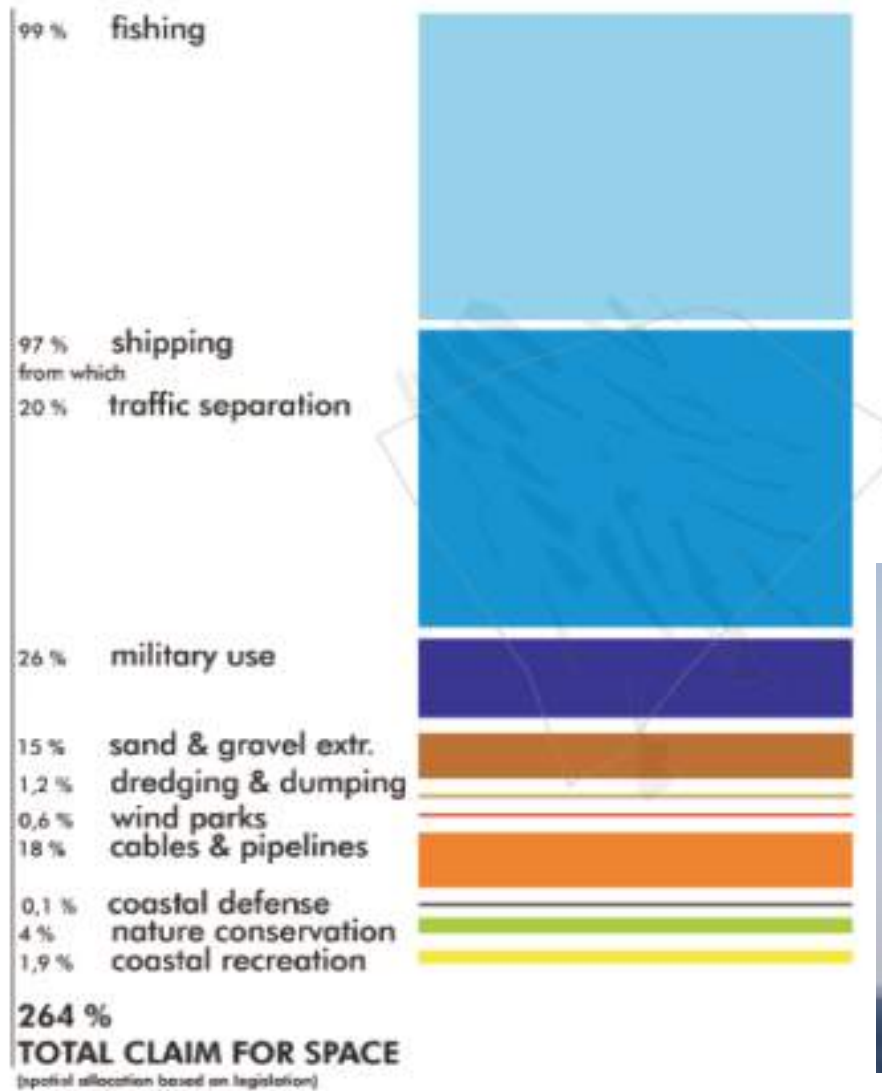


International Law and EU Law perspectives on coastal zone management

Outline

- Problem
- Law of the sea
- Land-sea perspective (EU)
 - - Integrated coastal zone management
 - - Water framework directive
- Sea-land perspective (EU)
 - - Marine spatial planning (MSP)
 - - Marine strategy (EU)

Figure III.1.4.1a. Demand for space in the BPNS, based on legislation and on the condition that all space would be both available and suitable (abstract and simplified scheme)
 (Mername Institute - Gent University)



