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## МЕЖДИСЦИПЛИНАРНЫЕ ИССЛЕДОВАНИЯ

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*I. Magel, A. Luttmann*

### MARINE SPATIAL PLANNING AS AN INSTRUMENT OF SUSTAINABLE DEVELOPMENT OF THE SEAS<sup>\*1</sup>

Marine Spatial Planning (MSP) is a progressive instrument for regulation of the numerous types of use of marine areas. In principle, it is understood as “a marine equivalent to terrestrial spatial planning which has been used to rationally develop, for example, urban areas, but also to protect environmental and cultural values”. Many countries such as Australia, Belgium, Germany or the Netherlands already exercise Marine Spatial Planning. In Russia, however, the development of this instrument is presently in the initial phase. Even if the Russian Federation has begun drawing up a Federal Law on Maritime Spatial Planning in 2014, the theoretical concept of MSP is not yet widespread amongst Russian scholars. The current interruption of work on the law seems to put the topic into the background of the legislative agenda. However, in the light of global sustainable development, it still appears important to put the legislative process forward. In this context, the following article will give an overview about the meaning of Marine Spatial Planning and compare the legal and methodological aspects of MSP in Russia and Germany. The German experience in working out and implementing marine spatial plans can serve as an orientation for the establishment of a Marine Spatial Planning System in Russia. Finally, the article will summarize, how planning of marine areas — not exclusively in Russia and Germany — can contribute to a sustainable development of the oceans, seas and marine resources. Refs 3. Fig. 1.

*Keywords:* marine spatial planning, sustainable development, Russian Federation, Germany, spatial planning, environmental protection.

#### 1. Preface

The conservation and sustainable use of the oceans, seas and marine resources is one of the Sustainable Development Goals (SDG) of the United Nations (Goal 14). Representing 99 per cent of the living space on the planet by volume and being heavily affected by

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*Magel Ina Vladimirovna* — LL.M., Bachelor of Laws (LL.B.), Leibniz Institute of Ecological Urban and Regional Development, Weberplatz, 1, 01217 Dresden, Germany; i.magel@ioer.de

*Luttmann Anne* — Leibniz Institute for Baltic Sea Research Warnemuende, Seestrasse 15, Rostock, 18057, Germany; anne.luttmann@io-warnemuende.de

\* Article appears in author's edition.

<sup>1</sup> Helsinki Commission (HELCOM, 2017): Maritime spatial planning. <http://www.helcom.fi/action-areas/maritime-spatial-planning> (accessed: 24 March 2017).

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human activities, including pollution, depleted fisheries, and loss of coastal habitats (SDG 2015) oceans are one of the central topics on the United Nations' agenda<sup>2</sup>. Therefore, one of the SDG targets includes "the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources" (SDG 2015). In this context, the tool of Marine Spatial Planning (MSP) has attracted wide attention since the beginning of the last decade [1].

As a reaction to the increasing demands on the use of marine areas, many countries, as for example, Germany, Australia, Belgium or Sweden, have reformed their law on spatial organization at an early stage. On the European Union level, the topic gathered pace in 2014 with the entering in force of the MSP-Directive 2014/89/EU. At the same time, Russia has started working out a legal basis for MSP in future.

Although Russia is not a member of the European Union, it already takes an active part in the MSP development process in the framework of the HELCOM-VASAB (Helsinki Commission-*Vision and Strategies around the Baltic Sea*) MSP Working Group.

Additionally, in view of the shared borders between the European Union and the Russian Federation in the Baltic Sea region, along with Germany's leading role in the EU regarding Marine Spatial Planning, a German-Russian Advisory Assistance Project was set up with the title "Environmentally sound concepts for spatial use in the Baltic Sea coastal area of the Russian Federation" (MSP-Rus)<sup>3</sup>.

The following article will emphasise the importance of Marine Spatial Planning for a future sustainable development, paying special attention to the Russian and German planning systems. Taking into account the German experience in MSP since 2005, the summary of the lessons learned can be a solid basis for further legislative and methodological steps in Russia's MSP development process.

