency, the Secretary of Energy and Environmental Affairs, who must consult with the Ocean Advisory Commission as well as the Ocean Science Advisory Council in the plan development process.⁴

B. PROCEDURE

The MSP process in Massachusetts was the outcome of several state-level initiatives, especially the creation of the 2003-04 Massachusetts Ocean Management Initiative and the Ocean Management Task Force, which published a 2004 background report with alternatives and recommendations.⁵ The main factors that triggered the need for the Mass. Act was an increased concern about use conflicts among commercial fishing, marine transport, and projected offshore wind farm projects, as well as general concerns about effects of climate change in Massachusetts coastal areas. A relevant factor is that the Mass. Act excluded fisheries management measures

¹ Massachusetts Act Relative to Oceans, 2008 Mass. Acts 114, § 4C (a).

² *Id.* at § 2(a).

³ 3 nautical miles, according to the Submerged Lands Act.

⁴ Massachusetts Act Relative to Oceans, 2008 Mass. Acts 114, § 2(a).

⁵ Waves of Change, March 2004. Available at: <http://www.mass.gov/eea/docs/czm/oceans/waves-of-change/waves-of-change.pdf>.

from the planning process. The Plan was developed in one year since the enactment of the 2008 Mass. Act and involved extensive stakeholder participation including 18 public hearings.

C. KEY ELEMENTS OF THE MASSACHUSETTS OCEAN ACT OF 2008

The Mass. Act assigns to the Secretary of Energy and Environmental Affairs (EEA) the role of developing “an integrated ocean management plan”⁶ in consultation with two new specialized bodies established by the Act: the Ocean Advisory Commission (OAC) and the Ocean Science Advisory Council (SAC). The following paragraphs describe the main sections of the Mass. Act:

OCEAN TRUST FUND

The Mass. Act begins by establishing an Ocean Resources and Waterways Trust Fund⁷ to be funded by mitigation fees, grants, legislative appropriations, and income from investments. The main purpose of the Fund is to restore or enhance marine habitat and resources or compensate for the impacts of ocean development.

GOALS AND OBJECTIVES⁸

The Act requires that the plan must set forth the commonwealth’s goals, siting priorities and standards for ensuring effective stewardship of its ocean waters; adhere to sound management practices, reflect the importance of the waters being managed to those who depend on them for their livelihood or for recreational purposes; identify endangered or special marine life or habitats; address climate change and sea-level rise; respect the interdependence of ecosystems; and other principles.⁹ The plan must be developed in accordance with the public trust doctrine.¹⁰

ADVISORY BOARDS¹¹

The Ocean Advisory Commission’s main role is to assist the Secretary in development of the plan.

The Ocean Science Advisory Council provides a baseline assessment and other scientific information necessary for development of the plan.

PLANNING WORK AND TIMELINE¹²

The Mass. Act defines a series of priorities for the planning process, but leaves the details to the discretion of the Secretary of Energy and Environmental Affairs. For a brief summary of the planning process, please see the section below explaining the Management Plan.

The Mass. Act requires that the plan be promulgated by December 31, 2009.¹³

⁶ Mass. Act § 2.

⁷ *Id.* at § 1.

⁸ *Id.* at § 2.

⁹ This is not an exhaustive list, but it does include most of the general ideas behind the requirements the plan must address. For the complete list, see *Id.* at § 2(a).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

PUBLIC COMMENT AND HEARING

At least 6 months before the plan is fully established and enforceable, the Secretary must provide public access to the draft plan, which includes a comment and hearing period (at least 4 public hearings in at least 4 different coastal regions). The Secretary must also take into consideration any suggestions from the Ocean Advisory Commission.¹⁴

D. GENERAL STRUCTURE OF THE 2009 MASSACHUSETTS OCEAN MANAGEMENT PLAN

The planning process unfolded in three stages:¹⁵

- 1. Information gathering: Data gathering occurred throughout the planning phase but particularly during the initial months. Information gathered included, among other types, bathymetry, anchoring and mooring areas, ferry routes, and migratory patterns of endangered marine mammals. Data was gathered from several different sources and coordinated through the creation of a uniform database that was made available online.¹⁶
During the length of the information gathering phase, the Secretary organized workshops and presentations to review the information. The OAC and the SAC, as well as the general public, also were given the opportunity to review the information gathered and data quality.
- 2. Draft plan development: Spatial analysis occurred and options for the management approach were refined, while public participation and expert input continued. In addition, the OAC and SAC reviewed plan components. This phase culminated with the release of the draft Massachusetts Ocean Management Plan on June 30, 2009. In addition, a public-private partnership, the Massachusetts Ocean Partnership (MOP), was created to provide additional data and information to inform the marine planning process.
- 3. Formal public review of the draft plan: Copies of the draft plan were made available and notice of its availability for public review was provided in the Environmental Monitor. As specified in the Oceans Act, five formal public hearings were held before the final release of the Plan

The Plan is broadly divided into two volumes. Volume 1 includes the Plan itself, and Volume 2 summarizes all the background information that was gathered in preparation of the plan.

MANAGEMENT AREAS

The Plan established three types of areas:

- a) The **Prohibited Area** is coincident with the Cape Cod Ocean Sanctuary, within which a variety of uses, activities and facilities are expressly prohibited by the Ocean Sanctuaries Act, as amended by the Oceans Act, and are therefore prohibited under the ocean plan.
- b) **Renewable energy areas** allow commercial- and community-scale wind energy development. Based on current technology, the deployment of large-scale wave and tidal power facilities appears unlikely in the first five-year term of the ocean plan. However, at least three tidal power pilot projects are under development. Wave and tidal energy facilities, as well as community wind energy facilities, are also allowed in the multi-use areas.

¹³ Mass. Act at § 23.

¹⁴ Mass. Act at § 2.

¹⁵ *Id.*

¹⁶ MORIS: Coastal Zone Management Planning Tool, http://maps.massgis.state.ma.us/map_ol/moris.php

c) **Multi-use areas:** Management in the multi-use areas is based on specific marine resources identified as key components of the Massachusetts marine ecosystem. The vulnerability of each resource to new uses, activities, and facilities was determined and ranked through compatibility assessments. Similarly, management guidance for balancing impacts to commercial and recreation fishing and recreational boating was developed, and the compatibility of these uses with new uses was assessed. The main approach is “to direct development away from high value resources and concentrations of existing water-dependent uses.”¹⁷

Human activities that may be authorized in this area include, but are not limited to, aquaculture, cables and pipelines, extraction of sand and gravel, community-scale wind energy facilities, and wave and tidal energy facilities.

MANAGEMENT MEASURES

This section describes specific management measures for certain uses and human activities authorized by the Plan, such as utility-scale renewable projects, extraction of sand and gravel, laying of cables and pipelines, fishing and aquaculture, and other activities.

RENEWABLE ENERGY PROJECTS

In addition to the Ocean Act, in 2008 Massachusetts enacted two laws to boost renewable energy.¹⁸ The ocean management plan establishes a framework for potential offshore marine renewable energy development, including offshore wind energy, tidal energy, and wave energy. The plan includes the creation of an offshore renewable energy innovation zone for technology testing.

The plan provides details on energy project siting regulations, which are divided between **industrial-scale projects** (only allowed in specially-designated wind energy areas), and **community-scale projects** (which may be authorized in multi-use areas). In cooperation with the Massachusetts Association of Regional Planning Agencies (MARPA), the plan established a maximum number of turbines that could be installed in each region managed by a RPA.

