

Legal requirements for environmental integration in Marine Spatial Planning (MSP): case studies from the EU, Senegal, Cabo-Verde and Brazil



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Context and objectives

MSP is a process for ensuring the consistency of uses at sea in a context of diversification of maritime activities (Fig.1). This public process took shape in the European Union with the adoption of the Directive 2014/89/EU of 23 July 2014, establishing a framework for maritime spatial planning. MSP is spreading in all regions of the world (Ehler, 2017) with differentiated approaches and objectives (S. Jay, 2013). Considered as the "maritime counterpart" to land planning (De Cacqueray 2014), the elaboration of plans for the organization of activities at sea is however not without risk. "Ocean grabbing", is one of the major risks that the MSP could induce or increase (Bennett, 2015). Planning at sea takes place in a common space, dominated by the principle of freedom, unlike terrestrial planning which is based on the organization of ownership of the spaces. The MSP will therefore have to combine both environmental protection requirements and the rights of coastal States in maritime areas as provided by the UNCLOS of 1982. These requirements constitute the main substantive rules of the MSP. For the tropical Atlantic countries such as Senegal, Cabo Verde and Brazil, the implementation of MSP can be an opportunity to ensure a more rational management of marine resources and a relevant tool for an integrated protection of the marine biodiversity. However, these countries must remain vigilant with regard to the above risk. The creation of dedicated areas as a result of the planning process can create operating areas that evolve outside the global framework of the integrated planning. Thus, in the light of European experience, this research aims to consider that the legal prerequisites are necessary to the elaboration of a MSP more adapted to the interests of these countries in matters of the protection of the marine environment.



Fig1. Spatial and temporal scale of the evolution of maritime uses

Material and Method

- ❖ Legal texts applicable to the marine environment: UNCLOS, national sectoral laws applicable to marine uses (conservation, fisheries, transport, mining and gas), legal text concerning integrated and coastal management zone (Fig. 2)
- ❖ Identification of several marine uses
- ❖ Representation of the spatial influence of legal texts and uses: example with the coastal and marine area of the State of Pernambuco (Fig.3)
- ❖ Synthesis of potential scenario (Fig.4)

| Potential conflicts | Area | Activities/Plan concerned | Administration concerned | |
|------------------------------------|-----------------------------------|--|---|---|
| | | | Federal union | Federal states |
| Conflicts between human uses | Maritime area from 12 to 20 miles | Artisanal fishing and industrial fishing | • Ministry of environment (IBAMA) / Secretary of Agriculture and fishing (SAP-MAPA) • Navy | • Secretary of environment and sustainable development (SEMAS) / State environmental agency (CPRH) • Navy |
| Conflicts with environment | Costal zones (12 miles) | Cumulative impact of all activities | Ministry of environment (IBAMA) / Institute for conservation of Biodiversity (ICMBIO) | • Secretary of environment and sustainable development (SEMAS) / State environmental agency (CPRH) • Navy |
| Conflicts between management plans | Costal zones (0-12 miles) | Integrated Costal Management Plan (ICMP) | National policy for marine resources - National management plan (Ministry of environment IBAMA) | Secretary of environment and sustainable development (SEMAS) |
| | Costal zones (12 up to 200 miles) | Marine Spatial Management Plan (MSMP) | | National plan (Ministry of environment IBAMA) |

Fig.4 Scenario of potential conflicts

Results

| Form/level of regulation | EU | | | | Senegal | | | | Cabo-Verde | | | | Brazil | | | | | | | | | | | | |
|--------------------------|---------------|--------------|--------|-----------|---------|-----------|-----|----|---------------|--------------|--------|-----------|---------|-----------|-----|----|---------|--------------|--------|-----------|---------|-----------|-----|----|--|
| | sectoral laws | | | | TR | | | | sectoral laws | | | | TR | | | | | | | | | | | | |
| | fishing | conservation | energy | transport | tourism | pollution | SEA | PP | fishing | conservation | energy | transport | tourism | pollution | SEA | PP | fishing | conservation | energy | transport | tourism | pollution | SEA | PP | |
| General rules | | | | | | | | | | | | | | | | | | | | | | | | | |
| Specific Rules | | | | | | | | | | | | | | | | | | | | | | | | | |
| Regulatory texts | | | | | | | | | | | | | | | | | | | | | | | | | |