## 2. Legal Aspects of Sustainable Development and (Marine) Spatial Planning in Russia and Germany

### *Russian Federation*

Traditionally, Russia's planning system is regulated by a number of legal acts. In principle, spatial planning is understood as "territorial planning". The main legal act for its regulation is the City-Building Code of the Russian Federation from 2004 (*Gradostroitelnyj Kodeks — GRK*)<sup>4</sup>. The City-Building Code includes general principles of spatial planning in Russia along with provisions about competences, documents, procedures and tools of territorial planning. The principles of Russian territorial planning clearly name the aspect of sustainable development of the territory (Art. 2 I GRK). Based on the international agreement on sustainable development at the UN Conference in Rio in 1992,

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<sup>2</sup> Sustainable Development Goals (SDG): 17 Goals to Transform our World, United Nations, 2015. URL: <http://www.un.org/sustainabledevelopment/sustainable-development-goals/> (accessed: 27 March 2017).

<sup>3</sup> This project was funded by the German Federal Environment Ministry's Advisory Assistance Programme (AAP) and was supervised by the German Federal Environment Agency (UBA) with assistance of the German Federal Agency for Nature Conservation (BfN).

<sup>4</sup> Russian City planning Code 29.12.2004 N 190-FZ. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_51040/](http://www.consultant.ru/document/cons_doc_LAW_51040/) (accessed: 11.08.2017).

the President's Decree "On the concept of the Russian Federation transition to sustainable development" was passed in 1996 (Presidential Decree no. 440)<sup>5</sup>. This document sets up a clear framework for other legislation, understanding "sustainable development" as regeneration of ecologic resources and recovery of ecosystems along with a stable economic development [2]. According to that, other sustainability-oriented principles include ecologic, economic, social and other aspects in the frame of city building (Art. 2 II GRK) or the exercise of city-building activities with consideration of interests of environmental protection and ecological security (Art. 2 IX GRK).

Generally comparable to Germany, there are three planning levels in Russia:

- Federal planning of the Russian Federation
- Regional planning of the states (subjects) of the Russian Federation
- Local planning of the local authorities of the Russian Federation

The City-Building Code names the different fields of planning for which each level is responsible. The exclusive competence of the Federation relates to federal transport, including marine transport, public defence and security, energy, higher education and healthcare (Art. 10 I GRK). The states' or subjects' responsibilities in spatial planning are limited to transport of regional significance, prevention of emergency states of local significance, education, healthcare and all other objects of planning in accordance with the states' responsibilities (Art. 14 I 3, no. 1-6 GRK). However, as the object of regulation is strongly related to the land area, questions of Marine Spatial Planning have not received enough attention in the past.

Initially, the task to develop an instrument of Marine Spatial Planning was set by the Strategy for the Development of Maritime Activities until 2030 from December 2010<sup>6</sup>. According to this document, Marine Spatial Planning is to be integrated in the system of documents regulating the use of nature by single types. For this purpose, it is envisaged to work out a scheme for Marine Spatial Planning.

In the meantime, however, a new legal act was adopted in Russia, setting a new framework for the entire planning system. The law "On Strategic Planning" from 2014<sup>7</sup> integrates territorial planning in a system of four types of planning: socio-economic planning, budgetary planning, sectoral planning and territorial planning. One of the novelties in the Russian planning system, introduced by the law "On Strategic Planning" is the extension of its scope of application to marine areas of the Russian Federation (Art. 1 V).

### *The Conception of a Draft of a Federal Law "On Marine Spatial Planning"*

In 2014 the Government of the Russian Federation approved a conception for a federal law "On Marine Spatial Planning"<sup>8</sup>. However, a legal act on Marine Spatial Planning has not been worked out by now and thus, no sub-legal legislation.

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<sup>5</sup> Decree of the Russian President 01.04.1996 N 440 «Conception about Russian sustainable development». URL: <http://www.consultant.ru/cons/cgi/online.cgi?base=EXP;n=233558;req=doc#0> (accessed: 11.08.2017).

<sup>6</sup> Order of the Russian Government 08.12.2010 N 2205-r «On maritime activity in Russia up to 2030». URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_107955/](http://www.consultant.ru/document/cons_doc_LAW_107955/) (accessed: 11.08.2017).