EXTRACTION OF SAND AND GRAVEL

The Plan established a program to work with state agencies and the United States Geological Survey to refine existing data and identify specific locations for each region of the coastline that has appropriate sand resources. Sand extraction is allowed in the Multi-use areas.

CABLES AND PIPELINES

The plan describes the location of existing cables and pipelines, and establishes siting and performance standards for the installation of new ones, with a specific focus on the grid connection of future offshore wind facilities. As a general planning rule, linear infrastructure “should be ‘bundled’ within common corridors to the maximum extent

¹⁷ Massachusetts Ocean Management Plan 2009 (MOMP), at 2-3.

¹⁸ Green Communities Act (on renewable energy production), and the Global Warming Solutions Act (on greenhouse emission reductions).

feasible.”¹⁹ New pipelines would require a finding that a specific pipeline project is of “public necessity and convenience.” Cables and pipelines are allowed in Multi-Use areas.²⁰

FISHING AND AQUACULTURE

Fishing (commercial and recreational) is managed by the Massachusetts Division of Marine Fisheries. The plan reflects the importance and identifies areas of high commercial fishing activity and concentrations of recreational fishing activity. Information gathering for the implementation of the plan includes the identification of fishing areas by fishing effort levels and gear type to address potential incompatibility of specific types of development with different kinds of fishing activities. Information is collected from fishermen to map the details of their fishing activity.

Aquaculture is licensed by the towns, the Mass. Division of Marine Fisheries, and the US Army Corps of Engineers. The plan includes information to determine siting and performance standards. Site review includes evaluation of water quality, benthic habitat, submerged aquatic vegetation, endangered species, competing uses, navigation, access, and other topics.

OTHER ACTIVITIES

These may include municipal wastewater treatment discharges and facilities, operation and maintenance of existing municipal, commercial or industrial facilities and discharges, channel and shore protection projects, or improvements not specifically prohibited by the Ocean Sanctuaries Act. Agencies shall use the Plan as guidance for reviewing these projects.²¹

MITIGATION MEASURES

Mitigation requirements include the creation of an ocean development mitigation fee for relevant permits or licenses. The scope and scale of mitigation varies depending on the project. The Secretary of Energy is responsible for decisions on expenditures, in consultation with the Departments of Environmental Protection and Fisheries and Wildlife.

TRUST FUND

As required by the Mass Act, the Plan defines specific procedural requirements for the management of the Ocean Resources and Waterways Trust Fund.

AGENCY IMPLEMENTATION

The interagency EEA Ocean Team develops implementation guidelines. Implementation procedures determine a lead management agency (Secretary of Energy and Environmental Affairs) and a series of coordination procedures and mechanisms to ensure co-management of activities and resources under the jurisdiction of several agencies. Specifically, the management plan prioritizes the following aspects: development of standards to characterize

¹⁹ MOMP at 2-19.

²⁰ For a more detailed example of the creation of ocean zones for cables and pipelines, see the summary of the Marine Spatial Plan for the Belgian North Sea, on page 25 of this report.

²¹ MOMP at 2-22.

sensitive ocean resources and important existing water-dependent uses to consider conflicts; requirements for developing and submitting data during project review; working with regional planning agencies to coordinate criteria to assist with siting decisions for proposed community wind projects; and development of protocols for the development of appropriate mitigation for unavoidable impacts.

ROUTINE UPDATES

Existing data sets are periodically being updated and improved. This is done by the plan's management agency, although it might also be done by requests submitted to the Secretary.

FORMAL AMENDMENTS

At least once every five (5) years. The amendment process will be akin to the one undertaken to develop the first plan. Amendments might determine, e.g., new protected areas, or shift boundaries of management areas. The formal amendment process will include the following steps:

- 1 - The Secretary initiates the amendment process by providing public notice*
- 2 - Convening of five public hearings to receive comment on current version of plan and its implementation over past period*
- 3 - Initial OAC and SAC meetings to initiate consultation on the plan amendment*
- 4 - Issue-oriented work groups established and meetings held.*
- 5 - OAC and SAC meetings held over the period of the plan amendment process.*
- 6 - A draft plan amendment developed and released for public comment.*
- 7 - Public hearings held on the draft amended plan for minimum 60 days after the last hearing*
- 8 - Revisions made to draft, based on public comment.*
- 9 - The final amended plan will be promulgated.*

STAKEHOLDER INPUT, EXPERT ADVICE, AND PARTNERSHIPS FOR PLAN IMPLEMENTATION

The Mass. Act required the creation of two advisory bodies; the Ocean Advisory Commission (OAC) and the Ocean Science Advisory Council (SAC). The main function of the OAC was to serve as a policy advisory body to the Secretary during plan implementation, with a specific role as part of plan amendments (see above section describing plan amendment process). After the final approval of the Plan, OAC became a forum for annual discussions of plan implementation and emerging ocean issues, using the plan's performance indicators.

The SAC remained as the main coordinating body for compiling scientific information necessary for plan development, and to focus on particular science-related aspects of implementing the ocean plan.

PROGRESS AND PERFORMANCE ASSESSMENTS

The main objective of the progress and performance assessments is to obtain the necessary information so that the plan can adapt to changing needs and circumstances. The plan lists twenty environmental, socio-economic, and governance indicators, which shall also be periodically revised and updated. For example, the 2015 revision of

the Massachusetts Ocean Plan completely revamped the performance indicators, in line with the suggestions of UNESCO's "Guide to Evaluating Marine Spatial Plans (October 2014)"²²

PROPOSED REGULATORY CHANGES

This section of the plan describes the interaction between the plan and other regulations (Ocean Sanctuaries Act, 401 Water Quality Certification, the Wetlands Protection Act, the Massachusetts Environmental Policy Act, the Ocean Sanctuaries Act, and the state Coastal Zone Management Program), and the need to harmonize existing regulatory programs with the provisions of the ocean plan.

The Plan's Volume 2 includes all Baseline Assessment and Science Framework - information on the current state of knowledge regarding human uses, natural resources, and other ecosystem components of Massachusetts ocean waters.

²² UNESCO, A Guide to Evaluating Marine Spatial Plans, available at <http://unesdoc.unesco.org/images/0022/002277/227779e.pdf>.

SUMMARY

The Barbuda Coastal Zoning Regulations of 2014 (the Barbuda Regulations) is a concise legal instrument that introduces marine planning in Barbuda waters, which are defined as the “waters and submerged lands within 1 league seaward of the (a) low-water line.”²³ The Barbuda Regulations establish a set of marine areas for conservation, mooring and anchoring, shipping, and no-net zones, set out prohibitions and a legal structure for offences and environmental damages, provide specific protections for mangroves and seagrass meadows, require management fees for activities like scuba diving in marine reserves, and clarify enforcement powers in relation to activities in Barbuda waters. The Barbuda Regulations include in the legal text the designation of specific areas. In this case, the necessary scientific analyses, the information gathering process, and public consultations were developed in advance.

The following sections include: A) an identification of the leading institutional agency designated for managing the MSP process, B) an explanation of the process leading to the enactment of the Barbuda Regulations, and C) a brief discussion of substantive law on each of the topics of the Barbuda Regulations.

A. INSTITUTIONAL FRAMEWORK

The plan is managed by the Barbuda Council, which is a local governmental authority with jurisdiction over the island of Barbuda.

B. PROCEDURE

The process leading to the enactment of the Barbuda Regulations was made possible thanks to an institutional collaboration between the Barbuda Council, the Government of Antigua & Barbuda, the Barbuda Fisheries Division, the Codrington Lagoon Park, and the Waitt Institute. The Waitt Institute facilitated the scientific assessments, mapping, and communications, offered law and policy recommendations, and coordinated the overall planning process with the Barbuda Council.

