

Implementation of Marine Spatial Planning Instruments for Sustainable Marine Governance in Poland

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ABSTRACT: Marine spatial planning (MSP) is a process of managing human activities in the marine and coastal environment in order to achieve sustainable development goals. Amendments regarding marine spatial planning within the Polish marine areas introduced to Polish law in 2015 constitute grounds for drawing up maritime spatial plans for marine areas. This paper presents a few general comments on the marine spatial planning in Poland in the context of implementation of the Directive establishing a framework for maritime spatial planning (MSP Directive) in Europe. The MSP Directive plays an important role in the development of marine spatial planning by promoting MSP instruments. Marine spatial plans are the basic instruments of marine spatial planning. The MSP Directive requires all coastal Member States of the European Union to prepare cross-sectoral maritime spatial plans by 2021. Development of the first maritime spatial plan for Polish marine areas was started in 2013. The MSP legal basis are included in the Marine Areas of the Republic of Poland and Maritime Administration Act of 1991 amended in 2015, which defines the legal situation of the marine areas of the Republic of Poland, the coastal area, the sea ports and harbours, and the rules for the use of these areas, as well as the maritime administration authorities and their competences.

1 INTRODUCTION

In Europe, for several years, a large number of coastal states are significantly engaged in introducing marine spatial planning instruments into their domestic law - constantly improving them and by them perceiving their contribution to long-term marine spatial planning as participation in sustainable development. This tendency undoubtedly attests to achieving a higher degree of integration in the approach to sustainable marine governance [1]. In some cases the development of marine spatial planning instruments for sustainable marine governance is based on the individual experience of the coastal states resulting from the integrated coastal zone management [2].

The aim of marine spatial planning is to prevent and minimize conflicts between sea space stakeholders. The diverse legal status of marine areas, the different types and effects of human activities in the marine and coastal environment, multilevel activities and measures aimed at protecting and conserving marine ecosystems, as well as many other factors associated with them, do not constitute an easy planning field. In practice, the introduction of maritime spatial planning is burdened with ballast resulting from the sectoral approach and well-established habits in the area of granting competences to individual administrative authorities responsible for maritime affairs [3, 4].

The MSP Directive establishes a framework for maritime spatial planning aimed at promoting the

sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources[5]. The maritime spatial plan is an instrument that is to be used for the implementation of maritime spatial planning in the long-term perspective in Europe. In Poland, intensive work is currently underway to develop the first Polish maritime spatial plan [6].

2 THE ESSENCE OF MARINE SPATIAL PLANNING IN SUSTAINABLE MARINE GOVERNANCE

Marine spatial planning is an essential part of sustainable marine governance. From the legal point of view, sustainable marine governance should take place on two levels in parallel: legal and institutional. The legal level (due to securing the value of managing the sea space from the normative aspect in the substantive and formal law dimension) is characterized by the same significance as the institutional level (i.e. the executive, which includes all governmental and non-governmental organizations and international institutions that carry out activities directed to environmental management, or whose activity has specific effects on the environment) [7]. Sustainable marine governance includes multilevel, integrated human-based planning, based on the most up-to-date scientific knowledge of ecosystems and their dynamics, the origin and impact of various other previously occurring activities that are essential to maintaining the health of the marine ecosystem, as well as ensuring sustainable use of resources (i.e. ecosystem goods and maintaining ecosystem integrity) [8].

Sustainable marine governance is based on marine spatial planning. This process is characterized by the multilevel nature of the principles perceived in the following dimensions: doctrinal (sustainable development principle), institutional (principle of institutional integration and cooperation), regulatory (principle of prevention, precautionary principle), executive (ecosystem approach) and functional (stakeholder participation, adaptive management). Analysis of the content of the principles and approaches to the MSP leads to the conclusion that not all of them have a legal normative orientation. In the case of the MSP, legal standards of conduct and other standards of conduct do not constitute two clearly delimited groups. It seems to be a complexity dilemma. Marine spatial planning is based on principles on normative orientations identified as: (1) leading or directional (but not all of them are legal principles); (2) not answering all dogmatic questions; (3) indicating directions for solutions to potential issues; (4) acting as a pattern of arguments in the areas of responsibility; (5) oriented towards equity. An ecosystem-based approach is one of the MSP principles on a normative orientation, but not a legal principle. The application of an ecosystem-based approach to decision-making is a fundamental framework for sustainable development [6, 9].

