

Transcript of Video 4

Hello and welcome to our 4th 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 3rd component of MSP legislation, Marine Spatial Planning.

Provisions governing the contents of a marine spatial plan and the process for adopting or changing a marine spatial plan are the heart of MSP legislation. You can see a number of subcomponents listed [here](#).

This first subcomponent sets forth the required elements of a properly adopted marine spatial plan. At a minimum, a plan should include a demarcated plan area (defined by geographical coordinates and illustrated by a map) and identify any zones within the plan area, specifying the uses that are allowed or prohibited within each zone.

The legal drafter may also decide to include optional plan elements that, while not binding, will aid the government and ocean users with respect to both plan implementation and compliance. A further possibility is to allow the government to make any such optional elements binding by way of subsequent regulation.

Here, we have an example of what the language about plan's required elements might look like.

This legislative subcomponent can also be used to set forth any criteria that the government must satisfy in developing a marine spatial plan. These plan criteria often reinforce the stated legislative objectives and any guiding principles applicable to the law as a whole (as we covered in the Preliminary component - Part II Section 1 of the Guide and our second video). As an example, while the guiding principles may have described the importance of conflict resolution in more general terms, the plan criteria can specify what types of uses, such as those promoting sustainability and synergy with other uses, should be prioritized in cases of conflict.

The criteria are important, because certain activities that occur in the ocean space (such as, e.g., seabed mining and offshore energy development) can have a significant effect on ocean resources and ability to safely conduct other types of activities. It is thus useful for the plan's criteria to include siting priorities, climate change, and consideration of environmental impacts from potentially harmful projects.

Here is an example of language addressing plan's criteria.

As you can see, in addition to the siting priorities and climate change, we've just mentioned, we also have in this example "value of biodiversity and ecosystem health", protection of special sensitive marine life and habitat, preservation of public access, "encouragement of public participation in decision-making" and many others.

Most marine spatial planning legislation relies on zoning to implement the marine spatial plan. Each zone included in the plan prioritizes a particular ocean use or set of uses, often to the exclusion of other uses. Common zones include: conservation, fisheries, shipping, recreational, tourism, and mixed use. To the extent other existing sectoral legislation already governs the use of certain marine spaces—such as protected areas, fishing zones, shipping lanes—new marine spatial planning legislation should complement these laws, building on existing zone typology.

Each zone type should have a name and objective, and it should be associated with appropriate uses or prohibitions. Zone types can be established through legislative definitions. You can also allow for the use of regulations to add additional zone types in the future.

Also important are zone placement criteria. Activities conducted in one zone can have negative effects on the ocean resources in other zones. The placement of the zones is informed by the participatory planning process. Some key placement criteria could be established by the legislation or, in greater detail through regulation. But a better approach may be to rely instead on a set of nonprescriptive guidelines for the placement of zones.

Please keep in mind that violating the requirements of a zone used in a marine spatial plan can bring legal consequences for the violator. So it's important that zone types are established by enforceable legislation or regulation. A zone's requirements should be reasonable and clear.

Here is an example of language addressing zone types from the Marae Moana Act, which mentions a general use zone, a restricted commercial fishing zone, a seabed minerals activity buffer zone, an ocean habitat preservation zone and others.

New marine spatial planning legislation should establish a clear procedure for plan adoption, modification, and revocation. These are the procedural requirements that the lead ministry or other government entity must follow to ensure that a new plan and changes to an existing plan are lawful.

You should avoid establishing overly cumbersome process requirements, but should create guideposts to ensure a participatory, transparent, and science-informed planning process. If greater detail is required about the process, a country can also develop regulations. Also worth noting here that existing legislation may already define a stakeholder engagement process for the adoption of any government plan.

Legislation should address modification of a marine spatial plan, with safeguards to ensure that hasty alterations cannot easily be undertaken to weaken the plan. The legal drafter should consider spelling out acceptable reasons for plan modification. For example, changes in how the ocean is used, natural disasters, and advances in a country's scientific understanding of its ocean areas could result in the need to change a plan. And the process for plan modification could track the process for adopting a plan initially, or the modification process could be slightly abbreviated.

Lastly, new legislation should provide for revocation of a marine spatial plan. As with the provisions on plan modification, provisions governing plan revocation should both establish the grounds and procedure for revocation.

Here we have an example of language addressing adoption of a plan. Let's take a look.

Here is an example of language addressing modification of a plan.

Here is an example of language addressing revocation of a plan.

The legal drafter should consider whether a marine spatial plan should cover the entire geographical ocean area subject to the law. A simple approach is to have the legislation define the precise area for which a marine spatial plan should be adopted. It's also possible to have an incremental approach,

where the government, for example, adopts a plan for the nearshore area, and then, at a later date, plans out to the full extent of the EEZ.

There is also a question of whether a marine spatial plan must address all ocean uses within the plan area. By omitting from the plan any ocean uses that are occurring or likely to occur in the near future, the government loses the benefit of identifying and resolving potential conflicts among uses.

Sometimes, however, a country might prefer to omit an ocean use from the marine spatial plan and amend the plan later (for example, maybe a use is very minimal or a country is exploring the possibility of allowing new uses, but is in the early stages of deciding how to regulate them). The marine spatial planning legislation could require that any omitted uses are mentioned in the plan, as well as the reasons for the omission.

The legislation should provide that a properly adopted marine spatial plan remains in force until amended or revoked pursuant to law. A plan of indefinite duration provides predictability for implementation, compliance, and enforcement, while a plan that sunsets after a fixed number of years leaves open the undesirable possibility of having no plan in place.

A requirement for periodic review of a marine spatial plan (five years being typical) can help ensure that a plan does not become stale.

You can also include objective criteria that trigger a review. This might include, for example, significant new human uses of the ocean, the availability of significant new scientific information, including information revealed through monitoring activities, or a change in national legislation that concerns marine spatial planning activities.

In order to be most effective, a marine spatial plan must legally bind all persons. This is one of the principal reasons to use legislation or regulations, rather than a voluntary approach, to administer and implement marine spatial planning. This can be done with a simple provision.

Marine spatial planning legislation touches on multiple sectors, which might be governed by other laws, such as laws governing fisheries, planning, shipping, maritime matters, marine protected areas, and environmental protection. The question arises whether the MSP law “trumps” those other laws in the case of conflict, and how zones established under those other laws, or permissions issued under other laws, affect marine spatial planning.

With regard to which law supersedes, the legal drafter should try to avoid conflicts with existing legislation (which is why a legal assessment is important before drafting MSP law). When needed, the legal drafter can use targeted repealers or make narrow amendments to existing laws. Beyond this, the more recent legislation usually supersedes earlier legislation in the event of conflict, but a drafter can also include language providing that in case of a conflict between MSP legislation and another law, the law containing the more stringent requirement prevails.

With regard to how to integrate other laws with MSP legislation, it’s a good practice to require conformity with a properly adopted marine spatial plan.

Here, we have an example from South Africa.

Thank you for your time. In the next video, we will discuss Public Participation & Access to Information.