

Why do we need MSP and what triggered MSP initiatives?

An historical and evolutionary perspective

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THE VERY FIRST USES OF THE SEA: FISHERIES AND COMMERCE!



The first attempts to Govern the Sea

- From 30 BC to 117 AD the Roman Empire surrounded the Mediterranean, controlling much of its coasts. The Romans then began to refer to this sea as the **Mare Nostrum**. The period between November and March was considered the most dangerous for navigation, so it was declared **Mare Clausum** (closed sea), although navigation was probably never effectively banned.
- In classical law, the sea was not territorialized. However, since the Middle Ages, the maritime republics like the Republic of Genova and the Republic of Venice claimed the "Mare Clausum" in the Mediterranean.
- Also the Nordic kingdoms and England imposed fees of passage, fishing monopolies and even blockades to foreign ships in the seas neighboring their territories.



The Maritime Discoveries and the *Mare Clausum*

- ◊ With the advent of the Age of Maritime Discovery, between the XV and XVII centuries, maritime and coastal navigation became Oceanic. Thus, concern about the waters focused on maritime routes. The Iberian countries were pioneers in this process, seeking to obtain for themselves, exclusively, the rights on the lands discovered and to discover, within a policy of mercantilism protecting maritime routes.
- ◊ The celebration of the treaty of Alcáçovas in 1479 between the Kingdoms of Portugal and Castile constituted the first formalization of the concept of "*Mare Clausum*" and was the first of the sort, **that regulated the possession of lands not yet discovered.**



2019 The Advent and Recognition of *Mare Clausum*

D. João II of Portugal, D. Manuel I of Portugal, the Catholic Kings and D. Carlos I of Spain would **consecrate the principle of the "*Mare Clausum*"** and give it its greatest breadth and universality, based on legal and philosophical grounds, as well as punishments for those who dare to usurp it. The Manueline and Philippine Consecrations in Portugal are examples of this. This principle also presupposed the military domination of the seas and the colonization of the adjacent regions and was expressed in the ***Treaty of Tordesilhas in 1494***.

The Papacy contributed to legitimize and reinforce these claims expressed in the Treaty of Tordesillas. In fact, **Pope Nicholas V** by the **Bull *Romanus Pontifex* of 1495**, prohibited the navigation in the exclusive seas of the Portuguese without the authorization of the king of Portugal.

The title of the Portuguese kings denounced this claim to the exclusive use of the seas: "*King of Portugal and the Algarves, d'Aquém e d'Além-Mar in Africa, Lord of Commerce, Conquest and Navigation of Arabia, Persia and India* "



And the beginning of the Globalization - 1498

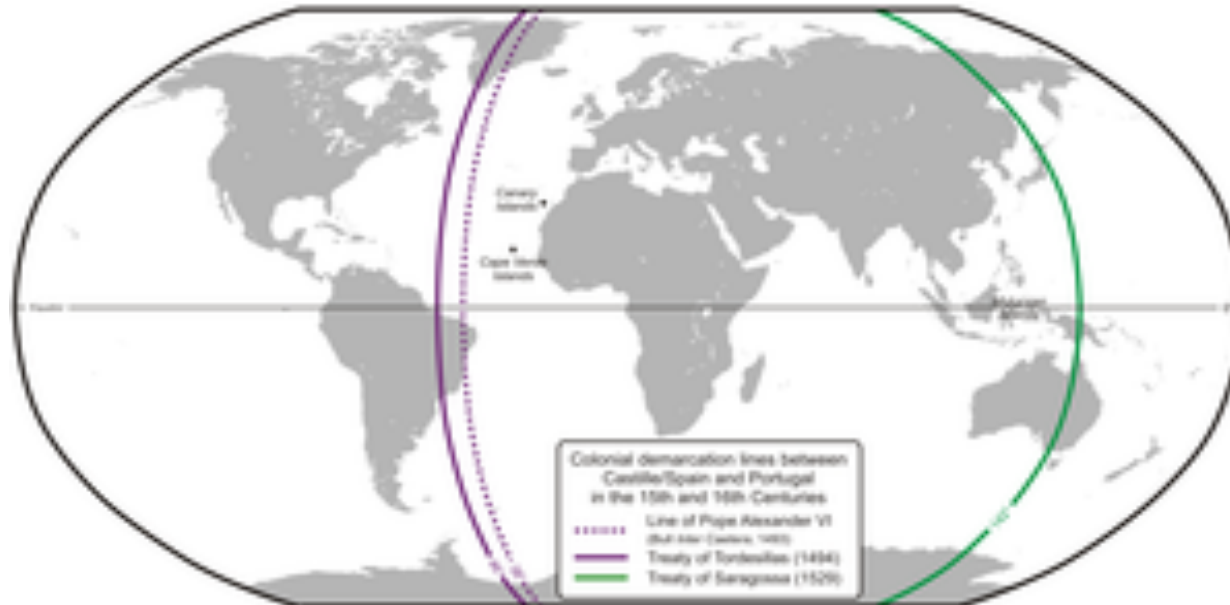
Vasco da Gama

Discovery of the Maritime Route to India



The International Reaction

- ◆ The Treaty of Tordesillas was an obstacle to the desires of maritime expansion of countries such as France, England and Holland, which disputed it: the request of Francis I of France was made famous asking the Pope to show him the "*Testament of Adam*" that excluded him from the "*Sharing of the World*". As they were prevented from advancing with their fleets they invested in the patronage of pirates and piracy, which increasingly attacked the Portuguese and Spanish fleets, although in the international legal order, the *Mare Clausum* doctrine defined in Tordesilhas, continued to be in force.



The Beginning of the End of the Mare Clausum

- ◊ In 1603, the Portuguese merchant ship "Santa Catarina" was captured on the high seas off Singapore by Dutch captain Jacob van Heemskerck, then employed by the Dutch East India Company. The act sparked international protests, even in the Netherlands.
- ◊ The sacking of this merchant ship was so great that the subsequent sale raised twice the capital of the Company of the Indies itself. The Dutch, who had discovered the routes in 1596 thanks to Jan Huygen van Linschoten, attempted to appropriate some of the wealth during the Iberian Union and the Philippine Dynasty (1580-1640).
- ◊ The ship was officially seized in Amsterdam on 4 September 1604.



