

..... The Tide is Turning:
The rise of legitimate EU Marine Governance



PROF. DR IR J.P.M. VAN TATENHOVE

Inaugural lecture upon taking up the post of Special Professor
of Marine Governance at Wageningen University on 27 October 2011



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ISBN 978-94-6173-159-3

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Rector Magnificus, colleagues, students, friends and family,

This inaugural address examines the development of the marine governance of Europe's seas. These seas face a number of environmental problems, competing spatial claims and controversies between maritime economic activities. Finding solutions for these problems is a challenge to governments, market parties and non-governmental organizations. To date, their efforts have resulted in a patchwork of conflicting EU policies, national policies, private initiatives and regulations on different levels.

In this inaugural lecture, I look at whether it is possible to develop integrated maritime policies for the regional seas. In doing so I examine the role of the EU, member states and stakeholders in developing legitimate region-oriented marine governance arrangements and ask whether it is possible to turn the tide of marine governance to the level of the regional sea?

1 Europe's seas and coastal regions: the current situation¹

Not many people live at sea, but many are involved in maritime activities, such as fishing, transporting goods, extracting minerals and resources and enjoying sailing and recreation at beaches and on shorelines. The EU's maritime economy supports around 5 million jobs and 5% of the EU's GDP (Gross Domestic Product), making a substantial contribution to Europe's economy. Ninety per cent of foreign trade and 40% of internal trade is carried by sea to one of Europe's 1200 ports, and the EU's merchant fleet would be the world's largest. With 6.4 million tonnes of fish each year the EU fishing industry is the third largest in the world. Fisheries, fish-processing and aquaculture, and ancillary activities still provide some 405,000 jobs in Europe. Other important maritime activities are commercial shipping and ship building, offshore energy production (e.g. oil, gas and renewables, such as wind energy), dredging, the development of marine infrastructure projects, such as harbours, as well as coastal and maritime tourism. Forty per cent of the oil and 60% of the gas consumed in Europe is drilled offshore, in the North Sea, the Barents Sea, the Mediterranean, the Adriatic Sea and the Black Sea. Most fossil fuel imports into the EU come by sea – and these are predicted to grow dramatically over the coming years. The seas around Europe provide a range of energy transport routes, via shipping, submerged pipeline and electricity networks.

The EU's coast line extends for almost 70,000 kilometres. Almost half of Europe's population lives within 50 km of the coast and the population growth in coastal regions and islands has been twice the EU average over the last decade. Coastal regions have an important economic function and account for more than 40% of the EU's GDP.

2 What are the problems in the European seas?

The EU is surrounded by different seas and oceans². The most important sea basins are the Baltic Sea, the North-east Atlantic Ocean (including the North Sea), the Mediterranean and the Black Sea.

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In all these seas fish stocks are being overexploited and marine ecosystems and their rich biodiversity are at threat from major oil spills, excessive discharges of chemicals, toxic substances, garbage into the sea and invasive non-indigenous species. These problems are caused both by land-based activities (such as agriculture, waste water treatment and ports) and by maritime activities, such as fishing, shipping, oil and gas drilling, tourism and recreation and navigational dredging. Besides these common problems the seas face different and specific problems, with different conflicts between users and the environment and between different users³.

The *Baltic Sea* is faced with the accumulation of pollution from industry, coastal agriculture and urban waste carried, by waterways or discharged directly into its waters as well as atmospheric deposition. The marine environment of the Baltic is very vulnerable, particularly to eutrophication.

The *Mediterranean Sea* covers only 0.7% of the global marine surface areas, but contains 9% of its biodiversity. This biodiversity and the sea's marine ecosystems are threatened by pollution from several sources: industries, tourism, maritime traffic, urbanized river basins (Ebro, Rhone, Po, Arno, Tiber and Nile) and non-indigenous species carried over in the ballast water of tankers.

The main environmental problems in the *North Sea* are eutrophication, chemical pollution, overfishing and tankers illegally emptying their fuel tanks. Climate change has an impact on coastal erosion and requires investment in infrastructure on the southern part of the North Sea.

The *Black Sea* is fed by water inflows from large catchment areas. These often carry high levels of nutrients, putting the sea at risk from eutrophication. This phenomenon is made worse by direct discharges from numerous ports, industrial zones and urban areas in the surrounding countries, such as Russia, Romania, Turkey, Ukraine and Bulgaria.

User-user and user-environment conflicts not only take place in the territorial seas and Exclusive Economic Zone (EEZ) of coastal states, there are also conflicts at the high seas. There exist serious gaps in authority in the regulating of high seas activities, such as shipping, waste dumping, high sea fishing (shark, whale and tuna fishing), conservation, MPAs, water quality protection (from activities other than shipping or dumping), noise pollution and new ideas for sequestering CO₂. According to Ardron *et al.*, '(...) in the high seas, conventional management

options are generally more difficult to enforce, and spatial protection, e.g. MPAs, could be particularly efficacious, particularly in data-poor situations, as are commonly encountered' (Ardron *et al.*, 2008: 834).

Growing use of the sea increases the conflicts between users. These spatial problems involve making choices about which activities can take place in which part of the sea. There is increased public awareness that marine ecosystems are at risk and should be protected, especially in the highly affected regions, such as the North Sea⁴. Yet this raises several questions: at what level should protection take place? Who is responsible and who should regulate activities? Should each country take measures to protect their own seas or should they cooperate on a sea basin level? And, what is the role of maritime industries and NGOs?

Environmental and spatial problems do not stop at the political and administrative borders of states. The transboundary nature of these problems should force governments and other actors to find solutions at the sea basin level and adopt an ecosystem approach that looks comprehensively at all the dimensions of environmental problems and economic conflicts. An 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' (OSPAR-HELCOM, 2003: 1-2).

3 A patchwork of activities, policies and initiatives

An ecosystem approach should address all aspects of marine basins, include all the activities and sectors, and should be a joint effort involving all governmental and private actors within a marine basin. Yet, finding solutions for environmental problems and competing (spatial) claims is complicated by two factors.

Firstly, no single authority is responsible for problems at sea. Maritime activities are regulated on the international, national, supranational and transnational level, each with its own rules and policies.

At the international level, there are several sets of formal rules, including the United Nations Convention on the Law of the Sea (UNCLOS), the Convention

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on Biological Diversity (CBD) and the International Maritime Organization (IMO)⁵. There are also Regional Sea Conventions: those that apply in Europe include the The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)⁶, The Helsinki Commission (HELCOM)⁷, The Mediterranean Sea Action Plan (to be implemented by the Barcelona Convention)⁸, and the Bucharest Convention of 1992 to protect the Black Sea marine environment⁹.

