

Legal perspectives and options for regional MSP

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Who's doing what and how?



- State developing at national level MSP for territorial sea and EEZ / continental shelf

- Different rationales can guide MSP plans = for ex. only for wind farms or fishing (sector driven) but not the only model = à la carte!
- Responsibilities for implementing the MSP is split between (too) many ministries and agencies = lack of consistence and transparency
- Lack of evaluating assessments / material consequences of MSP= determining the impact of MSP
- Knowledge used and shared is difficult to use (too technical) = issues of knowledge transfer (which knowledge?) and capacity building
- **General lack of social objectives and knowledge in MSP.**
 - People & the Ocean are at the heart of the MSP Roadmap = this is not the case on many MSP national or regional (= innovation here needed)
 - Prior consent and consultation of indigenous peoples and local communities (Agenda 2030 + current mechanisms inserted into the BBNJ Agreement of UNCLOS)
 - Knowledge pluralism (not only the one based on scientific data!)
 - Transparency, accountability, procedural justice
 - Social/cultural concerns, values and impacts (mapping and assessment)
 - Improvement of decision-making, social inclusion, respect = trust and credibility

- Reading and planning around the **layering**: creating consistency and efficiency beyond sectorial thinking

- In between the different scales: national, regional and international
- In between the different topics and frameworks (and related Member States). A few examples:
 - United nations Convention on the Law of the Sea
 - MARPOL Annex V Wide Caribbean region including Gulf of Mexico and Caribbean Sea
 - Cartagena Convention – Specially protected areas and wildlife Protocol (SPAW) & initiatives
 - World Heritage Convention (33 States parties in LA and C.) – various sub-regional action plans
 - Subaquatic Cultural Heritage Convention (2021 UNESCO Training manual for the protection of the underwater cultural heritage in Latin America and the Carribean.
 - Current negotiations on genetic resources & traditional knowledge and traditional cultural expressions at WIPO
 - FAO Agreement on Port State Measures to prevent, deter and eliminate UU Fishing
 - And others....
- Who will be specifically in charge of cooperation issues? How to make it work? Coordination, cooperation and consistency is a problem experienced everywhere at all levels
 - Need to innovate here = there is no model to follow.

Different models, different priorities



- Some Regional initiatives based on specific legislative frameworks

- HELCOM
 - Joint HELCOM-VASAB Marine Spatial Planning Working Group since 2010 + Data Expert Sub Group (data, information and exchange of information for MSP)
 - 2021: New Baltic Sea Action Plan and Roadmap 2021-2030 include MSP
 - Specific issues regarding integration of social and cultural pillars
- OSPAR
 - OSPAR Convention provides for the setting up of marine protected areas in EEZ and High Seas
 - MSP are developed by Member States on an individual basis, but enforcement does not appear possible in the High Seas under the current legal regime
 - Challenges in developing MSP across the various OSPAR regions = access to good quality data is a challenge + sectoral thinking
- EU law: 2014 Marine Spatial Planning Directive (also implemented through HELCOM, OSPAR and Barcelona)
 - Mainly articulated around the idea of Blue Growth and blue economy
 - EU Law has many other tools (impact assessments, protection measures through Natura 2000 sites, Good environmental status, but also ocean observation programmes through Marine Copernicus Service) so the implementation dynamics cannot be pasted in the LA&C region.

Latin America and the Caribbean to get inspired by other MSP models, frameworks and lessons learnt, but to adapt and design its own, based on current and future priorities, most importantly in view of its own cultures, traditions and specificities (can be reflected differently at the governance level for example).

- What are the regional priorities able to gather States despite pending conflicts?
 - Potential identification of minimum agreed priorities due to the regional context = a step by step approach (start with the easiest and most obvious while working towards others)
 - Clear definition of what “sustainable blue economy” will be required, as well as the definition of clear and measurable sustainable development goals (not only mentioning SDGs).

Which marine areas?



- UNCLOS Preamble

“Problems of ocean space are closely interrelated and need to be considered as a whole (...) recognizing the desirability of establishing through the Convention a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment”.

- Only within national jurisdiction or a mix within and outside national jurisdiction?

- If outside national jurisdiction, the current BBNJ negotiations should be taken in consideration for future implementation (incl. consultation procedure)

- What happens in case of Regional MSP in contested waters and marine regions?

- Obligations of States remains the same (protection of marine environment, cooperation)
- Environmental Security concerns, although it is a concept mainly used for terrestrial space.
- Planning in grey areas and disputed waters:
 - Pending agreement of a boundary, States can enter into provisional arrangements (UNCLOS)
 - Mainly used for oil and gas development “joint development zones”, Australia/Timor or more recently Mauritius/Seychelles
 - Nothing preventing from using this mechanism for scientific/marine spatial planning objectives.

