EUROPEAN COMMISSION - *DG XI.D.2*

LEGAL AND REGULATORY BODIES: APPROPRIATENESS TO INTEGRATED COASTAL ZONE MANAGEMENT

Contract B5-9500 / 97 / 000597 / MAR / D2

FINAL REPORT

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October 1999

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EXECUTIVE SUMMARY

INTRODUCTION

The achievement of integrated coastal zone management inevitably involves considerations of law. Whether ICZM is implemented by statutory or non-statutory means, it is important that legal principles should be used in the most effective way.

Law defines the powers and duties of the many public and private bodies and individuals involved in the management and use of the coastal zone, and it provides the legal framework within which they operate. It therefore has the potential to assist the process of ICZM, but it also has the capacity to impede it. Although ICZM is a modern development, it must inevitably function within a complex framework of existing laws, most of which pre-date the concept of ICZM and were created for different purposes.

This report analyses the role of law at national, European Community and international levels, and considers how these mechanisms may best be applied to promote the achievement of ICZM in the European Union.

The methodology on which the report is based involves a combination of research techniques:

- A desk study was undertaken of national, European Community and international laws affecting the coastal zone, together with the laws of selected States outside Europe.
- Questionnaires were sent to the Demonstration Projects and the National Experts, and fact-finding visits were made to individual projects, in order to discover the strengths and weaknesses of the legal systems in practice.

COASTAL ZONE LAWS IN MEMBER STATES OF THE EUROPEAN UNION

The report demonstrates the diverse range and complex nature of the national laws affecting the management of the coastal zone in European States. Despite this, there are nevertheless some similarities and common features among them. Not surprisingly, the resemblance tends to be greatest between States that share a legal background based on the common law, Roman law, Scandinavian or Germanic traditions.

Public ownership of the shore and territorial sea bed is a characteristic feature, but the precise extent and delimitation of the shore varies between countries. There are also public rights of access to coastal land and water, which are derived from common law, Roman law or the Scandinavian “Everyman’s Right”.

The designation of protected coastal belts along the shoreline, in which prohibitions and restrictions are imposed on development, is also popular. This is particularly apparent in the Baltic States, where HELCOM Recommendation 15/1 concerning the protection of the coastal strip has exerted a unifying influence, although there is again considerable variation in the width of the protected belts. The establishment of coastal planning zones has also been encouraged by HELCOM. Sometimes these designations are incorporated in wider systems of planning or nature conservation law, while others are independent measures such as the Shores Act in Spain. The French *Loi Littoral* and SMVM are interesting examples of the specialised development of existing planning laws.

A less desirable feature is the frequent distinction between laws that apply to the land and those that govern the sea. The typical dichotomy between terrestrial and marine measures militates against integrated management. Coastal planning laws are predominantly concerned with land use, and although they can be employed to control the influence of land-based activities on the sea, the reverse seems harder to achieve. It is also generally apparent that the role of local authorities is largely confined to land management, whereas the sea is treated as a national resource to be administered by central government.

Another disadvantage of most legal systems is the adoption of sectoral laws dealing with particular parts of the environment or particular types of activity. This approach hinders integrated management of coastal zones unless effective co-ordination mechanisms are included. A further area of concern is the frequent failure to implement laws properly. All these, however, are defects that can in principle be remedied.

A final observation on the analysis of national laws is that, whatever their merits, they are established principles with which ICZM must necessarily deal, and their complexity and variety mean that it is unlikely to be possible to superimpose a uniform legal model upon them all.

COASTAL ZONE LAWS OUTSIDE THE EUROPEAN UNION

A comparison of coastal zone laws outside the European Union reveals the variety of legal and non-statutory instruments available for the purposes of ICZM. No single approach is clearly superior to all the others, and countries have chosen those that they consider most appropriate to their own legal and administrative systems.

The example of the United States, which has the most mature experience of ICZM, indicates the importance of flexibility within a federal structure. A broad definition of the coastal zone at federal level permits individual states to adopt more precise boundaries that suit their particular geographical situation. While the US Coastal Zone Management Act specifies the national objectives of ICZM policy, it does not coerce states to develop coastal management programs, but successfully provides incentives for them to do so by offering the benefits of financial grants and “federal consistency”. The methods of implementation selected by US states are equally varied, and include comprehensive ICZM legislation, framework acts and non-statutory co-ordination schemes.