The Dutch Legal Defense and Mare Liberum

The Netherlands orders the brilliant lawyer Hugo de Grotius of his defense, who publishes in 1606 the work *Mare Liberum*, in which he defends the international nature of the ocean waters.



The Mare Liberum and the birth of modern International Law

Following, Hugo Grotius publishes in 1625 *De Jure Belli Ac Pacis* (On the Law of War and Peace), which consecrates him as the "Father of International Law". All law should be divided between what is divine and what is human. Distinguishes between the primary laws and the secondary laws of Nature. The first are laws expressing the divine will. The second, are laws and rules within the scope of reason. Grotius discusses the War as a way of protecting rights and punishing disripects. Although war can be considered a necessary evil, it must be regulated. **A just war**, in the eyes of Grotius, is a war to defend a right.

It discuss **three ways to resolve a dispute peacefully**:

- ◆ conference and negotiation between two rivals or contestant;
- ◆ compromise or an agreement in which each side abandons certain demands and makes concessions;
- ◆ by combat or by chance.

Grotius helped shape the concept of international society: a community bound by the notion that states and their rulers have laws that apply to them. **All men and nations are subject to international law and the international community remains bound by written agreements and custom.**



MARE LIBERUM VS. MARE CLAUSUM

The possible compromise and the Member States' right to Defence The beginning of the "Territorial Sea"

... **BUT** how far could a nation go to determine the exclusive use of their coasts?

Van Bynkershoek (Ne) proposes in 1702 - From *Dominio Maris Dissertatio* - that the **territorial sea** should be based on the principle of Hugo Grotius (*De Iure Belli Ac Pacis*) that a state had the right to control its adjacent waters in function of its control over them, in particular through military capability and the reach of their weapons.

The Italian Ferdinand Galiami is subsequently defining the range of the most modern weapon known in three miles: "*Cannon Shot Rule*".

"Terrae potestas fnitur ubi fnitur armorum vis"

The dominion of the land ends where the strength of the weapons ends.



WORLD WAR II

THE CONCEPTUAL RUPTURE ON THE USE AND ROLE OF THE SEAS



The Sea, the War and the Power of Nations

From the Trench War of WW I to the Battle in the Oceans in WW II:
A Conceptual Change in Operational Theater

The **Battle of the Atlantic** was a maritime confrontation that marked the Second World War, fought in the North Atlantic between Nazi Germany and the Allies. Hitler's goal was to **block commercial routes between the allies**, with their fleet of **submarines U-boats**, aimed at surrendering the United Kingdom and impeach USA intervention on the European scene of the conflict. The discovery of the new radar installed in airplanes helps decisively to the victory of the Allies in the Atlantic.



The Sea, the War and the Power of Nations

The **Pacific War** was divided into two stages: between 1937 and June 1942, Japan maintained the offensive and was victorious in occupying much of China, destroying the American fleet at Pearl Harbor, taking Hong Kong and Singapore, invasion and occupation of Thailand, Burma, Malaysia, Philippines, New Guinea, **Dutch East Indies**, Solomon Islands and American bases in Guam and Wake.



From the **Battle of Midway**, with the victory of the navy and North American aviation and the **destruction of Japan's main aircraft carriers**, the offensive moved on to the side of the Allies, who in three years regained all territories taken until the atomic explosions of Hiroshima and Nagasaki that would cause the unconditional surrender of the Japanese Empire on September 2, 1945.



The Sea, the War and the Power of Nations

The **Yalta Conference**, also called the **Crimean Conference**, took place between 4 and 11 February 1945 at Livadia Palace, at the seaside resort of Yalta, on the shores of the Black Sea, Crimea.

The heads of state of the United States of America (Franklin D. Roosevelt) and the Soviet Union (Josef Stalin), and the Prime Minister of the United Kingdom (Winston Churchill) met secretly in Yalta to decide the end of World War II and **the sharing of the zones of influence between the West and the East and the concept of United Nations Organization.**

A “NEW TORDESILHAS TREATY” involving the ocean and based on navy military power (and also the end of historical overseas colonial power).

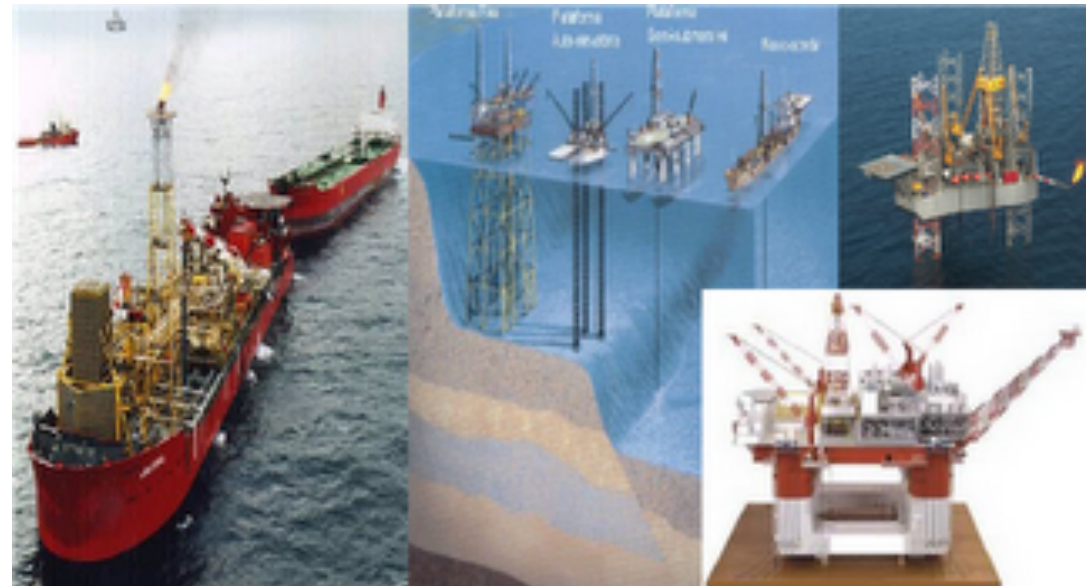


NEW USES OF THE SEAS ...AND EVERYTHING CHANGES



2019 The New Uses and the New Order in the Seas

- ◆ The status quo was halted by the USA as early as 1945 by unilaterally extending jurisdiction to the continental shelf to protect the oil reserves discovered in the Gulf of Mexico.
- ◆ Unleashed similar action by several nations of Latin America.



