

Transcript of Video 8

Hello and welcome to our 8th 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 7th component of MSP legislation, Miscellaneous provisions.

The miscellaneous component of marine spatial planning legislation covers various subcomponents. Arguably the most important of these is the provision allowing for the promulgation of regulations.

Marine spatial planning legislation should contain a provision establishing the authority of the government to make regulations under the law, specifying which governmental body has such authority and with regard to which aspects of the law. It is good practice to reserve both a general regulatory authority, as well as the authority to make regulations for specifically identified purposes.

Here we have an example of a provision from South Africa. As you can see, it states that regulations can be made about submission of plans, provision of data relevant for the development of a plan, and the list goes on, and at the end, we have a catch all, mentioning any other matters required for the effective implementation of marine spatial planning.

The data and monitoring provisions of MSP legislation can be used to specify how monitoring of the plan area is to be conducted and by whom, which types of information are collected and how often, which authority manages the data, where and how it is stored and analyzed, and how it is shared with others. Any such provisions should complement or build on existing monitoring provisions contained in a country's fisheries act or environmental framework law. Note that monitoring can refer to monitoring of scientific indicators in the plan area, or it could refer to monitoring the implementation and effectiveness of the plan.

Here we have an example from Scotland, which mentions effectiveness of the policies and progress made to achieve objectives.

As previously mentioned, due to the variety of uses that can exist in the area covered by the marine spatial plan, conflicts can and do arise. Objectives of the law, guiding principles, and criteria for developing a marine spatial plan can all seek to prevent and resolve such conflicts. Some countries have also started creating additional mechanisms by, for example, designating a committee that considers conflicts between uses. This could be the same body that approves marine spatial plans, as seen in this example from South Africa.

The geographically expansive and legally cross-cutting nature of marine spatial planning means that the legal drafter will need to ensure that the new legislation is consistent with the country's regional and international commitments under treaties and other bilateral and multilateral arrangements.

This can be achieved by a simple provision, as shown in this example.

To address the fact that previously issued permits or other permissions may already be in effect, or pending approval, in the plan area prior to the commencement of a marine spatial plan, and that a new plan or planning process could alter them, it can be useful to include a grandfathering provision. This essentially allows for a grace period for certain lawful pre-existing activities to come into compliance.

We have provided a sample provision that illustrates how this can be done.

As is always the case with legal drafting, the key to using repealers and savings clauses in marine spatial planning legislation is to make sure that they are clear, and will alter the existing legal framework only insofar as is necessary and intended by the drafter. This consideration is especially important in the marine spatial planning context, as the new law will likely touch on sectoral laws governing subjects such as fisheries management, protected areas and environmental protection, maritime and shipping, and offshore industry. The legal drafter's initial legal assessment should have identified potential areas of conflict and overlap, and care must be taken to resolve these.

In appropriate jurisdictions, marine spatial planning legislation should follow the convention of affirmatively expressing an intent to bind the Crown (or appropriate sovereign).

Lastly, there are schedules.

Schedules form part of the legislation but are presented separately from the main body of the law. Routine uses for schedules include presenting standardized forms, identifying amendments that follow as a consequence of the act, and providing for current or future fine amounts. In the marine spatial planning context, the legal drafter should consider whether any other uses are necessary. For example, a map of the country's maritime zones could prove helpful. Or, in a situation where a marine spatial planning process has taken place in parallel with development of legislation and the new legislation will bring that initial plan online at enactment, that plan could be appended as a schedule.

Thank you for your time. In the next video, we will discuss Traditional Rights & Management.