<sup>7</sup> Russian Federal Statute 28.06.2014 N 172-Ф3 «On Russian strategy planning». URL: [http://www.consultant.ru/document/Cons\\_doc\\_LAW\\_164841/](http://www.consultant.ru/document/Cons_doc_LAW_164841/) (accessed: 11.08.2017).

<sup>8</sup> See: *Chuguevskaia E. S.* About conception of Federal Statute «On maritime planning in Russia». URL: [http://www.docme.ru/doc/562233/konceptiya-federal\\_nogo-zakona-%C2%ABo-morskoy-planirovaniy-v](http://www.docme.ru/doc/562233/konceptiya-federal_nogo-zakona-%C2%ABo-morskoy-planirovaniy-v) (accessed: 11.08.2017).

The document introduces the conception of Marine Spatial Planning in the Russian system. Its primary objective is the rational and efficient use of marine areas by using this tool. Other objectives of the future law project are:

- Definition of relevant terms of Marine Spatial Planning,
- Determination of competences and procedures,
- Regulation of the interaction of different marine activities along with ensuring a sustainable development of marine areas,
- Coordination of marine and terrestrial planning,
- Development of a cross-border consultation system and cooperation in the field of Marine Spatial Planning.

Originally, the adoption of the law act “On Marine Spatial Planning” was envisaged for the beginning 2016. Meanwhile, however, the legal process was delayed and finally no legal act has been adopted by now. In May 2015, the Ministry of Defence presented a draft law “On State Governance of Marine Activities of the Russian Federation”<sup>9</sup>. This legal project is currently in the phase of review.

### *Germany*

Traditionally, the German planning system is qualified as “*spatial organization*”. This term implicates a coordination of all spatially relevant interests, functions, programmes and projects, rather than regulating only the use of a certain territory. The law of German spatial organization is codified in the Federal Spatial Planning Act (Raumordnungsgesetz — ROG)<sup>10</sup>. The guiding principle is to ensure a sustainable development by bringing in balance the social and economic demands of a territory with its ecological functions (Art. 2 II ROG). For establishing equivalent living standards in all parts of the country, spatial organization provides material guidelines and guiding principles, which are comprehensive, superordinate and binding for lower-level planning tiers, sectoral planning, and public measures affecting spatial development<sup>11</sup>. The German planning system is decentralized and based on three levels: federal level, state level (including the regional level) and local level. However, the competences on the federal level are limited as there is no provision for a binding spatial structure plan for the national territory as a whole. Instead, there is a fundamental competence and obligation of the states for the preparation of spatial and structural development plans for their territories.

In the marine area, which is divided into Coastal Waters and Exclusive Economic Zone (EEZ), the division of competences is reflected in two planning areas of equal rank:

- Federal level: Marine Spatial Plans for the EEZ in the Baltic Sea and North Sea
- State level: State spatial structure plans, including coastal waters.

### *Marine Spatial Planning in the German EEZ*

The legal basis for the Marine Spatial Plan for the EEZ in the Baltic Sea (and North Sea) is currently codified in Art. 17 III ROG. In this provision, the federal planning competence was extended to marine areas, namely the Exclusive Economic Zone of

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<sup>9</sup> Draft of Federal Statute «On the state administration of maritime activity of Russia» (as a project, actual text on 26.05.2015). URL: <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=PRJ&n=133845#0> (accessed: 11.08.2017).

<sup>10</sup> Raumordnungsgesetz der Bundesrepublik Deutschland vom 22.12.2008 (BGBl. I S. 2986).

<sup>11</sup> ARL (Akademie für Raumforschung und Landesplanung) 2008: The Planning System and Planning Terms in Germany (2008). URL: [http://shop.arl-net.de/media/direct/pdf/ssd\\_7.pdf](http://shop.arl-net.de/media/direct/pdf/ssd_7.pdf). (accessed: 27.03.2017).

Germany [3]. The responsible ministry is the Federal Ministry of Transport and Digital Infrastructure.

According to Art. 17 III ROG, the Federal Maritime and Hydrographic Agency (Bundesamt für Seeschifffahrt und Hydrographie — BSH) can work out the marine spatial plan in coordination with the Ministry<sup>12</sup>. The plans for the German EEZ have a comprehensive nature.