By comparison, the approach of the Australian federal system is to adopt a non-statutory ICZM policy at national level, and to encourage and support the participation of states and territories through funding and other initiatives. ICZM legislation is a regional mechanism that has been chosen by some, but not all, Australian states. In Canada, the analogy of the Oceans Act is not exact, since its focus is primarily marine, but it provides an example of federal legislation establishing a broad framework for integrated management co-ordinated by a national government.

New Zealand is exceptional in incorporating ICZM into a comprehensive reform of environmental law. Such a fundamental change inevitably requires considerable political will, and could not be introduced without the general consent of participants. It may be significant that New Zealand is not a federal State, and its example would be difficult to follow within the European Union as a whole. Experience in New Zealand has also shown that complex new legislation is unlikely to be perfect in its initial form, and will usually require further amendment. However, the Resource Management Act reflects the important principle that the

coastal zone is part of a wider environment, and legislation for the coast should not be considered in isolation, but must be compatible with other environmental laws.

It is too early to draw conclusive lessons from the South African initiative in ICZM, which is still at a preparatory stage, but it provides a useful review of practical problems and potential solutions. In particular, it is noteworthy that the preferred option at present is for a national framework act, rather than comprehensive legislation or a non-statutory approach.

THE IMPACT OF EUROPEAN COMMUNITY LAW ON ICZM

Despite the absence of any reference to the "coast" in the EC Treaty, the legal competence of the European Community is wide enough to embrace the concept of ICZM, and this has been strengthened by the inclusion of sustainable development in the Treaty and the requirement to integrate environmental protection into other EC policies. However, the principles of subsidiarity and proportionality impose some limitations on the extent of Community action in this field, and any legal measures for the establishment of ICZM would need to be of a fairly general nature. Directives offer greater flexibility than other forms of EC legislation, since they allow for national discretion in the method of implementation, but they also have disadvantages in terms of time-scale and enforceability. Moreover, directives cannot be expressed in too general terms, since compliance with their requirements must be verifiable and normally needs national legislation.

Irrespective of the introduction of a specific ICZM directive, there are numerous existing EC laws that affect the coastal zone, which must be taken into account and could be used to assist the promotion of ICZM. These range from horizontal measures, such as the EIA and proposed SEA Directives, which are basic tools of environmental management, to specific measures on environmental quality and nature protection. Public participation and information is an increasing feature of such instruments, but a common deficiency is a lack of clarity about their jurisdictional application to marine areas. On the other hand, the most recent environmental measures reflect a welcome trend towards a more integrated approach, particularly in the proposed Water Framework Directive and the IPPC Directive.

THE IMPACT OF INTERNATIONAL LAW ON ICZM

A wide range of international legal instruments affect the coastal zone, most of which have been introduced to deal with specific sectoral issues, such as marine pollution and nature conservation. Inevitably, they have focused more upon the sea than the land, because it is an area of international concern, much of which is beyond the sovereignty of individual States. The UN Convention on the Law of the Sea now provides a comprehensive jurisdictional framework for maritime zones, which will be an important basis for further action. However, although international law has sought to prevent marine pollution from land-based sources for some years, the integrated management of land and sea has not traditionally been an objective. Nevertheless, following Agenda 21, the need to integrate management policies is beginning to be reflected in such contexts as the North Sea Conferences and the Trilaterial Co-operation on the Wadden Sea.

International law has one obvious advantage over EC legislation, because it can apply also to States outside the European Union, and can thus embrace entire natural ecosystems such as regional seas. The different levels and types of international measures provide considerable flexibility, and regional agreements tend to be more ambitious than global ones. On the other

hand, membership of conventions is optional, ratification can take a long time, and the pace of implementation is often dictated by the slowest parties. Enforcement also tends to be weak, since compliance ultimately depends on the political will of the participants. However, the European Community is itself a party to many international conventions, and has the capacity to enforce compliance by Member States with provisions within its competence. Thus, despite some limitations, international law clearly possesses the potential to be a valuable aid to ICZM in conjunction with national and EC legislation.

