

**Dr hab. prof. UG Dorota Pyć**

University of Gdańsk

ORCID 0000-0003-0111-4184

## **LEGAL CULTURE OF MARINE SPATIAL PLANNING IN MARITIME AREAS FROM THE POLISH PERSPECTIVE**

**Abstract:** In the multidisciplinary literature, it has been assumed that ‘sea space’ is the subject of marine spatial planning (MSP). The primary goal of MSP activities is to divide ‘sea space’ optimally into different uses and to prevent conflicts related to the use of ‘sea space’. The Coastal States, in various regions of the world, for over twenty years have focused on MSP aimed at, amongst others, the development and implementation of maritime spatial plans. Undoubtedly, MSP is based on the division of the Global Ocean into maritime areas. Therefore, MSP instruments should be effectively developed, implemented and improved in pursuit of the goals of sustainable marine governance (SMG) for the protection and preservation of the marine environment. In the European Union, the Coastal Member States of the EU have been required to develop MSP plans by the end of the first quarter of 2021. Thus, MSP instruments are useful tools for the sustainable marine governance at the regional and national levels. At the regional level, sustainable marine governance presents a holistic approach to the use of marine resources and ecosystem services and it is derived from culture and human development. Moreover, there is a justified trend towards developing marine spatial culture understood as a common idea included in the set of good practices of MSP that can contribute effectively to sustainable marine governance. This paper presents several arguments in favor of the need to develop marine spatial culture in the context of Polish experiences in the implementation of MSP.

**Keywords:** law of the sea, maritime areas, sustainable marine governance, marine spatial planning (MSP), marine spatial culture

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## 1. Introduction

In traditional terms, the international law of the sea is understood as part of public international law which relates to the determination of the legal status of maritime areas and the rules for their use.<sup>1</sup> The law of the sea provides the basic legal framework for the allocation of maritime space to the States, their rights and duties regarding such space in its different sections, and the rules of conduct for international co-operation towards ocean governance.<sup>2</sup> The law of the sea has been codified in, amongst others, the United Nations Convention on the Law of the Sea<sup>3</sup> (UNCLOS), commonly known as the ‘constitution of the seas and oceans’.<sup>4</sup> UNCLOS was signed 40 years ago in Montego Bay, Jamaica on 10 December 1982, and entered into force 28 years ago. The UNCLOS reinforced the legal order of the seas and oceans, contributing to the consolidation of the law of the sea regime.<sup>5</sup> That legal regime is based on the division of the Global Ocean into categories of maritime areas distinguished due to specific legal status thereof. Their legal status is well defined in the Convention on the Law of the Sea.<sup>6</sup> Thus, UNCLOS codified normatively the division of the ocean space as well as defined the rights and duties of the Coastal States and the third Parties in each respective category of the maritime area. That division has been formed on the basis of several hundred years of experience of the States. Moreover, the practical experience of the States has contributed to the development of the common standards established amongst others by the Coastal States. The UNCLOS consists of the norms regulating the use of the marine environment and its resources in accordance with the norms defining the legal status of different maritime areas, overseeing the fulfilment

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1 Gilas, “Stan polskiej nauki międzynarodowego prawa morza (The State of Polish Science of International Law of the Sea)”, 21, 13; Attard (ed.), *IMLI Manual on International Maritime Law. Volume I: Law of the Sea*.

2 Pyć, “The Role of the Law of the Sea in Marine Spatial Planning”, 375-392, [https://link.springer.com/chapter/10.1007/978-3-319-98696-8\\_16](https://link.springer.com/chapter/10.1007/978-3-319-98696-8_16) (accessed on 8.08.2022).

3 United Nations Convention on the Law of the Sea: [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf) (accessed on 8.08.2022).

4 Mik, „Konwencja o prawie morza z 1982 roku w prawie Unii Europejskiej”, 75-79.

5 Harrison, *Making the Law of the Sea. A Study in the Development of International Law*, 62, 278-279; Tanaka, *The International Law of the Sea*; Roland Holst, *Change in the Law of the Sea. Context, Mechanisms and Practice*, 52-54.

6 Guilfoyle, *Shipping Interdiction and the Law of the Sea*, 10-18.

of the rights and obligations of the States in maritime areas,<sup>7</sup> and providing the basis for creating an ocean governance framework.<sup>8</sup>

UNCLOS does not contain any provisions relating directly to marine spatial planning (MSP). However, for the MSP process, it is crucial to divide and define the legal status of maritime areas in UNCLOS and the values as well as the principles enshrined in that Convention, in particular, relating to the protection and preservation of the marine environment.<sup>9</sup>

The term maritime areas (spaces or zones) has a purely conventional meaning in the law of the sea. UNCLOS divides maritime areas into three categories on the basis of their legal status: (1) maritime areas included in the territory of a State; (2) maritime areas which are subject to limited jurisdiction and in which a Coastal State enjoys sovereign rights; and (3) maritime areas located beyond national jurisdiction. The maritime areas included in the territory of the Coastal State are: internal waters,<sup>10</sup> the territorial sea<sup>11</sup> and archipelagic waters.<sup>12</sup> The maritime areas under limited jurisdiction in which the Coastal State has sovereign rights include: an Exclusive Economic Zone (EEZ),<sup>13</sup> the continental shelf,<sup>14</sup> and the contiguous zone.<sup>15</sup> The Areas Beyond National Jurisdiction (ABNJ) include the High Seas<sup>16</sup> and ‘the Area’ (deep seabed).<sup>17</sup> UNCLOS separates clearly the territorial sovereignty of the Coastal State from the exercise of sovereign rights in maritime areas with limited jurisdiction (e.g. in EEZ). The sovereign rights are the exclusive rights to maritime-related activities performed by a Coastal State.<sup>18</sup>

In the legal literature, maritime jurisdiction is a term used in relation to the exercise of regulatory, executive and judicial functions in maritime areas by the competent State authorities (e.g., maritime administration)

7 Harrison, *Saving the Oceans Through Law, The International Legal Framework for the Protection of the Marine Environment*, 20-23.