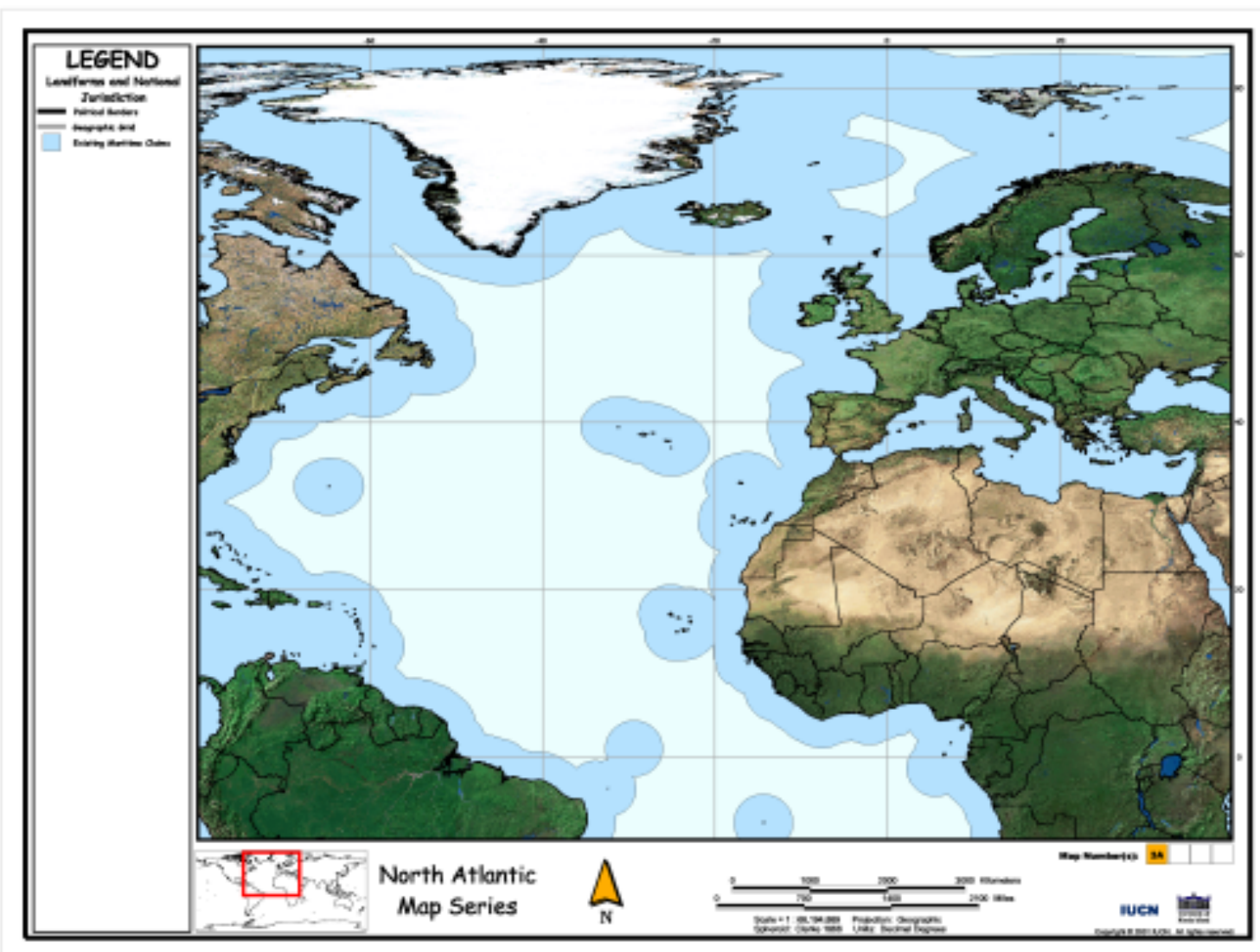
Problems:

- increased spatial claims
- increased intensity of activities
 - loss of biodiversity
 - decline of ecosystems
- new threats: exotic species & climate change effects



International law & governance

- Law of the Sea Convention (1982): right for CS to unilaterally regulate activities at sea – except shipping & the duty to protect the marine environment (not only prevention, but also nature protection + conservation)
- EEZ: driving force for nat. authorities to regulate new uses + improve protection of marine environment.
- Int. conventions (Ramsar, CBD, ...) stimulate species protection, habitat protection and ultimately ecosystem protection. Success depends on planning scale.



