

SIMAtlantic: Supporting implementation of maritime spatial planning in the Atlantic region

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# Table of Contents

- 1 Introduction ..... 1
- 2 Methodology ..... 2
- 3 Status of MSP in European Atlantic countries ..... 2
  - 3.1 Responsibility for MSP ..... 6
- 4 Legal basis for Maritime Spatial Plans ..... 8
  - 4.1 Inclusion of other legal requirements in Maritime Spatial Plans ..... 10
    - 4.1.1 France..... 11
    - 4.1.2 Ireland..... 12
    - 4.1.3 Portugal ..... 14
    - 4.1.4 Spain..... 14
    - 4.1.5 United Kingdom..... 15
  - 4.2 Marine Plan objectives in other policies ..... 17
  - 4.3 Translating policy objectives into management practices ..... 21
- 5 Dealing with transboundary aspects of marine planning ..... 23
  - 5.1 Other transboundary mechanisms of relevance to MSP ..... 25
    - 5.1.1 OSPAR Convention ..... 25
    - 5.1.2 Marine Strategy Framework Directive ..... 27
    - 5.1.3 Strategic Environmental Assessment ..... 28
    - 5.1.4 EU Common Fisheries Policy ..... 28
    - 5.1.5 Other national mechanisms..... 29
    - 5.1.6 UK and Ireland specific mechanisms ..... 30
    - 5.1.7 Atlantic Strategy..... 31
  - 5.2 Other relevant coastal/marine policies with a transboundary dimension ..... 32
- 6 Participation ..... 33

|    |   |    |
|----|---|----|
| 7  | Sectoral and stakeholder involvement..... | 37 |
| 8  | Conclusions.....                          | 38 |
| 9  | References.....                           | 41 |
| 10 | Annex 1.....                              | 44 |

## Acronyms

|       |   |
|-------|---|
| AA    | Appropriate Assessment [EU]   |
| AAP   | Atlantic Action Plan [EU]   |
| AFBI  | Agri-Food and Biosciences Institute (NI) [UK]   |
| ASC   | Atlantic Strategy Committee [EU]  |
| BIC   | British-Irish Council [UK-IE and others]  |
| CBD   | Convention on Biological Diversity  |
| CEA   | Cumulative Effects Assessment   |
| CFP   | Common Fisheries Policy [EU]  |
| CIA   | Cumulative Impact Assessment  |
| CIEM  | <i>Comisión Interministerial de Estrategias Marinas</i> [ES] (Interministerial Commission for Marine Strategies)  |
| CIS   | Common Implementation Strategy [EU]   |
| CMF   | <i>Conseil Maritime de Façade</i> [FR] (Maritime Façade Council)  |
| CNML  | <i>Conseil national de la mer et des littoraux</i> [FR] (National Council for the Sea and Coastlines)   |
| DAERA | Department of Agriculture, Environment and Rural Affairs (NI) [UK]  |
| DECC  | Department of the Environment, Climate and Communications [IE]  |
| Defra | Department of Environment, Food and Rural Affairs [UK]  |
| DGRM  | <i>Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos</i> [PT] (Directorate General of Natural Resources, Security and Maritime Services) |
| DGPM  | <i>Direção-Geral de Política do Mar</i> [PT] (Directorate General for Maritime Policy)  |
| DHLGH | Department of Housing, Local Government and Heritage [IE]   |
| DSF   | <i>Documents Stratégiques de Façade</i> [FR]  |
| DSBM  | <i>Documents Stratégiques de Bassin Maritime</i> [FR] (Maritime Basin Strategic Documents)  |
| EC    | European Commission   |
| EEZ   | Exclusive Economic Zone   |
| EIA   | Environmental Impact Assessment   |
| ES    | Spain   |
| EU    | European Union  |
| GEcS  | Good Ecological Status [EU]   |
| GES   | Good Environmental Status [EU]  |
| GFA   | Good Friday Agreement [UK, NI and IE]   |
| HRA   | Habitats Regulations Assessment [UK]  |
| IE    | Ireland   |
| IMO   | International Maritime Organization   |

|        |   |
|--------|---|
| IRBD   | International River Basin District (WFD) [EU]   |
| LSI    | Land-Sea Interactions   |
| MCAA   | Marine and Coastal Access Act 2009 [UK]   |
| MCZ    | Marine Conservation Zones [UK]  |
| MEMN   | <i>Manche Est Mer du Nord</i> [FR] (East Channel North Sea)   |
| MEOW   | Marine Ecoregions of the World  |
| MITERD | <i>Ministerio para la Transición Ecológica y el Reto Demográfico</i> [ES] (Ministry of Ecological Transition and the Demographic Challenge) |
| MMO    | Marine Management Organisation [UK]   |
| MPNI   | Marine Plan for Northern Ireland (NI) [UK]  |
| MPA    | Marine Protected Area   |
| MPP    | Marine Planning Partnerships (Scotland) [UK]  |
| MPS    | Marine Policy Statement [UK]  |
| MSFD   | Marine Strategy Framework Directive [EU]  |
| MSP    | Marine/Maritime Spatial Planning  |
| NAMO   | Nord Atlantique – Manche Ouest [FR] (North Atlantic – West Channel)   |
| NGO    | Non-Governmental Organisation   |
| NI     | Northern Ireland  |
| NMPF   | National Marine Planning Framework [IE]   |
| NMPi   | National Marine Plan interactive (Scotland) [UK]  |
| NPF    | National Planning Framework [IE]  |
| NSIP   | Nationally Significant Infrastructure Projects [UK]   |
| NSMC   | North-South Ministerial Council [NI-ROI]  |
| OECD   | Organisation for Economic Co-operation and Development  |
| OMPPs  | Overarching Marine Planning Policies [IE]   |
| OSPAR  | Convention for the Protection of the Marine Environment of the North-East Atlantic  |
| PAMM   | <i>Plans d'Actions Milieux Marins</i> [FR] (Marine Environment Action Plans)  |
| PCSD   | Policy Coherence for Sustainable Development  |
| POAP   | <i>Planos de Ordenamento de Áreas Protegidas</i> [PT] (Protected Area Planning Plans)   |
| POC    | <i>Programas da Orla Costeira</i> [PT] (Coastal Programmes)   |
| POEM   | <i>Planes de Ordenación del Espacio Marítimo</i> [ES] (Maritime Spatial Plans)  |
| PoM    | Programme of Measures (MSFD) [EU]   |
| POOC   | <i>Plano de Ordenamento da Orla Costeira</i> [PT] (Coastal Development Plan)  |
| PPE    | <i>Politique Pluri-annuelle de l'Energie</i> [FR] (Multi-year energy policy)  |
| PSOEM  | <i>Plano de Situação do Ordenamento do Espaço Marítimo</i> [PT] (MSP Situation Plan)  |
| PT     | Portugal  |

|             |   |
|-------------|---|
| RAMPE       | <i>Red de Áreas Marinas Protegidas de España</i> [ES] (Network of Marine Protected Areas of Spain)                          |
| RBD         | River Basin District (WFD) [EU]   |
| RBMP        | River Basin Management Plan (WFD) [EU]  |
| RMP         | Regional Marine Plans (Scotland) [UK]   |
| ROI         | Republic of Ireland   |
| SAC         | Special Areas of Conservation [EU]  |
| SDAGE       | <i>Les schémas directeurs d'aménagement et de gestion des eaux</i> [FR] (Master plans for water development and management) |
| SDG         | Sustainable Development Goal  |
| SEA         | Strategic Environmental Assessment  |
| SIMAtlantic | Supporting Implementation of MSP in the Atlantic region project   |
| SIMCelt     | Supporting Implementation of MSP in the Celtic Seas project   |
| SMPPs       | Sectoral Marine Planning Policies [IE]  |
| SNML        | <i>Stratégie nationale pour la mer et le littoral</i> [FR] (National strategy for the sea and the coast)                    |
| SPA         | Special Protection Area [EU]  |
| SPP         | Statement of Public Participation [UK]  |
| SSSI        | Sites of Special Scientific Interest [UK]   |
| UK          | United Kingdom  |
| UNCLOS      | United Nations Convention on the Law of the Sea   |
| WFD         | Water Framework Directive [EU]  |
| WNMP        | Welsh National Marine Plan [UK]   |

# 1 Introduction

Governance forms one of the cross-cutting themes in the SIMAtlantic project. The purpose of this task is to examine and establish the extent to which other legal requirements interact with the design and implementation of Maritime Spatial Planning (MSP). Specifically, the other legal instruments considered here include the Marine Strategy Framework Directive (MSFD), the Water Framework Directive (WFD) and the nature conservation legislation in the form of the Birds and Habitats Directive (which includes Natura 2000 sites). This work was informed by discussions with the partners in the project including those from Competent Authorities as well as previous and on-going MSP projects at national and EU level. For example, the SIMCelt<sup>1</sup> and SIMNORAT<sup>2</sup> projects have already looked at how MSP will interact with marine biodiversity considerations (De Magalhaes et al., 2018; Fauveau and Alloncle, 2017; De Magalhaes et al., 2019).

A secondary aim of this work is to review the existing MSP governance structures at a transboundary level in the European Atlantic region and any transboundary mechanisms that exist under other legal instruments such as the Regional Seas Conventions, Water Framework Directive, etc. This takes account of not only the more formal authority level mechanisms that usually exist within and between governments but also wider structures such as those that facilitate sectoral and stakeholder participation. This augments the critical analysis (SWOT) conducted in SIMNORAT on the organisation and structure of decision-making bodies and the development of Maritime Spatial Plans, including a mapping of existing decision-support tools that could have transboundary use (Quintela et al., 2019 and Marques et al., 2019).

Article 5 of the Directive<sup>3</sup>, which provides the minimum requirements for MSP, specifies that in developing their plans, Member States shall ensure transboundary cooperation between Member States in accordance with Article 11. The latter stipulates that the aim of cooperation is to ensure that maritime spatial plans are “coherent and coordinated across the marine region concerned.” Whilst the recitals of the Directive recognise that as there are differences between various marine regions and coastal zones, it is not appropriate to prescribe in detail what form the cooperation mechanisms should take (Recital 20). In Article 11, however, it is stated that cooperation shall be pursued through (a) existing regional institutional cooperation structures such as Regional Sea Conventions; and/or (b) networks or structures of Member States’ competent authorities; and/or (c) any other method that meets the cooperation requirements, for example those that operate in the context of sea-basin strategies.

Coherency and coordination by definition requires the incorporation of other relevant policy objectives, as recognised in the recitals to the MSP Directive itself. A thorough assessment or evaluation of coherency at such an early stage of MSP implementation across the EU is not possible at this time. For this reason this report identifies common themes across all aspects of governance and looks at how these fit with the OECD’s analytical framework for policy coherence for sustainable development (OECD, 2016). Whilst originally developed to explore coherence in relation to the 2030 Agenda for Sustainable Development, it can be used as a

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<sup>1</sup> <https://www.msp-platform.eu/projects/supporting-implementation-maritime-spatial-planning-celtic-seas>

<sup>2</sup> <https://www.msp-platform.eu/projects/supporting-implementation-maritime-spatial-planning-north-atlantic-region>

<sup>3</sup> Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0089>

screening tool to support governments in designing and implementing coherent policies. Sustainable Development Goal 17 on ‘strengthening the means of implementation and revitalizing the global partnership for sustainable development’ links directly to coherence and includes a specific target for this in SDG 17:14 which is to “enhance policy coherence for sustainable development” (PCSD). The associated indicator is the number of countries with mechanisms in place to enhance policy coherence of sustainable development.<sup>4</sup> At EU level, and indeed globally, MSP is seen as an approach that can help to deliver sustainable development of seas and oceans. As the MSP Directive already has requirements in terms of cooperation and coherence it is timely to look at how this is or could be addressed in Atlantic countries. This could in turn help to inform future evaluation methodologies for MSP. The report concludes with common approaches to management in transboundary spaces reflecting common legal requirements and sectoral interests and highlighting where these represent challenges for achieving policy coherence.

## **2 Methodology**

An examination of Maritime Spatial Plans published to date provides information on how other EU legal objectives are incorporated into the MSP process. Where Maritime Spatial Plans are under development, emphasis is placed on how such objectives will be included and subsequently implemented. This can provide lessons to other Member States faced with the same issues. Partners in the SIMAtlantic project were asked to complete a survey explaining how other legal requirements interact with their national MSP, to describe the structures that exist for implementation of MSP particularly those for cross-border/transboundary cooperation on MSP, and to provide information on how stakeholder and sectoral interests are/were included in the Maritime Spatial Planning process. A copy of the survey is included in Annex 1. Responses were received from all the project partner countries: France, Ireland, Portugal, Spain and the United Kingdom. This information supplements the documentary review and is incorporated into the relevant sections below.

The OECD Policy Coherence for Sustainable Development (PCSD) framework provides guidance on how to analyse, apply and track progress on PCSD. This framework consists of an analytical framework, an institutional framework and a monitoring framework. At this stage of MSP implementation it is the institutional framework which most relevant. This consists of a number of essential building blocks including a whole of government approach (i.e. awareness and understanding of sustainable development, priority setting, political commitment, multi-stakeholder involvement and strategic framework for SDG implementation) and policy coordination (i.e. coordination mechanisms, inter-linkages across governance levels, budget processes, administrative culture, national SDG targets), which can be further sub-divided as needed. These factors are broadly considered in the following sections recognising that national marine spatial plans have been designed and developed to implement the requirements of the MSP Directive and may not be explicitly linked to the Sustainable Development Goals, though implementation could implicitly help in their achievement.

## **3 Status of MSP in European Atlantic countries**

The EU Maritime Spatial Planning Directive requires Member States to have Maritime Spatial Plans in place by 31<sup>st</sup> March 2021. By April 2021, only six of the 22 coastal Member States in the EU, had met this deadline: Belgium, Denmark, Finland, Latvia, the Netherlands and Portugal

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<sup>4</sup> See <https://sdgs.un.org/goals/goal17>



(WWF, 2021). Work is progressing in all of the other countries and since then other EU Member States have adopted their plans including Ireland and Poland. Germany, Lithuania and Malta for example are further ahead and already revising their existing plans. From a SIMAtlantic partner country perspective, these are outlined briefly below.

In **France** MSP is implemented in metropolitan France and overseas territories by means of sea basin strategic documents, also referred to in French respectively as *Documents Stratégiques de Façade (DSF)* and *Documents Stratégiques de Bassin Maritime (DSBM)*.<sup>5</sup> Four sea basins have been delimited in the French mainland waters (Eastern Channel-North Sea, North Atlantic-Western Channel, South Atlantic, Mediterranean coast). These documents are comprised of two parts. Firstly, the “strategic component” of the DSF consists of a “state of the art”, the socio-economic and environmental strategic objectives, the vocation map and the vision of the actors for the sea basin by 2030. These were adopted by the coordinating “State representatives” of the sea basin in 2019 after a phase of consultation with the public and stakeholders. The second component of the DSF is the "operational component" that consists of an action plan and a monitoring mechanism, which is subject to public consultation until August 2021 and ready for adoption later in the year.

In **Ireland**, the National Marine Planning Framework (NMPF) Consultation Draft was published in November 2019 and has undergone a review process to take account of public comments and submissions received. The Plan secured Cabinet approval on 23<sup>rd</sup> March, which enabled it to be laid in the Oireachtas (the Legislature) and formally brought before the Dáil Éireann (house of representatives) and Seanad Éireann (the senate) for approval. The plan was officially launched on 1<sup>st</sup> July 2021 (DHLGH, 2021a). This was accompanied by the publication of the Maritime Area Planning Bill 2021, legislation to enable forward planning and manage marine development, which was approved by Cabinet on 29<sup>th</sup> June and is expected for enactment later in 2021.<sup>6</sup> The NMPF contains a vision, objectives and planning policies for all marine-based human activities. It outlines how these activities will interact with each other and key issues for sustainability. The NMPF is a key decision-making tool as all public bodies are legally required to comply with its objectives and policies.