The regulation of marine spatial planning, tourism, oil and gas production and offshore wind parks mainly takes place at the national level. In each country, different ministries are responsible for regulating different maritime activities and any problems they may cause.

There are also different supranational institutions (such as, the European Parliament, the European Commission, the European Council, Council of the EU and the Court of Justice) with various responsibilities and policies. The EU is increasingly emerging as a key player in maritime issues. Besides its exclusive competence over formulating fisheries policy, different Directorate Generals have developed several maritime policies and regulations, such as the Marine Strategy Framework Directive (MSFD), Integrated Maritime Policy (IMP), NATURA 2000, Integrated Coastal Zone Management (ICZM) and Maritime Transport Policies (MTP). Figure 1, presents a graphical representation of the different policy areas linked to the sea which are covered by the European Commission. The policy domains are grouped under the different Directorate Generals (DGs) who manage them.

The transnational level consists of a diversity of formal and informal institutions and organizations, ranging from regulatory Agencies¹⁰ and comitology committees (Joerges and Vos, 1999; Gehring, 1999; Jenson and Mérand, 2010) to epistemic communities (Haas, 1992), Communities of Practice (Wenger, 1998) and networks of NGOs, such as the Black Sea NGO Network.

The second difficulty can be found in the dynamics of the various sectoral maritime activities. These are differently spatially distributed¹¹ and the different sectors have widely differing institutional capabilities, economic strength and political influence: they are ‘not on equal footing’¹² (Ounanian *et al.*, 2012). They are regulated by sectoral maritime policies, which hinder the search for integrative solutions or may lead to contradictory and incompatible policies. Each

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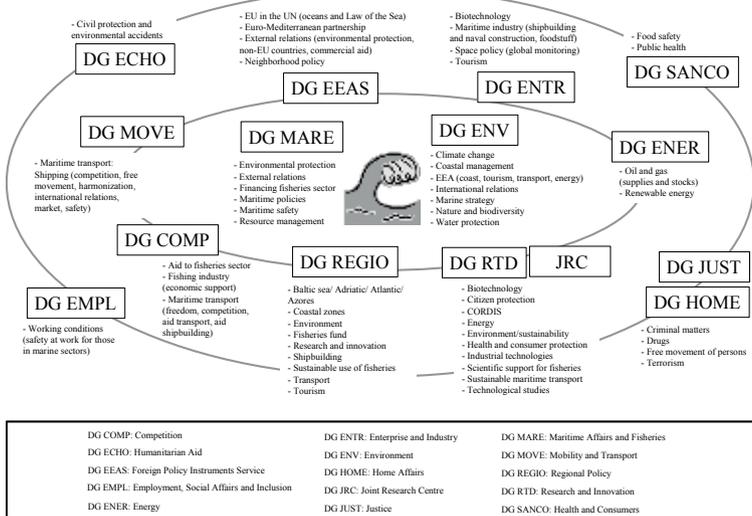


Figure 1: Policy areas covered by the European Commission and that are linked to the sea. The inner ring is the DGs who manage those topics more directly linked to the sea, leaving to the peripheral ring to those whose topics are indirectly related. (Ounanian et al., 2012: 661)

sectoral maritime policy domain is characterized by a specific set of governance arrangements, which coexist alongside one another. In fisheries management, centralised governance arrangements co-exists with co-management systems, national study groups, certification schemes, ITQ-systems and RACs (Raakjær and Vedsmann, 1999; Raakjær, 2003; Jentoft, 2007; Van Hoof, 2010; De Vos, 2011). To protect marine ecosystems, there are initiatives to realize carefully designed networks of ecologically connected MPAs (Marine Protected Areas) at larger scales to sustain and to restore marine populations (Sala et al., 2002; WWF Germany 2009; Gleason et al., 2010; Glenn et al., 2010; Van Haastrecht and Toonen, 2011). In shipping, the IMO and port and flag states play key roles, but innovative governance arrangements do emerge, such as the Clean Ship Concept developed by the Dutch eNGO the North Sea Foundation to trigger debates about the future of shipping and The Green Award¹³ to award individual ships that meet the Green

Award requirements¹⁴ (Van Leeuwen 2010). Also in offshore oil and gas policy covenants changed the roles of governments and market parties (Van Leeuwen and Van Tatenhove, 2010).

The result is a *patchwork* of, often, conflicting maritime activities, regulated by (fragmented) sectoral public policies operating at multiple levels with specific governance structures and regulations. These coexist alongside private initiatives and public-private partnerships. This patchwork of marine governance complicates the process of finding integrated solutions for sea-basins that are seen as legitimate by all parties concerned.

4 Governance and marine governance

Governance¹⁵ ‘is about the rules of collective decision-making in settings where there are a plurality of actors or organizations and where no formal control system can dictate the terms of the relationship between these actors and organizations’ (Chhotray and Stoker, 2009: 3). It is about managing the rules of the game in order to enhance the legitimacy of the public realm (Kjær, 2004). The ‘rules-in-use’ are provided by the specific existing combination of formal and informal institutions. These in turn influence the decisions that are made, the way that these decisions are made and the people who make these decisions: all the classic governance issues (Chhotray and Stoker, 2009).

Marine governance involves a process of negotiation between nested general institutions at several levels, on the one hand, and state actors, market parties and civil society organizations, on the other. This process leads to a sharing of policy making competences to govern activities at sea and control their consequences (Van Tatenhove, 2008; Van Leeuwen and Van Tatenhove, 2010). Marine policy and decision making occurs through different governance arrangements. A *marine governance* arrangement is a temporary stabilization of the content and organization of a marine policy domain. In a governance arrangement different more or less stable coalitions of governmental and non-governmental actors try to influence the activities that occur in and around the sea and to design legitimate governing initiatives based on shared discourses and by managing resources and defining the rules of the game (on different levels)¹⁶. The potential of different

actors to negotiate the rules of the game and be involved in policy processes (i.e. through inclusion and exclusion), depends on the existing power relations between different actors, their (unevenly distributed) access to resources and their different abilities to mobilize resources.

5 Challenges to understanding marine governance in the European Union

The aim of this lecture is to unravel this patchwork of marine policies and initiatives for the European seas and to set out the conditions required for designing legitimate and integrated marine governance arrangements. The first task, unravelling marine governance, involves addressing a number of challenges.