The land – sea perspective



Integrated coastal zone management

Problem: different national authorities are scattered over different policy levels competent for terrestrial and marine areas. Decision making is fragmented and often conflicting due to:

- Weak horizontal integration => no internal streamlining for coastal management policy within one institutional level
- No vertical integration => most of the coastal projects cross the land-sea interface and therefore lack interaction between different institutional levels
- ICZM should bridge the gap
(e.g. 1972 US Coastal Zone Management Act)

Integrated coastal zone management

- International instruments promoting ICZM are “soft law” (Chapter 17, Agenda 21; Plan of Implementation WSSD – 2002)
- European Recommendation on ICZM (2002/413/EC) introduces 8 principles: overall perspective, long-term perspective, adaptive management, local specificity and great diversity, working with natural processes, public participation, support & involvement of relevant administrations, use of a combination of instruments to facilitate coherence between policy objectives and planning/management.
- 21.01.2008 adoption of the Protocol on ICZM in the Mediterranean. This protocol is the first example to implement ICZM beyond the level of a national strategy

ICZM added value to policy (Rupprecht 2006)

- Reconciles short-term with long-term interests
- Participatory methods make authorities accountable
- Conflict resolution between stakeholders through public debate
- Interface between terrestrial and coastal management
- Rethinking of traditional planning approaches by reconciling economic, social and environmental interests
- Proper implementation of ICZM improves the livelihood and employment of coastal areas

ICZM in EU: elements for further attention

1. Legal obligation to implement EU recommendation?
2. Common methodology to assess ICZM progress: further work on ICZM progress indicators needed
3. Great diversity in national-local governance to implement ICZM due to legislation, property rights, local situations (e.g. islands), ...
4. Clarify the sea areas covered: all MS consider CZ including TS, a few extend the CZ to their EEZ (some cannot e.g. Medit. Sea: seaward limit is external limit of TS, or less)
5. Different stakeholders involvement due to different traditions and no real public participation (use carefully to avoid over kill?)
6. Local dominancy should not ignore the bigger picture (avoid NIMBY syndrome), while national authorities should feel involved (misperception of scale – legal constraints – lack of ecosystems vision)
7. Long lasting international cooperation on ICZM beyond national boundaries (cf. scientific cooperation)

EU Water Framework Directive (2000/60EC)

- Applies to surface water, groundwater, estuaries and coastal water
- (1 NM)
- Qualitative and quantitative aspects of water
- Identification of individual river basins (including groundwater) and assign them to river basin districts (incl. groundwater not following the basin). If transboundary = international river basin district
- Make a river basin management plan before 2009, with working programme (2006), identification of important water management problems (2007) and draft plan subjected to public participation (2008). Renewal every 6 years (2015, 2021, ...).

Objective:

Good surface water status



Means:

River basin management plans



input

Analysis

Programmes for monitoring

Programme of measures

- **Reporting**
- **Public participation**

Good water status

At latest in 2015

● **Surface water (SW)**

good ecological status

good chemical status

good quantitative status

● **Ground water (GW)**

good chemical
status

Measures

2009: 1st program of measures

- afterwards: control every 6 years + adjustments

2012: all measures 1st program should be operational

- afterwards: 6 years cycle - measures should be operational for next programs

Public information and consultation (art. 14)