8 Pyć, “Global Ocean Governance”, 159-152, <https://www.transnav.eu/pdf/o639.pdf> (accessed on 10.08.2022).

9 Pyć, “The Role of the Law of the Sea in Marine Spatial Planning”, 380-382.

10 Article 8 UNCLOS.

11 Articles 3-4 UNCLOS.

12 Articles 46-54 UNCLOS.

13 Articles 55-75 UNCLOS.

14 Articles 76-85, UNCLOS.

15 Article 33 UNCLOS.

16 Articles 86-115 UNCLOS.

17 Articles 133-155 UNCLOS.

18 Symonides, *Nowe prawo morza*, 155-169.

including, in particular, all matters of maritime safety and maritime security. Thus, in respect of some of its contents, jurisdiction is an essential aspect of the State sovereignty. The analysis of legal norms allows to distinguish: (1) civil jurisdiction, (2) criminal jurisdiction, and (3) administrative jurisdiction. Moreover, the scholarly legal writings also adopt a distinction between prescriptive (regulatory) jurisdiction and enforcement jurisdiction (e.g., inspection, arrest and judicial proceedings), which facilitates a more complete analysis of the role of the State authorities. In prescriptive jurisdiction, the lawmaking process is the subject of research and in relation to enforcement jurisdiction, that is its application.<sup>19</sup> The scholarly legal writings also indicate functional jurisdiction over natural resources (e.g., in EEZ). Among Polish researchers of international law, Professor Janusz Gilas has dealt with the issues of the law of the sea for many decades. In volume XXXIV of the *Maritime Law* published and dedicated to Professor Janusz Gilas on the 80th Anniversary by the Maritime Law Commission of the Polish Academy of Sciences, Gdańsk Branch, the academic biography and achievements of the Professor were presented.<sup>20</sup> Professor Janusz Gilas is a founder and the first chairman of the Maritime Law Commission of the Polish Academy of Sciences.

## **2. Autonomy of the Law of the Sea in the Context of Sustainable Marine Governance**

The law of the sea is characterized by an extensive internal autonomy in relation to public international law.<sup>21</sup> As far as to the normative framework of this autonomy is concerned, the reference to axiology is required. In particular, in the process of co-creating the legal culture of marine spatial planning, it is important to perceive the law of the sea as a set of instrumental values that serve to implement the maritime spatial order. The instrumental values require fruition. It is possible due to the fact that the law of the sea

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<sup>19</sup> Due to its nature, it is closely related to the enforcement jurisdiction and constitutes a separate type of jurisdiction. When a State exercises maritime jurisdiction, it often plays three roles simultaneously as: Coastal State, Flag State and Port State. Accordingly, three types of jurisdiction relating to law enforcement and State inspection are fundamental under the law of the sea: (1) Coastal State jurisdiction, (2) Flag State jurisdiction and (3) Port State jurisdiction, Pyć, “Tytuł I. Przepisy ogólne”, 75-77.

<sup>20</sup> *Maritime Law*, vol. XXXI, Gdańsk 2018; <https://journals.pan.pl/pm>

<sup>21</sup> Gilas, „Międzynarodowe prawo morza”, 303.

independently influences the behavior of its entities and shapes international relations. Thus, it demonstrates functional efficiency.<sup>22</sup>

In the mid-nineties of the last century, J. Gilas wrote that “the law of the sea has its own axiology, because its main values are the sovereign equality of States and equal opportunities for the strong and the brave, human solidarity in defending life from the sea and at the same time preferring the poor and those dependent on the sea”;<sup>23</sup> he also emphasized that the law of the sea has its own concept of justice, which is characterized by greater importance attached to the structure of restorative justice than in public international law.<sup>24</sup>

The considerations on praxeology in an international context, valuable not only for lawyers, were presented by J. Gilas, who argued that international relations could be studied in terms of techniques used by entities operating to achieve their goals, distinguishing between efficient and inefficient activities. Due to the nature of these relations, research conducted on them, and broadly the science dealing with them, is called international praxeology.<sup>25</sup> He also explained that praxeology as a science is concerned with effective action and is based on the principles of efficient action. In this context, it is interesting to refer the opinions of J. Gilas to the views of L. Petrażycki on the scope of the policy of international law, “the task of which is to develop legal institutions adapting them to the psyche of nations at a given time, which would guarantee their observance”.<sup>26</sup> However, J. Gilas argued that the task of adjusting the norm of international law to the level of the legal awareness of nations was only a fragment of the general issue of efficiency in international relations.<sup>27</sup>

The praxeological motive of effective conduct plays the most important role in the functioning of the States and its organizations. Praxeology includes a method of exposing efficient conduct. The implementation of praxeological instruments in the sphere of fulfilling the obligation of international cooperation and continuous improvement to a significant extent coincides with responsible ocean governance. Praxeology, including its international

22 According to J. Gilas’s opinion expressed in 1995, the autonomous international law of the sea was not fully formed at that time and was in the process of being created; Gilas, “Międzynarodowe prawo morza – cechy charakterystyczne”, 15.