The first of these is to understand the multi-level dynamics of marine governance in the EU. The formulation and implementation of maritime policies takes place at different governmental levels and there is a lack of coordination between (and sometimes within) member states, the EU and international initiatives. Here it is important to understand the evolving institutional arenas and practices of EU marine governance and the tensions between (inter)national, supranational and transnational arenas of marine governance.

The second challenge is to understand the specific institutional setting in which EU marine governance arrangements are being developed. To explain this institutional setting I use a (neo) institutionalist approach¹⁷, focusing on how institutions (as sets of formal and informal rules) are formed through interactions between actors and how these more or less stable structures both enable and constrain future interactions. It is also important to examine the practices of actors, as well as locating the real spaces in which 'European' practices occur. These vary from formal supranational organizations to informal practices in working groups and committees (cf. Jenson and Mérand, 2010; Van Tatenhove *et al.*, 2006).

The third challenge is to understand the conditions that enable and constrain the development of legitimate integrated marine governance arrangements for Europe's regional seas.

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6 Factors that complicate EU marine governance

To understand the dynamics of EU marine governance one needs to look at several unique aspects of the EU's institutional setting (Van Tatenhove *et al.*, 2006).

Firstly, the institutional setting is in constant flux. Over the years, the EU has grown tremendously, both in terms of the number of member states and its competencies. With several Treaty revisions within a few decades the pace and scope of institutional change in the EU is unprecedented. These institutional changes have not only changed the responsibilities of national and supranational institutions, but also the rules of policy-making and politics itself (Van Tatenhove *et al.*, 2006).

Secondly, the Union is both driven by intergovernmental decisions made by the heads of State, especially in times of crisis, resulting in treaty changes, and by day-to-day policymaking by governmental and non-governmental actors working at many different levels. The latter play a major role in interpreting and practising the agreed rules and norms and in implementing decisions. No matter how detailed the treaties may be, they leave ample room for various actors to pragmatically use them in the most effective way or to twist them into their own advantage.

Thirdly, the EU is a fragmented system with differentiated competences, according to the policy area and layer of governance. These are often formulated in an ad-hoc fashion in response to policy-problems. As a result, decision-making rules and policy responsibilities vary considerably, according to the specific situation. In order to keep the system functioning, new and unconventional policy arrangements are designed, bringing together NGOs, scientists, market actors and representatives of the Commission, member states and regions, in order to establish new institutional rules. This increases both the complexity and the informality of the system.

7 Conceptualizing EU marine governance

The institutional setting of EU marine governance is shaped by different rules, arenas, practices and locations that guide and shape the political and policy processes. The spatial dimension of the regional seas is especially relevant for

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marine governance. To understand this spatial dimension I make use of insights from the field of 'territorial institutionalism' (TI) (Carter and Smith, 2008; Carter and Pasquier, 2010). This 'generates a coherent set of analytical tools for conducting research on the EU as a single, yet sectorally fragmented, polity. In particular, territorial institutionalism addresses core questions arising from the policy – polity dialectic to explain how the EU polity is being reproduced, legitimized and dominated' (Carter and Smith, 2008: 277). The central concepts within TI are institutional order and territory. The public definition of problems and the adoption of policy instruments are shaped by institutions that pertain both to a sector and to the territory within which that sector is located. Defined as systems of rules and expectations, institutions have a strong tendency to overlap and produce 'institutional orders', co-produced over time by public and non-public actors. 'Institutional orders structure negotiations in a multiplicity of locations and contain the arenas in which regulatory decisions are taken and sectoral politics unfold' (*ibid.*: 268).

The institutional setting of marine governance consists of a ground structure of a multiplicity of locations, such as the European, global, national and local locations¹⁸ and a diversity of arenas (supranational, intergovernmental and transnational)¹⁹ in which actors from the different (territorial) levels come together. Within this polity, marine governance arrangements emerge and are institutionalized.

The swinging of the governance pendulum

The EU is not a fixed political space, but is fragmented and in constant flux. It is never clear at which level, or in which arena, problems will be defined or solutions found. Sometimes, problems are solved in the supranational arena (e.g. fisheries policies) and sometimes in the intergovernmental (e.g. shipping) or national arenas (e.g. marine spatial planning). This continuous tension between these arenas can be understood in terms of the metaphor of the (governance) pendulum, introduced by Helen Wallace 'to convey both the sense of movement in the EU policy process and a kind of uncertainty about its outcomes. (...) The policy pendulum swings between the national political arena of the participating member states, on the one hand, and the transnational arena²⁰, with its European and global dimensions, on the other hand' (Wallace, 2000: 41).

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The swinging of the governance pendulum from arena to arena is the result of several factors.

Firstly, there are push and pull pressures from member states to find national or European solutions. The President of the European Council, together with the heads of state and ministers of the 27 member states play a crucial role in deciding which problems and solutions should be defined and formulated at the national or supranational arenas. Today's cultural and political climate is pushing the pendulum to national arenas.

Secondly, there are the push and pull pressures from DG's within the Commission to find European solutions on the MS-level or on the level of the regional seas.

Thirdly, there are push and pull pressures from the different maritime policy domains to find national, supranational or international solutions. Each maritime policy domain has its own institutional dynamic, reflecting the different levels at which sectoral maritime activities are regulated. The newly developed Integrated Maritime Policy and MSFD might well act as 'magnets' pulling sectoral policies in the direction of being more integrated and transnational.

These three factors set the pendulum in motion, swinging between the supranational, national or international arenas. The outcome of this process is uncertain²¹, because the swinging of the governance pendulum takes place in (and is a reflection of) a situation of institutional ambiguity.

Institutional Ambiguity

Institutional ambiguity describes the mismatch between the institutional settings and the specific territorial locations (in this case the regional seas) in which they are operating. In the case of regional seas the institutional rules of the EU, the Regional Sea Conventions, EU member states, and other bordering states all have some influence. This gives rise to uncertainty and confusion about the rules for policy-making and participation. As there are no generally accepted rules and norms in the overlapping zones of these institutional settings, actors have the opportunity to negotiate and change the existing institutional (frontstage) rules of the game (Van Leeuwen *et al.*, 2012; Liefferink *et al.*, 2002; Van Tatenhove *et al.*, 2006), and to develop new governance arrangements. The larger the gaps, the more room actors have to manoeuvre. The fragmented EU polity, with multiple

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and sometimes conflicting frontstage and backstage settings, accentuates this institutional ambiguity.