Therefore, besides the provisions of the Federal Spatial Planning Act, there is a number of provisions of sectoral law, which are taken into account. Sectoral legislation is important for the numerous types of use, such as:

- Shipping,
- Raw materials extraction,
- Production of energy, especially wind energy,
- Laying submarine cables and pipelines,
- Marine scientific research,
- Fishing and
- Protection and preservation of the marine environment.

The relevant sectoral legislation, for instance, defines the licensing procedure for offshore wind farms or raw material extraction. Important national legal acts for planning in the marine area are among others:

- Ordinance on Offshore Installations Seaward of the Limit of the German Territorial Sea,
- Federal Mining Law,
- Renewable Energy Act and
- Federal Nature Conservation Act.

Moreover, see also selected contents of the Marine Spatial Plan for the German EEZ in the Baltic Sea (figure).

Some types of use are subject to regulations and restrictions of the European Union, for example fishing. In this field, the competence of the German legislator is strongly limited. In the first instance, national legislation has the role to implement the European common fisheries policy. As far as Marine Spatial Planning (MSP) or the protection and preservation of the marine environment is concerned, EU legislation mostly provides the framework for further national regulation. The key directives in the field of marine environment are:

- Habitats Directive 92/43/EEC<sup>13</sup> and Birds Directive 2009/147/EC<sup>14</sup>;
- Marine Strategy Framework Directive 2008/56/EC<sup>15</sup>;
- Maritime Spatial Planning Directive 2014/89/EU<sup>16</sup>.

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<sup>12</sup> BSH (Bundesamt für Seeschifffahrt und Hydrographie), The Federal Maritime and Hydrographic Agency, Marine Spatial Plan of the German EEZ in the Baltic Sea. URL: [http://www.bsh.de/de/Meeresnutzung/Raumordnung\\_in\\_der\\_AWZ/Dokumente\\_05\\_01\\_2010/Karte\\_Ostsee.pdf](http://www.bsh.de/de/Meeresnutzung/Raumordnung_in_der_AWZ/Dokumente_05_01_2010/Karte_Ostsee.pdf) (accessed: 27.03.2017).

<sup>13</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal L 206, 22.7.1992, pp. 7–50.

<sup>14</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, Official Journal L 20, 26.1.2010, p. 7–25.

<sup>15</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, Official Journal L 164, 25.6.2008, pp. 19–40.

<sup>16</sup> Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, Official Journal L 257, 28.8.2014, p. 135–145.

