

Transcript of Video 2

Hello and welcome to our second video from the series about the Marine Spatial Planning legal drafting Guide, entitled *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters*. This video focuses on the 1st component of MSP legislation, the Preliminary component.

The “preliminary” component of marine spatial planning legislation covers a number of potential subcomponents. These include the short title, definitions, scope of the law, objectives, guiding or interpretive principles, and ocean policy. Each of these subcomponents presents considerations specific to the ocean context.

A “short title” allows for a more compact way to refer to the legislation.

When creating a short title, the legal drafter should consider tailoring it to the local context. For example, the Cook Islands’ marine spatial planning legislation is titled “Marae Moana Act 2017,” with “marae moana” translated as “sacred ocean.”

The legislative definitions section (or “interpretation” section, as it is called in many jurisdictions) presents several considerations for the legal drafter. For example, the legal drafter may need to define certain legal and scientific terms related to ocean jurisdiction and the use of marine spaces, unless these terms have already been defined elsewhere in the country’s law. Such terms, many of which are already defined by the United Nations Convention on the Law of the Sea (UNCLOS), may include: territorial sea; exclusive economic zone (EEZ); continental shelf; internal waters; waters of the [country].

You may find that your country has already defined some of these terms, but drafting of marine spatial planning legislation presents an opportunity to update or correct these definitions and to ensure consistent terminology.

It is good practice to adapt key ocean jurisdiction terms from the definitions contained in UNCLOS. For example, territorial sea, exclusive economic zone, continental shelf, archipelagic baselines, and archipelagic waters are all defined in the UNCLOS.

Here, we have an example of definition of the exclusive economic zone take from Fiji’s Marine Spaces Act.

Key technical terms specific to marine spatial planning will require definition. These may include, for example, “marine spatial plan” and “zone,” as well as definitions for specific types of zones (such as multi-use zone, shipping lane zone, recreational zone, and so on). These definitions also provide a means of describing the spatial dimensions in which marine spatial planning may occur under the law.

Here we have an example of how marine spatial plan is defined under the Marae Moana Act.

A section on the law’s scope, or application, characterizes its jurisdictional reach. The law could extend jurisdiction to the whole country, including to the limits of the country’s EEZ. For example, here, the law applies to the country’s internal waters, territorial sea, EEZ, and continental shelf. It’s important to note that the scope of the law is different from the definition of where marine spatial planning can take place. For example, the legal drafter could allow for marine spatial planning under the law to take place within all – or only a portion – of the geographical area to which the law applies.

The objectives section (sometimes called “objects” or “purpose”) expresses the legislature’s goals in enacting marine spatial planning legislation. This provides an opportunity to emphasize beneficial aspects of planning and to provide a lens through which the legislation should be understood by the public, implemented by the government, and interpreted by courts. The usual approach is to call out numerous objectives, including environmental protection and conservation, economic development, and resolution of conflicting ocean uses. And of course, in nations where traditional rights and management are part of the social and legal landscape, these considerations should also be reflected in the law’s objectives. Here, we have an example.

Marine spatial planning legislation may include a set of guiding or interpretive principles. Note that this is also a common feature of environmental framework legislation, and if relevant guiding principles already exist in the framework law, the legal drafter should consider incorporating them by reference into the new MSP legislation instead of restating them. Relevant principles may include, for example, precautionary principle, transparency, and also others like polluter pays, and use of best available science. These principles should guide the government during its development and implementation of a marine spatial plan, and, similar to legislative objectives, these principles provide guidance for courts called upon to interpret the law. Also it’s good to include definitions of the principles, not just list them.

Some countries considering marine spatial planning either already have a written ocean policy or are considering adopting one. An ocean policy can be an important complement to legislation. It can spell out the thinking of the government with respect to ocean management, often anticipating emerging and future uses. A policy is far easier to modify and update than legislation.

It can be useful to require a national ocean policy, and allow for its regular revision, through legislative text. Where new legislation will mandate such a policy, additional drafting options are to require marine spatial planning activities under the law to conform to the policy, as you can see in this example, and also to state that one of the law’s objectives is to implement the policy.

Thank you for your time. In the next video, we will discuss Institutional & Administrative provisions.