MSP and the protection of the marine environment

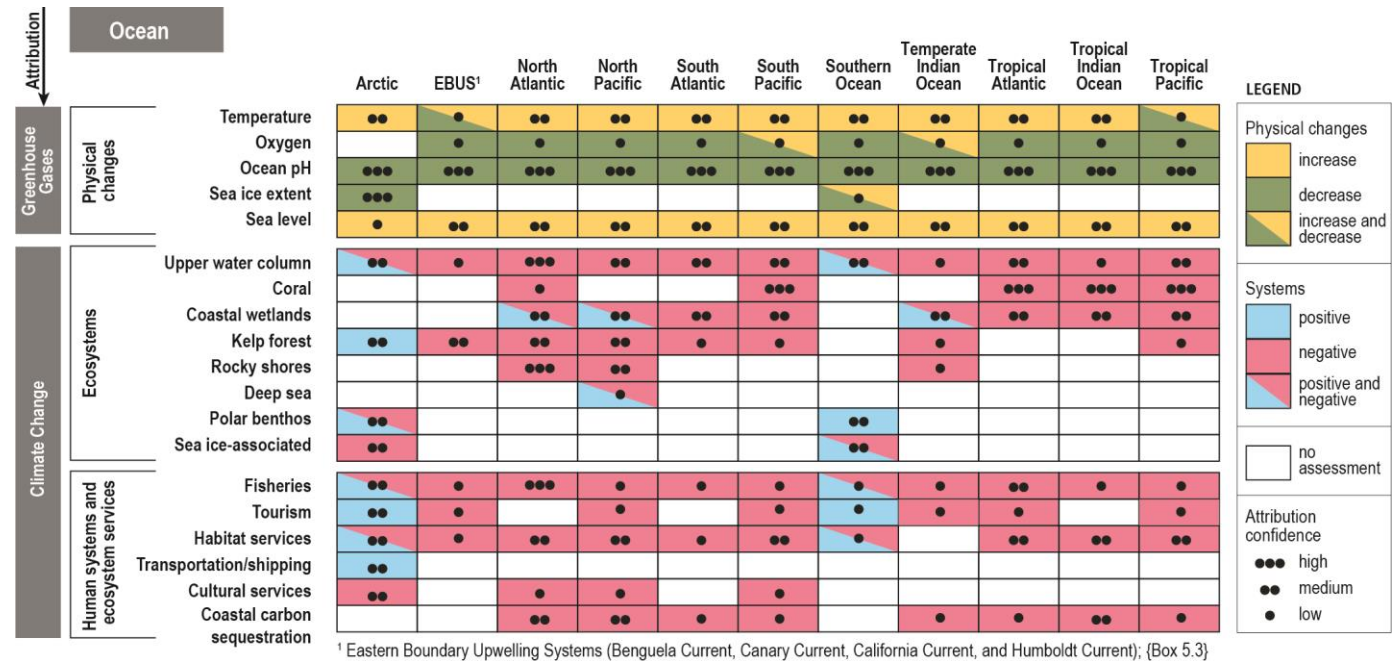
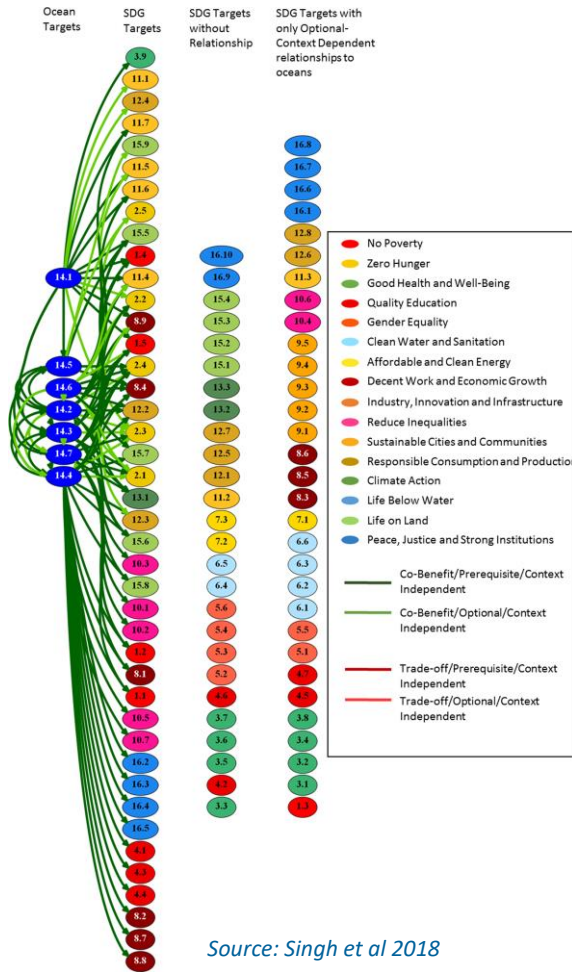


General Duty of State to protect and preserve the marine environment (UNCLOS, customary law)

- Duty to prevent, reduce and control pollution (from any source)
- Duty to monitor the risks or effects of pollution = observe, measure, evaluate and analyse, directly or through competent international organisations
- Duty to assess potential effects of activities if reasonable grounds to believe substantial pollution or significant and harmful changes to the marine environment

- **What is at stake? The implementation of the precautionary approach**
 - Adequate Environmental Impact Assessment
 - Identification of the risks
 - Mitigation or not of the risk (can it be avoided, can it be remediated, can it be mitigated?)
 - Accepting or rejecting an activity based on the risks
 - Requires baseline information
 - Adequate baseline information is required
 - For MSP at regional level: Direct, indirect, cumulative and transboundary (= challenging)
 - Need of Ocean Data. Which one?
 - Not all ocean data is open access, collected and shared freely, especially in a contested areas.
 - Marine Scientific research data on resources (biological and minerals) are sensitive at State level
 - Only way forward: provisional arrangements, irrespective of boundary making, allowing certain information to be shared. Negotiations on which ones = what is achievable, what are the priorities?
 - **Need of clarity:** environmental goals, objectives, thresholds and indicators to harmonize management and decision making at the regional level

Implementing Agenda 2030: Working synergies to fill up gaps



Source: IPCC 2022

Regional MSPforum - Latin America and the Caribbean



Thank you! ¡Gracias! Merci !



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