**Portugal** approved a dedicated law on “marine spatial planning and management”, in 2014 which started the process of MSP. In 2015, Decree-Law No. 38/2015 (updated by the Decree-Law No.139/2015) entered into force, and develops the MSP and management fundamental law, defining, among others, the regime of maritime spatial planning instruments. These consist of: i) the Situation Plan which identifies protection and preservation areas of the maritime space, and the temporal and spatial distribution of current and potential uses and activities; and ii) Allocation Plans for the private use of some areas or volume of the maritime area not considered in the situation plan (DGRM, 2019). The National Maritime Spatial Planning Situation Plan (PSOEM) corresponding to the subdivision of the mainland, the subdivision of Madeira and the subdivision of the Extended Continental Shelf was approved in December 2019 by the Council of Ministers (Resolution No. 203-A/2019). The Situation Plan for the subdivision of Azores is under development.

In **Spain**, legislation in the form of Royal Decree 363/2017, of 8<sup>th</sup> April, establishes a framework for Maritime Spatial Planning. This is a policy development of the Law 14/2010, of 29<sup>th</sup> December, on the protection of marine environment, which transposed the Marine Strategy

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<sup>5</sup> Available from <http://www.geolittoral.developpement-durable.gouv.fr/documents-strategiques-de-facade-metropole-r560.html>

<sup>6</sup> See <https://www.oireachtas.ie/en/bills/bill/2021/104/>

Framework Directive. As such implementation of MSP will be closely related to MSFD implementation. Sub-groups were identified to address specific topics within the national MSP process. These sub-groups are formed by representatives of Ministries and Entities concerned with each topic, representatives of the regional bodies in charge of the different topics and representatives of the Centre for Studies and Experimentation of Public Works (CEDEX) and the Spanish Institute of Oceanography (IEO). The MSP process is illustrated in Figure 1. In 2020, work on a Strategic Environmental Assessment (SEA) commenced with consultation on the first draft of the POEM (*Planes de Ordenación del Espacio Marítimo*), together with the Strategic Initial Document. From these documents, an inventory of uses and activities was progressed, considering both present and future uses.<sup>7</sup> These documents are currently being reviewed by the Ministry of Ecological Transition and Demographic Challenge (MITERD) and the Autonomous Communities (regional governments). Final versions of these, together with the draft Royal Decree to legally approve POEMs, opened for public consultation in June 2021.

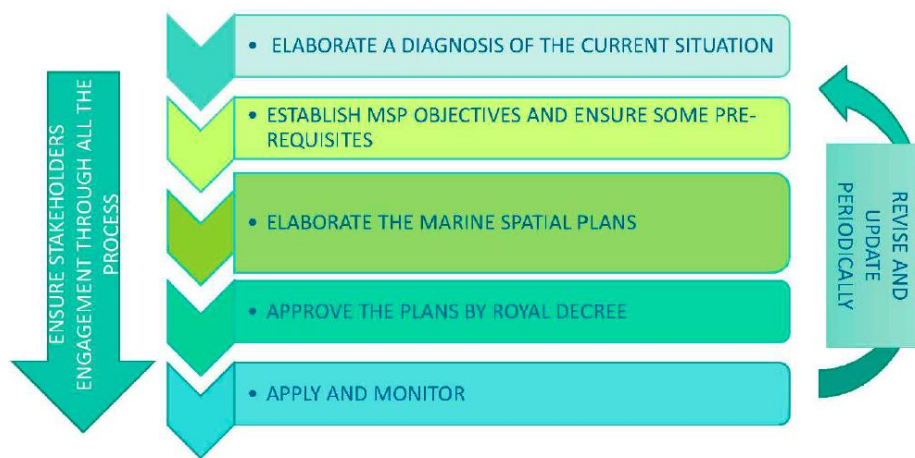


Figure 1 The MSP process in Spain (translated from: MITERD, 2020, p.13)

The **United Kingdom** includes England, Scotland, Wales and Northern Ireland each with certain levels of delegated authority. In England, there are 11 marine plan areas: North East Inshore, North East Offshore, East Inshore, East Offshore, South East Inshore, South Inshore, South Offshore, South West Inshore, South West Offshore, North West Inshore and North West Offshore.<sup>8</sup> Ten plans will be produced in total, since it was decided following feedback from stakeholders that there would be a single planning process covering both the North West areas. The East Marine Plans were adopted in 2014, followed by the South Marine Plans in 2018. The Marine Management Organisation (MMO) is on course to see the adoption of the North East, North West, South East and South West Marine Plans in early 2021. Amendments to the plans have been completed and reflect comments received to the public consultation last year. A Consultation Summary has been produced and published. The amended plans have been submitted to the Department of Environment, Food and Rural Affairs (Defra) for a period of review and will then be circulated for clearance by government departments before being

<sup>7</sup> Draft documents for each of the 5 Marine Demarcations are available in: <https://www.miteco.gob.es/es/costas/temas/proteccion-medio-marino/ordenacion-del-espacio-maritimo/>

<sup>8</sup> See <https://www.gov.uk/guidance/explore-marine-plans>

submitted to the Secretary of State for consideration for adoption. Adopted plans are subject to a three-year review cycle. Where there is not yet a marine plan in place, the *UK Marine Policy Statement* (MPS) 2011 sets the direction for decisions that affect the marine areas, and a public body must explain any decision made that is not in line with an adopted plan or the MPS. Exceptions exist; for example, a relevant national policy statement carries greater weight.

Wales consists of two marine regions: inshore and offshore. The first Welsh National Marine Plan (WNMP) was adopted and published in 2019 (Welsh Government, 2019). It is the first marine plan for Wales and covers both inshore and offshore Welsh marine regions. It was prepared and adopted under the *UK Marine and Coastal Access Act 2009* and in conformity with the *Marine Policy Statement* (MPS). A Monitoring and Reporting Framework and Implementation Guidance were published in 2020. The WNMP takes a 20-year view whilst recognising that certain activities may need to be planned for beyond this period and others are likely to change significantly during its lifetime. The Welsh Ministers will review and report at least every three years on the effects of policies in the WNMP. The management of activities in Welsh waters is split between devolved functions, the responsibility of Welsh Ministers, and functions retained by UK Government. The WNMP includes provision relating to devolved and retained functions and has been adopted with the agreement of the UK Secretary of State for Environment, Food and Rural Affairs.

Scotland's first statutory marine plan, the National Marine Plan, was adopted and published in 2015 and reviewed in 2018 (The Scottish Government, 2015). A further review is due in 2021. The policies and objectives of the National Marine Plan will be reflected in the development of Regional Marine Plans (RMPs). Eleven Scottish Marine Regions have been created which cover inshore waters (sea areas extending out to 12 nautical miles). RMPs will be developed by Marine Planning Partnerships (MPPs), which will be made up of marine stakeholders who reflect marine interests in their region. Regional marine planning powers will be delegated to MPPs by the Scottish Ministers. These powers will not include licensing or consenting as these will remain the responsibility of consenting bodies such as Marine Scotland and Local Authorities. Marine Scotland will provide support to MPPs, for example by giving access to research and science, the provision and hosting of data through National Marine Plan interactive (NMPI) and guidance on policy development. When their RMPs are adopted, the role of the MPPs will continue as they must oversee the implementation of their plans, monitor their regions and the effects of their plans' policies, review objectives and policies and amend their plans if required or requested by the Scottish Ministers. Currently two MPPs have been established (Shetland and the Clyde) with a third one in development (Orkney). The draft RMPs formulated by the two MPPs have not yet been given Ministerial approval. The Scottish Parliament published *Development and implementation of Regional Marine Plans in Scotland: interim report* (2020).

In Northern Ireland, the UK Marine and Coastal Access Act 2009 and the Marine Act (Northern Ireland) 2013 set out the statutory basis for the preparation of marine plans and the framework for marine planning systems. The draft Marine Plan for Northern Ireland (MPNI) was launched for consultation in April 2018 and closed in June 2018 (DAERA, 2018a). The draft Plan was accompanied by a Sustainability Appraisal; a Habitats Regulations Assessment; an Equality Impact and Human Rights Screening; a Rural Needs Impact Assessment and a Partial Regulatory Impact Assessment. The NI Marine Plan consists of an inshore and offshore region. The inshore region extends from the Mean High Water Spring Tide mark out to, at most, 12 nautical miles (nm) and includes tidal rivers and sea loughs. In places along the north coast, this is reduced due to the proximity of Scotland's marine area. The offshore region is the area that extends south-eastwardly from the 12nm territorial limit to the outer boundary of the Northern Ireland marine area (31nm from the inshore boundary, at its farthest extent). In 2021,

a summary of responses to the consultation draft was published. This document collates, analyses and responds to the comments received and will be used to inform further work in developing marine planning in Northern Ireland. The MPNI will be adopted when the Department for Agriculture, Environment and Rural Affairs (with agreement of the Secretary of State with regard to retained functions and agreement of the Northern Ireland Executive as a cross-cutting issue) publish the plan.

*Key points*

- All Atlantic countries are working to either finalise or implement their Maritime Spatial Plans
- Some countries have decided to have one national plan covering all marine waters whilst others have taken a more regionalised/localised approach to plan-making

**3.1 Responsibility for MSP**

One of the requirements of the MSP Directive is the designation of a competent authority for Maritime Spatial Planning at national level. This information is presented in Table 1.

| Country  | Competent Authority  |
|--|--|
| France   | French Ministry of the Sea   |
| Ireland  | Minister for Housing, Local Government and Heritage  |
| Portugal   | Ministry of the Sea  |
| Spain  | Ministry for the Ecological Transition and Demographic Challenge (MITERD)  |
| United Kingdom<br>England<br>Wales<br>Scotland<br>Northern Ireland | Department of Environment, Food and Rural Affairs (Defra) <ul style="list-style-type: none"> <li>• Marine Management Organisation (MMO)</li> <li>• Welsh Assembly Government</li> <li>• Scottish Government (Marine Scotland)</li> <li>• Department of Environment, Agriculture and Rural Affairs (DAERA)</li> </ul> |

Table 1 Competent Authorities for MSP

Whilst designated competent authorities for MSP tend to be central government departments, it is important to recognise that many specify other national agencies and bodies that have a role in supporting MSP implementation.

In **France**, at the scale of maritime basin, each DSF is developed by the State representatives for the concerned sea basin, for a period of six years. State representatives are responsible for its development with contributions from associated State services. The “coordinating State representatives” are supported by a consultation body, the “Conseil Maritime de Façade” (CMF) for each sea basin, which brings together different stakeholders from the sea, the coast and the land. Citizens are invited to express themselves in the framework of a “preliminary consultation” (“*Concertation Préalable*”). Local authorities are responsible for various sectors related to maritime activities (“*Régions*”, “*Départements*”) as well as municipalities and their groupings. These local authorities have planning tools that can apply their MSP objectives locally, within the limits of the territorial sea.

In **Ireland**, the governing legislation provides that the Minister can decide to have more than one MSP at particular stages of implementation, for example, at a regional or sub-regional level, but this will not be the case in the first phase of implementation. Regional plan-making will be

developed through a partnership approach between the Department of Housing, Local Government and Heritage, groups of local authorities working on a regional basis, other Government departments, and stakeholders. The intention is to have at least three such regional plans. The NMPF states these regional plans will be prepared with local authority groups following different models (e.g. shared service, lead authority) depending on local specificities such as shared coastline / geography, similar maritime challenges and opportunities and existing partnership arrangements. Scientific and technical advice to support MSP implementation is provided by the Marine Institute, the State agency responsible for marine research and development.

In **Portugal**, two sub-divisions within the Ministry of the Sea have input into the MSP process. The General Directorate for Maritime Policy (**DGPM**) is responsible for the National Ocean Strategies and Blue Growth and promotes the permanent assessment of the different planning instruments for the national maritime space. The Directorate General of Natural Resources, Security and Maritime Services (**DGRM**), is responsible for the coordination of the Portuguese maritime spatial plan, named the Situation Plan, and for the preparation and development of the Plan in the maritime zone between the baseline and the continental shelf beyond 200 nautical miles (with the exception of the national maritime space adjacent to the Madeira and the Azores archipelagos), named Continent Subdivision and Extended Continental Shelf Subdivision. In the Autonomous Region of Azores, the Regional Directorate for Maritime Affairs (DRAM), of the Azores Regional Government, is responsible for the preparation and development of the Situation Plan in the maritime space adjacent to the Azores archipelago, between the baseline and the continental shelf up to 200 nautical miles, named Azores Subdivision. In the Autonomous Region of Madeira, the Regional Directorate of the Sea (DRM), of the Madeira Regional Government, is responsible for the preparation and development of the Situation Plan in maritime space adjacent to the Madeira archipelago, between the baseline and the continental shelf until 200 nautical miles, named Madeira Subdivision. Portugal also has an Inter-ministerial Commission for Maritime Affairs (CIAM), that brings together representatives from all the concerned ministries and is an inter-institutional body for reflection, coordination, and strategic decision on maritime affairs, created with the main objective of assuring the monitoring and consultation of transversal policies of maritime affairs.

In **Spain**, for the implementation of the MSFD, an Interministerial Commission of Marine Strategies (CIEM – *Comisión Interministerial de Estrategias Marinas*) was established. Within this there is a Working Group on MSP (GT-OEM – *Grupo de trabajo de Ordenación del Espacio Marítimo*) with representatives from the Ministries concerned and from two technical support institutions, the Spanish Institute of Oceanography (IEO) and the Centre for Studies and Experimentation of Public Works (CEDEX). Five plans are expected for each of the 5 Marine Demarcations, which are the same units for implementation of the MSFD, both related to the Spanish marine regions/subregions. The Commission (CIEM) has monitoring committees for each of the Marine Demarcations, which are composed of representatives from the central administration (national level) and representatives of the Autonomous Communities concerned in each Marine Demarcation (regional level). Consultation has also been ongoing with the regional governments, specifically in relation to tourism, fisheries and aquaculture, environment and protected areas, regional ports, and cultural heritage. Ten bilateral meetings with the different regions took place between June to September 2020. The different subgroups created to tackle specific issues have representatives from the central government as well as representatives from the autonomous communities, covering aspects such as MPAs, cetaceans, ports, marine renewable energy, benthic habitats and recreational activities.

In the **United Kingdom**, as explained above, the competent authority is the Department of Environment, Food and Rural Affairs (Defra), but this has delegated functions to authorities in

England, Scotland, Wales and Northern Ireland as reflected in Table 1. The Marine and Coastal Access Act 2009 requires marine plan authorities to notify local planning authorities whose area of jurisdiction adjoins or is adjacent to the marine plan area of their intention to create a marine plan. The MPS states that there should be liaison between respective responsible authorities for terrestrial and marine planning, including in plan development, implementation and review stages. At the start of the planning process for each marine plan, the marine plan authority is required to prepare a Statement of Public Participation (SPP), to be published once agreed by the Secretary of State. To prepare the SPP, the authority should build relationships with stakeholders with a direct interest in planning for each plan area.

*Key points*

- Competency for MSP differs according to the country involved, which may have implications for implementation and transboundary cooperation.
- Some countries have designated a central government ministry / department as the competent authority for MSP, e.g. Ireland.
- Elsewhere, where there are more regional and local approaches to MSP, responsibilities are allocated to that level and the institutions that operate there.

### 4 Legal basis for Maritime Spatial Plans

**France** has transposed the provisions of the EU MSP Directive and MSFD together through the DSF. This is illustrated in Figure 2. The French Environmental Code specifies that other plans and projects (sectoral) at sea and water management (WFD) must be compatible with the DSF while coastal plans and projects (on land) must take them into account. The latter could be regarded as a weaker legal obligation in the French legal framework.