The purpose of marine spatial planning is to design sea space to achieve a balance in the use of access to marine areas and their resources in

cooperation with all stakeholders.

This process may require restrictions of the use of sea space (e.g. time or area limits), and in justified cases, to avoid conflicts between different users of the environment and improve the management of their activities involving the use of marine and coastal resources, including exclusions (e.g. prohibitions of a particular proceeding). It is also important for capacity building of administration bodies and other entities in the field of sustainable marine governance [10].

3 DEVELOPMENT OF MARINE SPATIAL PLANNING IN POLAND

Marine spatial planning is a process of achieving spatial order at sea. In practice, spatial order understood as a functional order of space is analyzed primarily in the field of planning and spatial development on land. The term 'marine spatial planning' is used in international law in functional meaning (planning process), while MSP Directive uses the term 'maritime spatial planning' mainly in the instrumental sense (i.e. spatial plan).

The concept of maritime spatial order does not function in the Polish law. One of the directions of Polish maritime policy is to improve maritime management [11]. Maritime spatial planning, understood purely technically, is to act as an "instrument serving the implementation of the integrated maritime policy of the European Union". The goal is to create an efficient maritime management system. Among the activities aimed at improving maritime management is the development of plans for the development of Polish sea areas, taking into account the ecosystem approach.

According to the MSP Directive, maritime spatial planning means a process in which the relevant Member State's authorities analyze and organize human activities in marine areas to achieve ecological, economic and social objectives taking into consideration relevant interactions of activities, uses and interests, *inter alia*: aquaculture areas; fishing areas; installations and infrastructures for the exploration, exploitation and extraction of oil, of gas and other energy resources of minerals and aggregates, and for the production of energy from renewable sources; maritime transport routes and traffic flows; military training areas; nature and species conservation sites and protected areas; raw material extraction areas; scientific research; submarine cable and pipeline routes; tourism; underwater cultural heritage.

Taking into account the effectiveness of the works, it should be stated that in Poland the actual actions aimed at implementing the MSP Directive were taken in 2013. The provisions of the ordinance of the Minister of Transport, Construction and Maritime Economy and the Minister of Regional Development on the plans for spatial development of Polish marine areas issued on August 5, 2013 have been in line with the provisions of the MSP Directive. The minister competent for the maritime economy in cooperation with the Directors of Maritime Offices in Gdynia, Słupsk and Szczecin prepared a schedule for the

development of maritime spatial plans for Polish marine areas in autumn 2013. Then a significant "Study of the conditions for spatial development of Polish sea areas" was created together with spatial analyzes that define spatial, legal, economic, social and natural conditions for the purposes of drawing up a spatial development plan for the Polish marine areas [12]. It was also at that time that intensive legislative works were initiated to adapt Polish legislation to the provisions of the MSP Directive. After about two years, the provisions of MSP Directive have been implemented into Polish domestic law by introducing changes to the Act on maritime areas of the Republic of Poland and maritime administration in 2015, including by means of: revision of spatial development plans for Polish sea areas; introduction of provisions regarding cross-border arrangements for the draft spatial development plan for Polish sea areas and public arrangements for the draft spatial development plan for Polish sea areas [6, 13]. The maritime spatial plan of the Polish marine areas is being developed by Maritime Institute in Gdańsk and National Marine Fisheries Research Institute in Gdynia.

Spatial planning and development covering the marine internal waters, territorial sea and exclusive economic zone means the process through which the competent authorities analyze and organize the use of marine areas to achieve ecological, economic and social objectives [14]. The authorities competent for the maritime spatial planning are the minister in charge of the maritime economy and the director of the maritime office [15]. The maritime administration authorities and their competences are specified in the Act of March 21, 1991 on the maritime areas of the Republic of Poland and maritime administration. They are: the minister competent for the maritime affairs as the supreme organ of maritime administration, directors of maritime offices as local maritime administration authorities (Article 38 § 1). Supervision over the activities of directors of maritime offices within the scope regulated by the Act on Maritime Areas of the Republic of Poland and Maritime Administration and in separate regulations is exercised by the minister competent for the maritime economy.

It should be noted that the Polish law defines an ecosystem approach. The ecosystem-based approach is defined in the Act on Maritime Areas of the Republic of Poland and Maritime Administration, and means that in the management of human activities, in which the three following conditions must be satisfied cumulatively: (1) an impact of the planned human activities on the ecosystem shall be maintained at a level enabling to achieve and maintain a good environmental status; (2) both the ability of the ecosystem to function properly, as well as resilience to environmental changes, arising from human activities, shall be maintained; (3) the sustained and at the same time sustainable use of the marine goods and services by the present and future generations shall be enabled (Article 37b 1 a.) [16].