2 0 1 9 The New Uses and the *New Order in the Seas*

Truman's 1945 statement on the continental shelf and its resources (<http://www.presidency.ucsb.edu/ws/index.php?pid=12332>)

Where the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that ...

Now, Therefore, I, Harry S. Truman, President of the United States of America, of the United States of America, with respect to the natural resources of the subsoil and sea bed of the continental shelf.

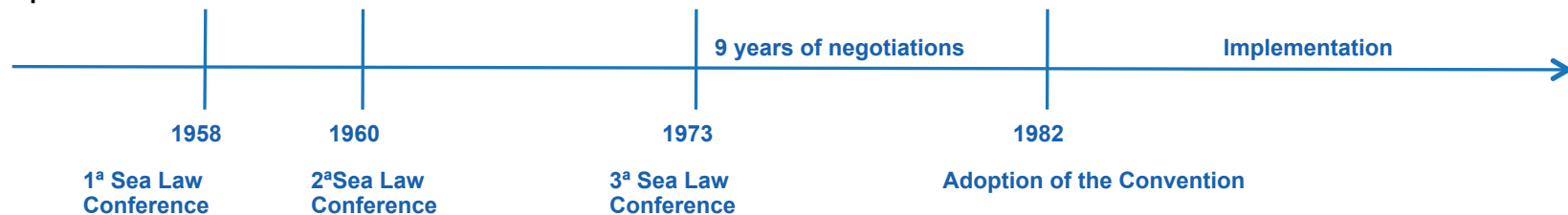
Having regard to the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and is bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America affixed.



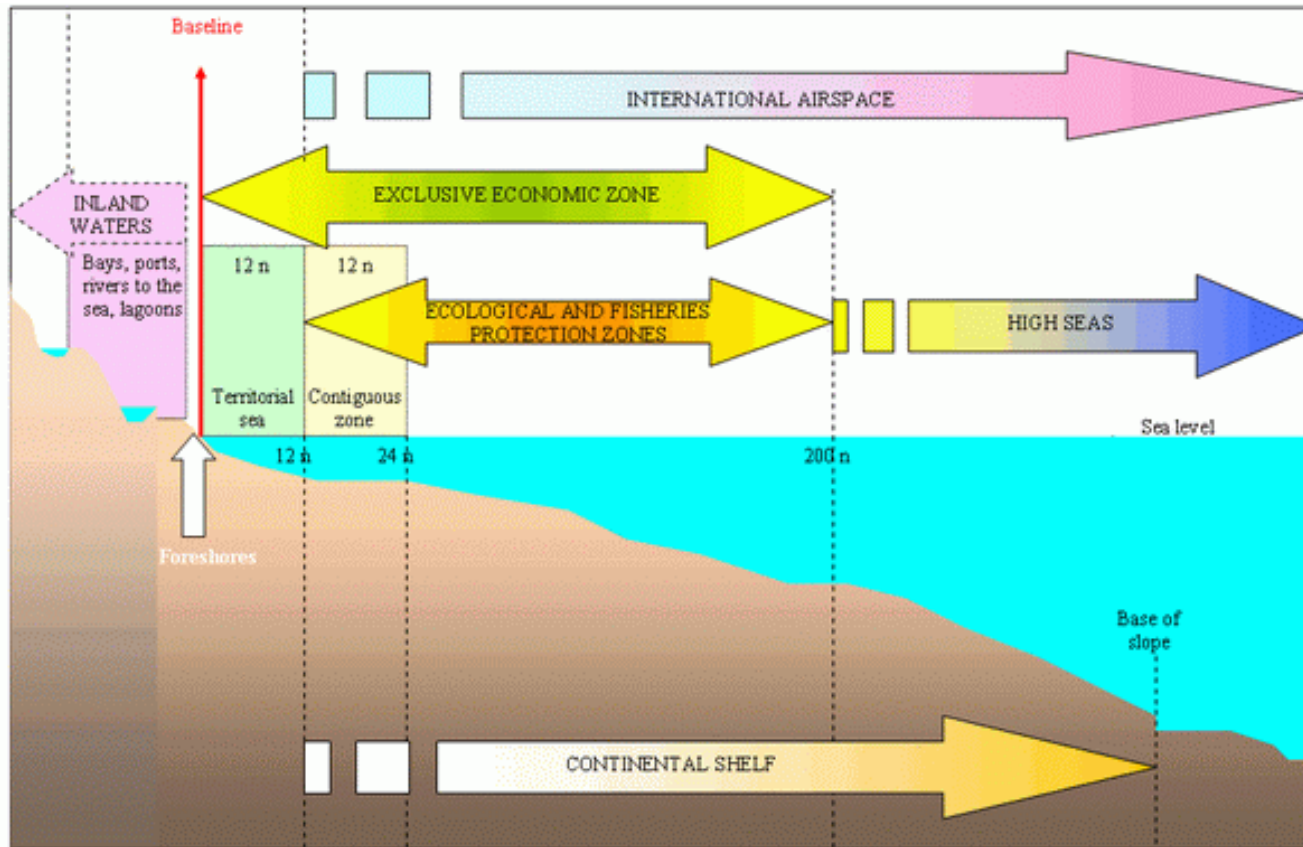
UNCLOS – United Nations Convention on the Law of the Sea

- ◊ "... Establish (...), **with due consideration for the sovereignty of all States**, a legal order for the seas and oceans, to facilitate international communications and promote the peaceful uses of the seas and oceans, the equitable and efficient use of their resources, the conservation of living resources and the study, protection and preservation of the marine environment. "



- ◊ Concept of EEZ;
- ◊ Concept of Sovereignty in EEZ;
- ◊ Concept of State Archipelago and archipelagic waters;
- ◊ Formal recognition of world heritage;
- ◊ Establishment of the International Seabed Authority;
- ◊ Comprehensive international environmental law;
- ◊ New marine scientific research regime;
- ◊ The most advanced network of international technological cooperation;
- ◊ The most comprehensive and binding dispute settlement instrument in the world;
- ◊ Reserve of abyssal funds for peaceful purposes.