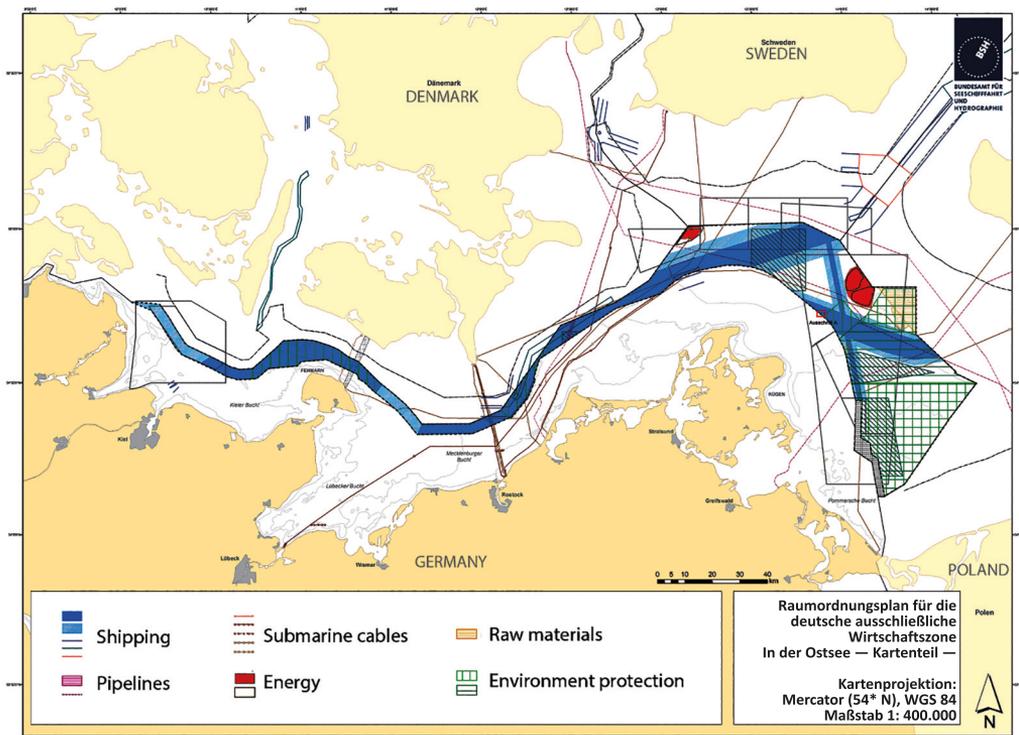


Figure. Selected contents of the Marine Spatial Plan for the German EEZ in the Baltic Sea (The Federal Maritime and Hydrographic Agency — Bundesamt für Seeschifffahrt und Hydrographie, BSH 2009 — adopted by Leibniz Institute of Ecological Urban and Regional Development)

These directions impose certain obligations on member states like Germany, including specific deadlines. Namely, there are deadlines to work out marine spatial plans by 2021 and achieve a good environmental status of EU marine waters by 2020. By having presented the marine spatial plans for the Baltic and North Sea in 2009, Germany has almost met all conditions of the MSP-Directive. In contrast, a number of European coastal states has initiated the process only after coming into force of the directive.

### *Marine Spatial Plans in the Coastal Waters*

Planning of the German coastal waters is part of spatial planning, which is carried out by the federal states (Länder) on their territories. Accordingly, coastal states include the marine area extended seaward up to 12 nautical miles in their spatial plans. Like planning on the federal level, state planning is aimed at establishing and safeguarding equivalent living conditions in all parts of the state. Therefore, its main task is to prepare spatial structure plans based on all spatially significant sectoral plans in the field of industry and commerce, transport, utilities, labour and recreation, as well as nature conservation and environmental protection<sup>17</sup>. Along with the implementation of binding federal planning principles, each state applies its own (sectoral) legislation. For instance, the Nature Con-

<sup>17</sup> ARL (Akademie für Raumforschung und Landesplanung) 2008: The Planning System and Planning Terms in Germany (2008). URL: [http://shop.arl-net.de/media/direct/pdf/ssd\\_7.pdf](http://shop.arl-net.de/media/direct/pdf/ssd_7.pdf). (accessed: 27 March 2017).

ervation Act of the federal state Mecklenburg-Western Pomerania<sup>18</sup> provides the basis for the landscape planning procedure. An important step in this three-level procedure is the Expert landscape framework plan for the planning regions of Mecklenburg-Western Pomerania. This document, based on extensive data sets of the last decades, reflects the current space use requirements (e. g. the increasing use of renewable energy) along with the obligation posed by the European legislator (e. g. regarding biotope protection) and helps to integrate them in the planning process.

The procedure of state spatial planning is not uniform in Germany. It is exercised by the highest state spatial planning authorities and is usually adopted by a state parliament as a statute or by the state government as an ordinance. In the state of Mecklenburg-West Pomerania, the responsible authority is the Ministry of Energy, Infrastructure and State Development. The plans have a long-term planning horizon and are generally updated every 10 years<sup>19</sup>.

### 3. Methodological Aspects of Marine Spatial Planning

#### *The ecosystem-based approach in Marine Spatial Planning*

An important, internationally agreed strategy for achieving sustainability in Marine Spatial Planning is the ecosystem-based approach. In the year 2000, the Convention on Biological Diversity (CBD)<sup>20</sup> initially stated the following definition:

*“The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. [...] An ecosystem approach is based on the application of appropriate scientific methodologies focused on levels of biological organization, which encompass the essential structure, processes, functions and interactions among organisms and their environment. It recognizes that humans, with their cultural diversity, are an integral component of many ecosystems”<sup>21</sup>.*