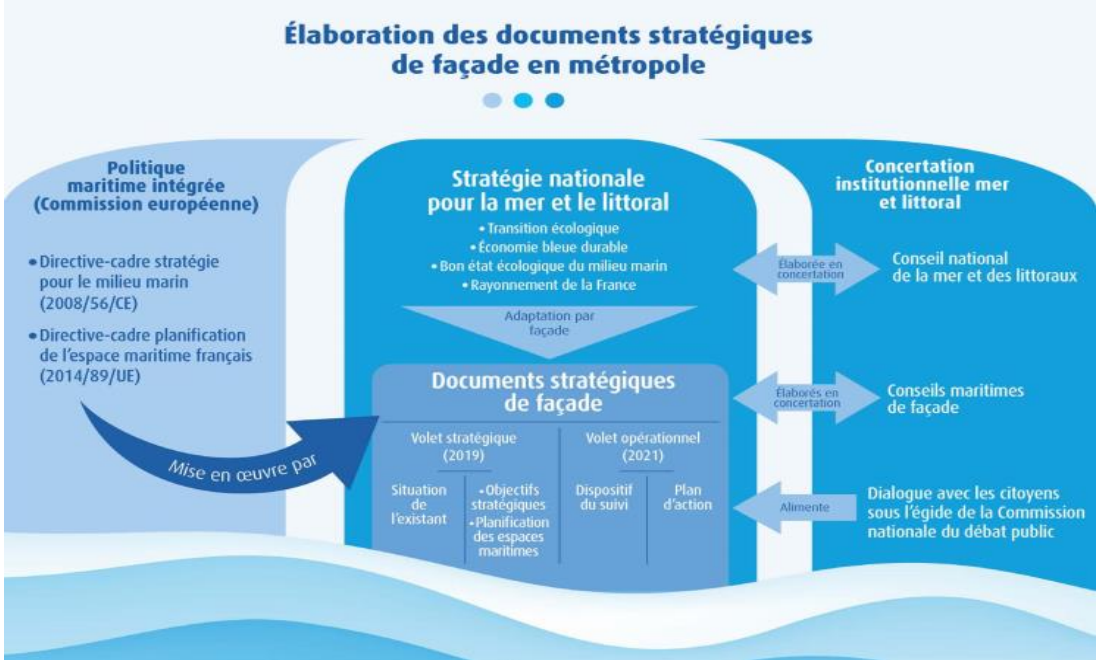


Figure 2 Development of strategic facade documents (DSF) in metropolitan France.

In **Ireland**, the MSP Directive was originally transposed into national legislation by way of Regulations made in 2016 (SI 352 of 2016). Since the regulations were made under the European Communities Act 1972, they were strictly limited to measures required to transpose the Directive. In October 2018 the Regulations were repealed and replaced by [Part 5 of the Planning and Development \(Amendment\) Act 2018](#). Part 5 re-transposes the Directive in

primary legislation and contains a number of measures that are additional to those required by the directive, including: adoption of the National Marine Planning Framework (NMPF) by government; review and replacement of the NMPF every 6 years; obligation for marine regulatory bodies to secure the objectives of the NMPF when making policies, plans, or granting consents; and enforcement powers for the Minister if the foregoing obligations are not being fulfilled. These provisions will be recast in the forthcoming Maritime Area Planning Bill expected to be enacted in 2021. This Bill will reform consenting processes for the majority of marine activities and provide a new statutory basis for MSP.

In **Portugal** a number of legislative instruments cover MSP. These are: Law No. 17/2014 on “marine spatial planning and management”, which transposes the Directive on MSP. One of the principles established in this legislation is that MSP should be coherent with coastal zone management plans. Decree-Law No. 38/2015 (updated by the Decree-Law No.139/2015) develops the MSP and fundamental management law. Order No. 11494/2015, began the process of preparation and development of the Situation Plan (PSOEM). Resolution No. 203-A/2019, approved the PSOEM in December 2019 by the Council of Ministers.

In **Spain**, Royal Decree 363/2017, of 8<sup>th</sup> April, establishes a framework for Maritime Spatial Planning and transposes the Directive. This builds in earlier legislation (Law 14/2010, of 29<sup>th</sup> December) on the protection of the marine environment, which transposed the MSFD. This legal structure for MSP within the legal framework for Marine Strategies (under MSFD) provides a clear legal relationship between both. In Spain, five Marine Strategies exist for the five Marine Demarcations covering Spanish marine regions and subregions. MSP objectives are, therefore, subordinate to the objectives contained in the Marine Strategies as a Law ranks higher than a Royal Decree in the Spanish legal system. The practical effect of this is that MSP provisions cannot, in any way, contradict provisions contained in the Marine Strategies.

Article 5 of the MSP Royal Decree, regarding MSP objectives, establishes that marine spatial plans will:

- a) Establish specific objectives for each marine demarcation taking into account environmental **objectives of marine strategies** as well as sectoral planning objectives.
- b) They will take into account economic, social and **environmental aspects** to support sustainable development and growth in the maritime sectors, applying an **ecosystem approach**, which will promote the coexistence of relevant activities and uses and the socially equitable sharing of access to uses.

In the **United Kingdom**, the Marine and Coastal Access Act 2009 established the legal basis for MSP. The *UK Marine Policy Statement* (MPS) provides the policy framework for the marine planning system. *Guidance to the UK Marine Policy Statement* from 1 January 2021 explains how references to EU law in the UK MPS should be interpreted following the UK’s withdrawal from the EU. The *Marine and Coastal Access Act 2009* includes provisions for, in addition to marine planning, marine planning authorities; the establishment and remit of the MMO; Exclusive Economic Zones; marine licensing; marine nature conservation including Marine Conservation Zones (MCZs) and other conservation sites such as Sites of Special Scientific Interest (SSSIs) and National Nature Reserves; fisheries; and coastal access. The MPS refers to several legislative instruments that marine plans must take into account, including the MSFD, WFD, Habitats Directive and Wild Birds Directive, and it details relevant policy objectives of these. The *Guidance to the UK Marine Policy Statement from 1 January 2021* states that (with a few exceptions) references to EC or EU Directives are to be read as references to legislation that gave effect to the requirements of those Directives in the UK, as amended to ensure that they are operable from 1 January 2021. Marine plans put into practice the objectives for the

marine environment that are identified in the MPS alongside the *National Planning Policy Framework* (NPPF) and the *Localism Act 2011*. Marine plans are produced in line with statements of public participation and are subject to Sustainability Appraisal, incorporating Strategic Environmental Assessment, and to Habitats Regulation Assessment.

In Wales, the Welsh National Marine Plan was prepared and adopted under the Marine and Coastal Access Act (MCAA) 2009 for the purposes of Section 51 of the MCAA and in accordance with Schedule 6 of the MCAA and in conformity with the UK Marine Policy Statement (MPS). In Scotland, in addition to the framework provided by the UK *Marine and Coastal Access Act 2009*, the *Marine (Scotland) Act 2010* contains provisions for both a national marine plan and regional marine plans. Its main sections cover marine planning; marine licensing; marine conservation; seal conservation; and enforcement aspects. The Scottish Government has also adopted the *UK Marine Policy Statement* (see above). Similarly, the Marine and Coastal Access Act (2009) and the Marine Act (Northern Ireland) 2013 set out the statutory basis for the preparation of marine plans and the framework for the marine planning system in Northern Ireland.

#### *Key points*

- *All Atlantic countries have enacted legislation to transpose the EU's MSP Directive where this did not already exist at national level. The UK had legislation on MSP prior to the adoption of the EU Directive on MSP.*
- *France and Spain have deliberately considered the operation of the Marine Strategy Framework Directive (MSFD) when legislating for Maritime Spatial Planning and its future implementation.*
- *Portugal's MSP legislation has to fit with their pre-existing law and policy framework covering coastal planning and management.*
- *The UK's devolved character means there is over-arching legislation that includes MSP, but this is further strengthened and supplemented by regionally-specific legislation in Scotland and Northern Ireland.*

## **4.1 Inclusion of other legal requirements in Maritime Spatial Plans**

This section looks solely at specified legal instruments namely the EU's Marine Strategy Framework Directive, Water Framework Directive and nature conservation (Birds and Habitats) Directives, together with national local planning policies. All of the published plans mention the Sustainable Development Goals, and it should be noted that many EU law and policy objectives also directly relate to the over-arching SDGs. This includes, for example, commitments and targets for:

- healthy aquatic environments (SDG6 Clean water and sanitation),
- renewable energy production (SDG7 Affordable and Clean Energy),
- environmental assessment and strong environmental management practices (SDG12 Sustainable consumption and production patters, including Target 12.2: By 2030, achieve the sustainable management and efficient use of natural resources),
- climate change (SDG 13 Climate Action),
- marine environmental protection including pollution reduction and biodiversity conservation (SDG 14 Life below water),
- integrate of ecosystem and biodiversity values into national and local planning and measures to prevent the introduction and impact of invasive alien species (SDG 15 Life on Land)



- achieve sustainable development (SDG 17 Partnerships for the goals, including Target 17.14 Enhance policy coherence for sustainable development).

National plans may also specify particularly relevant to their own national context. The Irish National Marine Planning Framework, for example, states it will contribute to the achievement of numerous SDGs including Good Health and Well-Being (SDG3), Affordable and Clean Energy (SDG7), Climate Action (SDG 13) with SDG14 on Life below water having most significance to the marine plan. Whilst the SDGs are not legally binding, countries are expected to implement them and establish a national framework for achieving the 17 Goals so they can act as a strong policy driver.

#### 4.1.1 France

In **France**, at the national scale, the National Strategy for the Sea and the Coast (*Stratégie nationale pour la mer et le littoral*, SNML) from 2017 sets out four fundamental objectives: the ecological transition, the development of a sustainable blue economy, good ecological status of the environment and the realisation of France’s ambition to be an influential maritime nation.

**Links with MSFD:** At the Sea basin scale, the DSF integrates the Marine Environment Action Plans (*Plans d’Actions Milieux Marins - PAMM*) introduced by the MSFD. The objective of achieving Good Environmental Status (GES) of marine environments with regard to the criteria of the MSFD is therefore part of the environmental characteristics of “the state of the art”, “the cross-cutting issues”, “the visions” defined for the basins and defined measures in the action plans. This merger of the MSP Directive and MSFD processes is a step towards consistency and synergy between planning of maritime activities and environmental policies.

**Links with local planning policies:** As mentioned above, there are two systems for legal enforceability in France in relation to the DSF and their relationship to other planning documents. The Environmental Code specifies that as soon as the DSF is adopted, when it is necessary to update or create new local planning documents or sectoral management tools, the latter should in theory take into account the new indications / recommendations of the DSF on the theme concerned. Examples of such planning documents that contribute to the management of watersheds and coast include the executive plans for water management (*les schémas directeurs d’aménagement et de gestion des eaux - SDAGE*), tools for implementing the WFD; other territorial development strategies supported by local authorities at different scales (*les schémas régionaux de développement durable et d’égalité des territoires - SRADDET, les schémas de cohérence territoriale - SCOT et les plans locaux d’urbanisme, intercommunaux le cas échéant - PLUi*).

**Links with WFD:** In addition to the link with SDAGE plans, mentioned above, achieving good ecological status of water bodies according to the criteria of the WFD is part of both the environmental characteristics of the “state of the art”, of the cross-cutting issues, and of measures defined in action plans. The schedule of the DSF is correlated with the schedule of the SDAGE for the corresponding hydrographic basins for better consideration of land-sea interactions and to ensure complementarity of actions to achieve the required good condition of the marine environment in both documents. The adoption of the SDAGE and DSF action programmes will also be synchronised (scheduled for August 2022).

**Links with Birds and Habitats Directives:** The objectives of these Directives, or the objectives pursued by the Natura 2000 network, are mentioned or included in several annexes of the DSF. Specifically, there is a scientific and technical synthesis relating to the initial assessment of the ecological state, map(s) of environmental issues, the Natura 2000 site objectives are reiterated in the environmental “strategic objectives”; and are also represented in the descriptive sheets

of the vocation maps of each DSF. In addition, ecological issues identified within the MSFD framework reflects the species and habitats contained in the Birds and Habitats Directives. This type of approach should, in theory, facilitate articulation with the Natura 2000 network. In practice, this will be further refined and improved during the next cycles of the DSF. The environmental assessment report developed for each DSF also contains a Natura 2000 impact study. The requirements of the nature conservation Directives are cited in the PAMMs as existing strategies or regulations contributing to the achievement of environmental objectives. For example, the monitoring programme of the PAMM for the Bay of Biscay marine sub-region states that this should “seeks harmonisation with the tools for implementing related public policies, for example within the framework of the Water Framework Directive, the Habitats and the Birds Directive”.

#### **4.1.2 Ireland**

In **Ireland**, the MSP legislation provides that the Minister ‘shall ensure’ that the NMPF does not contravene the SEA Directive, the Birds or the Habitats Directive or any Irish legislative instrument (section 72). The NMPF refers to both the MSFD and WFD and briefly explains how they operate. With respect to MSFD, for example, the plan recognises that “work on implementing MSFD requirements is progressing separately and in parallel to the MSP process and is adopted as part of the environmental pillar of the NMPF”. Similarly, in relation to the Water Framework Directive the NMPF states that the “NMPF has been prepared to have regard to the measures contained in the RBMP, particularly those that relate to coastal waters.” The NMPF contains Overarching Marine Planning Policies (OMPPs) that will apply to all marine activities or development. These are followed by Sectoral Marine Planning Policies (SMPPs) designed to guide decision-makers in assessing or dealing with specific proposals. The Sectoral Marine Planning Policies are organised according to the sectoral objectives, marine planning policies, key references; background and context; key issues for marine planning; interactions with other activities; and issues for sustainability. The NMPF states that “it will be for decision-makers and those making proposals to ensure proportionate, proposal-specific application of relevant plan policies to ensure compliance.”

**Links to MSFD:** The OMPPs cover environmental, social and economic aspects. The environmental objectives are largely based on the descriptors from the Marine Strategy Framework Directive (i.e. biodiversity, disturbance, Marine Protected Areas, non-indigenous species, water quality, sea floor integrity, marine litter, underwater noise, and air quality). Each of these are then described further under the headings “planning policies, key references, background and context, and, key issues for marine planning”. The key references, for example, signposts readers to other relevant legislation and policy in that area. The NMPF recognises that some of the environmental objectives are at different stages of implementation to others, recognising the differences in supporting knowledge, existing policy and management activity.

**Links with local planning policies:** The NMPF will operate in parallel to the National Planning Framework (NPF) and the National Development Plan, known as Project Ireland 2040. The NPF includes six national strategic outcomes that relate to the marine area, including sustainable management of environmental resources; transition to a low carbon and climate resilient society; enhanced amenity and heritage; high-quality international connectivity; strengthened rural economies and communities; and a strong economy supported by skills, enterprise and innovation. The NPF takes a 20+ year perspective, a similar timeframe to the NMPF. Both these plans link to Regional Spatial and Economic Strategies at regional level and also county and city Development Plans, which are more local in scale. Under the Planning and Development

(Amendment) Act, 2018 national, regional and local plans will be required to be consistent with the NMPF.

**Links with WFD:** The NMPF explains the operation of the WFD and river basin management planning. With respect to MSP and water quality objectives, it states that [marine development] proposals should be compliant with and contribute to the aims and objectives of river basin management plans. The NMPF places the responsibility on the associated public body to ensure water quality objectives are taken into account (i.e. “In accounting for water quality in decision-making, Public bodies should seek to ensure consideration of those measures set out in the Programme of Measures that are of relevance to any particular activity being considered.”)

**Links with Birds and Habitats Directives:** The NMPF explains the environmental assessment process including screening for Appropriate Assessment (deriving from Article 6(3) of the EU Habitats Directive). Both a SEA and an AA have been carried out on the NMPF itself. Under the OMPPs, the Environmental - Ocean Health policies reflect the MSFD descriptors, which includes biodiversity and protected marine sites that include both SACs and SPAs, linking to the binding environmental targets under MSFD policy documents.

#### **Planning Policies**

##### **Protected Marine Sites Policy 1**

Proposals must demonstrate that they can be implemented without adverse effects on the integrity of Special Areas of Conservation (SACs) or Special Protection Areas (SPAs). Where adverse effects from proposals remain following mitigation, in line with Habitats Directive Article 6(3), consent for the proposals cannot be granted unless the prerequisites set by Article 6(4) are met.