23 Gilas, „Międzynarodowe prawo morza – cechy charakterystyczne”, 8.

24 Ibidem, 8.

25 Gilas, „Przesłanki prakseologiczne w badaniach stosunków międzynarodowych”, 101.

26 Ibidem, 102.

27 Ibidem, 102.

spectrum, is usually focused on a specific effect. Thus, as the science dealing with the norms and principles of effective action, it could strengthen the process of creating value for genuine co-operation in building a network structure with coordinated activities for sustainable marine governance.<sup>28</sup>

UNCLOS promotes a holistic approach to sustainable marine governance (SMG) relevant to MSP, mainly by implementing the obligation to protect and preserve the marine environment (e.g., Article 192). However, UNCLOS does not contain any provisions relating *expressis verbis* to sustainable marine governance or marine spatial planning. Thus, UNCLOS prescribes that States shall co-operate on a global or regional basis, directly or through competent international organizations,<sup>29</sup> in formulating and elaborating international rules, standards and recommended practices and procedures for the protection and preservation of the marine environment, taking into account characteristic regional features (Article 197).

Sustainable marine governance is based on the law of the sea regime and the division of the Global Ocean into maritime areas with a separate legal status, using the potential of MSP. Contemporary considerations about SMG and the maritime economy require an integrated approach. Thus, it is worth mentioning the interesting vision of the ocean economy along with the recommendations presented by the OECD in the report ‘The Ocean Economy in 2030’ on the management of the EEZ,<sup>30</sup> in which a special attention is devoted to the emerging ocean-based industries in the light of their high growth and innovation potential, and contribution to addressing the challenges such as energy security, environment, climate change, and food security.

The governance of the Global Ocean is also of interest to the EU. In 2016, the European Commission and the EU High Representative developed a joint agenda for the future of our oceans, proposing 50 actions for safe, protected, clean and sustainably managed oceans in Europe and around the world, which

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28 Rudolph, Ruckelshaus, Swilling, Österblom, Gelcich, Mbatha, “A transition to sustainable ocean governance”, 8-10, <https://www.nature.com/articles/s41467-020-17410-2.pdf> (accessed on 8.08.2022); Spalding, de Ycaza, “Navigating Shifting Regimes of Ocean Governance. From UNCLOS to Sustainable Development Goal 14”, 5-26, <https://doi.org/10.3167/ares.2020.110102>.

29 Symonides, “Unresolved issues and emerging challenges in the law of the sea”, 37-38, <https://journals.pan.pl/Content/109795/PDF/symonides.pdf> (accessed on 8.08.2022).

30 <https://www.oecd.org/sti/inno/the-ocean-economy-in-2030-9789264251724-en.htm> (accessed on 8.08.2022).

were later subjected to assessment.<sup>31</sup> Then, in 2018, the European Parliament adopted a resolution on international ocean governance – an agenda for the future of the oceans in the context of the 2030 Sustainable Development Goals.<sup>32</sup> The Global Ocean, all seas and oceans, in terms of sustainable marine governance, requires an integrated planning of ‘sea space’ that takes due account of the interests of all maritime sectors and their impact on the marine environment, as well as their contribution to the climate change and biodiversity loss. In the Joint Communication on the EU’s International Ocean Governance agenda, “Setting the course for a sustainable blue planet” of 2022 it is provided, that building on an ecosystem-based approach,<sup>33</sup> MSP can support the achievement of conservation and restoration targets and contribute to a sustainable blue economy.<sup>34</sup>

### 3. Marine Spatial Planning for Sustainable Marine Governance

Marine spatial planning is an international and even global concept.<sup>35</sup> In a broad, international perspective, it is most often perceived and understood

31 *International ocean governance: an agenda for the future of our oceans*, JOIN(2016) 49 final <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016JC0049&from=EN> (accessed: 8.08.2022); *Improving international ocean governance - two years of progress*: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019JC0004&from=EN> (accessed on 8.08.2022).

32 European Parliament resolution of 16 January 2018 on *international ocean governance: an agenda for the future of our oceans in the context of the 2030 SDGs*, 2017/2055(INI), 2018/C458/02 [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0004\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0004_EN.html) (accessed on 8.08.2022).

33 Langed, Rayfus (eds.), *The Ecosystem Approach in Ocean Planning and Governance. Perspective for Europe and Beyond*, passim; [https://maritime-spatial-planning.ec.europa.eu/sites/default/files/9789004389984\\_\\_the\\_ecosystem\\_approach\\_in\\_ocean\\_planning\\_and\\_governance\\_the\\_ecosystem\\_approach\\_in\\_ocean\\_planning\\_and\\_governance.pdf](https://maritime-spatial-planning.ec.europa.eu/sites/default/files/9789004389984__the_ecosystem_approach_in_ocean_planning_and_governance_the_ecosystem_approach_in_ocean_planning_and_governance.pdf); Guideline for the implementation of ecosystem-based approach in Maritime Spatial Planning (MSP) in the Baltic Sea area, HELCOM/VASAB <https://vasab.org/wp-content/uploads/2018/06/Guideline-for-the-implementation-of-ecosystem-based-approach-in-MSP-in-the-Baltic-Sea-area-1.pdf> (accessed on 8.08.2022).

34 Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Setting the Course for a Sustainable Blue Planet – Joint Communication on the EU’s International Ocean Governance Agenda*, JOIN(2022) 28 final.