In 2003, during their joint Ministerial Meeting, both the Helsinki Commission (HELCOM, Baltic Marine Environment Protection Commission) and the OSPAR Commission (OSPAR, Commission for the Protection of the Marine Environment of the North East Atlantic) adopted a statement of their common vision of an ecosystem approach to managing human activities impacting on the marine environment in their marine areas<sup>22</sup>. As a next step, the ecosystem approach was included in the joint Baltic Sea broad-scale MSP principles adopted by HELCOM and the “Visions and Strategies Around the Baltic Sea” Committee on Spatial Planning and Development of the Baltic Sea Region in 2010:

*“The ecosystem approach, calling for a cross-sectoral and sustainable management of human activities, is an overarching principle for Maritime Spatial Planning which aims at achieving a Baltic Sea ecosystem in good status - a healthy, productive and resilient condition so that it can provide the services humans want and need. The entire regional Baltic Sea eco-*

<sup>18</sup> Gesetz zum Schutz der Natur und der Landschaft im Lande Mecklenburg-Vorpommern (Landesnaturschutzgesetz — LNatG M-V) vom 22.10.2002 (GVBl. M-V 2003 S.1).

<sup>19</sup> ARL (Akademie für Raumforschung und Landesplanung) 2008: The Planning System and Planning Terms in Germany (2008). URL: [http://shop.arl-net.de/media/direct/pdf/ssd\\_7.pdf](http://shop.arl-net.de/media/direct/pdf/ssd_7.pdf). (accessed: 27.03.2017).

<sup>20</sup> Convention on Biological Diversity, Rio de Janeiro, 5.6.1992.

<sup>21</sup> CBD (Convention on Biological Diversity) Secretariat (2000): COP 5 Decision V/6. URL: <https://www.cbd.int/decision/cop/?id=7148> (accessed: 23.03.2017).

<sup>22</sup> HELCOM & OSPAR (2003): Record of the Joint Meeting of the Helsinki & OSPAR Commissions 2003 — Annex 5. 7 p.

*system as well as sub-regional systems and all human activities taking place within it should be considered in this context. [...].” (Principle 2)<sup>23</sup>.*

Defining overarching principles for MSP in the Baltic Sea was the first action of the joint HELCOM VASAB MSP Working Group established in 2010. In the following years, the practical application of the ecosystem approach in MSP has been a central issue for discussion and negotiation in almost every meeting of the group. Finally, in their eleventh meeting (October 2015) they agreed on a guideline for the implementation of the ecosystem-based approach in MSP in the Baltic Sea area as a non-binding document. Importantly, the Strategic Environmental Assessment (SEA) and its full integration into the marine spatial planning procedure is seen as a core foundation and as providing a guiding structure for achieving the ambitions of the guideline.

### ***Strategic Environmental Assessment as an important tool for sustainability***

In Germany, the SEA has its origin in the EU SEA Directive 2001/42/EC<sup>24</sup>. This directive, in turn, implements the provisions of the international Espoo Convention on Environmental Impact Assessment in a Transboundary Context<sup>25</sup> and its Protocol on Strategic Environmental Assessment (Kyiv Protocol)<sup>26</sup>. SEA shall ensure, for the sake of effective environmental protection according to uniform principles, that the environmental impacts of plans and programs are comprehensively described and assessed. The results must be early taken into account during the establishment processes of plans and programs. This also applies to marine spatial plans of the EEZ and spatial plans of the coastal states, for which a SEA is mandatory.

The core element of a German SEA is the environmental report. Regulations on the minimum information to be included in this document can be found in § 14g par. 2 of the Environmental Impact Assessment Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG)<sup>27</sup>:

- outline of the contents and the main objectives of the plan or programme,
- environmental characteristics and current state of the environment within the areas,
- existing environmental problems (previous impacts),
- environmental targets,
- expected significant environmental impacts,
- measures envisaged to avoid, minimise and compensate environmental impacts,
- outline of the alternatives analysed,
- proposed measures for future monitoring, and
- non-technical summary.

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<sup>23</sup> HELCOM (Helsinki Commission) & VASAB (Vision and Strategies Around the Baltic Sea), 2010: Baltic Sea Broad-Scale Maritime Spatial Planning (MSP) Principles. Adopted by HELCOM HOD 34-2010 and the 54th Meeting of VASAB CSPD/BSR. 3 p.