##### **Protected marine sites Policy 2**

Proposals supporting the objectives of protected marine sites should be supported and:

- be informed by appropriate guidance
- must demonstrate that they are in accordance with legal requirements, including statutory advice provided by authorities relevant to protected marine sites

##### **Protected marine sites Policy 3**

Proposals that enhance a protected marine site’s ability to adapt to climate change, enhancing the resilience of the protected site, should be supported and:

- be informed by appropriate guidance
- must demonstrate that they are in accordance with legal requirements, including statutory advice provided by authorities relevant to protected marine sites.

##### **Protected marine sites Policy 4**

Until the ecological coherence of the network of protected marine sites is examined and understood, proposals should identify, by review of best available evidence (including consultation with the competent authority with responsibility for designating such areas as required), the features, under consideration at the time the application is made, that may be required to develop and further establish the network. Based upon identified features that may be required to develop and further establish the network, proposals should demonstrate that they will, in order of preference, and in accordance with legal requirements:

- a) avoid,
- b) minimise, or
- c) mitigate significant impacts on features that may be required to develop and further establish the network, or
- d) if it is not possible to mitigate significant impacts, proposals should set out the reasons for proceeding.

#### **Box 1 Planning Policies relating to Protected Marine Sites (DHLGH, 2021a, p.42)**

### 4.1.3 Portugal

In **Portugal** the situation with respect to interactions with other key legal instruments are as follows:

**Links to MSFD:** The four subdivisions (Continent, Azores, Madeira and Extended Continental Shelf) established under the Portuguese Marine Strategies were applied under the Situation Plan. Law n.º 17/2014 states that the granting of a permit for private use determines its effective use and the holder must ensure the adoption of the necessary measures for the maintenance of the good environmental status of the marine environment. Both the MSFD and the MSP directives are handled by the same administrative unit of DGRM.

**Links with Birds and Habitats Directives:** The Decree-Law No. 38/2015 (updated by the Decree-Law No.139/2015), article 5, states that “*National maritime spatial planning instruments ensure the programming and implementation of pre-existing territorial programs and plans with an impact on the area to which they relate, in order to ensure the necessary articulation and compatibility, expressly identifying the incompatible rules of the pre-existing territorial programs and plans which must be revoked or amended.*” Some of this “pre-existing territorial programs or plans” are the coastal programmes (POCs) and coastal protected areas plans (POAP), so the Portuguese MSP tries to ensure the articulation between different policies and legislation. The PSOEM (Situation Plan) includes Natura 2020 sites as relevant areas for nature conservation.

### 4.1.4 Spain

In **Spain**, as explained above, MSP and MSFD processes are inherently interlinked. The time frames for MSP have been adjusted to coincide with marine strategies cycles. In this sense, Marine Strategies and Maritime Spatial Plans will be revised and updated each 6 years. Furthermore, it is expected that monitoring of MSP plans will be also linked with the monitoring programmes of Marine Strategies.

**Links to MSFD:** The existing links between both Directives (MSFD and MSP) have been transferred to the national regulatory sphere in the same way. Law 41/2010 itself establishes in Article 7 that “Marine strategies are the **planning instruments** for each marine demarcation and constitute the general framework to which the different sectoral policies and administrative actions with an impact on the marine environment must necessarily conform to the provisions of the corresponding sector legislation”. As such it can be said that prior to the MSP Directive, this Law 41/2010 had foreseen MSP as a tool to guarantee sustainability and the achievement of Good Environmental Status (GES), and thus includes it in its Annex V, which specifies the types of measures that could be included in the programmes of measures under the marine strategies.

Likewise, Article 4.2 of this Law establishes that “the Government may approve common guidelines to all marine strategies in order to guarantee the coherence of its objectives, in aspects such as: (...) f) The **planning of activities** that are carried out or may affect the marine environment”. Royal Decree 363/2017, of 8<sup>th</sup> April, augments the provisions of Article 4.2 of Law 41/2010, by providing that “this management framework will constitute a common guideline for all marine strategies, in accordance with the provisions of article 4.2.f) of the Law of protection of the marine environment”.

There are other references to marine strategies throughout RD 363/2017, of 8<sup>th</sup> April, specifically the following:

- Article 5. The maritime spatial planning objectives must take into account the environmental objectives of the marine strategies.
- Article 7. Preparation of the management plans: “Likewise, the General Directorate of Sustainability of the Coast and the Sea will collect the necessary baseline information for the elaboration of the plans, taking into account the data that have been collected in the framework of the marine strategies of Spain ”
- Article 7. The inter-administrative cooperation organisations are the same: CIEM and Committees for the monitoring of marine strategies.

**Links with local planning policies:** Although the Royal Decree 363/2017, of 8<sup>th</sup> April, states that it “*shall not apply to parts of coastal waters that are object of spatial planning and urban planning measures*”, it also specifies that management plans “*shall seek to promote coherence between maritime spatial planning and the resulting management plan(s) and other processes such as integrated coastal management or equivalent formal or informal practices*”. This includes any land planning policies at the local level. Specifically this is addressed in the section on Land Sea Interactions (LSI) analysis of the plans, where, for each LSI identified, a detailed analysis of existing tools (national, regional and local) has been conducted, providing guidance on how MSP will contribute to the specific topic.

**Links with WFD:** As previously mentioned, Article 2 of the MSP Royal Decree establishes that “this royal decree **shall not apply:** c) **To coastal waters**, to parts of them that are the object of spatial planning and urban planning measures, or to the waters of the port service area, provided that this is established in the MSP plans.” “Coastal waters” here uses the definition that is contained in the WFD, namely, “the surface waters located towards land from a line whose totality of points is located at a distance of one nautical mile offshore from the closest point of the baseline that serves to measure the width of territorial waters and that extend, where appropriate, to the outer limit of the transitional waters.” In these waters, Law 41/2010, 29<sup>th</sup> December, on protection of the marine environment does not apply (and in turn, MSP) to those aspects of the environmental status of the marine environment that are already regulated in the Law of Water (Royal Legislative Decree 1/2001, of 20<sup>th</sup> July, that transposes the WFD) or in its regulatory developments. It is presumed that these already comply with the environmental objectives contained in the marine strategies. Nature conservation (MPAs) and fresh water legislation pre-dated largely MSP legislation.

#### 4.1.5 United Kingdom

In the **United Kingdom**, the *Marine Policy Statement* refers to several legislative provisions that marine plans must take into account, including the MSFD, WFD, Habitats Directive and Wild Birds Directive, and it details relevant policy objectives of these. The *Guidance to the UK Marine Policy Statement from 1 January 2021* states that (with a few exceptions) references to EC or EU Directives are to be read as references to legislation that gave effect to the requirements of those Directives in the UK, as amended to ensure that they are operable from 1 January 2021. The relevant legislation is (as amended):

- Marine Strategy Framework Directive – the *Marine Strategy Regulations 2010*
- Water Framework Directive – the *Water Environment (Water Framework Directive) (England and Wales) Regulations 2017* and the *Water Environment (Controlled Activities) (Scotland) Regulations 2011*
- Habitats and Wild Birds Directives – the *Conservation of Habitats and Species Regulations 2017*, the *Conservation of Offshore Marine Habitats and Species Regulations 2017* and (in Scotland) the *Conservation (Natural Habitats, &c.) Regulations 1994*

The Marine Plan Northern Ireland: The Draft Marine Plan for Northern Ireland (DAERA, 2018) states that it reflects all EU obligations as they “presently apply”. The finalised Marine Plan for Northern Ireland will take into account the relationship with the EU at the time of publication and will be reviewed as necessary, including consideration of a report every three years regarding any amendments that may be needed to the marine plan. The Marine Plan will be reviewed, as necessary, following agreement on the UK’s future relationship with the EU. It contains Core Policies, which apply to all proposals, and Key Activity Policies which will be considered by public authorities when there will be a direct or indirect relevance to, or impact on a specific key activity.

Links to MSFD: The draft MPNI complements the MSFD Programme of Measures and in this way contributes to the achievement of Good Environmental Status. In addition a number of the Core Policies contained in the Plan, are also MSFD descriptors, for example, invasive alien species, marine litter and marine noise. As such, these topics must be considered and/or assessed by public authorities when deciding on a development proposal.

Links with local planning policies: The draft plan states that it has taken account of Local Development Plans and consulted with the District Councils whose district adjoins or is adjacent to the Northern Ireland marine area. In addition a Core Policy explicitly covers Land-Sea Interactions providing that public authorities must consider the land and sea interactions of proposals; and where a proposal has land and sea interactions, a public authority may require the proposer to demonstrate that these interactions have been considered. Guidance in the form of “Planning in the Coastal Area” document explains how terrestrial development may impact on the marine area, how it can be managed in an integrated manner and how potential impacts can be avoided or mitigated, through early engagement and collaborative working.

Links with WFD: In a similar way to the MSFD, the NIMP will contribute to achievement of Water Framework Directive objectives, through a Core Policy on Water Quality. This requires public authorities to consider any potential impact from proposals on water quality. Where a proposal has the potential to adversely impact on water quality, the public authority will require the applicant to demonstrate avoidance, minimisation or mitigation of the adverse impact. If it is not possible to avoid, minimise and/or mitigate any adverse impact, a proposal will only be allowed, where the public benefit clearly outweighs the adverse impact. Applicants must also have regard to River Basin Management Plans, in developing their development proposals.

Links with Birds and Habitats Directives: The Natural Heritage Core Policy in the draft plan seeks to ensure that legal obligations arising from nature conservation legislation and associated designations are considered when making decisions where impacts on the marine environment, habitats and species are likely. This employs the same risk mitigation hierarchy as under other core policies i.e. avoid, minimise, mitigate. Public authorities are requested to apply the precautionary principle when considering the impacts of proposals on national or international natural heritage resources and to consider their duty to further the conservation and where appropriate, enhancement, of biodiversity of the marine area when assessing development applications. The draft plan also acknowledges the role other environmental assessment processes have to play in this area.

#### *Key points*

- *Significant effort has been invested by all Atlantic countries in aligning MSFD objectives and implementation with MSP. This may be because both will operate in the same spatial area or it may be that at the time of MSFD adoption, MSP was already anticipated.*

- *It seems that older legislation covering nature conservation and water generally is covered by MSP only in the sense that public authorities and developers must have regard to these other legal and policy objectives when carrying out planning functions.*
- *The way in which other law and policy objectives are operationally taken into account relies on the consenting and licensing processes in place, which were not studied as part of this Task.*
- *Generally it would appear that existing Maritime Spatial Plans state that they will contribute to the achievement of other policy objectives but no details on how this is to be achieved or evaluated is given in the plans currently.*
- *In a similar vein, however, no mention is given to what happens where policy objectives are not complimentary.*

## 4.2 Marine Plan objectives in other policies

It is quite difficult to ascertain the extent to which other policies reflect or deliver the objectives of MSP. This is largely attributable to the fact that MSP is relatively recent, and many other policies have existed prior to the design and implementation of MSP. As other legal instruments progress through their cycles of implementation, the implications for MSP and how complementary objectives can be met is likely to become more apparent.

In **France** with respect to the Birds and Habitats Directives, the recent National Strategy for protected areas (including in particular the Marine Natural Parks and the Natura 2000 network), published in January 2021, proposes in one of its measures to “better integrate protected areas into the various public policies and into the projects of territory”. The objective seeks to strengthen the reciprocal link between the management documents of protected areas and the planning documents drawn up by the State and the communities in the area of integrated maritime policy (including the DSF). MSP and MSFD processes are now merged.

The transposition of the WFD in France is organised under the law on water and aquatic environments (known as "LEMA"), which now constitutes the central text of French water policy. This law was adopted in 2006 and therefore predates the development of the principles of MSP. At the scale of hydrographic basins, in France the principles of LEMA are set out in the executive plans for water management (*les schémas directeurs d'aménagement et de gestion des eaux - SDAGE*). Each of the three SDAGEs covering the French Atlantic coast has a chapter devoted to coastal preservation and specific measures. These SDAGEs take into account the particularities of coastal waters: “the site of an important activity: tourism, swimming, fishing, shellfish farming, port activities and areas of great ecological interest”. Specific objectives are pursued for these coastal areas among which “improve and preserve the quality of water: eutrophication, sanitary quality of bathing water” and “protect coastal ecosystems” and “supervise the extraction of marine materials.” The SDAGE “Loire-Bretagne” (basically covering the NAMO DSF) specifies that 25% of expenditure for community sanitation is aimed at achieving the objectives of protected shellfish and swimming areas located on the coast.

In **Ireland**, nature conservation legislation largely pre-dated MSP design and implementation so is not currently considered thoroughly in the associated policies. The Irish government is currently working on expanding its network of Marine Protected Areas (MPAs). A recent Expert Advisory Group report on this topic states that the links between MSFD, MPAs, forthcoming Maritime Area Planning Bill and MSP need to be thoroughly thought through and clearly describe how one impacts on the other and how they will be implemented in a complementary manner (DHLGH, 2020). The National Biodiversity Action Plan 2017-2021 has conservation and restoration of biodiversity and ecosystem services in the marine environment as a policy

objective. This is linked by targets to the MSFD and WFD and achievement of GE/EcS. The Plan highlights the role of EIA in ensuring this happens. (“The development and implementation of effective Marine Spatial Planning for Ireland’s coastal zone and EEZ waters will assist in the identification and improved protection of threatened habitats and species in accordance with the MSP Directive and MSFD”).

The Initial Assessment, Targets and Indicators under the MSFD were all completed prior to adoption of MSP Directive. The associated Monitoring Programme and Programme of Measures (PoM) were developed in 2015 and 2016 respectively. The latter states that there are no transboundary impacts from the development of the Irish programme of measures (DECLG, 2016). The PoM is based on the existing regulatory architecture and emerging and transboundary pressures have been identified and are being addressed at sub-regional level, primarily through OSPAR processes. From an organisational perspective, responsibility for implementation of the MSFD rests with the same Government Department responsible for MSP (i.e. DHLGH), which should facilitate cooperation and coherence of policy objectives.

Ireland’s current national River Basin Management Plan (2018-2021) acknowledges that 79% of Ireland’s river basin district is comprised of coastal waters but the document does not mention marine spatial planning *per se*. It does, however, refer to ‘land use and spatial planning’, ‘National Planning Framework’, and the ‘National Spatial Strategy’ all of which are terrestrial in focus. The RBMP states that there will be guidance for planners on how to take account of risks to RBMP objectives when making decisions regarding planning and development management, but this does not specify whether such guidance will also cover coastal and marine activities. The RBMP highlights that whilst there is generally an extensive monitoring network for water quality there is none for “offshore coastal water bodies”. Previously Ireland was divided into several distinct River Basin Management Districts (RBMDs), two of which were classified as International RBDs (IRBDs) as the water bodies are shared with Northern Ireland. The waterbodies from these River Basin Districts that are located in the Republic of Ireland are managed as part of the single national River Basin District. The single national RBD is sub-divided into 46 catchment management units, which are further broken down into 583 sub-catchments. Approximately 2% of this is categorised as ‘coastal’.

Ireland is presently consulting on a new River Basin Management Plan for 2022-2027 until March 2022 (DHLGH, 2021b). The draft Plan acknowledges that consistent policy integration between the RBMP process and other national and local plans is an ongoing issue and has been identified by external stakeholders as a priority, hence it is stated that the next (third) phase of RBMP will link RBMP objectives with the Climate Adaptation Plans, Marine Spatial Planning, Flood Risk Management Plans, and Biodiversity Action Plans objectives (DHLGH, 2021b, pp.24-24). The draft Plan explains how cross-border cooperation is approached and the complexities involved in light of Brexit, stating bilateral relations are now governed primarily by the Good Friday (or Belfast) Agreement and relations between the EU and the UK are governed presently by the Withdrawal Agreement. WFD cross-border coordination is still conducted on a bilateral basis through the Department of Housing, Local Government and Heritage’s North South Water Framework Directive Coordination Group. Other relevant mechanisms include:

- National Technical Implementation Group (NTIG): oversees technical implementation of the RBMP at a national level and provides a forum for coordination among all relevant agencies and public bodies.
- Border Regional Operational Committee - a forum to enhance interagency networking, develop relationships and work together to help achieve objectives set out in RBMPs.