C. KEY ELEMENTS OF THE 2014 BARBUDA COASTAL ZONING AND MANAGEMENT REGULATIONS

The Barbuda Coastal Zoning Regulations describe management sea areas and enforcement powers. The main sections of the Regulations are as follows:

MARINE AREAS

Five sections of the Barbuda Regulations define, respectively, all marine protected areas in the management zone, a series of areas where no net fishing is allowed due to specific characteristics needing additional protection, such as the presence of coral reefs or the proximity to shore, several anchoring and mooring zones around the island, one shipping zone to access the island’s port, as well as the option to create new types of zones in the future by

²³ Barbuda (Coastal Zoning and Management) Regulations, 2014. § 2.

subsequent amendments to the Zoning regulations. The Barbuda Regulations define all these marine zones with specific geographical coordinates.²⁴

MANAGEMENT FEES

This section introduces a per-person fee for diving in a Barbuda marine sanctuary, describing how the payment must be made, the responsible officer, and the procedures for proving that the fee has been paid. The Regulations also state that the Barbuda Council may in the future impose fees for other activities.²⁵

RESEARCH IN BARBUDA WATERS

The Barbuda Council has authority to grant permission to conduct fisheries research operations. In order to do so, the applicant must submit a research plan and show a previous authorization to conduct fisheries research granted by the Antigua and Barbuda Minister of Fisheries. This section also details some specific rules regarding the operation of the research permit, such as the need to keep a copy of the permit onboard and presenting it to an enforcement officer upon request.²⁶

PROHIBITIONS

This section includes details of actions in contravention of the management rules, such as the prohibition of fishing in no-take zones, the prohibition of actions that may damage coral reefs or seagrass meadows, or of diving in marine sanctuaries without paying a fee.²⁷

A SPECIAL MANAGEMENT AREA (CODRINGTON LAGOON)

The Regulations define one area of special management, the Codrington Lagoon, in which special fishing regulations apply to ensure an adequate balance between conservation and exploitation of living marine resources. This designation is provisional, valid for 2 years, after which the Barbuda Council may amend the requirements.²⁸

REGULATIONS FOR SEAGRASS AND MANGROVE PROTECTION

This section establishes specific, stringent regulations for the protection of seagrasses and mangroves. Any permit application that would lead to damages to seagrass or mangrove coverage can only be approved if: the public benefits clearly outweigh the public detriments; all practicable steps have been taken to avoid and minimize damage; and there will be no significant alteration of either the total seagrass or coastal mangrove resource.²⁹

MAPS

²⁴ *Id.* at §§ 3-7.

²⁵ *Id.* at § 8.

²⁶ *Id.* at § 9.

²⁷ *Id.* at § 10.

²⁸ *Id.* at § 11.

²⁹ *Id.* at § 12.

The Regulation includes several maps showing the location of all created areas.³⁰

DESIGNATION AND POWERS OF ENFORCEMENT OFFICERS

This section describes which local enforcement officers will have authority to enforce the zoning regulations. The Regulations establish that the same agencies and officers with authority to enforce the Barbuda Fisheries Regulations are also authorized to enforce the marine zoning regulations. These authorities are all those described as fisheries officers under the Antigua and Barbuda Fisheries Act,³¹ as well as any person designated as Barbuda fisheries ranger by the Barbuda Council.

OFFENSES AND PENALTIES

This section details specific presumptions and penalties for certain actions in contravention of the Barbuda Regulations.³²

NATURAL RESOURCE DAMAGES

The Barbuda Regulations include stringent measures in relation to damages to Barbuda's marine natural resources. They describe responsibility pertaining both to individuals and vessels, and define recoverable damages broadly, including the cost of conducting damage assessments and of replacing, restoring, or acquiring the damaged resource. The Barbuda Regulations also detail a set of uses for the response costs and damages awarded to the Barbuda Council.³³

NOTICE OF VIOLATION

This provision empowers an enforcement officer to give to the person committing an offense against the Barbuda Regulations a notice charging him or her with the commission of such offense.³⁴

IMMUNITY AND FEES & FINES PROVISIONS

A general immunity provision protects enforcement officers from actions brought against them in respect of anything done or omitted to be done by them in good faith in the execution of their powers. The Barbuda Regulations also describe specific procedures for the payment of fees and fines.³⁵

³⁰ *Id.* at § 13.

³¹ *Id.* at § 14. Fisheries officers are: the Chief Fisheries Officer, Deputy Chief Fisheries Officer, Senior Fisheries Officer, Fisheries Officer or Fisheries Assistant appointed under 4(2) of the Fisheries Act, 2006. *See* Fisheries Act, 2006 § 2 (1).

³² Barbuda (Coastal Zoning and Management) Regulations, 2014, § 15.

³³ *Id.* at § 16.

³⁴ *Id.* at § 17.

³⁵ *Id.* at §§ 18-19.

SUMMARY

The United Kingdom Marine and Coastal Access Act of 2009 (hereinafter the UK Act) is a detailed and extensive law that sets the general legal framework for the implementation of marine planning in UK waters. The UK Act significantly refurbished the legal framework for ocean resources management, creating a new government agency that concentrates most functions on the stewardship of ocean living and non-living resources. The UK Act constitutes a starting point for the development of a series of regional marine planning processes. It lists a series of legal reforms aimed at transferring competences to the new Marine Management Organisation (MMO), describes the procedures for drafting a general UK Marine Policy Statement and for the creation of regional Marine Plans, sets out requirements for licenses, determines offences, penalties, and enforcement powers, and sets up basic regulatory measures for the management of a range of uses of ocean spaces, from ocean conservation and fisheries management to the siting of utility-scale, offshore renewable energy developments.

Unlike other regulatory models for MSP described in this document (such as the Belgian Royal Decree or the Barbuda Zoning Regulations) in which the legally-binding instrument mainly focuses on the establishment of marine zones for specific uses, the U.K. Coastal Access Act is a highly complex, multifaceted legal instrument that aims at creating a leading management agency, reorganizing agency competences, providing long-term principles and objectives for ocean development in the U.K., and enabling the drafting of several regional marine spatial plans.

In order to provide an overview of the legal process for the enactment of MSP in the U.K., the following sections include: A) an identification of the leading institutional agencies designated for the MSP process, B) a brief explanation of the process leading to the enactment of the UK Act, C) a description of key elements of the UK Act, D) an example of regional implementation by providing a summary of the 2010 Marine (Scotland) Act and of the 2015 Scotland National Marine Plan.

A. INSTITUTIONAL FRAMEWORK

Leading institution: UK Department for Environment Food and Rural Affairs (DEFRA) for the regulatory reforms, and the Marine Management Organisation (MMO) for implementation.

B. PROCEDURE

In 2002, the UK Government published its Marine Stewardship Report, which set out a vision for the marine environment. In March 2006, the Government published a consultation document on a Marine Bill. A summary of responses to the consultation was published in October 2006. In March 2007, the Government published a Marine Bill White Paper putting forward proposals for legislative measures to introduce new arrangements for the sustainable management of activities and protection of resources in the UK's marine area. The White Paper set out proposals covering: a) a new marine planning system, b) a new system for licensing marine developments, c) a flexible mechanism to protect natural resources, including marine conservation zones, d) changes to the management of marine fisheries, e) a Marine Management Organisation to discharge these and other marine functions.