4 THE STATUS OF IMPLEMENTATION OF THE POLISH MARITIME SPATIAL PLAN

From 2013, intense efforts have been made to draw up a maritime spatial plan in Poland. The current project of the Polish maritime spatial plan (draft plan) covers internal waters and territorial sea of the Republic of Poland as well as the Polish exclusive economic zone, but does not cover the Szczecin, Vistula and Kamieński Lagoons and marine internal waters within the boundaries of ports. The Act on the marine areas of the Republic of Poland and the maritime administration defines the legal situation of the marine areas of the Republic of Poland, the coastal area, the sea ports and harbours, and the rules for the use of these areas, as well as the maritime administration authorities and their competences. The marine areas of the Republic of Poland are: marine internal waters; the territorial sea; contiguous zone and exclusive economic zone. The marine internal waters and the territorial sea are part of the territory of the Republic of Poland. The territorial sovereignty of the Republic of Poland over the internal waters and the territorial sea shall extend to the waters, to the airspace over such waters as well as to the seabed and the subsoil of the internal waters and the territorial sea. The territorial sea of Poland consists of a marine area of 12 nautical miles wide, measured from the baseline of that sea. The baseline of the territorial sea is a line connecting the corresponding points defining the lowest water level along the coast or other points designated in accordance with the principles set out in the United Nations Convention on the Law of the Sea (UNCLOS) [17]. The outer limit of the territorial sea is the line, where each point is 12 nautical miles from the nearest point of the baseline, but roadsteads which are normally used for the loading, unloading and anchoring of ships and which are situated entirely or partially outside the outer limit of the sea waters areas, are included in the territorial sea. Polish contiguous zone adjacent to the territorial sea of the Republic of Poland, the outer limit of which is not more than 24 nautical miles from the baseline [18]. In the exclusive economic zone Poland is entitled sovereign rights to explore, manage and exploit the natural resources, whether living or non-living, the seabed and its subsoil and the waters covering them as well as the right to conserve those resources, as well as the sovereign rights with respect to other economic undertakings in the zone; and jurisdiction with regard to: the establishment and use of artificial islands, installations and other structures; marine scientific research; the protection and preservation of the marine environment; as well as other rights provided for under international law [6, 19].

The maritime spatial plan of the Polish maritime areas decides on five main issues: (1) the destined use of the maritime areas; (2) prohibitions or limitation in the use of the maritime areas, taking into account the requirements of nature protection; (3) location of public purpose investment; (4) directions of development of transport and technical infrastructure, as well as (5) areas and conditions of environmental protection, cultural heritage, fishery and aquaculture, renewable energy production and exploration and extraction of minerals [20].

The Polish legislator has distinguished two main functions types of allocations of the marine area, namely: the basic functions and the acceptable functions. The basic functions mean the leading allocations of the area established in the plan, which cannot be interfered by any other acceptable functions. The acceptable functions of the area mean the possible ways of using the area, the coexistence of which does not adversely affect sustainable development of the area [2, 21].

The draft plan is prepared by a territorially competent director of the maritime office, using the ecosystem-based approach and taking into consideration: (1) supporting the sustainable development in the maritime sector, taking into account the economic, social and environmental aspects, including the improvement of the environment and the resilience to climate change impacts; (2) defence and national security; (3) coordination of actions by relevant parties and the methods of using the sea [22].

The Polish maritime spatial plans will be adopted by the minister in charge of maritime economy and the minister in charge of the construction industry, spatial planning and development as well as housing in cooperation with the ministers in charge of environment, water management, culture and protection of national heritage, agriculture, fisheries, transport, internal affairs and the Minister of National Defence (Article 37a. § 1). The Polish maritime spatial plans covering the marine internal waters, the territorial sea and the exclusive economic zone will be adopted by a regulation.

The minister in charge of the marine economy and the minister in charge of construction industry, spatial planning and development as well as housing in cooperation with the minister in charge of fisheries and the minister in charge of environment determine, by means of a regulation, the required range of the plans contained in the textual and the graphical parts drawn up in the form of a digital chart study developed on the basis of the databases specifying, in particular, the planning materials, the type of chart studies, the scale of chart studies, the designations, names, standards applied, and how to document planning works, with regard to clarity and transparency of the plans, as well as the guidelines adopted by the Baltic Marine Environment Protection Commission (HELCOM) and the authorities of the European Union in the field of maritime spatial planning.

