

MARINE PLANNING IN PORTUGAL (1)

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I couldn't start my presentation without expressing my gratitude to Professor Gerd Winter for the opportunity to participate in this workshop. For me it is a great honour to be here with you.

In Portugal there is currently no strategic planning system in force for the maritime area as a whole. Although, there are a number of political and legal instruments, based on global or sectoral approaches, with an integrated aim, involving marine spatial planning (3). Actually, the need for a strategic planning system for the Portuguese oceanic area, including the coastal zone, is acknowledged by the Government and is highly relevant for a maritime State like Portugal.

We underline the fact that the maritime area under Portuguese jurisdiction is around eighteen times the size of Portugal and it is the largest in the European Union (more than 1 700 000 Km²). This calculation only considers the territorial sea (with 12 NM) and the exclusive economic zone (with 200 NM). Nevertheless, we expect the official enlarge-

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(3) Although there is a lack of consensus on what elements should be included in a marine spatial plan, in a simple definition marine spatial planning can be seen as “*a strategic plan for regulating, managing and protecting the marine environment that addresses the multiple, cumulative and potentially conflicting uses of the sea*”, Robert CANNING (Defra), in “*Spatial Planning in the Coastal and Marine Environment: next steps to action*”, a CoastNET Conference, SOAS, University of London, 1 October 2003, p. 9. See also «*Marine Spatial Planning*», UK — Wales, a background document to the “*International Workshop on Marine Spatial Planning*”, UNESCO, Paris, 8-10 November 2006, p. 2.

ment of the Portuguese maritime area after the conclusion of the process related to the establishment of the outer limits of the continental shelf beyond 200 NM.

1 — MARITIME NATIONAL STRATEGIES BASED ON A GLOBAL INTEGRATED APPROACH

Considering the political level, there are two instruments in Portugal which address the Portuguese maritime area in a holistic manner ⁽⁴⁾, both based on the marine ecosystem approach ⁽⁵⁾ ⁽⁶⁾. The first one is the *Report of the Strategic Commission for the Oceans*, published in 2004 ⁽⁷⁾. This Commission was created by the Portuguese government taking into

⁽⁴⁾ In the sense of integration of ocean and coastal dimensions.

⁽⁵⁾ According to the definition suggested by the Helsinki and OSPAR Commissions, the ecosystem approach is “*the comprehensive integrated management of human activities based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity*”. The application of the precautionary principle is equally a central part of the ecosystem approach. *Vide* First Joint Ministerial Meeting of the Helsinki and OSPAR Commissions, Bremen, 25-26 June 2003, Statement on the Ecosystem Approach to the Management of Human Activities, *Towards an Ecosystem Approach to the Management of Human Activities*. See also the Decision V/6 (COP 5-2000) and Decision VII/11 (COP 7-2004), Conference of the Parties to the Convention on Biological Diversity. The Convention on the Conservation of Antarctic Marine Living Resources, of May 20, 1980 (came into force in 1982), was the first binding international source requiring the adoption of an ecosystem approach.

⁽⁶⁾ Citing Fanny DOUVÈRE and Charles N. EHLER: “*Many different «ecosystem approaches» exist. The ecosystem approach developed in the context of the Convention on Biological Diversity, the ecosystem approach to fisheries and integrated marine and coastal area management [...] represent three useful tools for making progress towards a more integrated and holistic management of ocean spaces and resources. Both ecosystem management and integrated coastal and ocean management adopt a holistic, integrated approach covering both the environmental and socio-economic dimensions, and are basically similar. However, the scale and level of management intervention might vary with respect to geographical scale*”, in “*The International Perspective: Lessons from Recent European Experience with Marine Spatial Planning*”, Paper presented at the “*Symposium on Management for Spatial and Temporal Complexity in Ocean Ecosystems in the 21st Century*”, at the 20th Annual Meeting of the Society for Conservation Biology, San Jose, California, 24-28 June 2006, p. 1-2.