In April 2008, the Government published the draft Marine Bill for public consultation and pre-legislative scrutiny. The pre-legislative scrutiny and an accompanying policy paper and Impact Assessment were published for public consultation.

C. KEY ELEMENTS OF THE UNITED KINGDOM MARINE AND COASTAL ACCESS ACT 2009

This extensive regulation sets the general legal framework for the implementation of ocean resources management in the U.K. Main elements include:

CREATION OF THE MARINE MANAGEMENT ORGANISATION (MMO)

The MMO is a marine management authority on behalf of the UK Government, and has competences in English territorial waters and UK offshore waters on matters such as marine licensing, enforcement of marine legislation, and other.³⁶ To facilitate the operational capacity of the MMO, the Act includes a series of regulatory reforms that detail several transfers of functions and competences from previously-existing agencies to the new MMO.

Competences transferred to MMO include (non-exhaustive list):³⁷

- Fisheries and trans-shipment licensing
- Determination of time to be spent at sea
- Licensing for scientific research
- Licenses to take or kill seals
- Regulatory decisions on the protection of the marine environment
- Licenses regarding siting of offshore energy facilities

A provision on agreements between MMO and other agencies for the exercise of MMO's functions allows the MMO to delegate its functions to other agencies and/or regional management bodies (some competences are non-transferable).³⁸

The Act also includes additional provisions on the technical and managerial organization of the agency, including funding provisions.³⁹

STRATEGIC MARINE PLANNING SYSTEM AND DEVELOPMENT OF MARINE PLANS

The Act establishes general requirements for the drafting of the MARINE POLICY STATEMENT (MPS):⁴⁰ this is a "big picture" document in which four (4) authorities; a) the Secretary of State; b) the Scottish Ministers; c) the Welsh Ministers; and d) the Department of the Environment in Northern Ireland, state general policies for the achievement of sustainable development in the UK marine area.

The Act also details other elements of the procedure for the drafting, approval, and amendment of the MPS.⁴¹

³⁶ Marine and Coastal Access Act 2009, Part 1, §§ 1-3.

³⁷ *Id.* at §§ 4-13.

³⁸ *Id.* at §§ 14-22.

³⁹ *Id.* at §§ 32-36.

⁴⁰ *Id.* at § 44.

⁴¹ *Id.* at §§ 45-48.

The Act applies to all the “UK Marine Area,” which is broadly defined to include the exclusive economic zone, the territorial sea, and the continental shelf under UK jurisdiction.⁴² The Act divides UK waters in 8 “Marine Planning Regions” and assigns one Planning authority to each region (e.g. for the Scottish offshore region, the Scottish Ministers).⁴³ Each Planning Authority may develop one (or several) **MARINE PLANS**.⁴⁴ The Marine Plans implement the Marine Policy Statement in specific areas. The Act details some elements of procedure, including amendment and withdrawal of plans, and provides a general structure for planning.⁴⁵ The Act authorizes delegation of planning powers to other authorities, but this procedure must be publicized in advance to inform all parties potentially affected.⁴⁶

All marine planning authorities must keep the following matters under review for as long as the marine plan is in effect:

- the effects of the policies on the marine plan;
- the effectiveness of those policies in ensuring that the objectives for which the marine plan was prepared and adopted are met;
- the progress being made towards securing those objectives;
- if an MPS governs marine planning for the marine plan authority’s region, the progress being made towards ensuring that the objectives for which the MPS was prepared and adopted are met in that region.⁴⁷

The Authority must prepare and publish a report on those matters every **3 years**.⁴⁸ The report must be shared with the appropriate legislature (e.g. the Scottish Parliament). Every **6 years** the Authorities must also prepare and publish a report on any marine plans it has adopted, its intentions for their amendment, and its intentions for the preparation and adoption of any further marine plans.⁴⁹

The Act also provides for the judicial review of planning provisions: a person aggrieved by a planning document may make, no later than **6 weeks** after its publication, an application to the appropriate court on any of the following grounds— (a) that the document is not within the appropriate powers; (b) that a procedural requirement has not been complied with. The Court might suspend the operation of the Marine Plan (wholly or in part).⁵⁰

MARINE LICENSING SYSTEM: SIMPLIFIED LICENSE PROCESS

All authorities must make their management decisions in accordance with the marine planning documents. If not, the decision must be explained.⁵¹ “Licensable marine activities”, as defined by the Act include, inter alia, to deposit any substance or objects either in the sea or on or under the sea bed, from any vehicle, vessel, aircraft or marine structure, any container floating in the sea, or any structure on land constructed for the purpose of depositing solids in the sea; to construct, (a) in or over the sea, or (b) on or under the sea bed; to carry out any form of dredging within the UK marine licensing area; or to incinerate any substance or object on any vehicle, vessel,

⁴² *Id.* at § 42.

⁴³ *Id.* at §§ 49-50.

⁴⁴ *Id.* at § 51.

⁴⁵ *Id.* at §§ 52-54. Planning procedures are described in greater detail in Schedule 6 of the Act.

⁴⁶ *Id.* at §§ 55-57.

⁴⁷ *Id.* at §§ 61.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at §§ 62-63.

⁵¹ *Id.* at § 65.

marine structure or floating container.⁵² The Act defines the procedures for submitting an application, as well as for the determination, inquiries, variation, suspension, revocation and transfer, and procedures for appealing against licensing decisions.⁵³

Exceptions to licensing procedures include certain activities that have specific procedures defined in other statutes, such as dredging in Scottish waters, oil and gas activities and carbon dioxide storage, harbor and electricity works, and laying of submarine cables on the continental shelf.⁵⁴

ENFORCEMENT PROVISIONS

The Act determines offences in contravention of the marine licences, detailing two types of penalties: (a) fines, not exceeding £50,000; and (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both. The Act also describes procedures for the imposition of fixed or variable monetary penalties,⁵⁵ establishes conditions for the suspension of licensed activities, and defines exemptions.⁵⁶

All rules pertaining to ocean activities are to be enforced by what the Act describes as “**marine enforcement officers**.”⁵⁷ The Act provides marine enforcement officers with authority to enforce fisheries, environmental conservation, oil and gas licensing, and other regulations affecting human activities at sea. The Act details the elements of enforcement powers (including power to board, search, require production of documents, seize, record evidence).⁵⁸

MARINE NATURE CONSERVATION

The Act details new powers to enable the designation of Marine Conservation Zones (MCZs)⁵⁹ in the territorial waters adjacent to England and Wales and UK offshore waters, and defines the authorities in charge⁶⁰ which, depending on the area in which the MCZ is to be declared, are coincidental with the governmental agencies in charge of drafting marine plans.

The Act establishes requirements for the designation of protected areas (Marine Protection Zones). Declarations must be based on the need to conserve marine flora or fauna, marine habitats, or geological features. The declaration must define the protected area and state a series of conservation objectives. In considering whether it is desirable to designate an area as an MCZ, the authority may have regard to any economic or social consequences of doing so.⁶¹

⁵² *Id.* at § 66.

⁵³ *Id.* at §§ 67-73.

⁵⁴ *Id.* at §§ 74-84.

⁵⁵ *Id.* at §§ 93-96.

⁵⁶ *Id.* at §§ 91-92.

⁵⁷ *Id.* at § 235.

⁵⁸ For a detailed list of common enforcement powers granted to marine enforcement officers, see page 20 of this document.

⁵⁹ *Id.* at §§ 116.

⁶⁰ *Id.*

⁶¹ *Id.* at §§ 117-118.

