

Transcript of Video 3

Hello and welcome to the 3rd video in our 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 2nd component of MSP legislation, Institutional & Administrative provisions.

This component of marine spatial planning legislation addresses the governmental institutions and other entities responsible for administering the law. Key subcomponents include: identifying the ministry or other governmental entity responsible for coordinating planning activities under the law, and any new powers or responsibilities granted to the ministry; providing for a marine advisory body; and clarifying the role of traditional institutions in marine spatial planning.

Marine spatial planning is rooted in ocean governance, so it implicates multiple government competencies and portfolios, including conservation, fishing, shipping, tourism, recreation, and scientific research.

Keeping in mind the cross-cutting nature of marine spatial planning, the law should assign the lead coordinating role to a single ministry or department. The most likely assignment is to the ministry responsible for environment and natural resources; fisheries (which in some nations falls under agriculture); or planning. Such selection is often done as a matter of policy.

Still, key considerations will include: the existing legal framework, existing competencies of the selected ministry or department and whether those should be expanded, names of other ministries and stakeholders that should be involved in the marine spatial planning work due to its cross-cutting nature, capacity of the selected ministry or department to perform various duties, and whether some duties – including scientific expertise – should be assigned to an advisory body. Sometimes, instead of selecting one ministry responsible for marine spatial planning, a state creates an intergovernmental council.

Note that Successful marine spatial planning depends for its success on stakeholder participation and intragovernmental coordination. The legal drafter should ensure that new legislation reflects these realities by not assigning responsibility for marine spatial planning to an office within government that lacks the authority, credibility, or staffing resources for implementation. In short, the drafter of the MSP legislation should be cognizant of what agencies have what capacity, and assign duties in the legislation appropriately.

Here we have an example from Denmark.

Marine spatial planning legislation should specify the powers and duties of the lead ministry or department. These might include overseeing the development of a marine spatial plan; ensuring consultations with appropriate stakeholders and timely adoption of the plan; periodic plan review; and amendment and revocation of the plan.

Here, we have an example of the duties of the Marae Moana Council.

Marine spatial planning legislation can benefit from an advisory body that provides guidance to government decision-makers. This body, often a council or committee, makes recommendations related to various aspects of marine spatial planning. It typically contains members representative of government, industry, conservation interests, and at least one member who brings relevant scientific expertise.

New legislation should describe the body's role, membership, and operation. The legal drafter should consider whom the body will advise and how often, as well as the weight of its advice. For example, can the ministry that the body advises ignore that advice? The language should explain the points in the process (such as at the conceptualization, development, and implementation phases of marine spatial planning) when the marine advisory body will be consulted.

In addition to providing advice, an advisory body can be assigned other duties, including drafting the marine spatial plan and policy documents, monitoring implementation of the plan, and preparing reports.

Details about the advisory body can also include its size, the identity of its members, membership term, compensation, and appointment requirements. Legislation may also specify how often the body must convene, how recommendations are made and reviewed, what information about its work is made public, and what happens if the body fails to meet. A failure of the body to convene or perform its role should not effectively halt the marine spatial planning process.

Also useful to keep in mind that prior to creating a new advisory body by legislation, the legal drafter should consider whether an existing, viable consultative body can be appropriately assigned additional duties. The key is to ensure that the body is multi-sectoral in its membership.

Here we have an example from the US, in which we see listed some of the details we have just discussed.

And for countries in which traditional institutions play governance roles, the legal drafter must consider how traditional considerations fit within the marine spatial planning framework. This is discussed in full in Part II Section 8 of the Guide and in the video 9 of our series.

Thank you for your time. In the next video, we will address the Marine Spatial Planning component.