⁽⁷⁾ *O Oceano, Um Desígnio Nacional para o Século XXI*, of March 15, 2004.

account the Portuguese history, tradition and geographic reality. Its main objective was to develop a national strategy for the ocean namely based on the sustainable use of the ocean resources. The final Report is still the most detailed, advanced and comprehensive document on the subject in Portugal, presenting the following main features:

- foresight of an integrated ocean and coastal management, based in the ecosystem approach and its main principles (such as the precautionary principle and adaptive management, the participation principle, principle of cooperation, environmental impact assessment ⁽⁸⁾);
- identification of the main uses and use conflicts in the marine area. The main uses are related to the following activities: fisheries, aquaculture, shipping, ports and harbours, mineral and energetic resources exploitation, biotechnology, tourism and recreation;
- protection of marine biodiversity, especially through the creation of marine protected areas in the offshore and coastal zones;
- scientific based decisions and promotion of scientific research at a multidisciplinary level;
- creation of a marine data collection, promotion of ocean knowledge and enforcement of marine monitoring capacity;
- foresight of a new model of national ocean governance, which encompasses the creation of a Council of Ministers specialized in ocean affairs and a National Entity for the Ocean (key element of the ocean governance model, with technical and scientific competence, but without political decision power).

Most of the proposals contained in the Report were considered in the official *National Ocean Strategy* recently approved by the Portuguese government on November 2006 ⁽⁹⁾. This Strategy establishes principles, objectives and three strategic pillars, implemented through several actions and measures. In this document we highlighted the following main features:

First, the cross coordination and articulation between the National

⁽⁸⁾ *Vide* Decision V/6 (COP 5-2000) and Decision VII/11 (COP 7-2004), Conference of the Parties to the Convention on Biological Diversity.

⁽⁹⁾ Council of Ministers Resolution n.º 163/2006, of November 16 (“*the National Ocean Day*”), published on December 12, 2006.

Ocean Strategy and other strategies, policies or national programs, and the international commitments. For instance, the Integrated National Coastal Zone Management Strategy, the National Spatial Planning Policy, the coastline management plans, and other strategies and plans concerning tourism, energy, fisheries, sport, port and harbours.

Second, one of the strategic pillars is, precisely, the spatial planning and management, anchored in the following principles: sustainable development, precaution and the integrated management of the ocean and coastal area, based on the marine ecosystem approach. To materialize the spatial planning and management one broad action is formulated regarding, for instance:

- identification and mapping of the sea-uses;
- coordination or simplification of the management process, the licensing process, and the monitoring and enforcement systems;
- protection, conservation and restoration of biodiversity and coastal and oceanic ecosystems ⁽¹⁰⁾, and;
- minimization, by anticipation, of potential sea-uses conflicts. Some conflicts are expected, arising from the following human activities: shipping, commercial and recreational fishing, dredging (gravel and sand extraction), prospecting and exploitation of mineral resources (polymetallic sulphides), protection of nature and biodiversity, nautical sports, ocean and river cruises, underwater archaeology, aquaculture, renewable energies, submarine cables, pipelines, ports and harbours, scientific and technological research, ship-building, military activities, biotechnology and coastal protection.

Third, the Strategy foresees the creation of an Interministerial Commission for Maritime Affairs. This entity was created last February and coordinates the implementation of the National Strategy for the Sea between

⁽¹⁰⁾ Marine spatial planning is a key tool in implementing the ecosystem approach and, consequently, could also be a key tool in delivering protection of the marine environment. Marine spatial planning “ensures «room» for biodiversity and nature conservation” and “provides context for establishing network of protected areas” (Vide Fanny DOUVÈRE and Charles N. EHLER, «Ecosystem-Based Sea Use Management: from theory to practice through Marine Spatial Planning», powerpoint presented at the “*International Workshop on Marine Spatial Planning*”, UNESCO, Paris, 8-10 November 2006). Under the sustainable development ideal, protection of the marine biodiversity no longer occurs in isolation to human activities.

2006 and 2016. After this time period the strategy will be globally assessed and revised.