PUBLIC CONSULTATION REQUIREMENTS

Before designating a MCZ the appropriate authority must publish notice of its proposal to make the order.⁶²

The notice under subsection must be published in such manner most likely to bring the proposal to the attention of any persons who are likely to be affected. The authority must consult any persons who the authority thinks are likely to be interested in, or affected by, the making of the order. Where the authority is not the Secretary of State, the authority must consult the Secretary of State (as well as other planning authorities that may be affected).

If the authority fails to make the order before the end of the period of 12 months beginning with the date on which notice was published under then anything done is to be treated as not having been done.⁶³

In a case where the appropriate authority thinks that there is an urgent need to protect the area proposed to be designated, the authority need not comply with these requirements. In such a case, the order designating the area as an MCZ remains in force for a period not exceeding two years, leading to revisions and complying with the general procedure. The authority must publish notice of the making of the order in such manner as to bring the order to the attention of any persons who are likely to be affected. Before designating an MCZ the authority may give to any person the opportunity of—(a) appearing before and being heard by a person appointed for that purpose; (b) providing written representations to such a person.⁶⁴

An order for the creation of a MCZ may be amended or revoked by a further order.⁶⁵ The Act also recognizes the possibility to coordinate the designation of MCZs with neighboring nations and supranational authorities to create a network of Marine Protected Areas.⁶⁶ The Authority designating MCZs must send periodic status reports to the Legislature, and fulfill other general duties regarding management decisions.

PENALTIES

The Act also establishes offences for damages to protected areas and liability of up to 50 thousand pounds.⁶⁷

The Authorities can also establish fixed monetary penalties for certain actions affecting MCZs. The Act determines the general procedures for the imposition of penalties and the general requirements of the notice of penalties, which must include information as the grounds for imposing the penalty, how payment may be made, the payment period, early payment discounts or late penalties, rights of appeal, and consequences of non-payment.⁶⁸

FISHERIES MANAGEMENT AND MARINE ENFORCEMENT

The Act establishes a new management system for inshore fisheries management in England through the creation of the Inshore Fisheries and Conservation Authorities (IFCAs) and districts.⁶⁹

⁶² *Id.* at § 119.

⁶³ *Id.* at § 120.

⁶⁴ *Id.* at § 121.

⁶⁵ *Id.* at 122.

⁶⁶ *Id.* at § 123.

⁶⁷ *Id.* at § 140.

⁶⁸ *Id.* at §§ 142-146.

⁶⁹ *Id.* at § 149.

The Act organizes inshore fisheries (out to 6 nautical miles from Territorial Baselines) management by providing the Secretary of State the authority to divide UK waters into Fisheries Districts and Conservation Districts. One management authority is created for each district, formed by a committee of the representatives of councils for local authorities in that area.⁷⁰

The Act determines procedures for the membership of each Management Authority, as well as for the revocation or modification of Districts.

INSHORE FISHERIES MANAGEMENT PROCEDURES

The authority for a district must manage the exploitation of sea fisheries resources in that district and (a) seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way, (b) seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment, (c) take any other steps which in the authority's opinion are necessary or for the achievement of sustainable development, and (d) seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.⁷¹

The authority must also seek to ensure that the conservation objectives of any MCZ in the district are furthered.

In addition to the marine enforcement officers, the Act determines that the management authorities can appoint persons to be inshore fisheries and conservation officers ("IFC officers")⁷² and enter into agreements with other enforcement bodies.⁷³ The Act describes the enforcement powers of IFC officers, which are the same provided for all marine enforcement officers.⁷⁴

The Act also imposes specific data gathering requirements. The authorities must collect statistics relating to the exploitation of sea fisheries resources within its district, publish an annual plan detailing management priorities and objectives, and publish reports.⁷⁵

MIGRATORY AND FRESHWATER FISHERIES

This section introduces a new licensing and authorization system for fishing activities with the Environment Agency as the competent authority to make emergency.

The Act details a series of additional regulatory reforms pertaining to fisheries management, including minimum sizes, types of nets and fishing gear, migratory and straddling stocks, the register of fishing licenses, penalties for offences, special permits for takings for scientific purposes, and fees to be paid for the exercise of commercial fishing.⁷⁶

⁷⁰ *Id.* at §§ 150-152.

⁷¹ *Id.* at §§ 153.

⁷² *Id.* at §§ 165-166.

⁷³ *Id.* at §§ 167-171.

⁷⁴ *Id.* at § 163 (3).

⁷⁵ *Id.* at §§ 194-214.

⁷⁶ *Id.* at §§ 215-234.

SPECIFIC PROVISIONS ON ENFORCEMENT POWERS

Part 8 of the Act details the nature and powers of marine enforcement officers. For each specific marine activity, e.g. environmental conservation, or fisheries management, the Act explains that marine enforcement officers will have all the general common enforcement powers described in the Act,⁷⁷ plus a series of special enforcement powers included in other regulations (e.g. in the Fisheries Act). Common enforcement powers are:

- Power to board and inspect vessels and marine installations
- Power to enter and inspect premises
- Power to enter and inspect vehicles
- Dwellings
- Powers of search, examination
- Power to require production of documents
- Powers of seizure
- Retention of seized items
- Power to record evidence of offences
- Power to require name and address
- Power to require production of license
- Power to require attendance of certain persons
- Power to direct vessel or marine installation to port
- Assistance
- Power to use reasonable force

ENABLING THE CREATION OF MARINE ROUTES AROUND THE ENTIRETY OF THE ENGLISH AND WELSH COASTLINE

This section of the Act focuses on ensuring the availability of public access to the coast, and to make available a “margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment.”⁷⁸ The implementation of this section has led to many coordination actions with landowners and to the drafting of the England and Wales Coast Path.⁷⁹

The Act’s final Schedules establish general provisions for, inter alia, the preparation and adoption of the Marine Policy Statement⁸⁰ and the Marine Plans.⁸¹ Scotland’s National Marine Plan, enacted in 2015, complies with the general structure of Schedule 6 of the UK Act. The following section provides an overview of the Scottish plan and the implementation process.

D. GENERAL STRUCTURE OF THE MARINE (SCOTLAND) ACT AND SCOTLAND’S NATIONAL MARINE PLAN

⁷⁷ *Id.* at § 245-261.

⁷⁸ *Id.* at § 296.

⁷⁹ Wales Coast Path, <http://www.walescoastpath.gov.uk/?lang=en> ; England Coast Path, <http://www.nationaltrail.co.uk/england-coast-path>

⁸⁰ Marine and Coastal Access Act 2009. Schedule 5.

⁸¹ *Id.* at Schedule 6.

The 2009 UK Act established the legal basis for the development of regional Marine Plans. In 2010 the government of Scotland enacted the Marine (Scotland) Act.⁸² The Scotland Act enables the preparation of Scotland's National Marine Plan,⁸³ which was published in 2015.