<sup>24</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, Official Journal L 197, 21.7.2001, p. 30–37.

<sup>25</sup> Espoo Convention: Convention on Environmental Impact Assessment in a transboundary context. United Nations, 1991.

<sup>26</sup> Kyiv Protocol of the Espoo Convention (SEA protocol): Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a transboundary context. United Nations, 2003.

<sup>27</sup> Gesetz über die Umweltverträglichkeitsprüfung vom 24.2.2010 (BGBl. I S. 94).

The protected goods of the SEA (see § 2 par. 1 sentence 2 UVPG), to which the assessments should refer, include:

- people, including human health, animals, plants and biodiversity,
- soil, water, air, climate and landscape, cultural and other material goods as well as,
- the interactions between the aforementioned protected goods.

Comparing terrestrial with marine spatial planning, there are of course differences that should be reflected in the way and the intensity the protected goods are described and assessed. The environmental report of the marine spatial plan for the EEZ (Baltic Sea), for example, goes into particulars about marine sediments and their pollution load. Besides, the protected good *water* is of central importance — environmental features such as currents, swell, water level fluctuations, temperature, salinity, ice conditions, suspended matter and turbidity as well as nutrient and pollutant distribution can play a role depending on the planning context and the expected impacts. Regarding the protected goods *animals* and *plants*, the assessments in the environmental report of the marine spatial plan of the EEZ (Baltic Sea) include phytoplankton, zooplankton, benthos, biotopes, fish, marine mammals, seabirds, migratory birds as well as bats and bat migration. Protected goods which are not or only marginally described in the case of the EEZ plan are *humans, including human health, air, climate, landscape and cultural and other material goods*. The reasons can be missing data or not expected significant environmental impacts and must be justified. For the sake of the precautionary principle, potential impacts with unknown probability because of missing data should be still incorporated into the expert judgement.

In the Russian Federation, the implementation of the provisions of the Espoo Convention in the legal system requires the integration of SEA into the existing system of environmental assessment, including the *evaluation of environmental impacts* and *state ecological expertise*. The process of environmental assessment in the Russian Federation contains many elements which are also characteristic of environmental assessments in Germany and other countries. However, it has due to current legislation its own particularities. These are mainly the lack of legal justification for the application of the SEA, as well as the shortened list of objects that are subject to *ecological expertise* and the *evaluation of environmental impacts* compared to the list given in the Espoo Convention.

#### ***Achieving coherence with cross-border coordination***

Besides the proper implementation of SEA, cross-border coordination is a key issue for the integration of environmental concerns into MSP. This includes both national borders and administrative borders within countries, e.g. the coordination of MSP of the coastal waters and the EEZ in Germany. Federal and state authorities consult each other when setting up or updating a plan. This is, for example, essential when defining routes of submarine cables so that they can be spatially bundled with the least possible environmental impact.

Neighbouring countries also have to be included in the establishment of spatial plans. In Germany, this is not only the case if considerable transboundary environmental impacts of a specific plan are to be expected. Additionally, discussions on issues of MSP are taking place independently of any specific plan, for example with Poland. Finally, cross-border cooperation within the HELCOM VASAB MSP Working Group also contributes to the consideration of environmental issues in spatial planning. The Working Group has not only recently developed a series of environmentally relevant strategies, as described

earlier, but is also an important forum for the coordination of MSP in the Baltic Sea region.

### *Strengthening public participation*

Equally important as cross-border coordination is the involvement of the public in drawing up spatial plans and for consideration of environmental concerns. In Germany, the “public” includes any natural or legal person, who may be affected in his / her matters or has another specific interest in the planning, including associations. During the update of the recently relaunched Spatial Development Program of Mecklenburg-Western Pomerania, extensive public participation took place. Statements could be submitted in two participatory rounds, with different ways of participation being offered. Also after the plan has already been established, the decisions taken on the comments from stakeholders and public are still online accessible or can be viewed at the supreme Federal State Planning Authority. Thus, the process is transparent and comprehensible for interested parties.