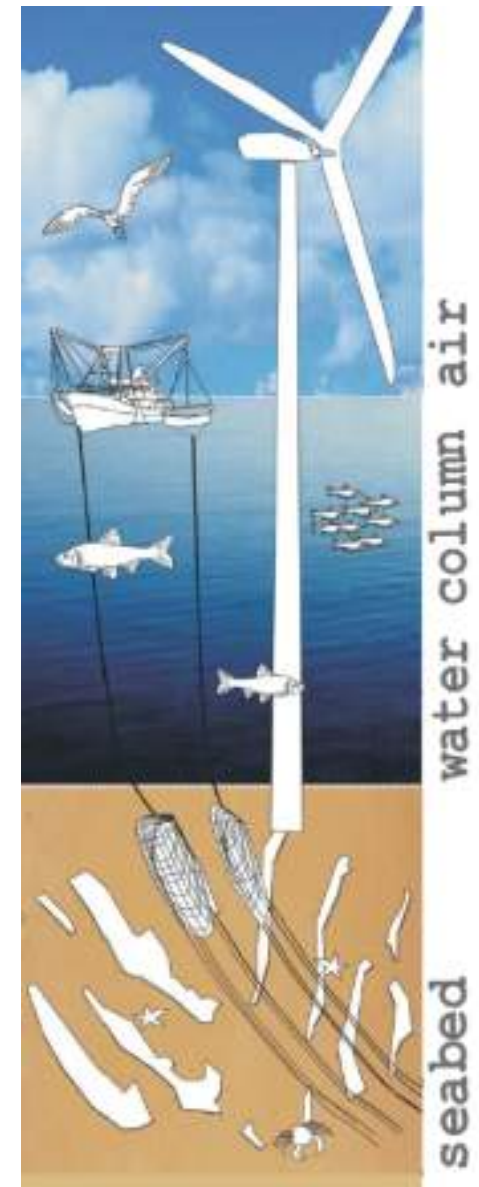
- Encourage active involvement of all interested parties
 - Through publication of
 - ☐ timetable and work program river basin management plan (2006)
 - ☐ organization of public participation (2006)
 - ☐ overview water management issues (2007)
 - ☐ draft river basin management plan (2008)
 - Access to
 - ☐ Background documents & info draft plan
 - public
 - ☐ At least 6 months to comment in writing

The sea-land perspective



Marine spatial planning

- Marine Spatial Planning (MSP) = a process of analyzing and allocating parts of the three-dimensional marine environment to specific uses, to achieve ecological, economic, and social objectives that are usually specified through the political process. The process usually results in a comprehensive plan or vision for a marine region.
- (Ehler & Douvère, UNESCO 2007)



MSP at international level

- Law of the Sea Convention remains silent about MSP as a management process.
- However, this does not prevent coastal states from taking MSP initiatives in their maritime areas. Article 123 UNCLOS promotes regional cooperation and coordination to:
 - (a) manage, conserve, explore and exploit the living resources of the sea;
 - (b) implement their rights and duties with respect to the protection and preservation of the marine environment;
- ...