The main features of the Marine (Scotland) Act are: (1) A Planning mandate: the Act requires the creation of a new marine planning system to sustainably manage the seas,⁸⁴ (2) Marine licensing: legal reforms introduce streamlining of the licensing system, minimizing the number of licences required,⁸⁵ (3) Marine conservation: the Act requires marine planners to enact marine nature and historic conservation, and assigns new powers to protect and manage areas those areas,⁸⁶ (4) Seal conservation: as a regionally-relevant species, the Act specifically focuses on the protection and management of seals,⁸⁷ and (5) Enforcement: the Act describes a series of enhanced powers of marine conservation and licensing that mirror the description of common enforcement powers under the U.K. Act.⁸⁸

The Act requires that the Ministers consult with the public throughout the planning process,⁸⁹ and perform periodic monitoring and reporting on implementation of the marine plans.⁹⁰

PLANNING PROCEDURES

A unique feature of the planning procedure in Scotland is that the Scottish Government drafted a particularly detailed implementation procedure and timeframe, detailing specific deadlines. The planning process in Scotland was organized with community participation at the center. A Statement of Public Participation (SPP)⁹¹ was published describing the timeline of the planning process and a series of opportunities for the public to provide their input. Overall, the planning process was divided in **nine stages** within a specific timeframe:

- Stage 1: Initial meetings to consult stakeholders on the National Marine Plan: *June - December 2010.*
- Stage 2: Preparation of pre-consultation draft National Marine Plan and undertaking Sustainability Appraisal (SA), which includes Strategic Environmental Assessment (SEA): *October 2010 – March 2011.*
- Stage 3: Pre-consultation of the draft national marine plan and draft SA/SEA: *March 2011 - June 2011.*
- Stage 4: Revision of the pre-consultation draft National Marine Plan in response to comments made during the pre-consultation and the SA/SEA pre-consultation followed by Scottish and UK Ministerial clearance process: *July 2011 - June 2013.*
- Stage 5: Consultation on the Draft National Marine Plan (16 weeks) and Consultation on the SA/SEA: *25 July 2013 – 13 November 2013.*
- Stage 6: Revision of the Draft National Plan in response to comments during the Plan consultation, SA/SEA consultation followed by Scottish and UK Ministerial clearance process: *November 2013 – October 2014.*

⁸² Marine (Scotland) Act 2010, http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf

⁸³ Scotland's National Marine Plan A Single Framework for Managing Our Seas, <http://www.gov.scot/Resource/0047/00475466.pdf>

⁸⁴ Marine (Scotland) Act 2010 at § 5.

⁸⁵ *Id.* at § 20-64.

⁸⁶ *Id.* at § 65-106.

⁸⁷ *Id.* at § 107-130.

⁸⁸ *Id.* at § 131-157.

⁸⁹ *Id.* at § 9.

⁹⁰ *Id.* at § 16.

⁹¹ Marine Planning Statement of Public Participation, available at <http://www.gov.scot/Topics/marine/seamanagement/national/nmpspp>

- Stage 7: Presentation of the draft National Marine Plan before Parliament and Parliamentary consideration of the proposed National Marine Plan: *11 December - February 2015*.
- Stage 8: Final considerations, adoption and publication of the National Marine Plan. Publication of the SEA Post-Adoption Statement: *March 2015*.
- Stage 9: Keep National Marine Plan under review and report in line with the appropriate legalization.

Scotland's National Marine Plan was published in March 2015. The plan begins by describing a series of implementation objectives and then establishes general administration rules and sectoral management measures.

SCOTLAND'S NATIONAL MARINE PLAN GENERAL PLANNING PRINCIPLES

Scotland's Plan begins with a recitation of planning principles.⁹² These include, among others:

Achieving a sustainable economy, describing both the economic and social benefits of ocean resources management; **Ensuring a strong, healthy and just society**: Marine planners and decision makers must act in the way best calculated to mitigate, and adapt to, climate change; **Establishing a network of well managed marine protected areas** and sites of especial scientific interest; **Marine litter**: Developers, users and those accessing the marine environment must take measures to address marine litter where appropriate. Reduction of litter must be taken into account by decision makers; **Adaptive management**: Adaptive management practices should take account of new data and information in decision making, informing future decisions and future iterations of policy; **Cumulative impacts**: Cumulative impacts affecting the ecosystem of the marine plan area should be addressed in decision making and plan implementation.

Planning authorities and decision makers will consider the potential cumulative impact of activities and, using best available techniques, whether: the cumulative impact of activities, either by themselves over time or in conjunction with others, outweigh the benefits; a series of low-impact activities would have a significant cumulative impact which outweigh the benefit; an activity may preclude the use of the same area/resource for another potentially beneficial activity.

SECTORAL APPROACHES

After establishing general guiding principles, the Scottish Plan divides each sectoral approach in specific sector objectives and policies.

SEA FISHERIES OBJECTIVES⁹³

The sectoral approach on fisheries includes the following planning and management **objectives** and **policies**:

1. Fish stocks are harvested sustainably leading to exploitation of commercial fish stocks at Maximum Sustainable Yield and with long-term stability.
2. The fishing fleet is seen as an exemplar in global sustainable fishing practices, is confident in securing a long-term income, and accounts for changes in species distribution and abundance due to climate change.
3. The sea fisheries industry can: Optimize annual quota opportunities across fish stocks, Optimize the sustainable harvesting of wild fish, Optimize the value of its product, Optimize the use of fuel by using fuel-efficient gear and vessels.

⁹² Scotland's National Marine Plan, Chapter 3.

⁹³ *Id.* at Chapter 6.

4. Communities where fishing is a viable career option and value is added throughout the supply chain.
5. Management of fisheries on a regional sea-basin ecosystem basis with stakeholders empowered in the decision making process and, ecosystem-based management of inshore fisheries.
6. Fisheries managed in line with international and national environmental priorities.
7. An evidence-based approach to fisheries management which is underpinned by a responsible use of sound science.
8. Tackle discarding through the avoidance of unwanted catches and the implementation of the EU's obligation to land all catches of quota stocks.
9. Fully documented fisheries.

SEA FISHERIES PLANNING POLICIES⁹⁴

Ocean planners should seek to ensure:

1. Existing fishing opportunities and activities are safeguarded wherever possible.
2. An ecosystem-based approach to the management of fishing which ensures sustainable and resilient fish stocks and avoids damage to fragile habitats.
3. Protection for vulnerable stocks
4. Improved protection of the seabed and historical and archaeological remains requiring protection through effective identification of high-risk areas and management measures to mitigate the impacts of fishing, where appropriate.
5. That other sectors take into account the need to protect fish stocks and sustain healthy fisheries for both economic and conservation reasons.
6. Delivery of Scotland's international commitments in fisheries, including the ban on discards.
7. Mechanisms for managing conflicts between fishermen and/or between the fishing sector and other users of the marine environment.

The following key factors should be taken into account when deciding on uses of the marine environment and the potential impact on fishing:

- The cultural and economic importance of fishing, in particular to vulnerable coastal communities.
- The potential impact (positive and negative) of marine developments on the sustainability of fish and shellfish stocks and resultant fishing opportunities in any given area.
- The environmental impact on fishing grounds

This section also includes guidance on managing interaction between fishers and other sea users, and within different fisheries sectors. Specific guidelines on interaction with other sea uses include, for example, positive interactions, such as **being a provider of income for ports and harbors**, or potentially negative impacts such as the fact that **offshore energy developments can displace fishing**.⁹⁵ Planning principles also recognize the need to evaluate the impact of fisheries in the marine environment and to plan ahead on the impacts of climate change on fisheries.

The Plan continues by including sector-specific management objectives and policies for Aquaculture, Wild Salmon and Diadromous Fish, Oil and Gas development, Carbon Capture and Storage (CCS), Offshore Wind and Marine

⁹⁴ *Id.*

⁹⁵ *Id.* at page 42-43.

Renewable Energy, Recreation and Tourism, Shipping, Ports, Harbors and Ferries, Submarine Cables, Defense, and Aggregates (sand and gravel extraction). Each sectoral policy is accompanied by a map showing the selected marine zones for each use.