- North West Water Forum - discusses emerging issues, existing national and EU projects, shares information and helps to build better working relationships within interested groups on both sides of the border.
- North South Rivers and Lakes Group - technical group that covers the operational dimensions of all freshwater monitoring, classification and reporting in shared water bodies to ensure alignment and consistent reporting.

In addition, EU and nationally funded projects can contribute to cross-border working and policy objectives, e.g. the Interreg VA and PEACE PLUS programmes.

In **Portugal**, like elsewhere, nature conservation legislation largely pre-dated MSP design and implementation so it has not been considered in associated policies. The second cycle of implementation of the MSFD started in 2018 and includes MSP. PSOEM adopted the subdivisions established in the national legal instrument that transposes the MSFD, and even the characterization reports of the Plan were prepared based on the Initial Reports of the MSFD. Likewise, the environmental monitoring of the Situation Plan is consistent with the MSFD Monitoring Programme and the results of this monitoring may lead to the establishment of measures to integrate the MSFD Programme of Measures. Any new coastal programme (POC) must ensure the necessary articulation and compatibility with the PSOEM and if necessary, expressly identify the incompatible rules of PSOEM, which must be revoked or amended.

In **Spain**, nature conservation (MPAs) and freshwater legislation largely pre-dated MSP legislation. The general position is that the application of MSP in Spain will not go beyond the current sectoral policies that currently apply. Regulation of MPAs takes precedence over any sectoral policy as well as over MSP. Moreover, MSP will identify new proposals for declarations of marine protected areas that will allow progress towards the established objective of achieving the protection of 30% of the marine area by 2030. Another of the measures in the plans is the approval and development of the Master Plan for the Network of Marine Protected Areas of Spain (*Red de Áreas Marinas Protegidas de España - RAMPE*).

In the **UK**, the Marine Strategy Regulations do not mention marine planning; however, the UK Marine Strategy Parts 1-3 (2012) states that: marine plans will help ensure that the pressures from activities do not compromise the marine ecosystem, as part of their wider objective of enabling the sustainable use of the marine environment. This is consistent with the requirements of the MSFD, which acknowledges the importance of wider social and economic uses of our seas and calls for the sustainable use of the marine environment. The MPS brings together and clarifies UK marine policies and all marine plans will be subject to Strategic Environmental Assessment and marine plan policies must take into account good environmental status (GES) targets and indicators. Marine plan monitoring arrangements should use the monitoring programme for GES as far as possible. It is noted that the nature and scale of the contribution that marine planning will make towards the achievement of GES will develop as marine planning matures. An update to the Marine Strategy Part One (Defra, 2019) found that since 2012 there has been a strengthening of the regulatory regimes associated with achieving GES through the introduction of marine plans. GES has not been achieved for marine litter or underwater noise; however, policies that address these issues are being included in marine plans. The results of ongoing monitoring of GES and improved understanding of cumulative effects will inform the review of marine plans.

Legislation and policy relating the water environment, do not mention marine planning; however, the statutory guidance, the River Basin Planning Guidance (2014), states that “while the Environment Agency is the competent authority for implementation of the WFD in the

transitional and coastal waters just as in freshwaters, it does not have the same overarching regulatory responsibilities in relation to these waters and so will need to work closely with other regulators” including the MMO “to ensure effective management across the land-sea interface, including the integration of plans and policies”. Similarly, river basin planning processes should take into account the relevant marine plans, and the policies and strategies set out in each river RBMP should be developed from and supported by marine plans. A RBMP has been produced for each of the 11 river basin districts in England and Wales, for the period 2015-21. Consultation on the draft updated RBMPs will take place in 2021. Updated River Basin Planning Guidance was published in September 2021 (Defra, 2021). This states that ensuring two-way links between RBMPs and other transitional and coastal plans will be particularly important and may be challenging as management arrangements and responsibilities are complex in transitional and coastal waters (p.60).

Marine planning must have regard to the requirements of the nature conservation Directives, and to guidance on the interpretation of the Directives that may be issued subsequent to the UK’s exit from the EU. In relation to wild birds, marine planning must take steps to secure the objective of “the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate”.

In Northern Ireland, all MSFD requirements are addressed through UK policy documents (assessment, monitoring and programme of measures). With respect to the Water Framework Directive, the Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 ensures that the WFD, as transposed, and the various supporting pieces of water legislation will continue to operate in Northern Ireland after 1 January 2021. Northern Ireland is in the third cycle of river basin management planning with the existing plans being reviewed and updated in 2021. Three river basin management units cover Northern Ireland (with two of these also covering parts of the Republic) but these are consolidated into one draft plan 2022-2027 open for public consultation until October 2021 (DAERA, 2021a). The draft RBMP refers only to the existence of the draft Marine Plan but contains nothing further on how river basin management plans interact with marine planning. The draft NI RBMP does however list the same cross-border working groups as detailed above, under **Ireland**.

SACs and SPAs are designated under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), implementing the EU Habitats Directive and will continue to apply after 1 January 2021. Some operability changes have been made through the Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. Two existing Special Protection Areas (Lough Foyle SPA and Carlingford Lough SPA) are located within the transboundary loughs between Northern Ireland and the Republic of Ireland though geographically closest to the Northern Ireland coastline. Government departments and public authorities in Northern Ireland are actively involved in a number of EU projects looking specifically at Marine Protected Areas and various aspects of their management (e.g. [MarPAMM](#), [Compass](#) and [SeaMonitor](#)).

#### *Key points*

- *Possibly due to the different implementation timelines that exist for MSFD, WFD and the nature conservation Directives, very few of the policy documents associated with these instruments mention MSP or, in the case of the latter two, marine areas at all.*
- *Phased implementation of the WFD and MSFD, for example, will enable this to be addressed in future implementation cycles and this is already being seen in some places.*
- *Implementation of the WFD in cross-border and transboundary contexts, for example, appear quite well developed with specific working groups at both strategic and operational*

levels created to assist implementation and alignments in such areas. This could provide a useful example for future implementation of MSP in these contexts.

- Going forward there is a need for better reflection of MSP objectives in other policy areas.

### 4.3 Translating policy objectives into management practices

In **France**, in the DSF, the strategic objectives (economic, social and environmental) and their associated indicators are accompanied by a vocation map that defines, in the maritime areas, areas consistent with the challenges and general objectives assigned to them. Specifically, “the vocation map must make it possible to judge the appropriateness of projects and activities and to articulate sectoral and territorial planning, or in some cases give rise to them. Activities seeking to expand will find, in this document, guidelines allowing them to identify areas likely to accommodate them, without being granted exclusivity” (DSF MEMN). The process of developing the DSF and their vocation maps has led to a paradigm shift in terms of dialogue between public and private actors. While the arbitration and decision-making role of the State remains an important parameter for consultation, consensus is a sought objective in this MSP process. At the end of this first cycle of DSF, and in the definition of vocation maps, some initial lessons will inform future implementation. The definition of the vocation maps has made it possible to define the areas of public debate for offshore wind farm planning and the implementation of the Multi-year Energy Programming (*Politique Pluri-annuelle de l’Energie - PPE*). However, this first cycle of the exercise has also made it possible to see where there could be improvements such as lessons learned from trying to reach consensus or appeasing fishing interests which has resulted in fishing being defined as a priority activity in all the sub-zones of the map (in the DSF NAMO in particular). For aquaculture, the Regional Aquaculture Development Schemes (SRDAM) will be revised in the vocation zones mentioning aquaculture and will be integrated into the DSF when they are revised in the next cycle.

In **Ireland**, policy objectives are generally translated into management practices through other regulatory processes. Applications for development will have to indicate how the proposed development meets the objectives of the NMPF. For developments that are subject to an EIA it will make the necessary links with other objectives. Decisions taken by the responsible authorities will be based on the information supplied (and subsequent environmental monitoring, where applicable).

In **Portugal** in the PSOEM potential areas for the development of the activities were established taking into consideration nature conservation (e.g. excluded zones for submarine cables for the protection of vulnerable marine ecosystems), defence/protection of the coastal zone (e.g. areas for dredged material in the coastal drift), increasing biodiversity (e.g. areas for artificial reefs).

In **Spain**, MSP considers MPAs in Article 2 of the RD, which states: “possible activities and uses and interests include but are not limited to: g) protected spaces, places and habitats that deserve special attention due to their high environmental value and protected species, especially those available in the Spanish Inventory of Natural Heritage and Biodiversity. These areas (i.e. Natura 2000) are therefore included in the inventory of uses and activities that it is being collected for the MSP process. Regarding the way in which these areas are going to be considered in the plans, there are different strategies: the POEM (*Planes de ordenación del Espacio Marítimo/ Maritime Spatial Plans*) will not address spatial planning of uses and activities in MPAs that already have approved planning / management tools. In MPAs that do not have planning / management tools approved at the time of preparation of the POEMs, these POEMs could address the spatial arrangement of uses and activities in those, provided that the management body considers it appropriate, and the conservation objectives that prevail in the

spaces are respected. Any planning / management tool for an MPA, once approved, will prevail with respect to what is established in the POEMs. The POEM may order activities or provide guidelines within the space, covering those aspects not addressed in the planning / management tools of the MPAs, again as long as it is deemed appropriate, and the POEM does not contradict the space planning / management tool. Consultations regarding this topic have been held between the MSP competent authority and the competent regional authorities for nature conservation in the respective demarcations (for MPAs designated at regional level). Review cycles of MSP are adapted to the review cycle of the marine strategies. Monitoring of MSP will also be linked to monitoring of the marine strategies.

In the **United Kingdom**, the marine plans address the objectives of other legislation as set out previously. Marine plans are subject to Sustainability Appraisal, incorporating Strategic Environmental Assessment, and to Habitats Regulation Assessment. Marine licensing decisions made under the Marine and Coastal Access Act 2009 must also be compliant with the Environmental Impact Assessment Directive and existing nature conservation regimes, where appropriate. The MPS and marine planning systems sit alongside and interact with other planning regimes across the UK. These include town and country planning and other legislation, guidance and development plans in each Administration. In England and Wales, consents for Nationally Significant Infrastructure Projects (NSIPs), including the larger offshore renewable energy and port developments, need to be determined in accordance with the relevant National Policy Statement (NPS) under the Planning Act 2008, and having regard to the MPS. The marine plan authorities in England and Wales should have regard to any relevant NPS in developing Marine Plans and in advising other bodies. In Scotland, the National Planning Framework (NPF) sets out a number of national development priorities to support sustainable economic growth. NPF4 will be published in late 2021 under the Planning (Scotland) Act 2019. In Northern Ireland the draft Marine Plan has been developed to support and complement other existing legislation, policies, plans and strategies including the Programme for Government that existed at the time of drafting; the Regional Development Strategy; Going for Growth; the Strategic Energy Framework; Strategic Planning Policy Statement (SPPS); Local Development Plans and the Integrated Coastal Zone Management Strategy.

#### *Key points*

- *The role of other regulatory processes is critical to the translation of policy objectives into management practices.*
- *Other regulatory processes in this context relates to, for example, Strategic Environmental Assessment and Environmental Impact Assessment, as well as more sectoral consenting and licensing processes.*
- *The preparation of maritime spatial plans and specifically how this has been conducted in some locations has enabled focused discussions on what stakeholders want from the MSP process, leading to more consensus in some places or resulting in allocated zones for specified uses.*
- *In Portugal, their plan has specified excluded activities in areas of high environmental sensitivity. Similarly in Spain, where management plans for designated sites already exist, they will not be considered in the MSP. If such a plan does not exist, then the MSP can cover these if appropriate and agreed with the associated management authority.*

## 5 Dealing with transboundary aspects of marine planning

As stated at the outset, the MSP Directive requires cooperation to ensure coherency between maritime spatial plans. Whilst most transboundary consultation occurs through diplomatic channels it is useful to look at how transboundary aspects are dealt with in existing Maritime Spatial Plans.

In **France**, the three DSFs on the French Atlantic coast state that: “cooperation between Member States and with third countries is also in place, in the application of the framework Directives. The European Commission encourages this cooperation (regular meetings of expert groups from the Member States, funding of projects to address issues specific to cross-border areas). The work within the Regional Seas Conventions also makes it possible to strengthen cooperation and to benefit from structuring methodological developments”. In the context of Brexit, the DSF MEMN specifies that: “waiting possible recognition as a specific European management unit, the East Channel-North Sea façade must anticipate the consequences of Brexit. The postponement of fishing zones in European waters, together with the imminent emergence of renewable marine energy zones, as well as port traffic and activity, require the integration of a new vision in the coordination of cross-border policies”. This declaration of intent is accompanied by a process of formal consultation with neighbouring states but is quite limited in terms of scope.

In **Ireland**, the NMPF has a section on transboundary cooperation which outlines the initiative taken by the DHLGH to establish a group in 2018 that brings together “senior policy and planning officials from the six marine planning administrations of Ireland, Northern Ireland, England, Scotland, Wales and the Isle of Man, on a periodic basis to discuss latest developments in terms of national plans and planning-related issues of mutual concern or interest.” It is hoped that this will provide a standing mechanism for transboundary engagement post Brexit. The NMPF notes the persisting international boundary issues between NI and ROI with respect to Loughs Foyle and Carlingford and ongoing commitment “to achieving a positive resolution as soon as possible” (DHLGH, 2021a, p.22). There is no mention of arrangements to work with France, Spain or Portugal with respect to MSP, but Ireland participates in the EC’s Expert Group on MSP and also a number of MSP relevant research projects which can facilitate this type of transboundary cooperation.

In **Portugal**, Decree-Law No. 38/2015 (updated by the Decree-Law No.139/2015) indicates “in the preparation, alteration, revision and suspension of the instruments for planning the national maritime space, cross-border cooperation and coordination must be ensured.” The PSOEM refers to the need to ensure transboundary cooperation in MSP and introduces the potential for the designation of a transboundary MPA in the Bay of Biscay and Iberian Coast (Portugal and Spain).

In **Spain**, at the technical level, Spain has participated and is participating in several MSP transboundary projects and initiatives.<sup>1</sup> In these projects, the institutions involved are the same as those that provide technical assistance to the competent authority (namely CEDEX and IEO). The competent authority was involved in the steering committee (or equivalent) of many of these projects. This allows the results from these types of initiatives to be incorporated and also assists with capacity development for the national process. More formally, with respect to the SEA Directive, Spain will consult with neighbouring countries regarding their national MSP plans. Meetings between competent authorities have been organised in different neighbouring countries in order to inform them about the process underway for each national plan. This specifically refers to consultation with authorities in France, Portugal and Italy. Cross-border

cooperation is also maintained within the framework of the WestMed Initiative with Morocco and Algeria.

In the **United Kingdom**, the Marine Policy Statement (MPS) sets out the framework for the production of marine plans for all UK waters. For areas not yet covered by an adopted plan, it is the primary marine policy document. It has a section on cross-border planning, noting that the UK Administrations are committed to the coordination of marine planning across administrative boundaries and have made it a requirement of their respective legislation. It also recognises that coordination will be needed with other countries sharing the same regional seas, specifically mentioning Ireland with which the UK shares a land and sea boundary. This includes sharing data and consulting with neighbouring authorities/countries on marine plans. Cross-border planning within the UK is facilitated by the UK-wide marine evidence base collected through monitoring programmes under the UK Marine Monitoring and Assessment Strategy (UKMMAS), overseen by the UK Marine Science Coordination Committee.

In England specifically, a Description of the Marine Planning System for England (Defra, 2011) notes the need for cooperation and consultation across international borders. Marine plans will reflect the MPS; for example, the East Inshore and East Offshore Marine Plans contain a commitment by the MMP to maintain data sharing arrangements with international planning authorities bordering the East marine plan areas to ensure that relevant cross-border evidence is collated wherever possible. In Wales, within the WNMP, policies (including GOV\_02 Cross-border and plan compatibility) state that relevant public authorities, in making their decisions, should have regard to any applicable policy in a relevant marine plan. A policy aim is that the effects of development proposals on both the marine and terrestrial environments, and both within Wales and further afield, should be assessed in a collective and cumulative manner. Proposals should provide evidence that integration across the different administrations has been considered, and they should consider opportunities to contribute to the sustainable development and objectives of neighbouring marine plan areas through cross-border working.