2 – SECTORAL LEGAL AND STRATEGIC INSTRUMENTS WHICH, DIRECTLY OR INDIRECTLY, ADDRESS THE COASTAL ZONE AND THE SEA PLANNING

Besides these two examples based on a holistic approach, in Portugal we find several sectoral ⁽¹¹⁾ legal and strategic instruments which, directly or indirectly, address marine planning, namely coastline management plans, marine protected area management plans and the Law which implements the Water Framework Directive ⁽¹²⁾. At present the basis for the Integrated National Coastal Zone Management Strategy ⁽¹³⁾ (2006), the National Spatial Planning Policy ⁽¹⁴⁾ (2006) and the Natura 2000 Network Sectorial Plan ⁽¹⁵⁾ (2006) ⁽¹⁶⁾ are under public discussion or approval. The large majority of these instruments only embrace the coastal zone. The unique exception is the marine protected areas management plans, despite so far none have been officially approved regarding offshore maritime areas (exclusive economic zone and continental shelf) ⁽¹⁷⁾.

a) Legal and strategic instruments addressing the coastal zone

A quick overview on the instruments addressing the coastal zone leads us to the following conclusions:

- the large majority extend no more than 1 NM or 30m deep in the territorial sea. In this respect the basis for the Integrated National

⁽¹¹⁾ In the sense of the subject (*e.g.*: protection and conservation of marine biodiversity / marine protected areas) or specific geographical scale (*e.g.*: coastal zone; river basin).

⁽¹²⁾ Law n.º 58/2005, published on December 29, 2005.

⁽¹³⁾ Vide http://www.portugal.gov.pt/NR/rdonlyres/432977FB-ECD0-4F24-AA49-FCAA45A01854/0/Proj_Rel_Bases_Estrategia_Gestao_Litoral.pdf

⁽¹⁴⁾ Council of Ministers Resolution n.º 41/2006, published on April 27, 2006.

⁽¹⁵⁾ Vide <http://www.icn.pt/psrn2000/>

⁽¹⁶⁾ In the Autonomous Region of the Azores this plan has already been approved. Regional Legislative Decree n.º 20/2006/A, published on June 6, 2006.

⁽¹⁷⁾ For a distinct perspective see Fernando LOUREIRO BASTOS, «A evolução futura da cooperação transfronteiriça nos domínios do ambiente e do ordenamento do território nas zonas costeiras e no espaço marítimo», in *Prof. Doutor Inocêncio Galvão Telles: 90 anos. Homenagem da Faculdade de Direito de Lisboa, Coimbra, Almedina, 2007*, p. 405 a 450.

- Coastal Zone Management Strategy goes further, proposing a coastal zone definition whose limit extends to the exterior limit of the geological continental shelf of 200m deep, approximately 24 NM;
- the express reference to the ecosystem approach is only found in the basis for the Integrated National Coastal Zone Management Strategy. The preamble of the legislation which implements the urbanistic and territory spatial planning policy ⁽¹⁸⁾ also widely sets its philosophical sites on the horizon of ecosystem sustainability;
 - the National Spatial Planning Policy includes the mention to an integrated management, embracing the terrestrial and marine compounds. Nonetheless, the integrated management only comprises the coastal zone. The reference to the oceanic area is essentially related to the purpose of protection of marine biodiversity and valorization of marine resources; finally
 - the relevant instruments include the identification and regulation of sea-uses conflicts, using the SWOT matrix.

b) Legal instruments addressing the coastal zone and offshore maritime areas

We conclude our analysis of the sectoral instruments with the legal regime applicable to the creation of Marine Protected Areas. The Decree-Law on the Protected Areas National Network ⁽¹⁹⁾ expressly allows the creation of protected areas in the offshore maritime zones (exclusive economic zone and continental shelf) ⁽²⁰⁾. Until now some marine protected areas were created in the coastal zone (or embracing island complexes) and hard work is being done regarding the creation of marine protected areas in the offshore zones. Actually, important marine deep ecosystems, like hydrothermal vents fields, seamounts and cold-water coral reefs, were discovered, mainly in our Autonomous Regions of the Azores and Madeira offshore maritime areas.