The Scottish government has created a permanent webpage for sharing information, receiving citizen input, and organizing stakeholder engagement on marine planning. National Marine Plan Online⁹⁶ presents all available information on marine planning. The page is updated as new information, research documents, or other activities become available. Periodic performance reviews of the Marine Plan are also published in this web platform.

⁹⁶ Scotland's National Marine Plan Online, <http://www.gov.scot/Topics/marine/seamanagement/national>

MODEL 4- ROYAL DECREE OF 20 MARCH 2014 ADOPTING MSP FOR THE BELGIAN NORTH SEA

SUMMARY

The Belgian section of the North Sea is a small but intensively used marine area. Three legally-binding documents form the basis for the development of MSP in Belgium: first, a 2012 amendment to the 1999 Marine Protection Act (hereinafter the Amendment) determined the need to conduct an MSP process. Second, the Belgian government enacted a Royal Decree⁹⁷ of November 2012 (the 2012 Royal Decree) that established an MSP Advisory Committee, provided marine planning competences to the Minister of the North Sea, and detailed the procedure for the adoption of an MSP in the Belgian maritime regions. Finally, the Belgian government enacted, in March 20th 2014, another Royal Decree (the MSP Royal Decree) adopting MSP for the Belgian North Sea.

One of the major drivers of the MSP process in Belgium was the need to develop an offshore energy sector for the country. The Advisory Committee cooperated with the Minister of the North Sea to draft the marine plan and conduct public consultations. Given its proximity with other countries deeply involved in MSP like France, the UK, and the Netherlands, the Belgian MSP process presents an interesting example of marine planning with significant transboundary implications.

The following sections include: A) an identification of the leading institutional agency designated for the MSP process, B) a brief explanation of the process leading to the enactment of the 2014 Royal Decree, C) a description of key elements of the 2012 Amendment and the 2012 Royal Decree, and D) a summary of the 2014 Royal Decree Marine Spatial Plan for the Belgian part of the North Sea.

A. INSTITUTIONAL FRAMEWORK

Since 2003, the Belgian Minister of the North Sea (currently a State Secretary for the North Sea within the Belgian Ministry of Social Affairs and Public Health, hereinafter the Ministry) has exclusive competences for marine drafting and planning.

B. PROCEDURE

The 2014 Marine Plan is the result of a long marine planning and zoning process that started in 1999 with the enactment of the Marine Protection Act. The Act described as series of non-binding, policy development strategies that focused on two policy priorities: a) addressing the need to develop offshore energy production, and b) implementing the European Network of Protected Areas.

Unlike other experiences (such as the previously described example of the Massachusetts Ocean Act) where the need to conduct scientific studies is included in a legally-binding text, in the case of Belgium preliminary technical studies and consultations were conducted through a non-binding process, leading to the publication of the 2003 Belgian Marine Plan. These studies however did not lead to a planning process due to lack of legal basis. As a consequence, the process lacked some elements, such as the enactment of management plans for MPAs. In

⁹⁷ The Royal Decree: in some civil law countries the Royal Decree is a legal instrument that, although drafted by the Executive Power, has the legally-binding nature and force of an Act enacted by the Legislative.

addition, important activities such as sand mining, fisheries, and aquaculture were not part of this first plan. Stakeholder participation was only organized informally, with limited public participation.

C. KEY ELEMENTS OF THE LEGALLY-BINDING AMENDMENT OF 2012 AND OF THE ROYAL DECREE OF 2012

In July 2012 the Belgian government initiated a legally-binding process for the implementation of MSP. An amendment to the 1999 Marine Protection Act introduced the concept of MSP and the need for a full consultative process. The name of the Marine Protection Act was updated to “An Act on the Protection of the Marine Environment and on the Organization of Marine Spatial Planning in the Sea Areas under Belgian Jurisdiction.”

The 2012 Royal Decree, enacted by the Belgian government in November 13th 2012, is a succinct legal document with only two sections: (a) the creation of a Consultative Committee for drafting the marine plan, and (b) a series of procedural requirements for the drafting and subsequent modification of the marine plan:

CONSULTATIVE COMMITTEE

The 2012 Royal Decree determines the creation of a Consultative Committee to assist the Ministry in the development of a plan for the protection of the marine environment and the organization of a management system for marine spaces under Belgian jurisdiction.⁹⁸ The Royal Decree sets up Committee Members and basic functions.⁹⁹

DRAFTING PROCESS

The Ministry must develop a draft plan and submit it to revision of the Consultative Committee, which must reply in a period of 30 days with a favorable assessment or comments. Once the draft is approved by the Consultative Committee, the Ministry submits it for approval of the Council of Ministers.¹⁰⁰ Upon this approval, the Ministry must open a period of public consultations of the draft, with a special focus on assessing the socio economic impact of the proposed marine plan.¹⁰¹ The Ministry must contemporarily submit the draft marine plan to the review of several governmental bodies¹⁰² and transmit the draft plan to the governments of the Netherlands, France, and the U.K.¹⁰³ The Royal Decree provides sixty (60) days for comment from these instances.

After completion of the consultation process, the Ministry must prepare a draft legal instrument (the Royal Decree) for the implementation of the draft marine plan, and submit it to the Council of Ministries for approval.¹⁰⁴ The Ministry must also publish and distribute widely a report detailing how all observations received during the

⁹⁸ Arrêté royal relatif à l'institution d'une commission consultative et à la procédure d'adoption d'un plan d'aménagement des espaces marins dans les espaces marins belges.

⁹⁹ *Id.* at art. 1.

¹⁰⁰ *Id.* at arts. 2 & 3.

¹⁰¹ *Id.* at art. 4 §1.

¹⁰² *Id.* Authorities consulted at this stage include the Federal Development Council, regional governments, the Coast Guard, and other instances considered relevant.

¹⁰³ *Id.* at art. 5.

¹⁰⁴ *Id.* at art 6.

consultation process have been taken into account.¹⁰⁵ The marine plan enters into force upon approval by the Council of Ministries.

FORMAL AMENDMENTS

The Royal Decree requires that the plan must be revised and updated every **6 years**. In addition, the Ministry can at any time, on its own initiative or at the request of other Ministry, and after the approval of the Council of Ministries, initiate a process of evaluation and/or revision of the marine plan. In case other Ministry or governmental agency requests the revision or modification, that request must be motivated.¹⁰⁶ The amendment process follows the same procedural steps defined for the first enactment of the marine plan.¹⁰⁷

D. GENERAL STRUCTURE OF THE ROYAL DECREE OF 20 MARCH 2014 ADOPTING MSP FOR THE BELGIAN NORTH SEA

The maritime spatial plan for the Belgian Part of the North Sea was approved in March 2014 by Royal Decree.¹⁰⁸ The MSP Royal Decree is mainly an ocean zoning regulation. It recognizes certain preexisting marine areas and creates a series of new ones for the development of specific activities. The 2014 Royal Decree is divided into the following sections:

DEFINITIONS

Includes the definition of basic terms, and specifies the binding nature of the ocean zoning regulations.¹⁰⁹

ZONING AND PRECONDITIONS

Chapter 2 of the 2014 Royal Decree contains the ocean zoning plan itself, divided in nine (9) sections that establish specific regulatory provisions for certain ocean uses. The 2014 Royal Decree describes all marine zones with specific geographical coordinates. Section 1, after determining that fishing is generally allowed in all sea areas, defines four zones in which specific fishing regulations apply (described as “good environmental status zones”) and establishes specific fishing gear requirements for each of those zones.¹¹⁰ Section 2 determines protected areas and areas for the protection of specific habitats, such as the harbor porpoise.¹¹¹ This section also establishes core protection zones in which certain activities, such as civil engineering or industrial development, are strictly prohibited.¹¹² Section 3 describes energy generation zones, as well as specific zones for installations for the transport of electricity, as well as for the laying pipelines and cables.¹¹³ Section 4 defines marine zones for the

¹⁰⁵ *Id.* at §2.