1982 - After nine years of negotiations, a new “World Constitution” for the sea is reached: 200 miles to the EEZ and 12 miles to territorial seas. The 320 articles of the convention cover all domains of the sea and oceans.

The Convention comes into force after ratification by 60 countries on 16th November 1994



The International Year of Oceans 1998 The Sea again on the World Agenda

The World Oceans Exhibition in Lisbon assigned also the commemoration of the 500th anniversary of the Discovery of the Maritime Path to India by Vasco da Gama

The Report of the Independent Global Ocean Commission under the auspices of the General Assembly of the United Nations, UNESCO and IOC:

Ocean, Our Future

Mário Soares



THE MILLENNIUM TURNAROUND, NEW USES OF THE SEA AND THE CHALLENGES OF MARINE GOVERNANCE

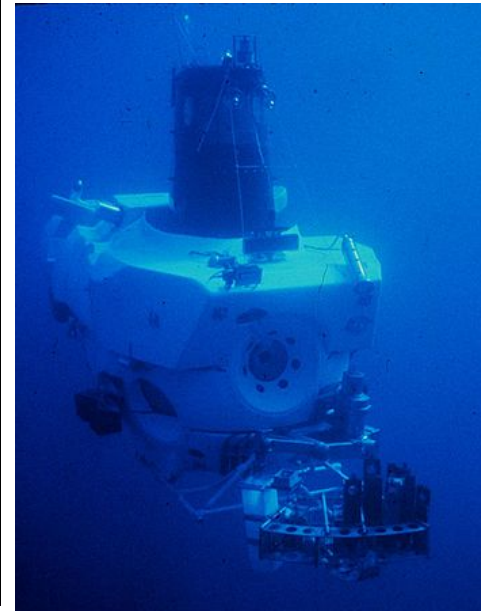


Advances in Marine Science

- ◆ The Floating Instrument Platform (FLIP) is the only ship in the world that has the ability to turn from a horizontal position to a vertical position while at sea. The FLIP vessel is designed to study wave height, acoustic signals, temperature and water density and for the collection of meteorological data.



ALVIN FINDS TITANIC



And ... some temptations on World Oceans Governance

- ◆ Moscow, 2 Aug 2007 (EFE) .- The Russian bathyscaphe Mir-1 with three occupants on board, landed today in the Arctic Ocean, near the North Pole, the 4261 meters deep, according to the Russian news agency "Itar-Tass. "
- ◆ ***A Russian bathyscaphe MIR has put a Russian flag on the sea bed of the North Pole on Thursday.*** The titanium flag was placed on the seabed 4,261 meters below the surface of the Arctic Ocean (Itar-Tass news agency).
- ◆ Russia wants to expand the territory it controls in the Arctic to the North Pole. There are believed to be huge untapped reserves of oil and gas in the region. In the bathyscaphe traveled Artur Chilingarov, Vice-President of the Duma. Moscow, August 1, 2009



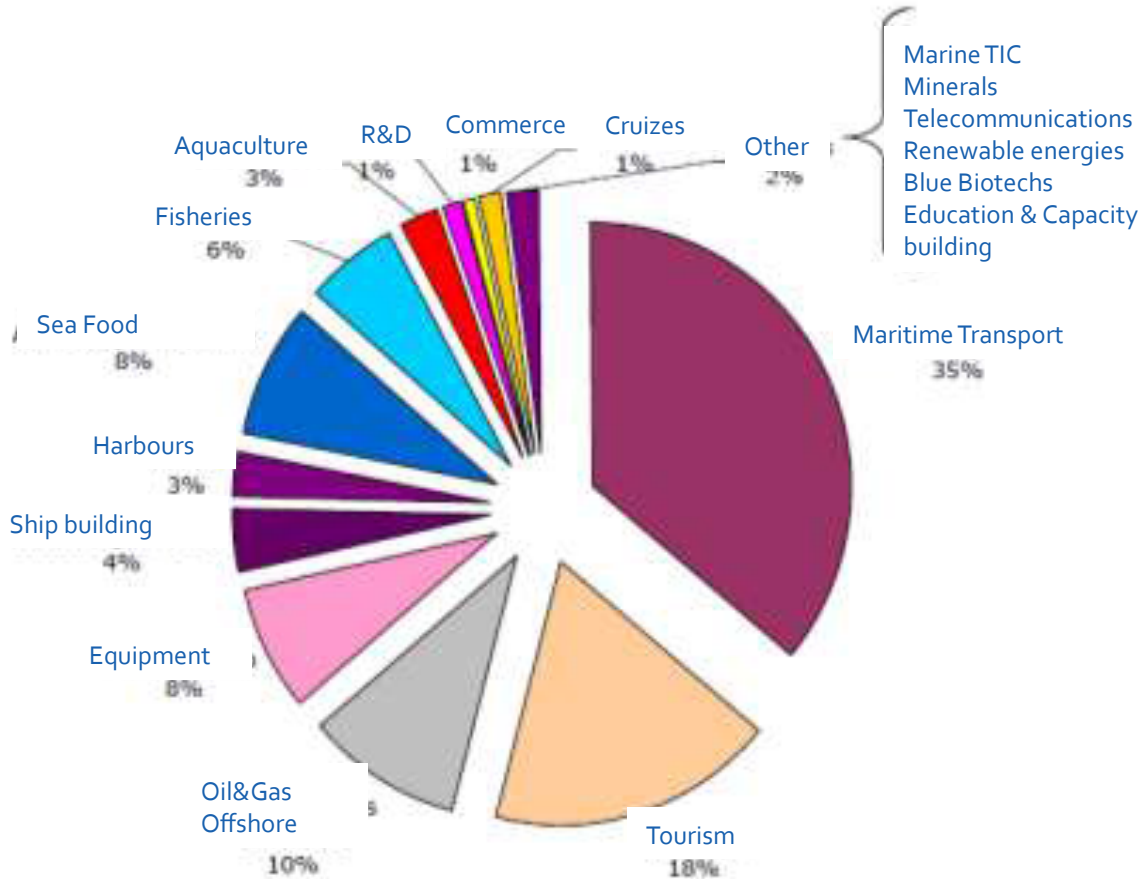
Russian Prime Minister Vladimir Putin has descended to the bottom of Lake Baikal, one of the world's largest freshwater waters, on board a bathyscaphe, Russian news agencies reported. The immersion happened during a visit of the head of the Russian Government to the ship "Metropol", that serves as the base for a scientific expedition in the lake, in which the bathyscaphes MIR-1 and MIR-2 participate. These are the same devices that were used in filming James Cameron's "Titanic."