The plan may include the arrangements binding upon the self-governments of voivodeships and the municipalities, within which there are the marine internal waters, or the municipalities adjacent to the plan area by the coastline or the maritime areas' boundaries, corresponding to that line, in drawing up, respectively, the spatial development plans of voivodeships, the studies of conditions and the spatial development directions of the municipalities, as well as the local spatial development plans in the field of: deployment of public purpose investments of the national significance specified in the medium-term national development strategy and other development strategies, the concepts of the national spatial development and the programmes which

specify the tasks of the government [23], protected areas, the manner of using of the marine areas (including the restrictions and approvals).

The minister in charge of the maritime economy carries out the cross-border cooperation within maritime spatial planning as well as the cross-border exchange in the field of spatial data necessary in the process of maritime spatial planning. The Council of Ministers may specify, by means of a regulation, the required scope and manner of cross-border arrangements of the maritime spatial plan covering the marine internal waters, the territorial sea and the exclusive economic zone, having regard, in particular, to the recommendations adopted by the HELCOM and the authorities of the EU in the field of maritime spatial planning. The director of the maritime office collects and stores the materials relating to the plans. The maritime spatial plan should be reviewed from time to time, at least every 10 years. The plan is being prepared in accordance with the Regulation of May 2017 on the required scope of spatial development plans of marine internal waters, territorial sea and exclusive economic zone [24].

In January 2019, the Director of the Maritime Office in Gdynia acting on behalf of the Director of the Maritime Office in Słupsk, the Director of the Maritime Office in Szczecin and his own informs about the completion of the next stage of work on the project of maritime spatial plan for marine internal waters, territorial sea and exclusive economic zone (the draft plan) in scale 1: 200,000 together with the environmental impact assessment. In June 2018, a draft plan with an environmental impact assessment was presented for public viewing. It ensured stakeholders possibility of submitting comments and requests. Then in July 2018 a public discussion on the adopted solutions was organized. In December 2018 a modified draft plan was prepared, which introduced changes resulting from the environmental impact assessment and the arrangements made, as well as changes resulting from the opinions, remarks and conclusions considered. The modified draft plan (v2) together with the updated environmental impact assessment were forwarded to the competent authorities in order to procedure resulting from the in Article 37e § 1 point 8 of the Act on Marine Areas of the Republic of Poland and maritime administration [25]. The draft plan (v2) together with the updated environmental impact assessment is available on the website of the Director of the Maritime Office in Gdynia [26].

5 CONCLUSIONS

Marine spatial planning is a progressive process with high adaptation potential in relation to changes as well as one of the tools for sustainable marine governance of the World Ocean. The MSP is based on principles and approaches that originate from international, global and regional law as well as domestic law. The MSP framework aims to promote sustainable growth in the maritime economy as well as sustainable development of marine areas and sustainable use of marine resources. In functional terms, MSP is a process that is meant to dynamically

separate sea space for many types of use by humans, also introducing time constraints in its use and even exclusion, also to avoid conflicts between various environmental stakeholders and improving the management of human activities. Public process of recognizing and dividing sea space and temporal distribution of human activities in marine areas to achieve economic, social and environmental goals ought to be included in state policy.

Achieving sustainability is the overriding goal of maritime spatial plan. The maritime spatial plan sets out priorities relating to different uses of the sea space. According to the assumptions of the MSP Directive, the maritime spatial plan is aimed at balancing the interests of stakeholders using the marine areas and is the framework for conduct. The development of a good plan requires detailed settlements in various related matters and correct diagnosis for the resources of sea space. It should cover various conditions, including economic, social, ecological and legal ones. These conditions must be analyzed in a multidimensional way in horizontal and vertical perspective.

In Poland, the maritime spatial plan is under development. In accordance with the principle of sustainable development, in the scope of determining detailed decisions, both the activities resulting from the need for economic development and activities aimed at environmental protection, in particular maintaining and improving its condition, were taken into account. These detailed decisions of the Polish maritime spatial plan (draft plan) are in line with the precautionary approach in the context of conservation and protection of natural values. This was confirmed by: the preparation of separate and specific for each designated marine zone prohibitions and use restrictions relating to the welfare of natural resources, an issue not regulated in the Natura 2000 protection plans; and recommendations regarding the use of marine zones in the future.

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