¹⁰⁶ *Id.* at art. 7 §1.

¹⁰⁷ *Id.* at art. 7 §§2-5.

¹⁰⁸ Arrêté royal relatif à l'établissement du plan d'aménagement des espaces marins, 2014;

https://www.ecolex.org/details/legislation/arrete-royal-relatif-a-letablissement-du-plan-damenagement-des-espaces-marins-lex-faoc150332/?q=marin&type=legislation&sortby=oldest&xcountry=Belgium&xdate_min=2014&xdate_max=2017&leg_type_of_document=Regulation

¹⁰⁹ *Id.* at arts. 1-5.

¹¹⁰ *Id.* at art. 6.

¹¹¹ *Id.* at Art. 7. §2.

¹¹² *See, e.g., id.* at art. 7 §3.

¹¹³ *Id.* at art 8.

disposal of dredged material, port development, and shipping, in accordance with international conventions.¹¹⁴ Section 5 establishes zones for marine aquaculture,¹¹⁵ and section 6 deals with spatial requirements for sand and gravel extraction.¹¹⁶ Section 7 delimits in a zone for testing new methods of coastal defense,¹¹⁷ and Section 8 defines five zones for military activities.¹¹⁸ Finally, Section 9 defines a munitions deposit area¹¹⁹ in which a considerable amount of war material was dumped after the First World War.

Two final provisions of the 2014 Royal Decree provide a general authorization to conduct scientific research and recreational activities, barring certain legal limitations.¹²⁰

¹¹⁴ *Id.* at art 9.

¹¹⁵ *Id.* at art 10.

¹¹⁶ *Id.* at art 11.

¹¹⁷ *Id.* at art 12.

¹¹⁸ *Id.* at art 13.

¹¹⁹ *Id.* at art 14.

¹²⁰ *Id.* at art 15.

III. BEST LEGAL PRACTICES FOR STREAMLINING MARINE SPATIAL PLANNING

This section provides a series of *talking points* that may be useful when discussing about different legal approaches for the implementation of MSP in specific countries and contexts. Experiences with the implementation of MSP are very diverse and comprise the specific characteristics of many different countries, with different legal systems. However, the examples described in this document allow us to draw some conclusions:

1. The legal provisions described in this document point out to the existence of **three** different regulatory approaches for the implementation of MSP: a) detailed legal instruments that seeks to **reorganize the regulatory landscape** for ocean resources management, planning and stewardship authorities, and permitting systems (e.g. UK); b) concise laws that set the stage for the whole planning process, **building on the existing legal framework** (e.g. Massachusetts), and c) those that focus on providing more legal certainty to sea users by establishing **ocean zoning** (e.g. Belgium, Barbuda).
2. **Legally-binding processes work better and faster.** A legal mandate provides a clear pathway for the implementation of MSP. Even the simplest MSP process for a relatively small marine area will very likely require participation from many authorities and several government agencies and levels of government. In addition, it will also be a policy tool that will affect the activities of several economic sectors, from sand mining and fisheries to offshore aquaculture and tourism. A legal mandate is a stringent legal instrument that reinforces the need for adequate coordination between all these actors. The legal instrument can even establish a specific planning and stakeholder engagement procedure to facilitate and streamline the planning process.
3. Having **one leading implementing agency** with a clear mandate to draft the marine plan seems to be more effective than relying on intra-governmental coordination committees and mechanisms.
4. A legal mandate with **clear deadlines** can avoid undesirable delays. In the Belgian case, the lack of a binding obligation to engage in marine planning ended up delaying the process several years, until a legal mandate established the obligation to complete the plan.
5. **Planning commissions and advisory committees** created by law have more support. Marine planning is a long and time-consuming process. Instituting a planning committee and/or a commission can help institutionalize the planning process and be more effective at bringing all relevant sectors and actors to the table.
6. It is important to include **a legal mandate to gather and constantly update data**. A good MSP process requires lots of information, which can come from different sources. A legal mandate establishing general criteria for information gathering, updating, and dissemination can reinforce the planning process and ensure that planners, regulators, and users have access to the best available science.
7. **Community participation** is paramount. All regulatory models for the implementation of MSP described in this document include, to a greater or lesser degree, a specific public engagement and consultation process. The legal instrument implementing the marine plan can be very detailed on the nature, number, and characteristics of the consultation process (such in the case of the Scottish marine plan), or can leave it to the regulator to decide what is the best approach to fulfill this requirement. In addition, several management organizations are making good use of online platforms, open access data, citizen science mechanisms, and social media as policy tools to reinforce community participation.
8. The MSP Act must **require periodic revisions of the marine plans**. The ocean is a living ecosystem in constant change. In addition, it is permanently being affected by anthropogenic actions, from unsustainable fishing

practices to climate change. It is important to ensure that the legal framework for the implementation of a marine plan recognizes the relevance of adaptive management, and establish specific legal provisions that allow for an adequate and realistic adaptive management process.

9. **Zoning** can be broad or detailed, but there has to be some zoning. A basic legal separation of human uses of the seas (including conservation measures) seems to be a good way to achieve better management and avoid potential use conflicts. The legal mandate for the creation of zones or areas can be very broad, such as in the case of the Massachusetts Ocean Act, or very specific, like in the Barbuda Coastal Zoning and Management Regulations.

10. A legal mandate establishing **clear planning principles and objectives** can provide consistency to the MSP process. As mentioned, the specific circumstances of ocean resources management can widely vary in time. At the same time, some ocean conservation and management processes are slow and need time enough and constant policies to become a reality (e.g. actions to ensure the recovery of an overexploited commercial species, or policies in support of the development of an emerging ocean energy industry). As a consequence, providing future planners and regulators with a series of overall legal principles can help them stay on course and maintain in place the regulations and policies that are needed to ensure long-term stability.

IV. RESOURCES¹²¹

GUIDELINES

- [Marine Spatial Planning: A Step-by-Step Approach toward Ecosystem-based Management](#)
- [A Guide to Evaluating Marine Spatial Plans](#)

ARTICLES

- [Insights from Practitioners: Challenges and Solutions for Ocean Planning](#)
- [Perspective: 13 Myths of Marine Spatial Planning](#)
- [Planning Canada's Pacific Coast: What Made it Work](#)

CONFLICT RESOLUTION IN OCEAN PLANNING

- [Environmental and resource conflicts and conflict resolution practices in coastal areas of the North American Great Lakes: towards an integrated approach for policymaking](#)
- [Conflict resolution in coastal resource management: Comparative analysis of case studies from four European countries](#)
- [Approaches to and tools for managing environmental conflicts in coastal zones in Africa](#)
- [Evaluating marine protected areas for managing marine resource conflict in Hawaii](#)
- [Guidance for Good Practice for Communicating with Stakeholders on the Establishment & Management of Marine Protected Areas](#)
- [Conflict in Protected Areas: Who Says Co-Management Does Not Work?](#)

STAKEHOLDER ENGAGEMENT

- [Beyond traditional stakeholder engagement: Public participation roles in California's statewide marine protected area planning process](#)
- [Stakeholder Involvement in MSP](#)
- [Coming to the table: Early stakeholder engagement in marine spatial planning](#)

¹²¹ Most of these resources can be found at <https://www.openchannels.org/top-lists>