35 Pyć, “Implementation of Marine Spatial Planning Instruments for Sustainable Marine Governance in Poland”, [https://www.transnav.eu/Article\\_Implementation\\_of\\_Marine\\_Spatial\\_Pyć,50,901.html](https://www.transnav.eu/Article_Implementation_of_Marine_Spatial_Pyć,50,901.html) (accessed on 8.08.2022); UNESCO-IOC/European Commission. 2021. *MSPglobal*

as a process,<sup>36</sup> not an instrument or a policy, as it can be observed in the regional law of the European Union. MSP is closely related to the norms of the law of the sea.<sup>37</sup>

There has been no universal definition of marine spatial planning, although such attempts have been made. The first international meeting on marine spatial planning was the MSP workshop organized in 2007 by the UNESCO Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization – IOC UNESCO.<sup>38</sup> The definition of MSP was then formulated. It recognized MSP as a way to improve decision-making and the effective implementation thereof, based on an ecosystem approach to managing human activities in the marine environment. Internationally, marine spatial planning is understood as the public process of recognizing and dividing the spatial and temporal distribution of human activities in maritime areas to achieve economic, social and environmental goals that are usually included in regional policies.<sup>39</sup>

In the European Union, as well as in the Baltic Sea region, the debate on maritime spatial planning began over twenty years ago.<sup>40</sup> The negative anthropogenic impacts on the oceans, the rapidly growing demand and competition in maritime space and for maritime space used for various purposes, such as: shipping, offshore fishing, offshore mining, construction of artificial islands for electricity generation in offshore wind farms, as well

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*International Guide on Marine/Maritime Spatial Planning*. Paris, UNESCO. (IOC Manuals and Guides no. 89) [https://www.msplglobal2030.org/wp-content/uploads/2021/12/MSPglobal\\_InternationalGuideMSP\\_HighRes\\_202112.pdf](https://www.msplglobal2030.org/wp-content/uploads/2021/12/MSPglobal_InternationalGuideMSP_HighRes_202112.pdf) (accessed on 12.08.2022).

36 The UNESCO's Intergovernmental Oceanographic Commission (IOC, 2009) defines MSP as: "a public process of analysing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic and social objectives that are usually specified through a political process"; Ehler, Douvère, *Marine Spatial Planning: A Step-by-Step Approach Toward Ecosystem-Based Management, Intergovernmental Oceanographic Commission and Man and the Biosphere Programme*, 18, <https://unesdoc.unesco.org/ark:/48223/pf0000186559> (accessed on 9.08.2022).

37 Pyć, "The Role of the Law of the Sea in Marine Spatial Planning", 375-382.

38 Douvère, Ehler, "International Workshop on Marine Spatial Planning, UNESCO, Paris, 8-10 November 2006: A summary", 582-583, [https://www.researchgate.net/publication/248288217\\_International\\_Workshop\\_on\\_Marine\\_Spatial\\_Planning\\_UNESCO\\_Paris\\_8-10\\_November\\_2006\\_a\\_summary](https://www.researchgate.net/publication/248288217_International_Workshop_on_Marine_Spatial_Planning_UNESCO_Paris_8-10_November_2006_a_summary) (accessed on 8.08.2022).

39 <https://ioc.unesco.org/our-work/marine-spatial-planning> (accessed on 8.08.2022); Grip, Blomqvist, *Marine spatial planning: Coordinating divergent marine interests*, <https://link.springer.com/content/pdf/10.1007/s13280-020-01471-0.pdf> (accessed on 10.08.2022).

40 *Spatial Planning for Sustainable Development in the Baltic Sea Region*, A VASAB 2010 Contribution to Baltic 21, Baltic 21 Series No 9/98, CSD/BSR 1998.



as the conservation of marine and coastal ecosystems have highlighted the urgent need for the integrated ocean governance.

In European Union law,<sup>41</sup> maritime spatial planning is defined as a process of planning and regulating all types of human use of the sea, taking into account the protection of the marine ecosystems in which these activities take place and the maintenance of marine and coastal biodiversity. In European Union law, within the framework of regional international cooperation of the States of the Baltic Sea region, maritime planning and management have been developing dynamically for several years.<sup>42</sup>

The idea contained in the Green Paper on maritime policy for the European Union<sup>43</sup> of 2006 influenced the introduction of an integrated approach to sustainable marine governance and the economies related to the sea to the EU's maritime policy. It concludes that the purpose of the EU's Integrated Maritime Policy<sup>44</sup> is to support the sustainable development of seas and oceans and to develop coordinated, coherent and transparent decision-making on EU sectoral policies for seas and oceans, islands, coastal areas and marine regions, as well as maritime sectors. The EU's Integrated Maritime Policy shows that maritime spatial planning and the Integrated Coastal Zone Management are cross-cutting instruments targeting public actors and stakeholders and should be used in a coordinated and integrated manner.

In 2008, the Commission defined five areas of support for the development of maritime spatial planning: cross-border cooperation, incorporating

41 In *Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU* states that: 'The term maritime spatial planning will be used throughout the document even though different terms tend to be used synonymously, e.g., by Member States, in current practice. The term maritime spatial planning is favored over marine spatial planning to underline the holistic cross-sectoral approach of the process'; Communication from the Commission, *Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU*, COM(2008) 791 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0791:FIN:EN:PDF> (accessed on 10.08.2022).

42 Zaucha, *Gospodarowanie przestrzeni morskiej*, <https://wydawnictwosedno.pl/wp-content/uploads/2018/10/Gospodarowanie-przestrzeni-morska.pdf> (accessed on 8.08.2022).