However understanding the dynamics of the swinging governance pendulum within a situation of institutional ambiguity is not enough, to understand how institutional change might take place and the possibilities for strengthening marine governance. Three concepts could be helpful in building a better understanding of the processes of institutional change and the way these affect marine governance: those of layering and conversion and capacity building.

Institutional Layering and Conversion

Layering and conversion ‘open the door for a more nuanced analysis of *when* and how particular institutional arrangements can be expected to change and why some aspects may be more amenable to change than others’ (Thelen, 2003: 234).

Institutional layering involves the partial renegotiation of some elements of a given set of institutions, while leaving others in place (Thelen, 2003: 225). Institutions evolve through a tense layering of new arrangements on top of pre-existing structures (Schickler in Thelen, 2003). In this process, new coalitions design novel institutional arrangements but may lack the support, or inclination, to replace existing institutions, established to pursue other goals. Layering describes the coexistence of traditional and innovative governance arrangements which creates a ‘layered institutional setting’. In the EU the *acquis communautaire* has evolved over time through such a layering process that adapts inherited institutions and practices to emerging new circumstances.

Institutional conversion refers to the process through which ‘existing institutions are redirected to new purposes, driving changes in the role they perform and/or the function they serve’ (Thelen, 2003: 226). The process of conversion can be set in motion by a shift in the environment that confronts actors with new problems that they address by using existing institutions in new ways or in the service of new goals. An example is the possible conversion of the Regional Advisory Councils in fisheries in ‘Integrated Marine Governance Councils’ (Van Tatenhove, 2011) or the conversion of corporatist governance arrangements in co-management systems in fisheries management (De Vos and Van Tatenhove, 2011).

Thus the institutional setting of EU marine governance is characterized not by the replacement of existing institutional rules and institutions but the adding of

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new rules to existing ones (layering) and the redirection of existing institutions (conversion). This fragmented system, which is in constant flux, defines the conditions and possibilities for institutional capacity building.

Institutional Capacity Building

Institutional capacity building is the ability of coalitions in governance arrangements to get involved in policy and decision-making processes by using specific discourses and by mobilizing knowledge resources and relational resources²² (compare Healey, 1998 and 1999; Buunk, 2003 and Healey *et al.*, 2003). Improving the institutional capacity of EU marine governance depends on the ability of coalitions to develop integrative governance arrangements in a situation of institutional ambiguity based on knowledge and insights of the swinging of the governance pendulum. These actors often use layering and conversion in order to change the pathways of policy-making. Because of the diversity of institutional settings and the different factors that cause the pendulum to swing it is not possible to develop the same type of marine governance arrangement for all of the regional seas. The different regional seas require tailor-made marine governance arrangements.

8 Is the tide turning?

With the introduction of the Integrated Maritime Policy in 2007, the Marine Strategy Framework Directive in 2008 and the ideas of regionalization in the 2012 reform of the Common Fisheries Policy it seems that the tide is turning towards a regionally oriented and integrative approach towards marine governance. These policies all push the marine governance pendulum from the national and supranational arenas to the transnational arena of the regional seas, although in different ways.

The Marine Strategy Framework Directive

With the Marine Strategy Framework Directive (MSFD) (2008/56/EC) the EU is attempting to implement an ecosystem-based approach to marine management (EBM) at the level of the regional seas. The MSFD can be seen as an

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effort to move from a ‘use-perspective’ to a ‘system-perspective’ – meaning that rather than regulating only the activities occurring in and on the water, the MSFD seeks to manage the whole system of the marine environment and its associated activities in concert (Ounanian *et al.*, 2012). This Directive sets out a common framework based on cooperation between Member States to ensure the sustainable use of marine goods and services by current and future generations. Member States must achieve, or maintain, Good Environmental Status (GES) in the marine environment by the year 2020 at the latest²³. Other significant changes brought by this Directive are the introduction of ‘marine region’ and ‘regional cooperation’ into EU marine law for the first time (cf. Long, 2011 and 2012). The introduction of the marine region²⁴ is intended to facilitate the application of the ecosystem approach on a regional basis. ‘Regional cooperation’ involves member states and other countries sharing the same marine region to cooperate and coordinate their activities²⁵, with the aim of developing and implementing marine strategies. Member states can make use of existing regional institutional cooperation structures, including those under Regional Sea Conventions, covering that marine region (Article 6(1)). The MSFD aligns the physical regional boundaries of ecosystems with several political and administrative boundaries of member and non-member states.

Integrated Maritime Policy

The Integrated Maritime Policy (IMP) provides another example of the swing of the governance pendulum to the regional sea arena. The Commission’s vision is for an integrated maritime policy that covers all aspects of our relationship with the oceans and seas. This innovative and holistic approach will provide a coherent policy framework that will allow for the optimal development of all sea-related activities in a sustainable manner (EC, 2007b). In 2007, the EC proposed in its Blue paper²⁶ an Integrated Maritime Policy for the European Union, ‘based on the clear recognition that all matters relating to Europe’s oceans and seas are interlinked, and that sea-related policies must be developed in a joined-up way if we are to reap the desired results’ (EC, 2007b: 2). According to the Commission, a more collaborative and integrated approach is needed to deal on the one hand with the ‘increasing competition for marine space and the cumulative impact of human activities on marine ecosystems’ (EC, 2007b: 4) and on the other

hand to overcome the inefficiencies, incoherencies and conflicts of use caused by fragmented decision-making in maritime affairs. One of the proposed suggested policy tools is Maritime Spatial Planning (MSP). This is a tool that allows ‘public authorities and stakeholders to coordinate their actions and optimize the use of marine space to benefit economic development and the marine environment’ (EC, 2008: 2). However, responsibility for developing these maritime spatial plans rests with the member states. Because IMP is a policy and not a directive, the EU cannot force member states to cooperate transnationally. The EC can only promote a common approach among member states that takes account of cross-border impacts and ecosystem requirements. If the MSP were a directive the EC would have a legal instrument to force member states to coordinate and integrate activities and policies that affect regional seas. However, at present this is a step too far for both member states and some NGOs. In the view of some NGOs (Joint NGO paper on MSP, July 2011) the MSFD provides an appropriate framework for the sustainable use of Europe’s seas and oceans, including a specific requirement for the use of spatial measures.

