

Transcript of Video 7

Hello and welcome to our 7th 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 6th component of MSP legislation, Enforcement & Compliance.

Enforcement mechanisms facilitate compliance with the law and provide the government with ways to respond to violations. A country's legal framework likely already provides for a range of offenses and penalties, as well as enforcement and evidentiary provisions, pertaining to use of the ocean. Such provisions are usually contained in fisheries acts, environmental pollution and protected areas laws, and so on. To the extent these existing provisions remain acceptable, they do not need to be repeated in marine spatial planning legislation. Instead, the legal drafter should: ensure that at least one set of offense provisions applies to violations of the new MSP law; and consider whether the enforcement provisions should be updated. These updates could be made through MSP legislation or elsewhere.

Here's a list of the types of provisions we will cover today.

It is common for criminal monetary penalties to begin with a fine that increases with repeated offenses or with severity of harm caused by the violator. Imprisonment can also be added as an option. Regarding the amount of fines, every country is different, and penalties must be sufficient to punish and to deter, but also consistent with established local norms and traditions.

Here, we have an example of what the language might look like.

In some jurisdictions, the government is authorized to seek forfeiture of and take title to seized property used in committing a violation of the law. This property can include vessels, fishing gear, and catch. Although forfeiture provisions can be a powerful tool, the reality in many countries is that seizing and storing until adjudication an IUU fishing vessel and gear can easily cost the government far more than the value of such vessels.

Here we have an example of a forfeiture provision from Tuvalu's Marine Resources Act. As you can see, it applies to vessels, fishing gear, fish, and other items connected to the prohibited act.

Where a violation of the law results in an injury to or destruction of marine resources, the law can provide that the offender, upon conviction, must pay for the damage.

Here is an example of provision taken from Barbuda's Regulations. You can see here the person causing the damage would pay the response costs and damages, and interest, and a maritime lien can be put on the vessel causing damage.

Detecting and successfully prosecuting offenses that take place at sea is difficult for many reasons, including challenges the government faces in obtaining, preserving, and presenting admissible evidence in court. Violators can easily spot the Coast Guard or other law enforcement vessels from afar and destroy evidence, stow offending gear, alter logs, and so on. To help address this problem, modern drafting practice is to include in legislation provisions that establish *rebuttable presumptions* – which, unless the defendant presents evidence to refute them, allow a court to presume certain facts to be true.

Here's an example of presumptions provision taken from Samoa's Fisheries Management Act. As you can see, these particular presumptions relate to the fish found on board of a vessel, place of an event, and logbook or other official record.

It's useful to note here that Evidence relevant to violations at sea can come from a variety of sources, including: eyewitness testimony; photographs; video recordings; satellite data, vessel monitoring system data, or other electronic information revealing a vessel's location and course; a vessel's logbook; catch and equipment found aboard a vessel; or a combination of sources. A country's laws (or evidence code) should provide for the admissibility of any type of reliable information as evidence to prove these violations.

Citizen suits allow for legal action by NGOs, community groups, or individual citizens against any person who violates the marine spatial planning law. Citizen suits serve as an oversight mechanism that allows citizens to act when the government has failed to do so, or even compel government officials to comply with the law. Citizen suits typically do not provide money damages, but rather injunctive relief in the form of a court order that the defendant take, or cease taking, some action. Citizen suit provisions often require the plaintiff to give advance notice of suit to the government, which may then choose to take over the enforcement action against a third party.

Here is a sample provision about citizen suits. As mentioned, there is a notification requirement, after which a civil action can be initiated.

It is the practice in many jurisdictions to designate who, pursuant to the legislation, has enforcement authority or may be granted such authority. Additional provisions may be used, where necessary, to describe the enforcement powers of authorized officers, including, for example, the powers to stop and detain vessels, board vessels, investigate, search, seize property, and arrest.

In this example from Tuvalu, we have one provision about who might be designated as authorized officers and one provision about powers. You can also find more examples in the Guide.

Thank you for your time. In the next video, we will discuss Miscellaneous provisions.