43 Green Paper: *Towards a future Maritime Policy for the Union: A European vision for the oceans and seas 'How inappropriate to call this planet Earth when it is quite clearly Ocean' attributed to Arthur C. Clarke*, COM(2006) 275 final, [https://europa.eu/documents/comm/green\\_papers/pdf/com\\_2006\\_0275\\_en\\_part2.pdf](https://europa.eu/documents/comm/green_papers/pdf/com_2006_0275_en_part2.pdf) (accessed on 8.08.2022).

44 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *Conclusions from the Consultation on a European Maritime Policy*, COM(2007)574, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0574:FIN:EN:PDF> (accessed on 8.08.2022).

monitoring and evaluation, a strong data and knowledge base, coordination within Member States – simplifying decision processes and developing maritime spatial planning in a transparent manner.<sup>45</sup> The Commission drew the attention of the Member States to the need for the sectoral integration of these areas, as well as to taking measures aimed at making the entire process transparent in order to better understand it publicly. Moreover, the Commission referred to the obligation of the EU Member States to implement maritime spatial planning. Then, in 2010, the Commission presented a summary of the activities in these areas of support for the development of MSP.<sup>46</sup>

These above-mentioned areas and other activities of the Commission contributed to the development of the Directive 2014/89/EU establishing a framework for maritime spatial planning (MSPD),<sup>47</sup> which introduced the legal obligation to prepare spatial development plans in the EU. The MSPD is embedded in the EU's integrated maritime policy. The MSPD entered into force on 17 September 2014 and the transposition deadline was 18 September 2016.<sup>48</sup> The EU Member States were required to set up maritime spatial plans by 31 March 2021. The MSPD provides the legal framework for the development of MSP in the EU and requires the 22 coastal EU Member States to produce maritime spatial plans for the maritime areas under their jurisdiction.<sup>49</sup>

The MSPD aims to promote the sustainable development of the maritime economy as well as the sustainable use of marine and coastal resources by applying an ecosystem-based approach,<sup>50</sup> and requires EU Member States

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45 Communication from the Commission, *Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU*, COM(2008) 791 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0791:FIN:EN:PDF> (accessed on 8.08.2022).

46 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Maritime Spatial Planning in the EU – Achievements and Future Development*, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0771:FIN:EN:pdf> (accessed on 8.08.2022).

47 Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 *establishing a framework for maritime spatial planning*, OJ L 257, 28.8.2014, 135-145.

48 Article 15(1) of the MSPD requires the EU Member States to transpose the Maritime Spatial Planning Directive into domestic law by 18 September 2016.

49 Some the EU Member States were not able to comply with the MSPD requirement to establish maritime spatial plans by 31 March 2021. See: Report from the Commission to the European Parliament and the Council outlining the progress made in implementing Directive 2014/89/EU establishing a framework for maritime spatial planning, COM(2022) 185 final, 5-6.

50 The application of an ecosystem approach in MSP is based on the effective use of MSP instruments and taking appropriate decisions within sustainable marine governance, using

to develop and implement maritime spatial plans. The MSP framework aims to promote:

- sustainable growth of the maritime economies,
- sustainable development of marine areas and
- sustainable use of marine resources.

Although the MSPD is a framework directive, it imposed clearly formulated obligations on EU Member States. Moreover, in the whole process of MSP, the EU Member States were and still are responsible and competent for setting up and deciding on the format and content of the resulting maritime spatial plans, including any allocation of maritime space to various activities and uses. The MSPD lays down the obligation to establish a maritime planning process, which should take into account land-sea interactions and promote cooperation among the EU Member States. The MSPD requires the EU Member States to designate the authorities competent for its implementation. The main functions of these competent authorities are to implement the MSPD and ensure effective cross-border cooperation between the EU Member States and with neighboring non-EU countries. The Commission is obliged to report on the MSPD implementation process.<sup>51</sup>

The MSPD requires that Member States establish maritime spatial plans as soon as possible, and at the latest by 31 March 2021.<sup>52</sup> Poland is one of those EU Member States which has succeeded in complying with the deadline fixed by the MSPD, establishing and adopting the Polish maritime spatial plan within one year after the deadline.<sup>53</sup> Poland has a comprehensive maritime

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the transparent procedures for institutional coordination as well as public consultation (social participation), Pyć, “The Propedeutics of Maritime Spatial Planning”, 9, [https://seaplanspace.eu/wp-content/uploads/2022/02/SEAPLANSPEACE\\_CSM\\_PL\\_vo4.pdf](https://seaplanspace.eu/wp-content/uploads/2022/02/SEAPLANSPEACE_CSM_PL_vo4.pdf) (accessed on 8.08.2022). *Synthesis Report on the Ecosystem Approach to Maritime Spatial Planning*, [www.panbalticscope.eu/wp-content/uploads/2019/12/PBS-Synthesis-Report.pdf](http://www.panbalticscope.eu/wp-content/uploads/2019/12/PBS-Synthesis-Report.pdf) (accessed on 8.08.2022).

<sup>51</sup> The Commission must submit a report to the European Parliament and the Council outlining progress on the implementation of the Directive by 31 March 2022, and every 4 years after that (Article 14(2) of the MSPD). This report gives an overview of that progress, as required under the MSPD, and assesses transposition and conformity.

<sup>52</sup> Article 15(3) MSPD. The MSPD also required the EU Member States to inform the Commission and other Member States concerned within three months of the establishment of those plans; Report from the Commission to the European Parliament and the Council outlining the progress made in implementing Directive 2014/89/EU establishing a framework for maritime spatial planning, COM(2022) 185 final.