Common Fisheries Policy

The move towards the level of the regional sea is also an issue in the reform of the Common Fisheries Policy (CFP). One of the reform options presented in the 2009 Green Paper was to resort to more specific regional management solutions. The consultation round suggested different forms of regionalization; ranging from increased regionalization at the sea-basin level to regional committees and cooperation between member states. July 2011 the Commission published its Reform of the Common Fisheries Policy (EC, 2011a). A substantial part is dedicated to ‘better governance through regionalisation’. According to the EC ‘a centralised, top-down approach makes it difficult to adapt the CFP to the specificities of the different sea-basins in the EU. Member States and stakeholders will take more responsibility for resource management at fisheries level, as well as for the coherence of such management with other actions in each sea basin.’ (EC, 2011a: 7).

The Communication of July 2011 shows a swing of the pendulum to the regional level, providing a central role for Advisory Councils, which could extend their activities to other areas of marine management that affect fishing activities.

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For example, the Communication proposes setting up a Black Sea Advisory Council. This body could advise the Commission on conservation policy, research, data collection and innovation and boost cooperation between Romania, Bulgaria and other countries sharing the sea basin. It could play an essential role in fostering a regional model of cooperation adapted to the specificities of the Black Sea (EC, 2011a: 7). However, there is a sharp contrast between the Commission's Communication (EC, 2011a) and the draft regulation (EC, 2011b). The latter severely limits opportunities for delegating decision making responsibilities (see for an extensive analysis of regionalising CFP: Raakjær and Hegland, forthcoming; Symes, forthcoming; Van Hoof *et al.*, forthcoming).

There are perhaps three things that we can learn from these policy initiatives.

First, although the European Treaty does not explicitly recognize the regional level, there is an evident wish to develop integrative marine governance arrangements at this level.

Second, the swinging of the governance pendulum to the regional sea arena is affected by the different dynamics of maritime sectors, coordination problems between fragmented sectoral policy domains, different opinions within the Commission and the resistance of member states to give the EU more competencies.

Third, these tensions result in a permanent state of institutional ambiguity about the status and governance of regional seas, which affects the room that governments, EU institutions, the RSC, market parties and NGOs have to manoeuvre.

9 How to turn the Tide?

What are the possibilities to turn the tide and to develop integrated regionally-oriented marine governance arrangements? The concepts developed in this lecture provide some clues about the six building blocks that could enhance institutional marine capacity building.

First building block

The **selection of marine sub-regions and stakeholders**, based on a combined inventory of the specific characteristics of marine ecosystems, administrative borders, the spatial distribution of maritime activities, the conflicts between them and the resultant environmental and spatial pressures. This inventory could be done by different (multidisciplinary) working groups consisting of scientists, civil servants of the EU, Regional Sea Conventions and the bordering states, and representatives of the main activities and sectors in each sub-region. DG Mare and DG Environment should play a key role in prioritizing the regions and identifying participants.

Second building block

Identify existing sectoral **maritime policies** at different governmental levels and the management and coordination problems that exist between them. This joint analysis by scientists, sectoral representatives, civil servants (EU and member state) and NGOs would build an inventory of existing policies, an overview of conflicts and coordination problems between them and identify the issues that enable and constrain further integration.

Third building block

Improve understanding of the **swings of the governance pendulum** by analyzing the pull and push pressures from different layers of government and different sectoral policies. This analysis will help identify conditions that enable and constrain the pendulum to swing towards the territorial sea arena.

Fourth building block

Identify **existing innovative governance arrangements and best practices** that have the potential to enhance integration. Useful starting points would include the RACs, the UK's Marine Management Organizations²⁷, Integrated Management Initiatives in Atlantic Canada, and Australia's Integrated Management Councils²⁸.

Fifth building block

Detect the **level of institutional ambiguity** that exists between the Regional

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Conventions, the EU and bordering states in terms of relevant regional marine policies. Earlier research (Van Leeuwen *et al.*, 2012) has shown differences in the levels of institutional ambiguity (between the European, Regional and individual member states) in implementing the MSFD for the four regional seas. This analysis should be extended to an analysis of the institutional ambiguity surrounding maritime policies with that aim to enhance integrative and regional approaches, such as Maritime Spatial Planning.

Sixth and last building block

Design of **legitimate** marine governance arrangements based on **institutional layering and institutional conversion**. The level of institutional ambiguity will influence whether new governance arrangements need to be developed, or whether existing arrangements could be redirected to new purposes (conversion). In general, one can surmise that situations of high institutional ambiguity are more in need of new institutions. In such situations, the mismatch between existing institutions obstructs the conversion of existing arrangements into more integrative governance arrangements. In a situation of low ambiguity, existing institutions could be more readily converted to new arrangements with a more comprehensive objective, for example the conversion of RACs into Integrated Marine Governance Councils or an upgrading of the role of Regional Sea Commissions.

Developing integrated marine governance arrangements in a context of institutional ambiguity touches upon the empirical and theoretical need to find new modes of legitimacy production (cf. Scharpf, 2004). Legitimacy refers to the acceptability of policy and decision-making. More specific the legitimacy of integrated marine governance arrangements is crucially dependent upon inclusive involvement of stakeholders, the delivering of accepted outcomes, the quality of the governance process and to transparency from politicians and administrators about the outcome of policy processes²⁹.

Research agenda and further cooperation

In my coming research and teaching, I will further develop these building blocks to understand the dynamics of marine governance. More specific my focus will be on the following areas:

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- 1 The swinging of the governance pendulum, the differences of institutional ambiguity for the European seas, and how these differences hamper or make possible the development of legitimate and integrated marine governance arrangements.
- 2 How processes of institutional change affect power processes and participation and result in different pathways of marine governance.

Doing research and teaching are social and joint activities. In realizing my research and teaching ambitions, I wish to continue my existing fruitful and cooperative relations with several groups within Wageningen UR, but also with networks and researchers from outside Wageningen.

Within Wageningen UR I wish to deepen my cooperation in research and teaching with colleagues from IMARES, LEI, Van Hall Larenstein, Alterra, Aquaculture & Fisheries, Aquatic Ecology and Water Management, and several chair-groups within the Environmental and Social Science Groups. I especially look forward to contribute to the further development of the research and teaching activities of the Centre for of Marine Policy.

In the Netherlands, I want to continue fruitful cooperation with DELTARES, Ecoshape, MARE (Centre for Maritime Research), NILOS and the universities of Amsterdam, Twente, Nijmegen, Utrecht, Tilburg and Groningen.

Internationally I wish to continue and to extend the cooperation with different groups and networks, especially, IFM in Aalborg, CEFAS, and the universities of Tromsø, Galway, Södertörn, Liverpool, Gothenburg and Ghent.