⁽¹⁸⁾ Decree-Law n.º 380/99, published on September 22, 1999.

⁽¹⁹⁾ Decree-Law n.º 19/93, published on January 23, 1993, and Decree-Law n.º 227/98, published on July 17, 1998.

⁽²⁰⁾ For more details see our work: Marta Chantal RIBEIRO, «O regime jurídico das áreas marinhas protegidas e a plataforma continental», in EMEPC-FDUP-CIMAR, *Aspectos Jurídicos e Científicos da Extensão da Plataforma Continental*, Lisboa, EMEPC, 2006, p. 61-99.

Especially in the Azores, the regional Government, along with the scientific community, is working on the creation of marine protected areas to preserve such ecosystems, which conflict with scientific research, fisheries and, potentially, with shipping, biotechnology, mineral mining (poly-metallic sulphides) and tourism.

So far one offshore seamount in the Azores has been approved as *Site of Community Importance (Banco D. João de Castro* ⁽²¹⁾), two offshore hydrothermal vents fields (*Lucky Strike* and *Menez Gwen*) were formally proposed by the Government of Azores as regional natural reserves in the beginning of two thousand six, and, finally, the Portuguese Government also proposed the classification as OSPAR Marine Protected Area of one offshore hydrothermal vent field (*Rainbow*), located in our continental shelf beyond 200 NM. This proposal is totally pioneer.

Taking into account this scenario, some marine protected areas management plans must be prepared and developed regarding Portuguese offshore maritime areas. All of these processes raise potential sea-use conflicts which may not be easily resolved.

Regarding this point we would like to stress:

First, the expected Marine Strategy Directive ⁽²²⁾ and the eventual european legislation on marine planning should not underestimate the extended continental shelf beyond 200 NM ⁽²³⁾;

Second, the OSPAR Convention geographical area does not include large maritime areas of the Autonomous Regions of the Azores and, especially, Madeira. Therefore, the OSPAR Convention legal framework doesn't apply to the whole Portuguese maritime area, with emphasis on the exclusive economic zone and continental shelf.

3 — AUTHORITIES COMPETENT FOR PLANNING

One final remark about the authorities competent for planning. This is a complex patchwork. The *summa divisio* concerns the State and the Autonomous Regions of the Azores and Madeira. Taking into account

⁽²¹⁾ Located at approximately 40 NM from the baseline.

⁽²²⁾ COM (2005) 505 final, of October 24, 2005.

⁽²³⁾ This point may also be relevant to the Mediterranean Sea, where some Member States didn't declare a exclusive economic zone or other areas where they exercise equivalent sovereign rights (*e.g.*: fishing protection zones, environmental protection zones).

the subsidiarity principle, the regions of Azores and Madeira have legislative ⁽²⁴⁾ and executive competences regarding spatial planning and environmental subjects.

While in the Azores Regional Government the same regional secretariat, the Regional Secretariat for Environment and Sea, cumulates sea, fisheries, environment and spatial planning subjects, in the Madeira Regional Government the competence is divided between the Regional Secretariat for Environment and Natural Resources (cumulates environment and fisheries) and the Regional Secretariat for Social Equipment and Transport (spatial planning).

Putting aside the Azores and Madeira regional specificities, in the national perspective a general division is made between the central, regional and local authorities. At national level the essentials of marine planning are under the competence of the Ministry of Environment, Spatial Planning and Regional Development. At regional and local levels the competent entities for planning are, respectively, the Commissions of Coordination and Regional Development (CCDR) and the municipal authorities.

Regarding maritime security, surveillance and enforcement, the main responsibility belongs to the civil, military and marine authorities incorporated in the Maritime Authority System. This system is integrated in the Marine, in the Ministry of National Defence.

Thank you very much for your attention.

⁽²⁴⁾ Regional Legislative Assembly.