<sup>53</sup> The spatial development plan for the maritime areas of the Republic of Poland was adopted by the Regulation of the Council of Ministers of 14 April 2021 on the adoption of the spatial development plan for internal sea waters, the territorial sea and the exclusive economic zone at scale of 1:200,000, Journal of Laws of the Republic of Poland 2021, item 935. The text

spatial plan in place for the first time, and is moving on to the challenge of implementing it in practice.

In compliance with a legal obligation to develop and implement a development plan for Polish maritime areas, in addition to many other legal regulations, the provisions of the three following normative Acts were primarily applicable: the Act of 21 March 1991 on the maritime areas of the Republic of Poland and maritime administration<sup>54</sup> (the Polish Maritime Areas Act), the Ordinance of the Minister of Maritime Economy and Inland Navigation and the Minister of Infrastructure and Construction of 17 May 2017 on the required scope of spatial development plans for internal sea waters, territorial sea and exclusive economic zone, specifying the required scope of spatial development plans for internal sea waters, territorial sea and EEZ in the text and graphic part of the plan, prepared for part or all of internal sea waters, territorial sea and the EEZ, and the Regulation of the Council of Ministers of 14 April 2021 on the adoption of the spatial development plan for internal sea waters, territorial sea and the exclusive economic zone at scale of 1:200,000. The first maritime spatial plan was developed on the basis of the provisions of the Polish Maritime Areas Act<sup>55</sup> of 1991, including in particular on the basis of amendments introduced to this Act in 2015 and issued to its implementing rules.

#### 4. Legal Bases of Maritime Spatial Planning in Poland

In 2015, the ‘Maritime Policy of the Republic of Poland up to 2020 (with a perspective up to 2030)’<sup>56</sup> was adopted by a Resolution of the Council of Ministers. The maritime policy of the Republic of Poland is in line with the recommendations of the European Commission contained in

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of the Regulation in English is available on the SEAPLANSPLACE website: [https://seaplanspace.ug.edu.pl/wp-content/uploads/2022/01/MSP\\_PL\\_Rozporządzenie\\_ENGLISH.pdf](https://seaplanspace.ug.edu.pl/wp-content/uploads/2022/01/MSP_PL_Rozporządzenie_ENGLISH.pdf) (accessed on 8.08.2022).

54 Act of 5 August 2015 amending the Act on maritime areas of the Republic of Poland and maritime administration and some other acts, Journal of Laws of the Republic of Poland 2015, item 1642, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001642/O/D20151642.pdf> (accessed on 8.08.2022).

55 Act of 21 March 1991 on maritime areas of the Republic of Poland and maritime administration 2022 r. items 457, 1079, 1250, 1604 <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19910320131/U/D19910131Lj.pdf> (accessed on 8.08.2022).

56 *Maritime Policy of the Republic of Poland up to 2020 (with perspective up to 2030)*, Inter-Ministerial Committee on Maritime Policy of the Republic of Poland, Warszawa 2015.

the ‘Integrated Maritime Policy of the European Union’ and ‘Guidelines for an Integrated Approach to Maritime Policy: Towards Best Practices in Integrated Maritime Management and Stakeholder Consultation’.<sup>57</sup> One of the priorities of Polish maritime policy is the improvement of marine governance by MSP (understood purely technically) which plays the role of ‘an instrument for the implementation of the integrated maritime policy of the European Union’. The goal is to create ‘an efficient maritime governance system’. Among the activities to improve maritime governance is the development of maritime spatial plans for Polish maritime areas taking into account the ecosystem-based approach.<sup>58</sup>

Polish maritime areas are: internal sea waters,<sup>59</sup> the territorial sea,<sup>60</sup> the contiguous zone,<sup>61</sup> and the EEZ<sup>62</sup> (see figure 1).

57 COM (2008) 395.

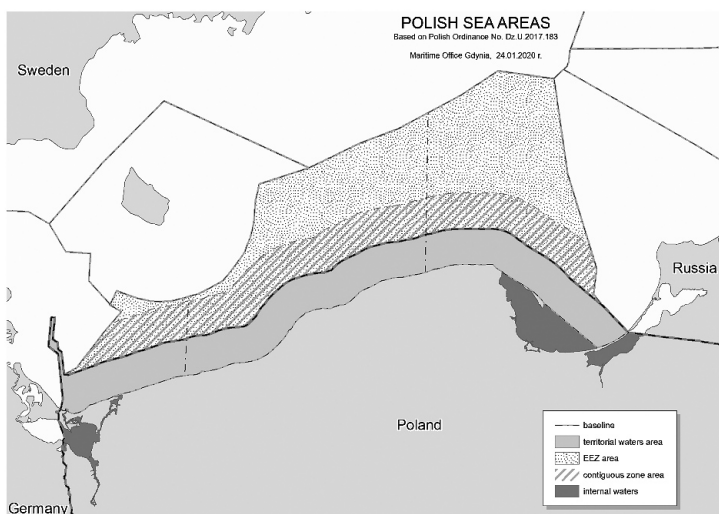
58 *Maritime Policy of the Republic of Poland up to 2020 (with perspective up to 2030)*, Inter-Ministerial Committee on Maritime Policy of the Republic of Poland, Warszawa 2015, 62.

59 Internal sea waters mean waters on the landward side of the baseline of the territorial sea. The territorial sovereignty of the Republic of Poland over internal sea waters and the territorial sea extends to waters and air space over these waters and the seabed of internal waters and the territorial sea, as well as to the subsoil.