Legend: SEA: Strategic Environmental Assessment TR: Transversal Rules UE: European Union PP: Public Participation Existing text Text in the process of adoption Non existing text

Fig.2 Categorization of sectoral and cross-sectoral instruments

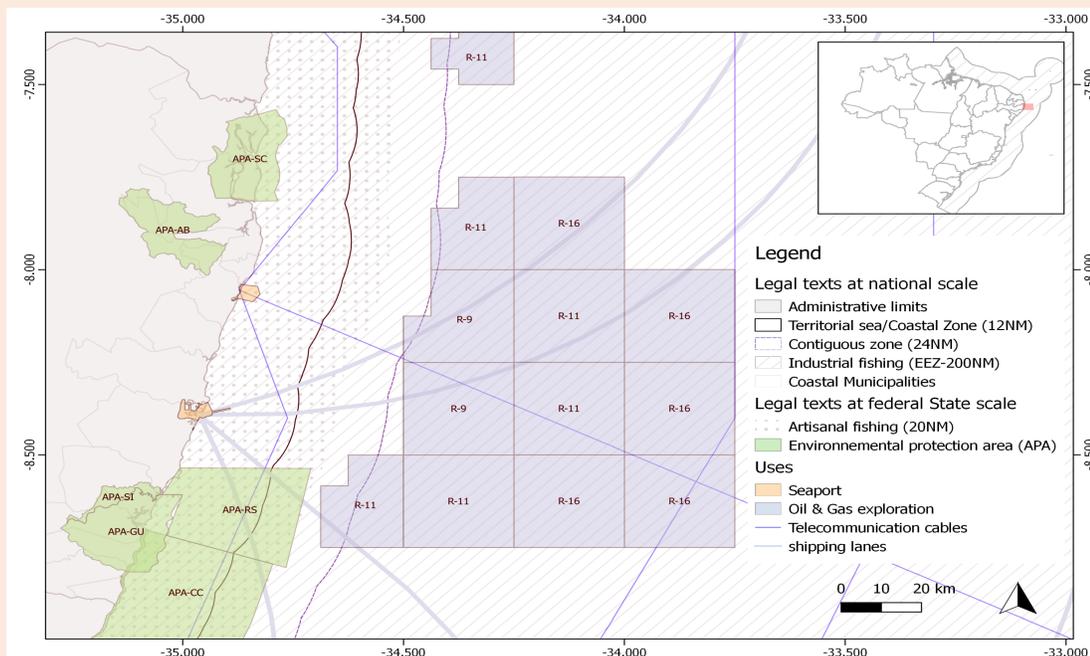


Fig.3 Map of legal texts and several uses

Conclusion

On the consistency of sectoral legal instruments with instruments for the delimitation of spatial competence

The 2015 Pernambuco Law on Artisanal Fishing defines a 20-mile fishing zone, yet the State of Pernambuco has jurisdiction over only 12 miles in accordance with the 1995 and 2010 Law

On conflicts between uses (artisanal and industrial fishing)

On conflicts with environment (cumulative impacts)

On procedural instruments for environmental protection

Lack of procedural environmental instruments (SEA, Public Participation for Plans and Programs)

Recommendations

Measures needed

Articulation between the 2015 law on artisanal fishing and the 2010 laws on the Management of the Coastal Zone of Pernambuco and the 1995 law on the distribution of competences in Brazilian waters

Measures needed

- ✓ To compensate for the reduction in fishing areas (example : small-scale fishing)
- ✓ To compensate for the imbalance in gear and catch methods in shared areas (artisanal and industrial fishing)
- ✓ To compensate for the ecological impact of the concentration of activities

Measures needed

- ✓ Take into account the cumulative impacts upstream
- ✓ Involving participation in the planning process
- ✓ Enable information, participation and access to justice in environmental matters