The Blue Economy relevance

The starting point

Blue Economy in the European Union –
Distribution for sector (2007)

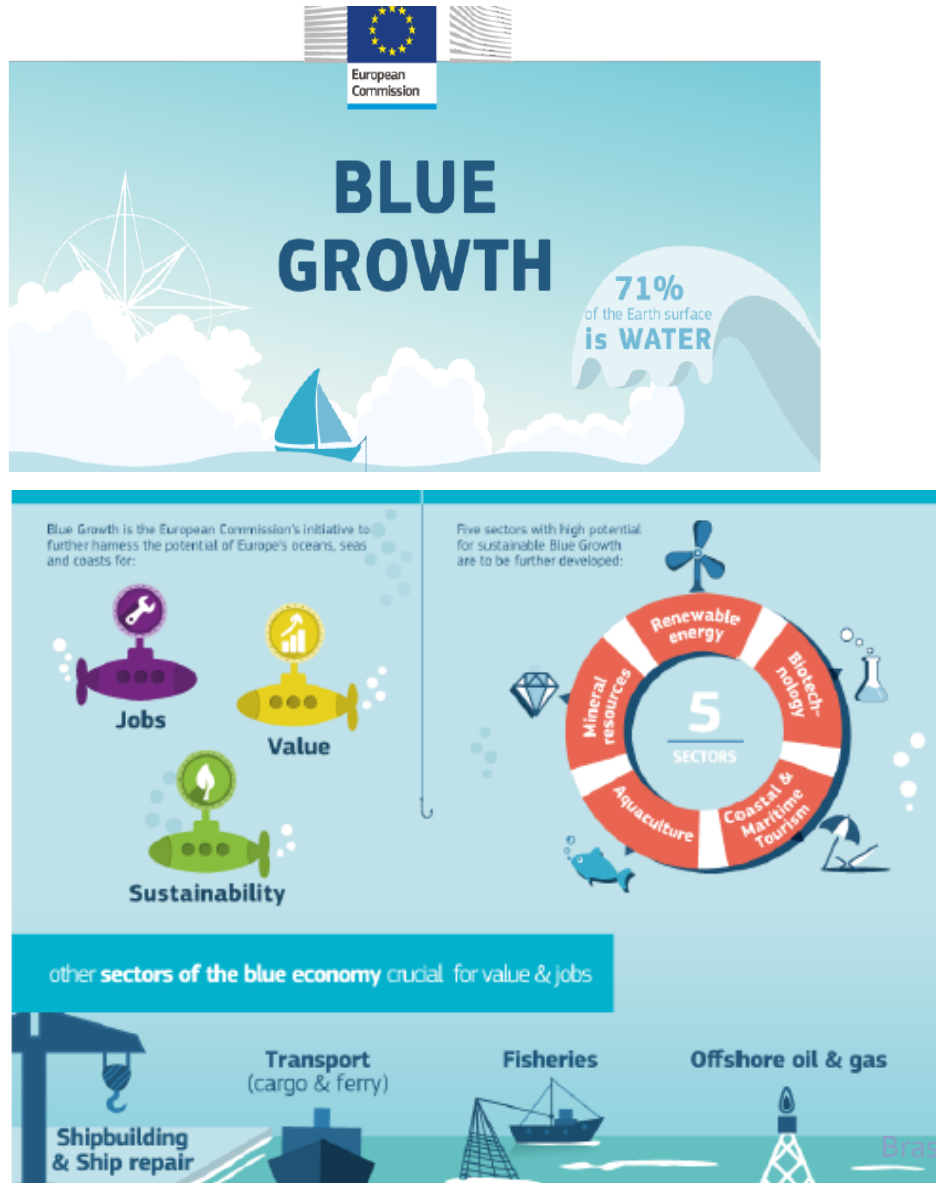


The European Union is the world's leading maritime power, especially regarding maritime transport, shipbuilding, coastal tourism, offshore energy, including renewable energy, and related services. The "blue economy" represents 5.4 million jobs and a gross added value of almost € 500 billion per year. ***Nonetheless there are strategic sectors with high potential for progression.***