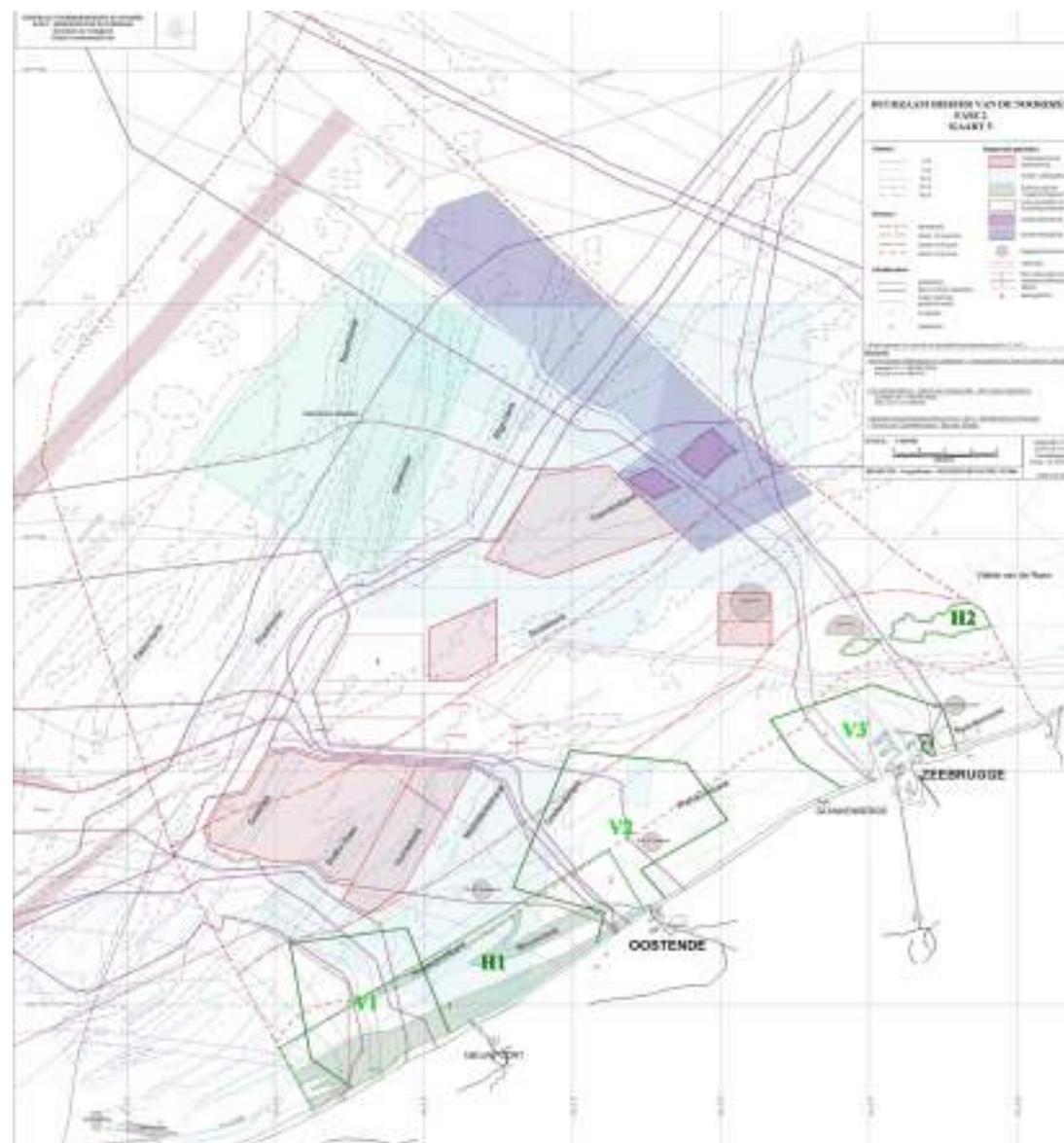
MSP at international level (MPAs)

- Convention on Biological diversity is the most appropriate global convention for advocating MSP to achieve an ecosystem approach:
 - MSP can enhance the implementation of integrated marine and coastal area management (IMCAM) to achieve the 2012 target for applying an ecosystem approach on a regional seas level by trans-boundary protected areas (TBPA's).
 - MSP can contribute to reduce the current rate of biodiversity loss at the global, regional, national and sub-national level (2010 biodiversity target).
 - Problem for areas beyond national jurisdiction - high seas

MSP at EU level (MPAs)

- MPAs in the EU are based on small ecologically-defined areas under the Birds Directive (1979) and the Habitats Directive (1992) by designating Special Protection Areas (SPAs) under BD and by designating Areas of Conservation (SACs) under HD*.
- The establishment of SPAs and SACs are measures that are mandatory under EU law and affect MSP. Taken together they should form a network of protected areas across the EU, known as Natura 2000, for which Member states have to take protective measures.

MSP BPNS



MSP at EU level

- The need for an ecosystem-based MSP of sea areas under jurisdiction of coastal states is recognized by the European Commission in its Green Paper, “**Towards a future Maritime Policy for the Union: A European vision for the oceans and seas**” (2006).
- The Green Paper considers an ecosystem-based marine regional spatial planning as a tool to ensure investment decisions at sea and refers to licensing, promoting or placing restrictions on maritime activities.
- It is recognized that under the current legal circumstances “*individual decisions on activities should be taken at a national or local level*” but that “*a degree of commonality between the systems will be needed to ensure that decisions affecting the same ecosystem or cross-border activities*”.