The draft Marine Plan for Northern Ireland was developed with input from other Government Departments and public bodies in Northern Ireland. DAERA, as marine plan authority, held regular meetings and liaised with other UK Marine Plan authorities and UK Government departments and agencies. Transboundary cooperation and coordination took place with authorities in the Republic of Ireland and the Isle of Man.

#### *Key points*

- *All Atlantic countries have carried out formal consultation with neighbouring countries on their maritime spatial plans.*
- *All EU Atlantic countries participate with other EU coastal Member States in the EU's MSP Expert Group and also in research projects, which can assist in advancing cooperation on specific areas of mutual concern.*
- *The realities of Brexit will necessitate some additional effort in terms of cooperation and coordination for France and Ireland.*
- *Whilst Ireland has instigated a group comprising representatives from Ireland, Northern Ireland, England, Scotland, Wales and the Isle of Man to discuss MSP and its implementation no equivalent group exists at the Atlantic level.*
- *Transboundary cooperation to date has focused exclusively on consultations relating to the national and regional marine plans.*
- *It seems that the priority has been to get plans finalised to meet the deadline contained in the Directive. As such it could be said that transboundary cooperation may become more of a priority as countries enter the MSP implementation phase when areas of mutual interest and/or concern could arise.*

- *Internal (domestic) cooperation in countries that have taken a more regional approach to MSP is facilitated by national authorities who have an oversight role.*

## 5.1 Other transboundary mechanisms of relevance to MSP

As advocated by the Integrated Maritime Policy, MSFD and MSP Directive, more coordinated and integrated approaches to marine governance are critical to effective management. The use of existing regional mechanisms is also encouraged. For the north-east Atlantic region this includes the OSPAR Convention and its various strategies. For some Atlantic countries, OSPAR is the only regional structure for cooperation. All SIMAtlantic countries participate in OSPAR processes. Likewise, the MSFD; the Water Framework Directive; the MSP Directive; and the Common Fisheries Policy each have expert groups, advisory groups and working groups with Member State representation created to progress work and collaboration on specific aspects.

### 5.1.1 OSPAR Convention

The **OSPAR Convention** and its strategies are implemented primarily through the adoption of decisions (which are legally binding on the Contracting Parties), recommendations and other agreements. A revised and updated North-East Atlantic Environment Strategy 2030 was adopted on 1 October 2021 in Cascais, Portugal.<sup>9</sup> This is the means through which the OSPAR Convention will be implemented from 2020-2030, contributing to the achievement of the UN Sustainable Development Goals (SDGs) under Agenda 2030. The Vision of the Strategy is “a clean, healthy and biologically diverse North-East Atlantic Ocean, which is productive, used sustainably and resilient to climate change and ocean acidification.” The Vision is guided by 12 strategic objectives which assist in achieving Good Environmental Status in the marine environment, which are grouped according to the themes of clean seas; biologically diverse and healthy seas; productive and sustainably used seas; and seas resilient to the impacts of climate change and ocean acidification. Whilst none of the strategic objectives refer explicitly to maritime spatial planning or transboundary cooperation per se, Strategic Objective No. 7 is to “Ensure that uses of the marine environment are sustainable, through the integrated management of current and emerging human activities, including addressing their cumulative impacts.” Integrated management is a fundamental to MSP. The strategic objectives are accompanied by related operational objectives, including some related cross-cutting objectives (see Box 2).

The OSPAR Commission is supported by five committees, according to work areas, some of which are in turn supported by working groups. The overarching structure is shown in Figure 3. OSPAR work across six main areas: biodiversity and ecosystems; hazardous substances and eutrophication; human activities; offshore industry; radioactive substances; and cross-cutting issues. Whilst most of these have some form of spatial and/or planning dimension, MSP is not addressed explicitly. Under the cross-cutting issues work area, however, there are many aspects that directly relate to implementation of MSP including: links to the Marine Strategy Framework Directive; economic and social analysis work; data and information; and overarching science agenda. Under OSPAR’s thematic strategy on biodiversity, one main strategic direction is the further development and implementation of tools such as marine spatial planning and socio-economic assessment, in order to achieve the reduction in pressures which are adversely affecting the marine environment, and the sustainable use of ecosystem goods

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<sup>9</sup> See <https://www.ospar.org/convention/strategy>

and services. Accordingly, OSPAR has conducted work on the economic value of various marine sectors; developing and refining the methodologies used to analyse ecosystem services and natural capital; and exchanging information on costs and benefits of various measures and approaches used in the economic analyses (e.g. benefits of MPAs; benefits of reducing marine litter etc.).

**Box 2 Operational objectives related to OSPAR Strategic Objective 7 (OSPAR, 2021).**

**S7.01:** By 2028 OSPAR will further develop methods for the analysis of **cumulative effects** in the marine ecosystems of the North-East Atlantic, taking into account relevant spatial and temporal information on human activities, pressures, sensitive receptors and habitats, and use the results to inform the establishment of measures and actions to prevent, reduce or otherwise manage impacts.

**S7.02:** By 2025 OSPAR will develop a **coordinated management approach** to ensure the number of non-indigenous species introduced via human activity is minimised and where possible reduced to zero.

**S7.03:** By 2025 OSPAR will start accounting for **ecosystem services and natural capital** by making maximum use of existing frameworks in order to recognise, assess and consistently account for human activities and their consequences in the implementation of ecosystem-based management.

**S7.04:** By 2023 OSPAR will assess, review and potentially revise the OSPAR criteria, guidelines and procedures relating to the **dumping of wastes** or other matter and to the placement of matter.

**S7.05:** By 2024 OSPAR will review the risks from **new, emerging and increasing pressures** on the marine environment, taking account of OSPAR’s Quality Status Report 2023, and prioritise them for action and the adoption of measures where necessary.

**S7.06:** OSPAR will work with relevant competent authorities and other stakeholders to minimise, and where possible eliminate, **incidental by-catch of marine mammals, birds, turtles and fish** so that it does not represent a threat to the protection and conservation of these species and will work towards strengthening the evidence base concerning incidental by-catch by 2025.

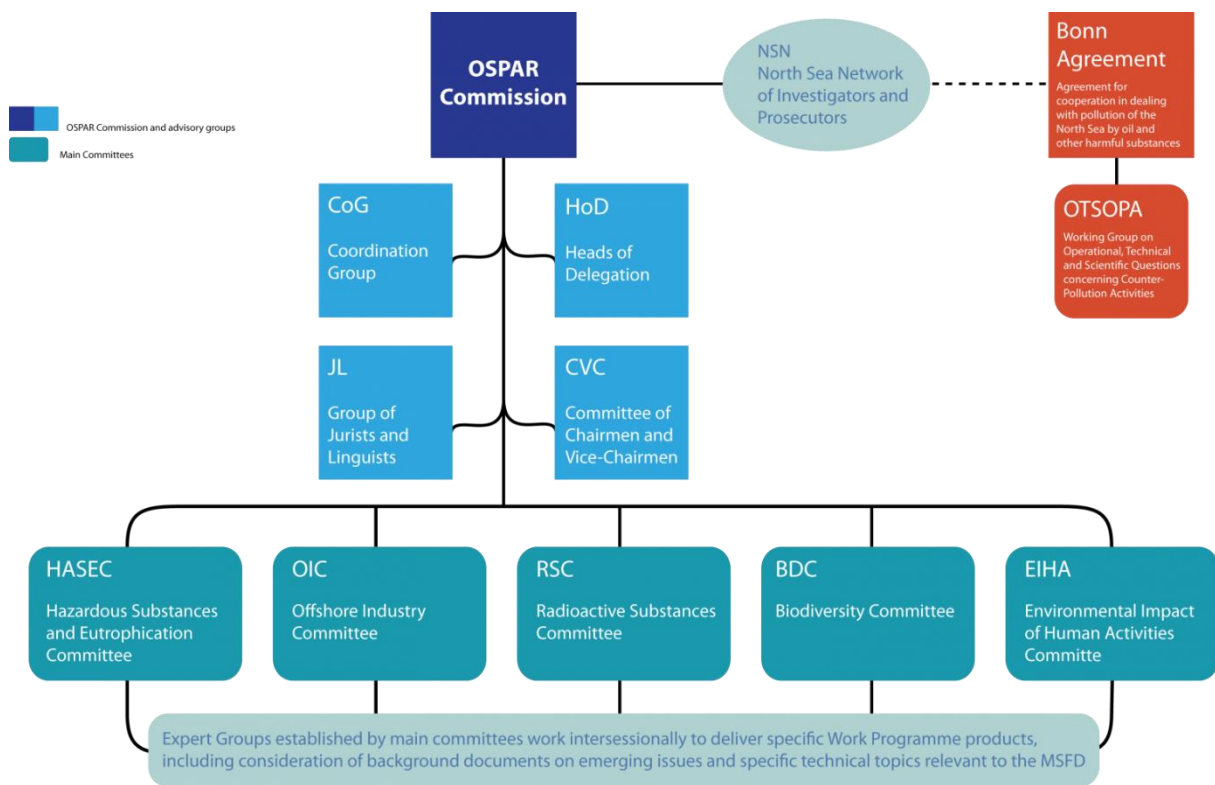


Figure 3 OSPAR structure (Source: <https://www.ospar.org/organisation>)



## 5.1.2 Marine Strategy Framework Directive

For the EU's **Marine Strategy Framework Directive**, the European Commission and Member States have set up an informal programme of coordination, the Common Implementation Strategy (CIS) to assist in coordinated implementation. The structure of the CIS is illustrated in Figure 4.



Figure 4 Structure of the Common Implementation Strategy for the MSFD (Source: [https://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/implementation/index\\_en.htm](https://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/implementation/index_en.htm))

The Marine Directors refers to a high-level political group who have ultimate responsibility. A link is provided between the Marine Directors group and the various working groups, by the Marine Strategy Coordination Group. This group also oversees the work of the Working Groups. The Working and Technical Groups are tasked with preparing common methods for the implementation of the Directive. None of these deal with wider policy linkages, such as Maritime Spatial Planning, explicitly. The 2020 implementation report on the MSFD, however, reiterates that the MSP Directive “makes explicit reference to the MSFD within its legal text, stipulating that maritime spatial planning should apply an ecosystem-based approach and help to achieve the aims of good environmental status and coordinate timelines with the MSFD to the extent possible” (p.13). This goes further to state that whilst numerous studies have defined or refined the ecosystem-based approach, there is still no agreed methodology across Europe.

The implementation report also found that in their MSFD programmes of measures, Member States tend to link marine biodiversity (through spatial protection measures such as MPAs) and hydrographical changes (through the activities covered by maritime spatial plans) to the Maritime Spatial Planning Directive. The MSP section of the implementation report concludes by stating that since the MSP process integrates all the blue economy sectors and activities, “it should enforce management measures that help to achieve good environmental status.”

Under the MSFD there are annual trilateral meetings between UK, Ireland and France to agree useful areas to cooperate together (for example, how to cooperate on areas of emerging pressures such as noise and litter). Ireland also coordinates with the devolved administration in Northern Ireland in relation to specific all-Ireland measures (e.g. MSFD Descriptor 2 Non-Indigenous Species).

**Portugal** has participated in transboundary projects under MSFD and the Environmental

Impacts of Human Activities Committee (EIHA) under the OSPAR Convention, which may provide a way of assisting transboundary MSP in Portugal.

### 5.1.3 Strategic Environmental Assessment

Where maritime spatial plans are likely to have significant effects on the environment, they are subject to the requirements of the Strategic Environmental Assessment (SEA) Directive (2001/42/EC). If the Plans are likely to have significant effects on the environment in another Member State, the Member State in whose territory the plan or programme is being prepared must consult with the other Member State(s). This has already arisen in most SIMAtlantic countries and transboundary consultation occurs through formal government channels, though the SEA itself is subject to public consultation, usually at the same time as consultation on the draft maritime spatial plan.

### 5.1.4 EU Common Fisheries Policy

The Advisory Councils created under the Common Fisheries Policy (CFP) are shown with members in Table 2. It should be noted that the advisory councils are comprised of fishing industry groups as well as other interest groups including environmental non-governmental organisations. As such they may have partners from outside the sea basin area. Whilst the primary focus of these groups are fish or aquaculture species or method, some have working groups relating to, for example, ecosystem-based management; Brexit; climate and environment; etc. which could provide another channel for communicating MSP.

| Advisory Council     | France                              | Ireland                             | Portugal                            | Spain                               | UK                                  |
|----------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Aquaculture          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |                                     |
| Baltic Sea           |                                     |                                     |                                     |                                     |                                     |
| Black Sea            |                                     |                                     |                                     |                                     |                                     |
| Long Distance        | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |                                     |
| Market               | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Mediterranean        | <input checked="" type="checkbox"/> |                                     |                                     | <input checked="" type="checkbox"/> |                                     |
| North Sea            | <input checked="" type="checkbox"/> |                                     |                                     |                                     | Partial                             |
| North Western Waters | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |                                     | <input checked="" type="checkbox"/> |                                     |
| Outermost regions    | <input checked="" type="checkbox"/> |                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |                                     |
| Pelagic Stocks       | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Partial                             | <input checked="" type="checkbox"/> |                                     |
| South Western waters | <input checked="" type="checkbox"/> |                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |                                     |

Table 2 Advisory Councils under the Common Fisheries Policy with representation from the SIMAtlantic Partner Countries.<sup>10</sup>

<sup>10</sup> See [https://ec.europa.eu/oceans-and-fisheries/fisheries/scientific-input/advisory-councils\\_en](https://ec.europa.eu/oceans-and-fisheries/fisheries/scientific-input/advisory-councils_en)

### 5.1.5 Other national mechanisms

In **France**, the procedure for drawing up maritime strategies remains strictly national and does not provide for specific provisions for cooperation and consultation with the States of the same maritime basin or with those that share a border. There are also different sectoral agreements / approaches in different regions. For example, the Biscay Plan between France and Spain applies specifically to rescue operations, pollution control and, most recently, assistance to ships in difficulty in the Bay of Biscay. Separately, there is an electricity interconnection project between France and Spain designated as a Project of Common Interest<sup>11</sup> due in 2025.

Also in relation to France, under the Political Declaration made by North Sea energy ministers on energy cooperation between North Sea countries (June 2016), this included agreement on the development of a common framework for reporting on environmental effects (CEAF = Common Environmental Assessment Framework).<sup>12</sup> This focuses on a common approach for identifying the ecological effects of offshore wind farms and could be used to support collaboration (on a voluntary basis) in the area of marine spatial planning. The following countries are working together under the leadership of the Netherlands on the development of the CEAF: Belgium, Denmark, Germany, France, Norway and UK-Scotland.

In addition to the OSPAR Convention, **Spain** also participates in the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean. It is also part of the WestMED Initiative and the BlueMed Initiative. WestMED derives from the 5x5 dialogue and involves both EU Member States and Third countries. The BlueMed Initiative developed a Strategic Research and Innovation Agenda (SRIA) for the Mediterranean Sea, the Implementation Plan of the SRIA includes MSP as one of its priorities as an essential part of the governance of the maritime space in the Mediterranean Sea. Spain is also involved in work under the Atlantic Strategy and coordinates the pillar on marine renewable energy.

The ability of the **United Kingdom** to get involved in many official EU groups is not possible currently due to Brexit. This emphasises the need for other groups that facilitate cooperation on maritime spatial planning and the marine environment more generally. The Irish Sea Maritime Forum was established in 2012 and has participation from a wider range of stakeholders including various government departments and public bodies that border the Irish Sea, industry groups and environmental NGOs. The objectives are to provide a broad-based forum for all Irish Sea users and provide an opportunity for voices to be heard; to facilitate knowledge exchange and capacity building across all administrative areas and sectors about marine planning; to facilitate sharing of data and information; to encourage and maintain political support for transnational partnership working in support of marine planning, with the aim of promoting sustainable development in the Irish Sea region; and to facilitate a more coordinated, efficient planning process for transnational issues/projects and good working relationships among Irish Sea partners.