Dankwoord

Ik wil mijn rede afsluiten met woorden van dank.

- Rector Magnificus, leden van de Raad van Bestuur, leden van de benoemingsadviescommissie, graag wil ik U danken voor het in mij gestelde vertrouwen om vorm te geven aan deze buitengewone leerstoel.
- De collega's van de leerstoelgroep Milieubeleid bedank ik voor de collegiale sfeer. Het resultaat is een hechte groep die gezamenlijk tot grootste dingen komt. In het bijzonder wil ik twee personen bedanken: Tuur Mol als inspirerende rots in de branding die steeds weer laat zien dat het geheel meer

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is dan de som der delen en Corry Rothuizen als altijd beschikbare steun en toeverlaat.

- De marine groep binnen Milieubeleid is niet meer weg te denken. Samen met jullie, promovendi en stafleden, wil ik het onderzoek en onderwijs verder ontwikkelen en vernieuwen. Beste Judith van Leeuwen, vooral met jou hoop ik nog veel inspirerende Europese avonturen te beleven.
- Wageningen IMARES en het LEI hebben deze leerstoel mogelijk gemaakt. Met veel onderzoekers werk ik al vruchtbaar samen, in het bijzonder wil ik Martin Scholten en Han Lindeboom van IMARES en Hans van Oostenbrugge van het LEI bedanken voor de inspirerende samenwerking. Het zelfde geldt voor de bij het Centre for Marine Policy (CMP) aangesloten onderzoekers van IMARES, LEI, Van Hall Larenstein, SSG, en Alterra. Samen met jullie wil ik marine governance in Europa verder op de kaart zetten.
- Beste Bas Arts, nu ben ik dan in de gelegenheid om jou zeer te bedanken voor onze vriendschap en als ‘scientific buddy’. Ik verheug me op onze toekomstige onderzoeksprojecten.
- Beste Maarten Hajer en John Grin, jullie wil ik bedanken voor al de inspirerende debatten over governance en de EU. Ik hoop onze samenwerking in de toekomst voort te zetten.
- Beste studenten, geen universiteit zonder onderwijs. Ik verheug me op jullie kritische vragen en goede discussies en het gezamenlijk uitbouwen van het marine governance curriculum aan deze universiteit.
- Voor het scherpen van de geest dank ik Hans, Gerard en Gert. Onze 3-maandelijkse verdiepingsbijeenkomsten zijn niet alleen gezellig, maar leveren steeds nieuwe inzichten en verrassende vergezichten op.
- Pa en ma. Het is geweldig dat jullie hier vandaag bij aanwezig kunnen zijn. Zonder jullie steun en vertrouwen had ik hier niet gestaan. Lieve Tom, Marjan en Floor, ik ben heel blij dat jullie er zijn. Maar vooral, lieve Annette, dank ik jou voor alles.

En tot slot dank ik U allen hartelijk voor uw aanwezigheid en aandacht.

Ik heb gezegd.

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Acknowledgement

I like to thank Bas Arts, Arthur Mol and Judith van Leeuwen for their valuable comments on earlier versions of this lecture.

Notes

- 1 The data in this and the next section are based on EC (2006 and 2007), the EC European Atlas of the Seas (ec.europa.eu/maritimeaffairs/atlas/maritime_atlas); DG Mare; www.imo.org and EC Eurostat.
- 2 The EU is surrounded by the following seas and oceans: The North-east Atlantic Ocean (The Greater North Sea, including the English Channel and Kattegat, Celtic Seas (Irish Sea, St George's Channel, Inner Seas of the West Coast of Scotland), the Bay of Biscay and Atlantic Iberian Coast and the waters surrounding the Azores, Madeira and the Canary Islands); The Baltic Sea (and Skagerrak, the Gulf of Riga, Gulf of Bothnia and the Gulf of Finland); North Atlantic Ocean; Mediterranean (Mediterranean – Western and Eastern Basin; Alboran Sea; Balearic Sea; Tyrrhenian Sea; Adriatic Sea; Ionian Sea; Aegean Sea and Ligurian Sea); the Black Sea and Outermost regions (DG Mare, fact sheets and European Atlas of the Seas). For extensive descriptions of the four sea basins and the environmental problems, see Knight, A.M. *et al.* (2011).
- 3 Douvere and Ehler (2009) distinguish two types of conflicts. 'First, not all users are compatible with one another and are competing for ocean space or have adverse effects on each other (user vs user conflicts). But a larger concern is the cumulative impact of all these activities on the marine environment, i.e. the conflicts between users and the environment (user-environment conflicts)'. (Douvere and Ehler, 2009: 77).
- 4 Halpern and colleagues (2008) indicate that there is no area in seas and oceans unaffected by human influence, while 41% is strongly affected by multiple drivers. Highly impacted regions are the Eastern Caribbean, the North Sea and the Japanese waters.
- 5 IMO is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships (www.imo.org, visited last time 22/09/2011).
- 6 The OSPAR Convention was constructed in 1992 to expand and replace the current legislation of regulation of pollution control in the North East Atlantic by the Paris and Oslo convention. Within OSPAR there are fifteen governments working together to help protect the marine environment under

OSPAR in the North East Atlantic; these are, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom (Been *et al.*, 2011).

- 7 The Helsinki Commission, or HELCOM (the governing body of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, signed in 1974 and revised in 1992), works to protect the marine environment of the Baltic Sea from all sources of pollution through intergovernmental co-operation between the riparian countries and the EU. The HELCOM Baltic Sea Action Plan (HELCOM BSAP, 2007) is a programme to restore the good environmental status of the Baltic marine environment by 2021 (Been *et al.*, 2011).
- 8 The Mediterranean Action Plan (MAP) was adopted in 1975 within the Regional Seas Programme of the United Nations Environmental Programme and in 1976 the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) was adopted. Seven protocols addressing specific aspects of Mediterranean environmental conservation complete the MAP legal framework. Today the MAP involves 21 Mediterranean countries and the European Community (Been *et al.*, 2011).
- 9 In 2009, The Black Sea Strategic Action Plan is updated. It represents an agreement between the six Black Sea coastal states (Bulgaria, Georgia, Romania, the Russian Federation, Turkey and Ukraine) to act in concert to assist in the continued recovery of the Black Sea. The document provides a brief overview of the current status of the Sea, based largely on information contained within the 2007 Black Sea Trans-boundary Diagnostic Analysis (BS TDA), and taking into account progress with achieving the aims of the original (1996) Black Sea Strategic Action Plan (BS SAP) (Been *et al.*, 2011).
- 10 Examples of EU regulatory Agencies in the marine domain are the European Environmental Agency (EEA); Community Fisheries Control Agency (CFCA) and the European Maritime Safety Agency (EMSA).
- 11 Sectoral maritime activities range from fixed static place bound structures (e.g. oil rigs and wind farms) to temporary dynamic activities (e.g. surface and submarine navigation and fisheries). These activities take place in a three