MSP at EU level: Marine Strategy

- The **Marine Strategy Directive** (COM(2005)505*), as approved by the European Parliament on 11 December 2007* relies on marine regions for an ecosystem-based approach in which MS have to achieve and maintain “good environmental” status of that marine environment by **2020*** at the latest.
- This directive confirms the European marine regions as management units for implementation (Baltic Sea, the North East Atlantic Ocean and the Mediterranean Sea, and their sub-regions).
- Each MS will be required to develop a marine strategy for its marine waters, in close cooperation with other MS, to draw up cost-effective measures and impact assessments in case of introducing new measures.
- *Commission proposed 2021

MSP at EU level: Marine Strategy

- Further objectives are (art.1):
 1. to protect and preserve the marine environment (ME), prevent deterioration or where practicable restore marine ecosystems in areas they have been adversely affected
 2. to prevent and reduce inputs in the marine environment with a view of phasing out pollution so to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea
 3. to ensure that collective pressure of human activities are kept within levels compatible to achieve a good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations. (task for MSP)

MSP at EU level: Marine Strategy

- “environmental status” means the overall state of the environment in marine waters, taking into account the structure, function and processes of the constituent marine ecosystems together with natural physiographic, geographic, **biological**, **geological** and climatic factors, as well as physical, **acoustic** and chemical conditions, including those resulting from human activities **inside or outside** the area concerned;
- “good environmental status” means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.: ...
- Good environmental status shall be determined at the level of the Marine Region or Sub-Region on the basis of the qualitative descriptors (Annex I).

MSP at EU level: Marine Strategy

- - By 2015: development of a program of measures to achieve or maintain a good environmental status
- - Programs of measures established ***shall include spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems, such as*** special areas of conservation pursuant to *the Habitats Directive* special protection areas pursuant to *the Birds Directive*, and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties.

MSP at EU level: Marine Strategy

- Public participation
- Member States shall publish, and make available to the public for comment, summaries of the following elements of their Marine Strategies, or the related updates, as follows:
 - a) the initial assessment and the determination of good environmental status;
 - b) the environmental targets;
 - c) the monitoring programs;
 - d) the programs of measures.

MSP at EU level: Marine Strategy

- Preamble
- (39) Measures regulating fisheries management **can** be taken in the context of the Common Fisheries Policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, based on scientific advice ***with a view to supporting the achievement of the objectives addressed by this Directive, including the full closure to fisheries of certain areas, to enable the integrity, structure and functioning of ecosystems to be maintained or restored and, where appropriate, in order to safeguard, inter alia, spawning, nursery and feeding grounds*** .

European state practice on MSP

- **Two legal approaches:**
- **- MSP has no statutory basis. Legal basis = a comprehensive maritime law introducing prohibitions, concessions & permits for all major users (except fisheries) after an EIA procedure (Belgium, cf. offshore bunkering)**
- **- MSP has a statutory basis (Germany)**

National MSP without statutory basis

- **Planning needs a strong maritime law (e.g. Belgium)**
- - **pro:** - flexible allocation of activities based on demands
- - flexible public or stakeholder participation depending on urgency
- - policy can easily be adapted based on new scientific knowledge
- **contra:** - does not solve competition among different governmental bodies:
 - no redistribution of competences in case of holistic approach
 - - planning does not take into account user-user conflicts for a broader area than the one for which the permit ion applies
 - - no EIA or assessment of ecological effects for the whole planning area, single use EIA

National MSP with statutory basis

- **Spatial planning has a statutory basis (Germany, ...)**
- **- Pro:** - legally enforceable duty for governmental bodies
- - public participation can not easily be offset due to legal procedures (access to courts)
- - legal enforcement tools besides administrative enforcement
- - a holistic legal basis for EIA or assessment of ecological effects
- - better legal protection of user rights and nature
- - improved management on a long term scale
- **Contra:** - less flexible to take into account new scientific data due to rigid procedures for planning adaptation & results of public participation
- - high political and administrative resistance might result in a weak plan