EU Green Book, 2006



The new economy of the Sea Blue Growth



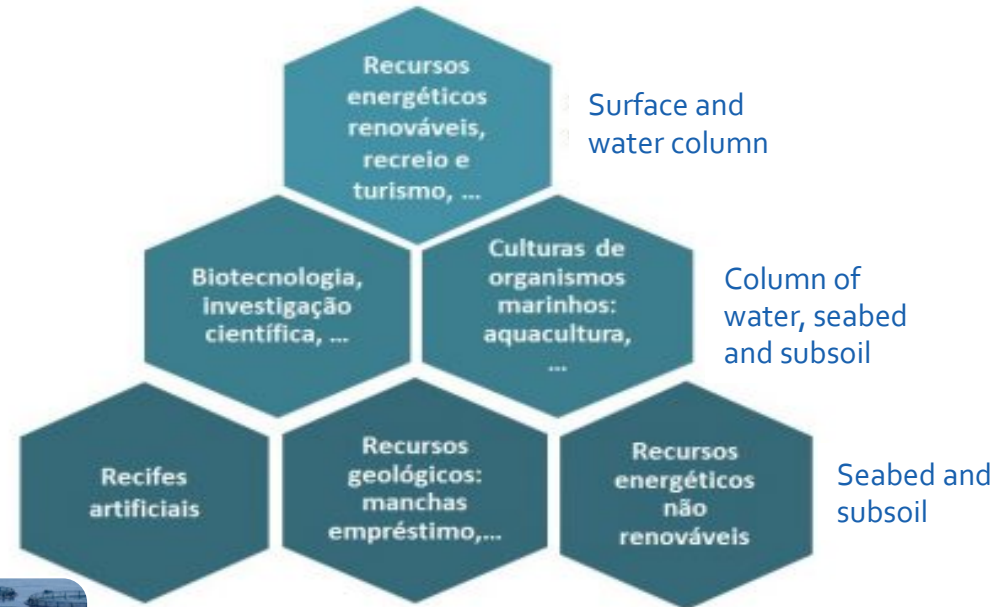
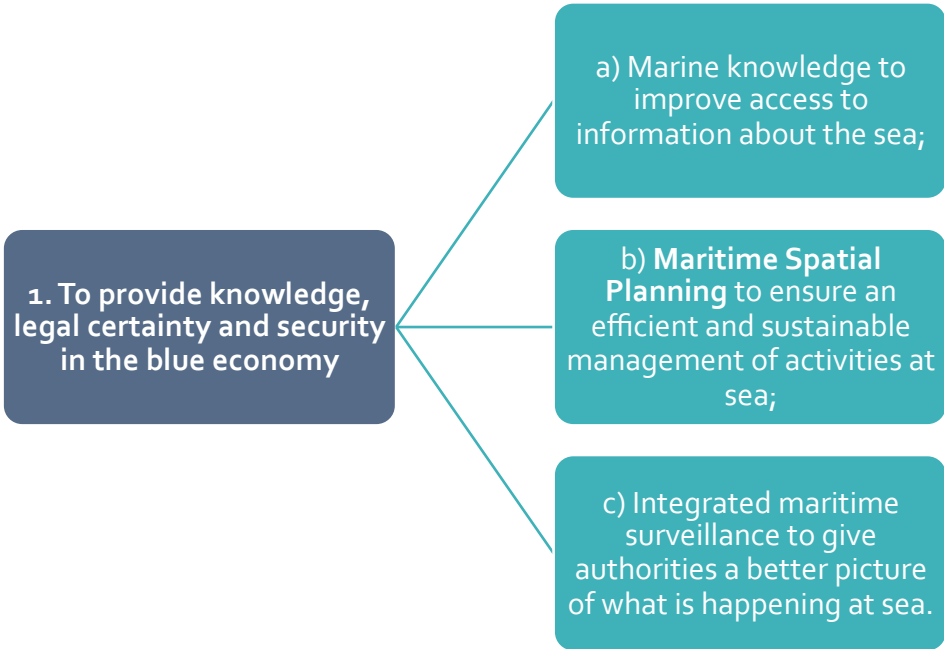
- ◆ The "Blue Growth" strategy aims to support long term sustainable growth in the marine and maritime sectors, recognizing the importance of the seas and oceans as engines of the European economy with great potential for innovation and growth.

Develop sectors that have a high potential for sustainable jobs and growth, such as:

- a) aquaculture
- b) coastal tourism
- c) marine biotechnology
- d) ocean energy
- e) seabed mining



Blue Growth and the uses of Maritime Space in the 21st Century



Fisheries



Transportation and Logistics



Biotechnology



Aquaculture



Tourism and Leisure



Defence and Security



Energy



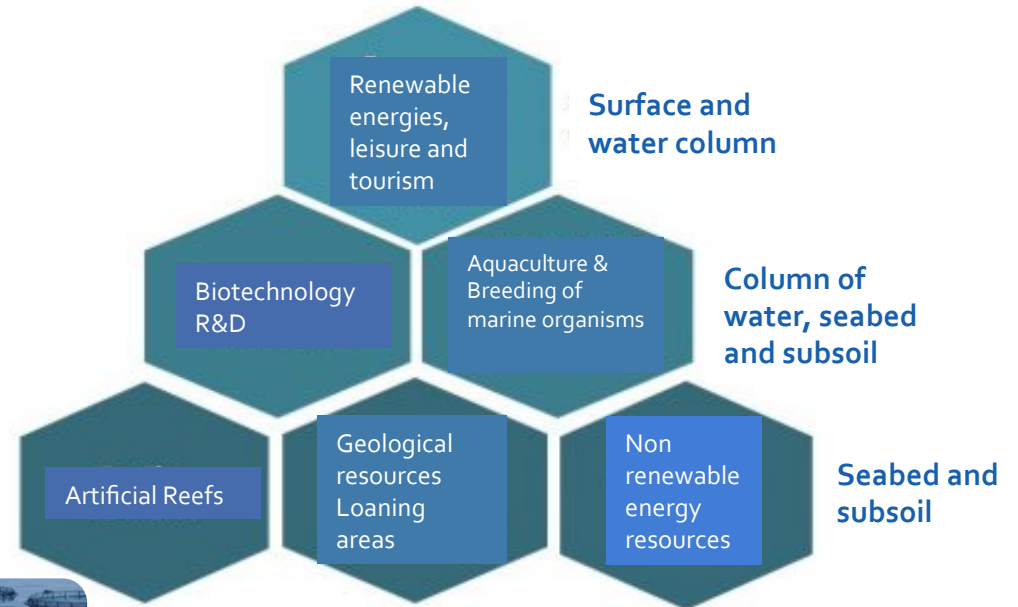
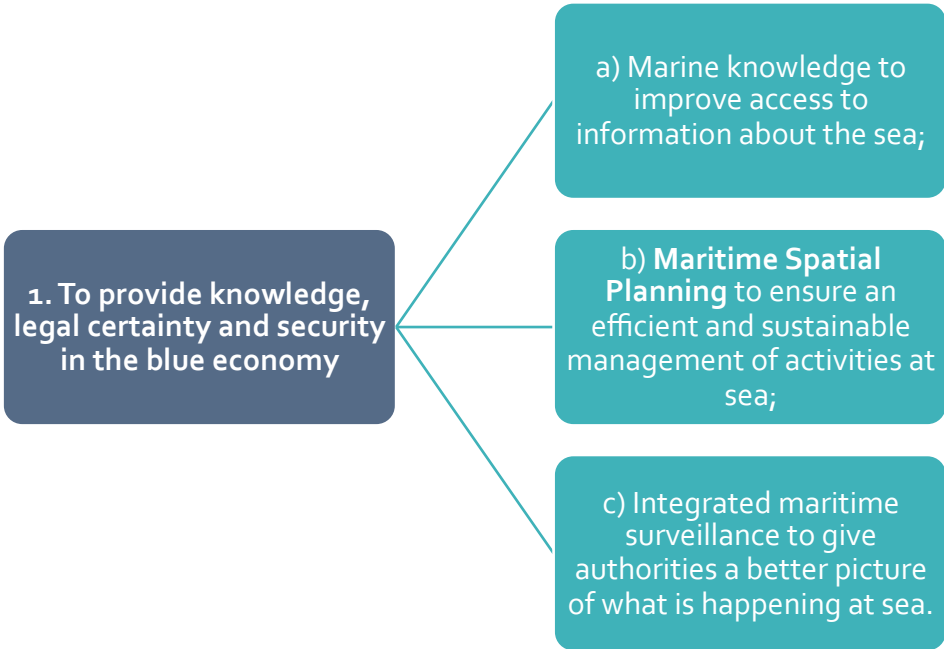
Scientific research

European offshore wind plants will be on the growth path in the next decade. The 16 gigawatts (GW) existing at the end of 2017 can evolve to almost 100 GW by 2030, according to Wind Europe's most optimistic prediction.