60 The territorial sea of the Republic of Poland is a maritime area of 12 nm (22 224 m) wide, which is measured from the baseline of that sea, that is the line of the lowest water level along the coast or the outer limit of the internal waters. The outer limit of the territorial sea is a line, where every point is at a distance of 12 nm from the nearest point of the baseline. Roadsteads, which are used for loading, unloading and anchoring ships and which are situated, wholly or partly, outside marine water areas, referred to above, are included in the territorial sea (Article 5(1) (3) and (4) of the Polish Maritime Areas Act). Innocent passage has been regulated by Polish law (Article 6 of the Polish Maritime Areas Act). In a legal sense, the passage through Polish territorial sea is innocent as long as it is not prejudicial to peace, public order or the security of the Republic of Poland (Article 8 of the Polish Maritime Areas Act).

61 On 19 November 2015, the Act amending the Act on Maritime Areas of the Republic of Poland and Maritime Administration and certain other laws (Journal of Laws 2015, item 1642) under which the contiguous zone had been established (Article 2(1)) entered into force. The Polish contiguous zone is a maritime area adjacent to the territorial sea in which Poland has the right to prosecute, detain, and punish the perpetrators of violations of these regulations. The contiguous zone overlaps with the part of the EEZ, where Poland exercises sovereign rights and has limited jurisdiction. Therefore, in the contiguous zone, all Polish regulations applied to the EEZ, are applicable. Due to its legal status, the contiguous zone is not subject to maritime spatial planning; Pyć, “The Polish Contiguous Zone – the Exercise of the Coastal State Jurisdiction and Control”, [https://www.transnav.eu/Article\\_The\\_Polish\\_Contiguous\\_Zone\\_-\\_the\\_Pyć,43,746.html](https://www.transnav.eu/Article_The_Polish_Contiguous_Zone_-_the_Pyć,43,746.html) (accessed on 12.08.2022).

62 In the Polish EEZ, Poland has sovereign rights and other rights provided for in international law (Article 17 of the Polish Maritime Areas Act). Polish environmental law is applicable in the Polish EEZ (Article 19 of the Polish Maritime Areas Act).



**Figure 1. Maritime Areas of the Republic of Poland**  
(<https://www.umgdy.gov.pl/mapy/>)

The Polish Maritime Areas Act includes the provisions introducing the framework of MSP in Poland in order to fulfill the EU obligation resulting from MSPD. Pursuant to Article 37<sup>1</sup> (Chapter 9) of this Act, spatial planning and governance covers the following Polish maritime areas: internal sea waters, territorial sea and the EEZ, and means the process by which competent authorities analyze and organize the use of maritime areas to achieve ecological, economic and social objectives.<sup>63</sup>

The authorities competent for maritime spatial planning are the minister in charge of the maritime economy and the director of the maritime office. The maritime administration authorities and their competences are specified in the Polish Maritime Areas Act. The minister in charge of the maritime economy is the supreme authority of maritime administration, directors of maritime offices are the local maritime administration authorities. Supervision over the activities of directors of maritime offices within the scope regulated by the Polish Maritime Areas Act and in separate regulations is exercised by the minister in charge of the maritime economy.

<sup>63</sup> See: 'The Study of Conditions of Spatial Development of Polish Sea Areas' which has been developed accompanied by spatial analyses, defining the spatial, legal, economic, social and environmental conditions for the purposes of setting up the maritime spatial plan for Polish maritime areas, [https://www.umgdy.gov.pl/wp-content/uploads/2015/04/INZ\\_Study\\_of\\_conditions.pdf](https://www.umgdy.gov.pl/wp-content/uploads/2015/04/INZ_Study_of_conditions.pdf) (accessed on 12.08.2022).

Pursuant to the Polish legal regulations, maritime spatial plans covering internal sea waters, territorial sea and the EEZ determine:

1. intended use, including the basic functions of internal sea waters, territorial sea and the EEZ;
2. prohibitions or restrictions on the use of areas, taking into account the requirements of nature protection;
3. distribution of public purpose investments;
4. directions of development of transport and technical infrastructure;
5. areas and conditions: environmental protection and cultural heritage, fishery and aquaculture, renewable energy, exploration, recognition of mineral deposits and extraction of minerals from deposits.

The Polish legislator has distinguished two main functions of sea basin allocation types: main functions<sup>64</sup> and allowed functions.<sup>65</sup> The main functions are the main allocations of sea basins established in the plan (as a sea basins cards) which must not be disturbed by any other allowed functions. The allowed functions of an sea basin denote possible uses of an area, the coexistence of which does not adversely affect the sustainable development of the area.

The ecosystem approach has been defined in Article 37b(1a) of the Polish Maritime Areas Act. It means that in managing human activity, the following three conditions must be met, namely:

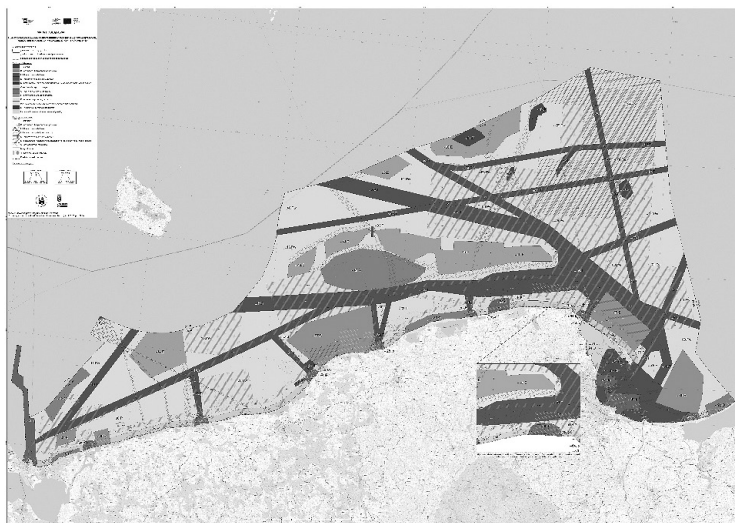
1. maintaining the impact of planned human activities on the ecosystem at a level that enables the achievement and maintenance of good environmental status;
2. maintaining both the ability of the ecosystem to function properly and resistance to environmental changes resulting from human activity;
3. enabling the stainable use of ecosystem resources and services by the present and future generations.