There is joint management of river basin districts that are transboundary between England and Wales, and between England and Scotland. England and Wales have the same legislation, but different competent authorities (the Environment Agency and Natural Resources Wales). They jointly produce the RBMPs for the Severn and Dee river basin districts. England and Scotland also have different legislation, and their respective competent authorities are the Environment

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<sup>11</sup> See [https://ec.europa.eu/energy/topics/infrastructure/projects-common-interest\\_en](https://ec.europa.eu/energy/topics/infrastructure/projects-common-interest_en)

<sup>12</sup> See <https://www.france-energies-marines.org/projets/ceaf/> and [https://northseaportal.eu/vaste-onderdelen/search/?zoeken\\_term=ceaf](https://northseaportal.eu/vaste-onderdelen/search/?zoeken_term=ceaf) (particularly the document named 'flyerceaf.pdf')

Agency and the Scottish Environment Protection Agency. They jointly produce the RBMPs for the Solway Tweed river basin district.

### 5.1.6 UK and Ireland specific mechanisms

Given the historical and political linkages between Ireland and the United Kingdom because of Northern Ireland, certain transboundary mechanisms have been created to deal with North-South relations. The Belfast Agreement (Good Friday Agreement, GFA) was concluded on Good Friday, 10 April 1998 and is an international agreement between the British and Irish governments, and most of the political parties in Northern Ireland, lodged with the United Nations, on how Northern Ireland should be governed. It established a new, shared devolved government whereby the UK Parliament transferred certain legislative and executive powers to the Northern Ireland Assembly and Executive Committee. These 'transferred matters' include health, education, roads and housing. Reserved matters, i.e. those areas where control is retained by the UK Government, related to foreign affairs, taxation and immigration policy. The GFA created specific mechanisms and bodies to build relationships within Northern Ireland; between Northern Ireland and the Republic of Ireland; and between Britain and Ireland. These so-called three strands refer to:

1. Power-sharing: between the Northern Ireland Assembly and Executive,
2. The North-South institutions: the North-South Ministerial Council (NSMC) and the North-South Implementation Bodies encourage cooperation that benefits both Northern Ireland and the Republic of Ireland, and
3. 'East-West' institutions: the British-Irish Council (BIC) and the British-Irish Intergovernmental Conference to encourage cooperation between Britain and Ireland. These are forums where the two Governments discuss Reserved Matters which are not the responsibility of the Northern Ireland Assembly.

The **North South Ministerial Council (NSMC)** was established to develop consultation, co-operation and action within the island of Ireland. There are six agreed Areas of Co-Operation where common policies and approaches are agreed in the North South Ministerial Council but implemented separately in each jurisdiction. These Areas include agriculture, education, environment, health, tourism and transport. Within the environment area the agreed work programme includes environmental research and reporting (including databases of environmental information); environment protection and sustainable development; water and wastewater management (promotion of cooperation and exchange information on marine/bathing/shellfish waters), waste management in a cross-border context (including a joint programme of enforcement and collaboration on tackling environmental crime) and EU funding.

Six North-South Implementation Bodies<sup>13</sup> were also created under the GFA. Two of these have specific roles in relation to marine and coastal environments. **Waterways Ireland** has responsibility for the management, maintenance, development and restoration of specified inland navigable waterways, principally for recreational purposes. The **Foyle, Carlingford and**

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<sup>13</sup> Waterways Ireland; Food Safety Promotion Board; Intertrade Ireland – a trade and business development body; Foyle, Carlingford and Irish Lights Commission; Special European Union Programmes Body – administer Interreg VA and PEACE IV funding; and, The Language Body – promotes Irish (Gaeilge) and Ulster-Scots as living languages.

**Irish Lights Commission** is comprised of the Loughs Agency and the Lights Agency. The Loughs Agency has responsibility for the promotion and development of Lough Foyle and Carlingford Lough, the transboundary loughs, for commercial and recreational purposes in respect of marine, fishery and aquaculture matters. The strategic and operational objectives of the agency are set out in the North/South Co-operation (Implementation Bodies) (NI) Order 1999, the British-Irish Agreement Act 1999, the Foyle Fisheries Act (NI) 1952 (as amended) and the Foyle Fisheries Act 1952 (as amended). Permits are required for the movement of fish within and into the waters of Foyle and Carlingford, for survey work, and for the removal of river bed material from the freshwater stretch of any river in the Loughs Agency's areas. It was intended that the Loughs Agency would also have statutory powers to licence aquaculture development within both Loughs, but this has not commenced as yet. The Loughs Agency is co-sponsored by DAERA in Northern Ireland and DECC in the Republic of Ireland.

The **British-Irish Council (BIC)** comprises representatives of the Irish and UK governments, Northern Ireland Executive, Scotland, Wales, Guernsey, the Isle of Man, and Jersey. The Council meets in two main ways: a bi-annual summit meeting with the Heads of Administrations, and work sector meetings of Ministers and meetings of officials. A number of the BIC work areas are relevant to maritime spatial planning e.g. collaborative spatial planning;<sup>14</sup> energy; and environment (climate adaptation, invasive non-native species, marine environment and marine litter). The Environment Work Sector was established in 2009 in order to share expertise and learning across the eight BIC administrations and to make decisions on common policies and approaches on spatial planning issues. To date there has been a dedicated Invasive Non-Native Species Seminar in Cardiff in January 2020 and a Climate Adaptation Symposium had been planned for Dublin in April 2020 but was postponed due to the pandemic. Details about work area meetings are available via joint communiqués issued by the Council after summits and ministerial meetings.

Separately, there is a *Six Administrations Group* focused on MSP which was established in 2018 to discuss and update each other on cross-border marine planning, with representation from all UK Administrations and the Irish Department of Housing, Local Government and Heritage (DHLGH). It has not met for a few years but with first iteration marine plans now complete in Ireland and the UK, authorities are looking to meet and work is underway to scope when such a meeting might be organised.

### 5.1.7 Atlantic Strategy

The **EU's Atlantic Strategy Committee (ASC)** is the governing body of the EU Atlantic Strategy. It aims to ensure political and operational coordination of the Atlantic Action Plan and provide a framework for its implementation. It consists of representatives from France, Ireland, Portugal and Spain, as the EU Atlantic Member States, along with representatives from the European Commission, the Committee of the Regions, the Economic and Social Committee and representatives from coastal regions, cities and other relevant economy and social stakeholders. An Atlantic Stakeholder Platform Conference is held annually to bring stakeholders together to discuss implementation of the Atlantic Action Plan and promote new ideas and innovations to promote the blue economy in the EU Atlantic region (see further below).

#### *Key points*

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<sup>14</sup> Limited to housing and terrestrial aspects.

- *A wide variety of structures and mechanisms exist to facilitate implementation of other legal instruments.*
- *As implementation of MSP becomes more established these other approaches could provide important and useful models. In relation to the MSFD for example, a Common Implementation Strategy was developed to assist with implementation primarily because the Directive was viewed as highly scientific and technical.*
- *MSP is arguably more difficult to coordinate due to the wide range of discretion given to Member States in the Directive. This emphasises the need for robust communication and cooperation mechanisms, which may not be achieved at over-arching EU level and hence require a more regional approach i.e. at the sea basin level. This would also facilitate greater alignment with the MSFD objectives.*
- *Whilst most significant marine law and policy instruments have dedicated cooperation mechanisms it is difficult to determine the extent to which these also consider MSP which will be necessary to achieve more integrated maritime governance.*
- *The Atlantic Strategy, Action Plan and Steering Committee represents a good example of cooperative and coordinated working to achieve specific goals but is perhaps limited due to a lack of dedicated funding.*
- *In light of Brexit, mechanisms outside of the EU and its institutions will take on increased importance. OSPAR is currently one of the only non-sectoral mechanisms that exists in the Atlantic area and whilst many of its work areas have implications for marine planning and management it does not focus on MSP explicitly.*
- *A wide variety of mechanisms exist between Ireland and the UK and also the Republic and Ireland and Northern Ireland. These have arisen primarily due to historical and political reasons but are necessary for management of shared resources. Whilst important in this specific geographical context similar approaches in the wider Atlantic region are probably not necessary.*

## **5.2 Other relevant coastal/marine policies with a transboundary dimension**

**France's** National Strategy for Protected Areas (2021), states that monitoring of the achievement of objectives will be done at different scales including the eco-regional scale. The ecoregions will thus be based on the Marine Ecoregions of the World (MEOW) divisions (Spalding et al. 2007). For France, the zone which covers the SIMAtlantic study area corresponds with two MEOW zones: the Celtic Seas and the South European Atlantic Shelf.

In **Portugal**, the transposition of the Water Framework Directive (WFD) into national law, in 2005, reinforced the need to clarify and homogenize concepts and boundaries related to water resources. The National Strategy for Integrated Management of Coastal Zones (ENGIZC) contributed to this clarification by providing a clear definition of: Littoral, Coastal Zone, Coastal Border, and Coastline. At the planning level, Portugal has the Coastal Zone Programme and/or Management Plans (POC/ POOC), which focus on the coastal border. This is augmented by one of the principles contained in Law No. 17/2014 on 'MSP and management', that requires MSP to be coherent with coastal management, giving particular attention to the protection and recovery of coastal ecosystems.

The Portuguese MSP process joins all binding legislation (UNCLOS, CBD, IMO, OSPAR, Natura 2000, etc.) which cover, in a transversal way, the entire national maritime space, and that will, direct and indirectly, contribute to the improvement of coherence among countries that signed those agreements. The key principles sustaining the Situation Plan (Portugal) are aligned with MSFD ones, whose final aim is to maintain or achieve the good environmental

status in European marine waters. Since each country has to develop its own Marine Strategy according with the region and sub-region where is placed, it is expected that their strategies are aligned.

**Ireland, Spain** and the **UK** cite fisheries policies, WFD implementation, and nature conservation legislation as those of most relevance.

The **EU's Atlantic Strategy** and associated *Atlantic Action Plan* aims to unlock the potential of blue economy in the Atlantic area while preserving marine ecosystems and contributing to climate change adaptation and mitigation. This aligns with the objectives of other EU policies such as the European Green Deal. The Strategy focuses on four pillars, selected as issues where collaborative action is necessary:

- Pillar I: Ports as gateways and hubs for the blue economy
- Pillar II: Blue skills of the future and ocean literacy
- Pillar III: Marine renewable energy
- Pillar IV: Healthy ocean and resilient coasts

The pillars have representatives from each of the EU Atlantic Member States as stakeholders in those thematic areas. Whilst there is not a pillar on maritime spatial planning per se, goal 6 on stronger coastal resilience contains an action on “sharing best practices on the application of maritime spatial planning to coastal adaptation, resilience, and applicable environmental assessments”. There is no responsibility or timelines allocated for this (or other) actions.

#### *Key points*

- *In countries with pre-existing coastal management plans there is some interaction with MSP and efforts made to ensure their alignment.*
- *All countries are parties to many other non-EU conventions, treaties and agreements which operate in a cooperative way so there is a history of collaborative working in place already.*
- *As the EU continues to advance its sustainable blue economy ambitions, it is possible that coordinated approaches to MSP implementation will become more of a priority.*

## **6 Participation**

At the national level in **France**, the National Council for the Sea and Coastlines (*Conseil national de la mer et des littoraux, CNML*) provides a forum for dialogue and strategic reflection on policies relating to the sea and coasts. It is therefore associated with the SNML development. It has 52 members divided into six colleges: elected officials, representatives of public establishments, representatives of companies, representatives of unions of employees, associations / NGOs and qualified individuals.

Local consultation on the development of DSF is provided by the Maritime Facade Councils (*Conseil Maritime de Façade - CMF*) mentioned in article L.219-6-1. “This council is made up of representatives of the State, local authorities, their public establishments, ports, coastal and sea professionals, civil society and environmental protection associations. It meets at least once a year”.

During the preparation of the DSF, a preliminary public consultation was held under the aegis of the National Commission for Public Debate (*Commission Nationale de Débat Public – CNDP* - body for monitoring public debates in France). The preliminary consultation took place over two months, from January 26 to March 25, 2018, around the four basins through “territorial

citizen workshops” and the establishment of an Internet platform common to the four sea basins.<sup>15</sup> This enables the public to learn about the issues, to submit their proposals and comments on the proposed vision for the future, to share and discuss with other contributors. The summary of the contributions of the public was added to the work carried out with the CMF. In an evaluation report, the CNDP, underlined the quality and seriousness of the debates. However, it points to the conceptual, generalist or even utopian character of the strategic vision proposed by the State, limiting practical implementation. This is a point of vigilance for the implementation of basin strategies and a way of improving implementation during the next planning cycles.

Before their adoption, the first two parts (State of the art and strategic environmental and socio-economic objectives) of the DSF were subject to public consultation for each sea basin. This consultation consists of a collection of opinions formulated on the different parts of the DSF. It was done digitally via the platform mentioned above. This second phase of consultation made it possible to gather the opinion of respondents online rather than proposals and new ideas.

In **Ireland**, the transposing legislation provides that the Minister “shall make arrangements to ensure compliance by the State with the requirements of Article 9 of the Directive” (section 71). To date this has taken a number of forms: a National Advisory Group,<sup>16</sup> an Inter-Departmental Marine Planning Group and public consultation events. The Advisory Group was created in 2018 to enable participation in the NMPF process by stakeholders from the economic, environmental and social pillars. The purpose of the group is to obtain input from a broad range of sectors including the public sector, industry and business, environmental, social and knowledge-based sectors to guide strategic thinking and decision-making in the preparation of the NMPF. The Advisory Group is expected to continue throughout the implementation phase.

Alongside the Advisory Group, is an Inter-Departmental Marine Planning Group which has senior level representation from other government departments and State bodies that have marine and maritime responsibilities. Public consultation events have endured since the commencement of the process in 2018, when the baseline report was published. Five events were held in different parts of the country, to launch the Baseline Report and promote awareness of the opportunity for public participation in the process. Over 170 submissions were received on the Baseline Report and these were used to refine and augment the content of the draft NMPF, published in November 2019. Public consultation on the draft NMPF began in November 2019, and there were seven regional coastal events between November 2019 and March 2020. Due to Covid-19 related restrictions, the final public consultation event was held online in April 2020. In total, 225 submissions on the draft NMPF were received, subsequently broken down into over 3,500 individual comments of varying length and complexity, which were taken into account prior to plan finalisation and publication in July 2021.

In **Portugal**, stakeholder involvement began at an early stage of the development of the Situation Plan. Several meetings with economic sector representatives and NGOs took place. For the fisheries sector, specific workshops were held in Algarve (where fisheries and tourism have an important social and economic role, and it is one of the best locations for aquaculture). At the end it was possible to identify the most relevant areas for each fishing gear in order to avoid allocating this area to private uses. The public consultation for the Situation Plan

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<sup>15</sup> See [www.merlittoral2030.gouv.fr](http://www.merlittoral2030.gouv.fr)

<sup>16</sup> <https://www.gov.ie/en/publication/d4a6c-national-marine-planning-framework-stakeholder-advisory-group/>



(Continent, Madeira and Extended Continental Shelf subdivisions), and for the Environmental Assessment, ran from 30 April until 31 July 2018 and from 12 December 2018 until 31 January 2019. Altogether, 250 written comments were received, and 4 following public sessions were held in Leixões, Lisboa, Faro and Funchal. There were specific sessions for the fisheries sector. The Portuguese website “[www.psoem.pt](http://www.psoem.pt)” is available for stakeholders to follow the current MSP process, and it provides general and technical information, including minutes of the technical working groups, public consultation and the geoportal. Public discussions on the second version of the draft PSOEM, related to the subdivision of the Continent and the Extended Continental Shelf, took place until the end of January 2019. Public consultation reports are also available at [www.psoem.pt](http://www.psoem.pt).

In **Spain**, the first meeting with stakeholders was conducted in Madrid in March 2019. Another thematic meeting was organised with the marine renewable energy sector in the same month. Other specific meetings were held online for *ad hoc* working groups, such as, renewable energies, MPAs, maritime transport/ports, during December 2020 and first part of 2021. Participatory workshops or events were planned to take place in the five marine districts throughout 2020. This participation plan was cut short by the emergence of the COVID-19 pandemic. The format of face-to-face events was therefore completely ruled out, and an online participatory event was held in December 2020 and open to the general public. This event was attended by more than 270 people and included a presentation on the status of the work followed by a question and answer session whereby representatives from different sectors could pose questions and get responses. Finally, a detailed workshop with the fisheries sector was held in July 2021 in order to address the potential conflicts with development of the offshore wind energy sector.