Source: Jornal Económico online 31.1.19



Blue Growth and the uses of Maritime Space in the 21st Century



Fisheries



Transportation and Logistics



Biotechnology



Aquaculture



Tourism and Leisure



Defence and Security



Energy



Scientific research

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THE END OF THE "OLD" FISHERIES, MARITIME TRANSPORT & OIL POLICIES AND THE BIRTH OF THE INTEGRATED MARITIME POLICY



European Union policies related to the governance of the seas



Green Paper:
Towards a future Maritime Policy for the Union: A European vision for the oceans and seas
(COM (2006) 275 final)

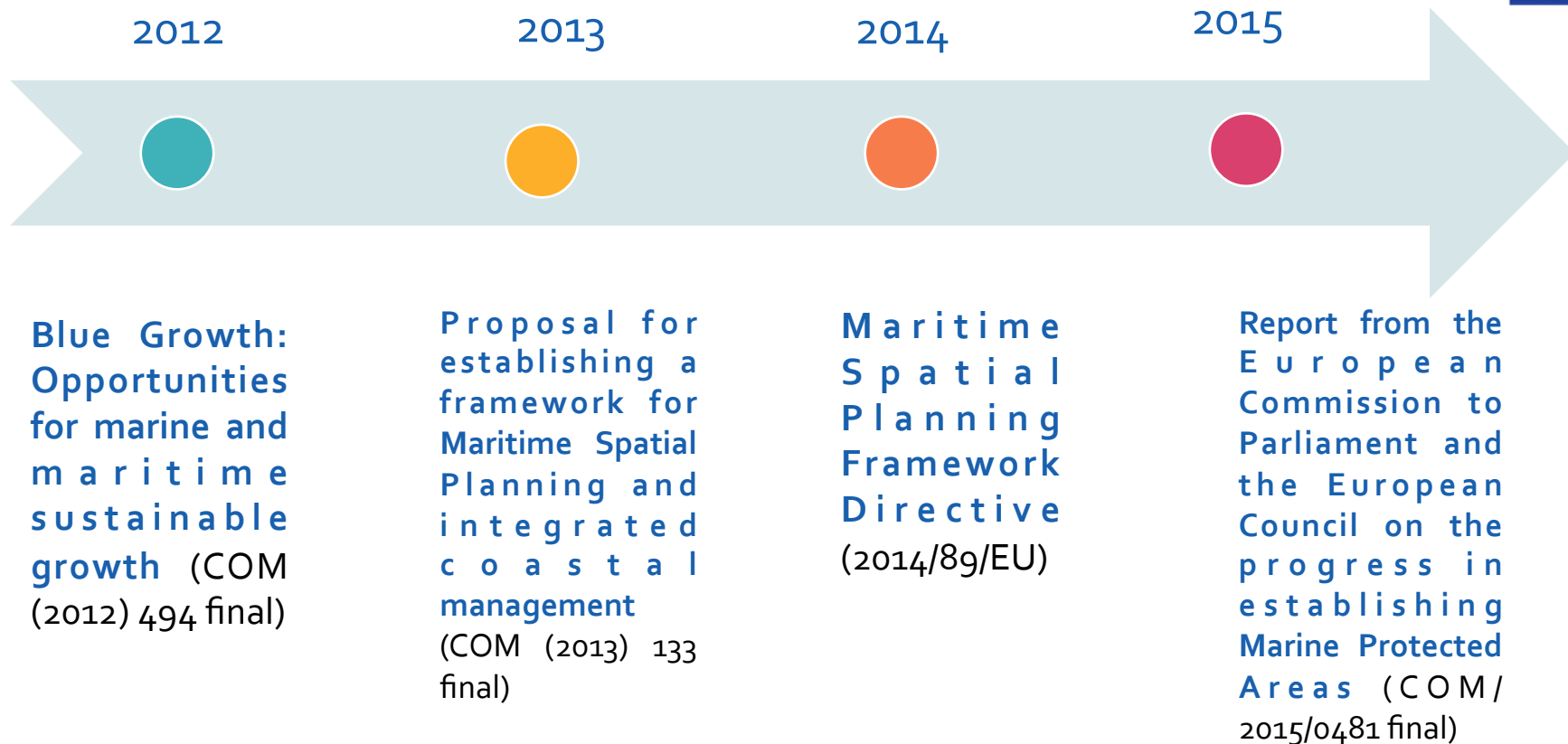
An Integrated Maritime Policy for the European Union (COM (2007) 575 final)

Roadmap for MSP in Europe: Achieving common principles in the EU (COM (2008) 791 final)
Marine Strategy Framework Directive (2008/56/CE)

MSP in the EU – Achievements and future development (COM (2010) 771 final)



European Union policies related to the governance of the seas



MARITIME SPATIAL PLANNING

EU Directive 89/2014



Article 3

b) Maritime spatial planning means a process by which the relevant Member State's authorities **analyse** and **organise** human activities in marine areas **to achieve ecological, economic and social objectives.**

Its ultimate objective is to draw up plans that identify the use of maritime space for different activities and avoid conflict of uses.

What should we Map?

Article 7

Specific minimum requirements for maritime spatial plans:

1. Maritime spatial plans shall include at least a marine water cartography that identifies the spatial and temporal distribution, effective and potential, of all relevant maritime activities, in order to achieve the stated objectives ...

2. When establishing maritime spatial plans, Member States shall take into account at least the following:

- a) Energy extraction and renewable energy production facilities;
- b) Oil and gas extraction sites and infrastructures;
- c) Shipping routes;
- d) The course of submarine cables and pipelines;
- e) Fishing zones;
- f) Aquaculture sites;
- g) Nature conservation sites.