An environmental impact assessment is prepared for the draft maritime spatial development plan for internal sea waters, the territorial sea, and the EEZ.

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<sup>64</sup> Main functions mean the leading allocation of the sea basin (reservoirs) designated in the maritime spatial plan of maritime areas, which cannot be interfered with by any other allowed functions.

<sup>65</sup> Allowed functions mean the other uses of the areas designated in the maritime spatial plan, the coexistence of which does not disturb the leading allocation of the area in a way that permanently prevents the implementation of the main function and does not adversely affect sustainable development of the area designated in the plan.



**Figure 2. Polish maritime spatial plan ([https://www.umgdy.gov.pl/en/maritime\\_plan/gis-data-of-the-spatial-development-plan-of-polish-sea-areas](https://www.umgdy.gov.pl/en/maritime_plan/gis-data-of-the-spatial-development-plan-of-polish-sea-areas))**

Undoubtedly, in a significant part, the Polish maritime areas, as a result of the development and implementation of the maritime spatial development plan (see: figure 2), have become the subject of implementation of the concept of sustainable marine governance.

## 5. Marine Spatial Culture

Marine spatial culture is a concept based on the identification and recognition of cultural values, understood as an ethical justification (moral duty) for the protection and preservation of the marine environment, promoting the need of sustainable marine governance for rational socio-economic human uses of 'sea space'.<sup>66</sup> It is emphasized in the literature that "Ocean governance faces the challenge of reflecting the multi-dimensional and interconnected role that the ocean plays in environmental health, economic

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66 Gee, Kannen, Adlam, Brooks, Chapman, Cormiera, Fischera, Fletchere, Gubbins, Shucksmith, Shellock, *Identifying culturally significant areas for marine spatial planning*, [http://plymsea.ac.uk/id/eprint/7672/2/Identifying%20culturally%20significant%20areas%20for%20marine%20spatial%20planning\\_RS\\_PlyMSEA.pdf](http://plymsea.ac.uk/id/eprint/7672/2/Identifying%20culturally%20significant%20areas%20for%20marine%20spatial%20planning_RS_PlyMSEA.pdf) (accessed on 10.08.2022).



prosperity and human well-being including justice and equity”.<sup>67</sup> The marine spatial culture, as an idea included in the set of good practices of MSP, can contribute effectively to sustainable marine governance. Successful marine spatial planning can help to ensure an environmentally, economically and socially sustainable development in coastal and marine regions.

The planning culture concerns the perception of the marine environment as well as openness, co-operation, trust and the ability to rely on expert knowledge, skills and experience in acquiring tacit knowledge etc. In Europe, EU Member States are at different stages of MSP development. Moreover, planning cultures differ substantially, which has an impact on how national maritime spatial plans are developed. To achieve the desired level of regional sustainability, it is necessary to develop a ‘common language’ as an indispensable component of marine spatial culture.

## 6. Conclusions

Marine spatial planning involves identifying the possible uses of marine resources and their rational distribution, as well as providing sustainable activity in terms of the ecosystem. Activities at sea and in coastal areas are often closely related and in order to promote the sustainable use of ‘sea space’, MSP should take into account land-sea interactions. Therefore, it can be very useful in determining the directions of development related to the sustainable and integrated management of human activities in the marine and coastal environment, the conservation of living resources, the vulnerability of marine and coastal ecosystems, erosion, as well as social and economic factors.

Maritime spatial plans are instruments for sustainable marine governance. The obligation to develop and implement maritime spatial plans results from the laws of the European Union. The EU’s maritime spatial planning framework promotes: sustainable growth in the maritime economy; sustainable development of maritime areas; sustainable use of sea resources. The responsible approach of EU Member States to the development and implementation of plans and cross-border cooperation has revealed a significant potential for building marine spatial culture.

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67 Rudolph, Ruckelshaus, Swilling, Österblom, Gelcich, Mbatha, “A transition to sustainable ocean governance”.

The planning solutions adopted in the Polish maritime spatial plan are closely related to sustainable development. MSP aims to promote the balanced coexistence of different uses and an appropriate distribution of ‘sea space’ among different uses. When designing the provisions implementing MSPD law into Polish law, the legislator took sustainable development into account.

MSP is a useful tool to apply the ecosystem approach to marine and coastal governance also as an instrument of maritime policy at both regional and national levels. One of the goals of maritime policy is to create effective sustainable marine governance. Improving marine governance was included among the priorities of Polish maritime policy, adopted in March 2015. The activities aimed at improving marine governance include the development of maritime spatial plans for Polish maritime areas, taking into account the ecosystem approach. The spatial development plan for internal sea waters, the territorial sea and the EEZ was drawn up in 2021. The conclusions from its implementation will allow the plan to be assessed. That will be of great importance for its improvement and adaptation to the needs of stakeholders in the process of introducing reasonable changes.

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