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- dimensional marine space: (a) on the surface (fisheries, shipping, dredging, oil- and gas platforms, windmill parks and recreation); (b) in the water column (fisheries with pelagic gear, dredging, recreation and oil and gas production); (c) on the seabed (pipelines, fisheries with benthic gear, dredging, oil and gas production) (Van Tatenhove, 2011).
- 12 For example, research about the role of sectors in implementing MSFD shows that “the attributes of sector activities and the associated resource ownership also make some sectors more aware of the institutional ambiguity associated with the MSFD. For example offshore oil and gas is able to work in more localized way than fisheries due to the fact that oil and gas reserves, unlike fish, are the property of the Member State through the rights to the seabed” (Ounanian *et al.*, 2012: 666).
- 13 The Green Award Foundation has been initiated by Rotterdam Port and the Dutch Ministry of Transport, Public Works and Water Management, but currently has a committee with members from industry associations, ports associations, an environmental NGO and a classification society (Van Leeuwen, 2010: 100).
- 14 Currently over 200 ships carry the Award and ports in some countries (the Netherlands, Belgium, Lithuania, Spain, Portugal, South Africa and New Zealand) have started to give a differentiated port fee to ships that carry a Green Award.
- 15 Well-known definitions of governance are Kooiman, 1993; Marks, 1993; Rhodes, 1997; Stoker, 1998; Kohler-Koch & Eising, 1999; Pierre, 2000; Pierre and Peters, 2000; Héritier, 2001; Hooghe and Marks, 2001 and 2003; Bache & Flinders, 2004; Van Kersbergen and Van Waarden, 2004; Kjeaar 2004; Sørensen and Torfing, 2005; Mak and Van Tatenhove, 2006; Hajer, 2009, etc.
- 16 This definition is based on the definition of a policy arrangement. A policy arrangement is “the temporary stabilization of the content and the organization of a particular policy domain” (Van Tatenhove, Arts & Leroy, 2000; Arts & Leroy, 2006; Arts *et al.*, 2006; Liefferink, 2006). The structure of a policy arrangement can be analyzed along four dimensions, the first three referring to the organizational, and the last to substantial aspects of policy: 1. The actors and their coalitions involved in the policy domain; 2. The division of resources between these actors, leading to differences in power and influence, where

power refers to the mobilization and deployment of the available resources, and influence to who determines policy outcomes and how; 3. The rules of the game currently in operation, in terms of formal procedures of decision making and implementation as well as informal rules and 'routines' of interaction within institutions; and 4. The current policy discourses, where discourses entail the views and narratives of the actors involved (norms, values, definitions of problems and approaches to solutions). Change in one dimension may induce change in other dimensions, thus changing the arrangement as a whole. When a new actor (for example the North East Atlantic Fisheries Commission, NEAFC) mobilizes a new discourse (to be careful that fish stocks are not being overexploited) in existing governance arrangements, this may result in a new rule (the introduction of a quota system) (De Vos and Van Tatenhove, 2011).

17 In general four 'schools of thought about institutionalization can be identified: the historical approach, the 'rational choice' approach, the sociological approach, and the discursive approach (March and Olson, 1994, 1989 and 1995; Hall and Taylor, 1996; John, 1998; Peters, 1999; Lowndes, 2002; Alexander, 2005; Schmidt, 2008). 'Historical institutionalism defines institutions as systems of formal and informal rules and norms and practices in politics or political economics. (...) It offers a broad long-range perspective, focused on path-dependency and a heightened awareness of unintended consequences. Rational choice institutionalism is associated with institutional economics (e.g. North and Williamson), its behavioral assumptions premise rational actors with fixed preference and values. Emphasizing the role of strategic information and behavior in institutional emergence and change, this school of thought attributes the origin of institutions to deliberate design and voluntary agreement among actors (...). 'Sociological institutionalism' began as a subfield of organization theory, focused on institutional forms and procedures in organizations (...). In contrast to the 'rational choicers', 'sociological institutionalism' concluded that institutionalization in organizations was not a result of a strategic search for maximum efficiency. Instead, institutional forms and practices are adopted for legitimacy, in a 'logic of social appropriateness' rather than 'a logic of instrumentality'. Institutionalization is a historic accretion of culturally specific forms and practices (even including

organizational myths and ceremonies), with their origins and diffusions related to their specific contexts: sectors, societies and subcultures' (Alexander, 2005: 212). Discursive institutionalism, lends insight into the role of ideas and discourse in politics while providing a more dynamic approach to institutional change than the older three new institutionalisms (Schmidt, 2008). The core concept in all variants of new institutionalism is 'institution': 'a relatively enduring collection of rules and organised practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances' (March & Olson, 2004: 4). The rules, routines, norms and identities of an 'institution' are the basic units of analysis, rather than micro-rational individuals or macro-social forces (*ibid.*, p. 20). Based on an analysis of new institutionalism in several disciplines, Goodin has formulated seven propositions; the core of these propositions is that institutions constrain or enable human agency, while at the end of the day institutions are produced and reproduced in human action (1996: 2-20). In general, new institutionalism is concerned with the informal conventions of political life as well as with formal constitutions and organisational structures (Lowndes, 2002: 91). It is general accepted that rules and rule systems (institutions) range from relatively informal, customary standards of conduct to codified systems of law (Stone Sweet *et al.*, 2001: 7). Informal conventions may reinforce formal rules, but may also override formal rules or serve to incorporate changes in formal arrangements (pp. 98 – 99).

18 Processes of marine governance take place in the following locations: global/international (United Nations), regional seas (Regional Sea Conventions), the European Union, national (member states of the EU, second (Norway) and third countries (Ukraine, Russia, Turkey, Israel, North African countries).

19 Because the EU is in constant flux, fragmented, and balancing between inter-governmental bargaining and multi-level governance, its basic structure should be understood as the interconnection of intergovernmental, supranational and transnational arenas (Van Tatenhove, 2003 and 2006).