In the **United Kingdom**, MSP is a partly devolved responsibility. As detailed in *A description of the marine planning system for England* (Defra, 2011), the MMO should instigate appropriate and effective engagement early with the public, industry, local government, regulators, academic bodies and other stakeholder groups in the planning process. This is enabled through the provisions within the Marine and Coastal Access Act which require for each marine plan the publication of a consultation draft and a Statement of Public Participation (SPP). The SPP should consider the nature of the coastal community, marine users and other stakeholder affected in each Plan area and, as required by the Act, set out how the MMO will involve these stakeholders at each stage. In 2019, the MMO published a commissioned report, *Enhancing stakeholder engagement: Analysis of experiences and insights (MMO1152)*. This indicates that participation within marine plan areas has been achieved primarily through workshops organised by the MMO, with information being made available via a quarterly email newsletter, social media and the Marine Information System (MIS) portal. The report makes a series of recommendations both for building wider awareness and for deepening existing relationships.

In **Wales**, the Welsh National Marine Plan (WNMP) has been produced in accordance with the *Marine and Coastal Access Act 2009*, which requires for each marine plan the publication of a consultation draft and a statement of public participation (SPP). The Marine Planning Stakeholder Reference Group (MPSRG) has been formed to provide stakeholder feedback on the production and content of the WNMP and associated processes and to advise on implementation of the adopted plan. It comprises a wide range of stakeholder interests, meets quarterly, and has provided or is expected to provide advice and input in a number of topic areas, for example:

- Vision and objectives for the WNMP
- Content of the WNMP
- The marine planning process in Wales

- Evidence for planning Sustainability Appraisal, Strategic Environmental Assessment and Habitats Regulatory Assessment
- Integration with other planning regimes
- WNMP monitoring, reviewing and assessment
- Integrated Coastal Zone Management as part of the marine planning process
- Plan implementation including decision making
- Lessons learned from other marine or related planning processes
- Cross-border coordination particularly around the Severn and Dee estuaries

In Scotland, the Marine Strategy Forum was established in 2009 with the overall aim of providing a strategic focus to ensure alignment and agreement of priorities and activities for integrated marine and coastal stewardship and to provide advice to Scottish Ministers on Marine Scotland's key strategies. The Stakeholder Advisory Group on the Crown Estate (SAGCE) was established in 2015 to provide a forum for stakeholders with an interest in the devolution of the management and revenues of Crown Estate assets in Scotland. Sub-group workshops have taken place on land, coastal and marine issues. The focus is now at regional level with participation being achieved through the Marine Planning Partnerships, which will be made up of marine stakeholders who reflect marine interests in their region. MPPs will vary in size and composition depending on the area, issues to be dealt with and the existing groups. The Scottish Parliament publication *Development and implementation of Regional Marine Plans in Scotland: interim report (July 2020)* examines the experience to date of developing and implementing Regional Marine Plans and identifies issues and questions around participation, on which views are to be sought before producing the final report and recommendations.

In Northern Ireland DAERA published a Statement of Public Participation (SPP) in 2018 (DAERA, 2018b). This sets out how and when DAERA will involve and engage 'interested persons' including statutory partners and other Government Departments and Agencies, District Councils, Devolved Administrations and neighbouring Governments, key sectoral and industry representative groups, non-government organisations, and other interested parties, such as communities, schools and special interest groups. This also set out the principles for engagement and a timetable for engagement activities over the course of plan development. The Marine Plan Team also produced updates via their website, a newsletter and by email. An Inter-Departmental Marine Co-ordination Group (IMCG) was also created to provide a forum for discussion of marine issues, policy development and information sharing. The IMCG comprised of representatives from DAERA, the Department for the Economy, the Department for Infrastructure, the Department for Communities, Loughs Agency and AFBI.

#### *Key points*

- *All Atlantic countries have invested significant efforts into promoting and sustaining participation in the MSP process.*
- *Such participation can vary according to how MSP implementation is envisaged: for example where implementation is at regional and local levels, participation has been advanced at these levels involving existing institutions and structures (e.g. national and local councils).*
- *Some countries have opted to create national groups to enable the participation of other governmental departments and agencies; other sectoral interests; or a combination of both.*
- *The way in which formal submissions and comments on draft plans have been taken into account in plan finalisation have been published in some places. This may lead to an increased sense of ownership/stewardship of the plan though this will only become evident over time.*

- *The global Covid-19 pandemic has limited the ability to host face-to-face stakeholder events but has results in the utilisation of more innovative methods that may have enabled better engagement with harder to reach sectors and groups.*

## 7 Sectoral and stakeholder involvement

As part of the MSP process in **France**, sectoral and stakeholder interests evaluated the socio-economic aspects required to meet the socio-economic objectives in plans, additional to the strict planning process.

In **Ireland** in addition to the general public consultation events outlined in the previous section, the Department responsible also liaised with industry groups including those from the fisheries and offshore renewables sectors. These sectors are also formally represented in the National Advisory Group, which has representation from the majority of sectors operating in the Irish marine space. There is an intention to create a sub-national (regional) suite of maritime spatial plans during the next phase of implementation and to establish a number of pilot coastal partnerships, so as to facilitate more in-depth participation across sectors and communities working and living within those regions.

In **Portugal**, during the development of the PSOEM (part of the MSP process), and also now, during the public consultation related to the granting of permits for the private uses/activities there has been close cooperation and consultation with the fisheries sector.

In **Spain**, there was a specific thematic meeting between the MSP working group and the marine renewable energy sector at national level. Also there was a specific event for the fisheries sector to discuss issues regarding the establishment of offshore wind farms in Spanish waters.

In the **United Kingdom**, with respect to England, coastal partnerships represent a wide range of interests and expertise. They are varied in aims, scope and membership but are recognised by the MMO as playing an important role in the integration and management of activities at the coast. They are identified as stakeholders in the marine planning process in the MMO's guidance on statements of public participation. The Coastal Partnerships Network (CPN) is a group of 50 coastal partnerships around the UK. The MMO has also held cross-sector stakeholder workshops as part of the marine planning process in all marine plan areas, often co-chairing with a local coastal partnership. In Wales, a Marine Planning Stakeholder Reference Group (MPSRG) has been formed to provide stakeholder feedback on the production and content of the WNMP and associated processes and to advise on implementation of the adopted plan. It comprises a wide range of stakeholder interests. In Scotland, Regional Marine Plans will be developed by Marine Planning Partnerships (MPPs), which will be made up of marine stakeholders who reflect marine interests in their region.

The Marine Plan for Northern Ireland (MPNI) was open for public consultation from 18 April 2018 until 15 June 2018. Due to delays in forming a new Northern Ireland Assembly following an election there have been consequent impacts on timelines for the marine plan. The consultation process involved a survey of 42 questions relating to the MPNI and the supporting assessments. Over 70 organisations responded, and a comprehensive public consultation report was published in 2021 (DAERA, 2021b). This highlights EU Exit; definition of terms and language; ecosystem based approach; Marine Mapviewer (GIS portal) and evidence; transboundary matters; precautionary principle; public accountability, governance and public participation; policy gaps; structure and sustainable development as the key themes which

emerged from the consultation process. Those issues relating to transboundary matters are reproduced in Box 2. Each theme is accompanied by a Department response indicating how the comments will be taken on board and potentially inform the next stage of the marine plan. In relation to transboundary engagement, for example, the Departmental Response says it “will link the policy to all of the MPNI’s objectives and provide narrative on transboundary engagement and consultation”.

- Respondents highlighted the **lack of a defined boundary** in Lough Foyle and Carlingford Lough could have implications for compliance, governance, management and achievement of ecological integrity. A clear statement on the position, the application of policy, transboundary co-operation and shared issues was suggested. Some respondents commented on the need for specific local plans for the shared loughs.
- The **role of the Loughs Agency** was remarked upon, and it was put forward the Foreign and Commonwealth Office should be directly involved in decision making concerning the shared loughs.
- Whilst some respondents suggested a greater emphasis on the consistency, continuity and co-ordination of spatial evidence and data/information sharing, others remarked that **more evidence, engagement, co-operation and discussion in relation to shared loughs** was needed as well to support joined-up decision making. Engagement with the Loughs Agency Stakeholder Advisory Forum was suggested.
- Reference to **marine planning in other jurisdictions** and the need for policies to effectively consider and address transboundary issues and reflect synergies was commented upon. Further collaboration with Clyde Marine Planning Partnership was recommended.
- The merit of developing and sharing of an **Implementation Plan** that identified policies with transboundary effects was raised.

**Box 3 Transboundary matters raised in responses to draft Northern Ireland Marine Plan public consultation (DAERA, 2021b).**

#### *Key points*

- *Perhaps in recognition of the economic value of marine sectors many countries have specifically met with and engaged with individual sectors and/or their representative organisations in an effort to ensure their positions are understood and reflected in the MSP as appropriate.*
- *Whilst overall engagement and participation at the national level is significant, less focus has been paid to transboundary participation which has been exclusively limited to formal channels (SEA etc.).*
- *It is possible that many countries are of the opinion there is no need to engage more explicitly with transboundary communities until a specific issue arises or where neighbours are geographically close e.g. Ireland and Northern Ireland; Spain and Portugal – both SIMAtlantic case study areas.*

## **8 Conclusions**

The current, largely early stage of MSP implementation in the Atlantic countries make it somewhat difficult to ascertain with certainty the extent to which marine spatial plans are coherent both with other national policies and their objectives and also with each other. It is evident that all countries are working on their Plans and have aspirations to further refine and expand these as implementation progresses and experience is gained. There is a strong realisation of the potential of MSP to assist in delivering sustainable development for marine and coastal areas, but the plans are less detailed on how this is to be achieved.



Reflecting on the OECD’s PCSD framework (left) (OECD, 2016) and specifically the institutional framework, varying degrees of progress have been made. The vision, leadership and policy interactions elements are strongest with significant further effort required in relation to monitoring, reporting and evaluation. Whole of government approaches to the implementation of MSP are evident. Whilst MSP is usually ‘led’ by a central authority, there are mechanisms in place to ensure input from other relevant actors at different governance levels. Where MSP is currently or is planned to be implemented at regional or local levels there is potentially more scope for a central government department or authority to have an oversight role, and this may assist in ensuring cooperation and coherence requirements are met.

Maritime spatial plans in place recognise the potential contribution of plan implementation to the achievement of sustainable development, which is to be expected given the purpose of MSP. What is less clear is how this is implemented in a practical way and this is also true for certain other policy objectives. The former could possibly be addressed if there were closer connections made between national marine plans and the national plans for implementation of the SDGs, which countries are encouraged to produce and implement. The latter is more difficult and requires significant effort and often specific mechanisms which are likely to differ according to sector and location.

All plans refer to other complementary legislative and policy objectives, so there is a recognition at least of the potential relationship between policies but less attention is paid to joint implementation. The one exception to this is possibly the Marine Strategy Framework Directive, where most maritime spatial plans have explicitly considered it in MSP implementation and timelines and gone further to specify how different maritime sectors can take MSFD objectives into account in their respective planning and management processes. The preceding sections show that this may simply be attributed to timing of MSFD and MSP and the fact that they both have the same geographic scope. There is scope to address this issue in future implementation cycles of, for example, the Water Framework Directive and its associated River Basin Management Plans.

Whilst published maritime spatial plans refer to numerous other legal and policy objectives and state how MSP can assist in achieving some of those, there is little or no mention of what happens when policy objectives are not complementary. It is possible that this type of issue could be dealt with when it arises and on a case-by-case basis but that approach may undermine coherency. Another element of this is the link to the more operational aspects of planning such as consenting and licensing processes. Member States have significant discretion in this regard and though the maritime spatial plan is the over-arching policy, it is unclear in many instances how project level decisions take the objectives of MSP into account. This link between strategic and operational level has a critical role to play in overall levels of coherence.

Another important element of the PCSD's institutional framework is multi-stakeholder involvement. All Atlantic countries have developed dedicated methods for public participation and consulted stakeholders and other relevant authorities, at the early stages of plan development right through to plan finalisation. This is a requirement of the MSP Directive, but it is also necessary for cooperation and coherence. Certain other EU instruments have established working and expert groups to supplement and augment participation particularly where there are significant scientific and technical considerations e.g. MSFD, WFD and CFP.

The EC's Member States Expert Group on MSP is the only mechanism that currently exists to bring together representatives who work on MSP from all Member States to exchange information on progress, relevant studies and research. These meetings are generally closed to external participants. Most recently the Commission has created a Technical Working Group on Data for MSP. The objectives of the group are to facilitate availability of data and information sharing between Member States on maritime spatial plans across the EU and, to facilitate availability of data and information on the state of the marine environment in connection with the established maritime spatial plans and ensure coherency across the EU. Data use and sharing is a consistent theme that arises in relation to cooperation and coherence.

At the transboundary level, coherence is much more difficult to achieve. A number of cooperative mechanisms exist but none are specific to MSP in the Atlantic region. The Atlantic Action Plan and its associated Steering Committee could be expanded to achieve this, but this would require some amendment and would still exclude the UK. To deliver an ecosystem approach and sustainable development it is essential that all parties can cooperate in equal measure. OSPAR is the obvious transboundary mechanism for cooperation in the North Atlantic area, and its work has close links to the objectives of the EU's Marine Strategy Framework Directive, but OSPAR does not work on MSP directly. Many of its work areas are, however, related.

Maritime spatial plans published to date recognise the need for transboundary cooperation and the Atlantic countries have each consulted with neighbouring countries on their respective Plans. Ireland has taken this a step further and in 2018 created the six administrations group comprising of marine planning officials from England, Ireland, Isle of Man, Northern Ireland, Scotland and Wales and it is intended that this will become a lasting mechanism for transboundary cooperation, particularly since the UK has exited the EU. Ideally in future this group could be expanded to include planning officials from the other Atlantic countries.

As there is no existing mechanism to facilitate cooperation between the Atlantic countries currently, research projects that bring these officials together take on a greater significance, specifically because they provide a way of enabling planners and others to work collaborative to address issues of mutual concern. This can therefore assist in achieving coherency, but it is not a wholly sustainable approach. There is still a need for a more permanent and resourced forum. In terms of policy coherence generally, there is also a need for further work on developing and trialling of methods to evaluate coherency in MSP across the EU.

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# 10 Annex 1

## **Cross-cutting Theme 1: Governance**

**Objectives:** Determine how other legal requirements (Marine Strategy Framework Directive, Water Framework Directive, and Birds and Habitats Directives) interact with national MSP. Describe the structures that exist for implementation of MSP particularly those for cross-border/transboundary cooperation on MSP, including stakeholder involvement across sectoral interests.

1. *What is the current status of MSP in your country? How is MSP being implemented?*
  2. *Who is responsible for MSP in your country? If possible, explain how this link with or will link with other governance levels?*
  3. *Is there specific MSP legislation in your country? Does this legislation include any other marine policy objectives (e.g. those deriving from the MSFD, WFD, biodiversity legislation, etc.)?*
  4. *How has participation been achieved in MSP design and/or implementation?*
  5. *How does MSP interact with other Directives/legislation? Explain links to MSFD, WFD and nature conservation legislation.*
  6. *Do any of these other policy objectives refer to MSP or its implementation? If so, how?*
  7. *How are the objectives of other legislation translated into planning decisions and management practice?*
  8. *How does MSP in your country deal with transboundary aspects of planning?*
  9. *Are you aware of any transboundary mechanisms that exist under other policies/legislation that may provide a way of assisting transboundary MSP? If yes, please provide a short description of how they operate. (This can be at local, regional, national or any governance level).*
  10. *Is there any other national level policy addressing EU Directives that address the coastal / marine space that might affect the national MSP process and/or transboundary issues?*
  11. *Are you aware of any partnerships or approaches to MSP that incorporate specific sectoral bodies/interests? If yes, how are they involved in MSP implementation?*
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