Strengthening the rights of participation of citizens is of particular importance for environmental protection, as the public can lend weight to the general interest “environmental protection and nature conservation” and act as counter-pole to economic concerns<sup>28</sup>. A comprehensive and transparent participation process thus generally promotes balanced governmental decisions in the sense of sustainable MSP.

## 4. Future developments

The previous chapters gave a short overview about legal and methodological aspects of Marine Spatial Planning in Russia and Germany. Finally, the conclusion can be made that planning of marine areas plays a major role in their sustainable use. The latter can be achieved by legally binding planning provisions, focusing on the balance of ecologic, economic, social and other aspects. Existing legal provisions for terrestrial Spatial Planning in both countries already adhere to the principle of sustainable development. A further step towards its implementation, especially for the Russian Federation, would be the extension of this principle on marine areas. Thereby, a broad implementation of international MSP standards, such as the HELCOM/VASAB principles, into national law would strongly contribute to the sustainable use of marine areas.

Recent legislative initiatives in the Russian Federation already take up the sustainability concept and should be carried forward in the near future. The German experience in MSP can serve as useful guidance for the development in Russia. Particularly, the comprehensive approach to Spatial Planning would be a future-oriented development direction for Russia’s planning system.

From a methodological point of view, some important elements for drawing up marine spatial plans (SEA, cross-border coordination, public participation) have been emphasized in the previous chapter. However, the application of the internationally agreed ecosystem-based approach is wider than “establishing the plan”, as it also involves for instance the application of basic horizontal principles in sectoral management<sup>29</sup>. In the

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<sup>28</sup> UBA — Umweltbundesamt, German Federal Environmental Agency (2016): Beteiligung. URL: <https://www.umweltbundesamt.de/themen/nachhaltigkeit-strategien-internationales/umweltrecht/beteiligung> (Last updated: 19 January 2016; accessed: 01.08.2016).

<sup>29</sup> HELCOM (Helsinki Commission) & VASAB (Vision and Strategies Around the Baltic Sea), 2016: Guideline for the implementation of ecosystem-based approach in Maritime Spatial Planning (MSP) in

HELCOM/VASAB guideline for the implementation of the ecosystem-based approach in MSP in the Baltic Sea area the following key elements are listed and described:

- Best available knowledge and practice,
- Precaution,
- Alternative development,
- Identification of ecosystem services,
- Mitigation,
- Relational understanding,
- Participation and communication,
- Subsidiarity and coherence,
- Adaptation.

Within the MSP-Rus project (2015–2017) the application status and potential adjustment requirements with regard to those key elements were analysed for the Russian context. Such baseline assessments can help evolving marine spatial planning systems to understand their current national status and develop strategies with regard to ecosystem-based marine management. In addition to that, still huge multi-sector and cross-scale efforts are needed to achieve a real balance between socio-economic uses and environmental protection in Russian and German sea basins and to keep marine ecosystems resilient.

The implementation of some elements, for instance SEA, will require the adoption of certain legal provisions in Russia. Amendments to current sectoral legislation and theoretical concepts appear necessary. On the other hand, the ongoing work on the MSP legislation in Russia provides an opportunity to integrate a wide range of MSP principles in national legal provisions. In this context, international projects (e.g. MSP-Rus) and forums (e.g. Baltic MSP Forum) build a good foundation for the exchange of experience and increase of knowledge.

## References

1. Douvere et al. The role of marine spatial planning in sea use management: The Belgian case. *Marine Policy*, 2007, no. 31, pp.182–191.
2. Bogoliubov S. A. *Kommentarii k Gradostroitel'nomu Kodeksu (postateinyi)* [Comment to the Town Planning Code (article by article)]. Moscow, Prospekt Publ., 2005. 464 p. (In Russian)
3. Janssen G. The Role of the Federation in Spatial Planning according to the Federal Regional Planning Act (Section 17 § 1-3 ROG). *Terra Spectra*, 2014, no. 1, pp.34–42.

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the Baltic Sea area. Adopted by the 72nd meeting of VASAB CSPD/BSR on 8 June 2016 and approved by HELCOM HOD 50-2016 on 15-16 June 2016. 18 p.