In the intergovernmental arena MS, The European Council and the Council of Ministers play a dominant role. Important institutions within the supranational

arena are the European Commission (EC), the European Parliament (EP) and the European Court of Justice (EJC). The transnational arena consists of a diversity of formal and informal institutions and organisations. Examples of formal transnational institutions are the diversity of committees and European agencies. Examples of informal transnational institutions are ‘epistemic communities’, ‘Communities of Practice’, ‘best practices’ or benchmarking. (Van Tatenhove *et al.*, 2006).

2.0 According to Wallace the transnational arena “consists of both European and broader global or multilateral frameworks, which provide opportunities for the resolution of policy problems beyond the state” (Wallace, 2000: 42). I do not incorporate the global or multilateral frameworks outside the EU setting as part of the transnational arena.

2.1 This is comparable with Gualini’s statement that the constitution of a European multi-level polity represents a change in the scalar rationale of state action rather than a simple upscaling. “(...) EU integration – as mode of ‘flexible institutionalization’ of new political spaces – represents a special case of a ‘politics of scale’. It represents, moreover, the utmost example of the shift from a ‘logic of sovereignty’ to a ‘logic of regulation’ in the constitution of territoriality, in as much as it addresses the need for constituting new regulative regimes that require a new spatio-temporal nexus for policies” (Gualini, 2006: 127).

2.2 Healey *et al.* (2003) developed a relational view of institutional capacity. Building on the concept of institutional capital she makes a distinction between three forms of capital: intellectual (knowledge resources), social (trust and social understanding) and political capital (the capacity to act collectively to develop local qualities and capture external attention and resources) (Healey, 1998). Healey *et al.* (2003: 65) distinguish three dimensions of institutional capacity building: (1) *Knowledge resources*: – The *range* of knowledge resources; – The *frames* of reference; – The extent to which range and frames are shared among stakeholders, *integrating* different spheres of policy development and action; – The capacity to absorb new ideas and learn from them (*openness and learning*); (2) *Relational resources*: – The *range* of stakeholders involved; – The *morphology* of their network (density of network interconnections); – The extent of *Integration* of the various networks; – The location of the

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power to act (relations of power between the actors and the interaction with wider authoritative, allocative and ideological structuring forces; (3) *Mobilization capacity*: The *opportunity structure*; – The institutional *arena* used and developed by stakeholders to take advantage of opportunities; – The *repertoire* of mobilization techniques which are used to develop and to sustain momentum; – The presence or absence of critical *change agents* at different stages.

- 23 GES is defined as: “Environmental status of marine waters where these provide ecologically diverse and dynamic oceans 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” (2008/56/EC). The MSFD lists 11 qualitative GES descriptors for the specific areas under which GES must be achieved. These descriptors are: biodiversity; non-indigenous species introduced by man; populations of commercial fish and shellfish; food webs; (human-induced) eutrophication; seafloor integrity; hydrographic conditions; contaminants; contaminants in fish and other seafood; marine litter; introduction of energy (incl. Underwater Noise).
- 24 ‘Marine region’ means a sea region which is identified under Article 4. Marine regions and their subregions are designated for the purpose of facilitating implementation of this Directive and are determined taking into account hydrological, oceanographic and biogeographic features’ (Art 3(2)).
- 25 Art 5(2): member States sharing a marine region or subregion shall cooperate to ensure that within each marine region or subregion, the measures required to achieve the objectives of this Directive, in particular the different elements of the marine strategies referred to in points (a) and (b) are coherent and coordinated across the marine region or subregion concerned (...).
- 26 With regard to the marine environment, the European Commission’s Strategic Objectives for 2005-2009 state that “in view of the environmental and economic value of the oceans and the seas, there is a particular need for an all-embracing maritime policy aimed at developing a thriving maritime economy and the full potential of sea-based activity in an environmentally sustainable manner” (COM (2005) 12 final). This commitment resulted in the Green

paper (EC, 2006) in June 2006 and after a consultation round of one year with stakeholders in the Blue paper (EC, 2007b).

- 27 The UK government has established the Marine Management Organisation (MMO) to make a significant contribution to sustainable development in the marine area and to promote the UK government's vision for clean, healthy, safe, productive and biologically diverse oceans and seas. This new executive non-departmental public body (NDPB) is established and given powers under the Marine and Coastal Access Act 2009. MMOs incorporate the work of the Marine and Fisheries Agency (MFA) and acquired several important new roles, principally marine-related powers and specific functions previously associated with the Department of Energy and Climate Change (DECC) and the Department for Transport (DfT). The establishment of the MMO as a cross-government delivery partner therefore marks a fundamental shift in planning, regulating and licensing activity in the marine area with the emphasis on sustainable development (www.marinemanagement.org.uk/ visited 07/09/2011).
- 28 Kearney *et al.* (2007) analyze the role of participatory governance and community-based management in Integrated Coastal and Ocean management in Canada. Foster and Haward (2003) developed for the Australian context Integrated Management Councils (IMCs) as one possible means of addressing the need for integrated oceans management. "These IMCs would be based on 'bioregions' within the large marine ecosystems established under AOP (Australian Ocean's Policy, JvT), and would be linked to the policy of subsidiarity. The IMC would in effect be a representative group of all interests within the bioregion. (...) The composition of each IMC would vary according to the bioregion" (Foster & Haward, 2003: 558-559).
- 29 This refers to four forms of legitimacy: (1) Input-legitimacy (government by the people) refers to representation: are all actors (and their preferences and interests) involved who are affected by decisions? (2) Output legitimacy ('government for the people') refers to problem solving: do governments perform and 'deliver goods' and do decisions work? (3) Throughput legitimacy refers to the concern for the quality of the structure and procedure of a policy-making process and (4) Feedback legitimacy refers to the way politicians and

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administrators give account to stakeholders about the outcome of policy processes and the quality of the feedback relations. (Scharpf 1999, 2004; Engelen and Sie Dhian Ho 2004; Van Tatenhove 2011). To understand the legitimacy of IMGA all four forms of legitimacy should be included (for an extensive analysis of legitimacy in integrated marine governance, see Van Tatenhove, 2011).

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Environmental problems, competing (spatial) claims and controversies between maritime economic activities and biodiversity at the European seas have challenged governments and non-governmental actors. Their efforts have resulted in a much-debated patchwork of EU policies, private initiatives, and regulations on different levels. Advanced insights in the *sui generis* institutional setting of the EU – a fragmented system in constant flux – enable us to formulate the conditions for more effective and legitimate EU marine governance arrangements.

ISBN 978-94-6173-159-3