The new EU network for the governance of the seas



From DGFisheries to DGMare (Maritime Affairs)

The Blue Book

The Blue Economy

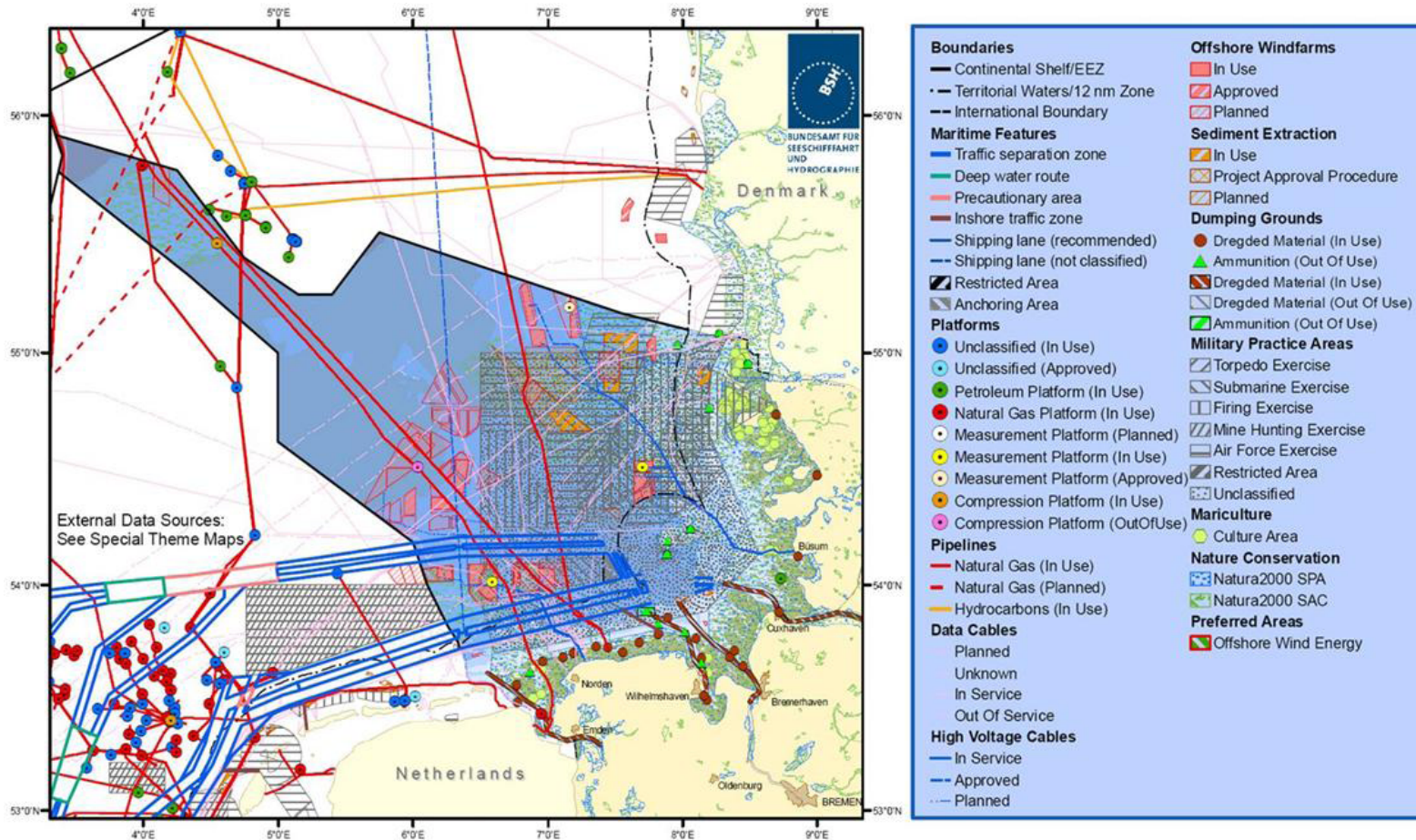
The Blue Growth

The Maritime Spatial Planning Directive

The Maritime Strategy Framework Directive



The new Map of Uses of the Sea



[Fonte: www.bsh.de, consultado a Outubro de 2008]



AND WHICH INSTRUMENTS OF POLITICS FOR THIS CONCEPTUAL RUPTURE IN THE "GOVERNANCE" OF THE SEAS?



Maritime Governance

What is it?

- **Governance:** *"is the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences". (UN/UNDP)*
- **Marine Governance:** *"is the way by which society has instituted objectives, priorities and systems of cooperation regarding the maritime space. Governance can be carried out at an international, regional, national and local level. Is the conduct of the policy, actions and affairs regarding the world's oceans. Within governance, it incorporates the influence of non-state actors (i.e. stakeholders, NGOs), therefore the state is not the only acting power in policy making". (UN)*

Paradigm shift: "Rule for" to "Rule with"



The New Instruments of Marine Policies

- ◆ The National Strategy for the Sea
- ◆ The National Policy for Maritime Spatial Planning
- ◆ The Law of Maritime Spatial Planning and Management
- ◆ The new Instruments of Territorial Management of Maritime Space
- ◆ The Sectorial Plans in Maritime Space (Energy, Mineral Exploration, Aquaculture, Nautical Tourism, Nature Conservation, etc.)
- ◆ The Licensing Regimes for Maritime Activities



The impact at the political & institutional levels

Government evolution

Ministry of the Sea

Or

Ministry of the Coordination of Maritime Affairs

Or

Ministry of the Economy of the Sea

Or

Deputy Minister of the 1st Minister (with the Coordination of the Sea)

Or

Ministry of Environment and the Sea

Or

Ministry of Planning and the Sea

Or

Interministerial Commission for the Sea

Or...

Institutional evolution

National Agency for the Sea

Or

Maritime Policy Directorate

Or

Institute for Management of Marine Resources

Or

Sea Management and Planning Agency

Or, various combinations

AND

Maritime Security / Surveillance Agencies

In general remain from "old order", autonomous organizations for Fisheries Management (institute, General Directorate, etc ., as well as for Port Administration)



Back to the “Research Question”

Why do we need MSP and what triggered MSP initiatives?

Science, Technology, Policy and Economics!

Again....

THANK YOU