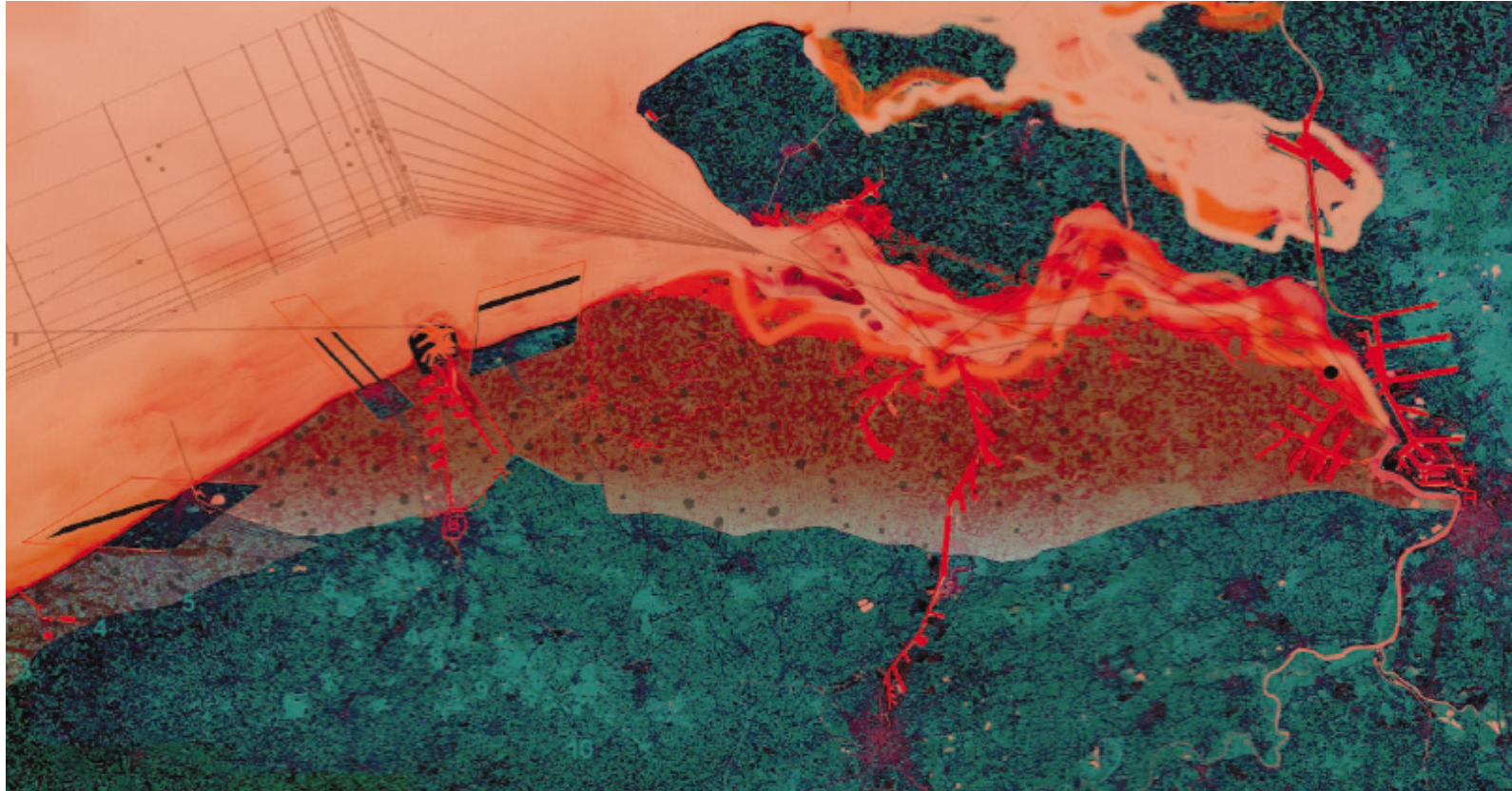
Conclusion

MSP:

- Reduces conflicts among uses and users by establishing priorities
- Provides certainty to the private sector when planning investments
- Promotes efficient use of space and resources
- Promotes ecosystem-based management for (new) activities
- Improves stake holder understanding during participation

ICZM:

- Introduces principles that should be used in MSP
- Bridges the land-sea developments in the EU (FDW-MSD)
- Improves national governance at sea



Thank you