LESSONS FROM THE DEMONSTRATION PROGRAMME

The experience of the Demonstration Programme confirms the diversity of coastal laws in the legal systems of Member States, but also shows a similarity of legal problems. There is no common State practice on the definition of the coastal zone, although restricted concepts of the seashore have arisen within the legal systems of some States (including Greece, Italy and the United Kingdom) which are defined by reference to selective tidal criteria and are too narrow to provide a basis for ICZM. While it is probably advisable not to have an exclusive legal definition of the coastal zone for general purposes, and preferable to include all areas where land and sea exert a mutual influence, specific boundaries do need to be defined at the stage when management is applied to particular places, and those boundaries may need to vary according to the matters that have to be managed.

Common problems illustrated by the Demonstration Programme include:

- inappropriate legal demarcation between land and sea, and the subdivision of natural areas such as estuaries that ought to be managed as a whole;
- conflicting and inflexible sectoral legislation;
- unnecessary legal restrictions on co-operation between authorities and on the purposes for which their powers may be used; and
- failure to implement and enforce laws that have been enacted.

However, there are also examples of good practice, such as:

- statutory obligations for consultation and participation;
- powers or duties for authorities to take account of factors outside their own sectoral remit;
- legally protected strips and coastal planning zones; and
- international co-operation between States bordering the same regional seas.

CONCLUSIONS AND RECOMMENDATIONS

The concluding chapter of the report looks towards the future, and considers the legal models and mechanisms that could prospectively be used to implement ICZM at the national and European Community level.

The first stage in the improvement of any national system should be a comprehensive review of the laws that already govern a State's coastal zone. Once the need for reform has been determined, it will be necessary to select the means of achieving it. In the national context, there are at least three main alternative approaches, although there could be many variations of detail in each. They are:

- the non-statutory co-ordination of existing laws;
- a statutory framework for co-ordination of existing laws; and
- a new legal procedure for authorising developments in the coastal zone.

Each of these mechanisms has advantages and disadvantages, and the choice should depend on the nature and quality of a country's existing laws, its economic circumstances, the characteristics of its coastline and its environmental problems.

The diversity of Member States' legal systems and the range of possible structures for change suggest that the European Community should not seek to be too prescriptive. Moreover, any intervention must be consistent with the legal competence of the EC and the principle of subsidiarity. It also seems appropriate that Community action should not only focus on the obligations of Member States, but should also address the role of the EC institutions themselves. The most useful of the potential measures available to the Community are an ICZM directive, a model law and a code of guidance, each of which has potential strengths and weaknesses.

- An **ICZM directive** would be legally binding on Member States, and so offers the benefit of legal enforceability, but it lacks flexibility and would be politically the most difficult to agree. A directive would therefore need to address the fundamental principles of ICZM rather than detailed mechanisms.
- A **model law** is an optional legal text which a State may choose to adopt or ignore. Its provisions could, however, be adapted to suit the needs and legal systems of different States.
- A **code of guidance** is the most flexible mechanism for ICZM, but, since it lacks legal force, its implementation would depend on political will and could not be guaranteed. On the other hand, non-statutory advice can be made more persuasive if it is accompanied by financial incentives, and Community funding could be contingent on compliance.

ICZM requires a comprehensive and integrated approach, which reflects the interdependent nature of land and sea and the relationship between the stakeholders involved in its administration and use. Laws that seek to promote ICZM at national, European Community or international levels should also exhibit the same integrated qualities. Artificial legal distinctions between terrestrial and marine jurisdictions must be avoided, but the integration of administrative functions should be specifically designed to suit the dynamic character of the coastal zone. This is likely to need a more sophisticated mechanism than a simplistic extension of land-based controls to the sea, since land-use planning laws generally deal with fixed areas of property under limited occupation, whereas the sea is a fluid environment subject to multiple public uses. Practical solutions must also overcome the jurisdictional barriers between overlapping sectoral authorities, removing legal impediments to co-operation and providing powers and duties for them to work together.

The complex framework of national laws affecting the coastal zone has inevitably produced many anomalies that can only be removed by legislation. Legal complexity also generates uncertainty and misunderstanding about the meaning and effect of laws, which could be mitigated by clearer drafting and better public information. Moreover, legislation that appears good on paper is inevitably undermined by inadequate implementation or enforcement. Thus, attitudes to law exert a significant influence on its effectiveness, and a willingness to comply with legal principles and to make the best use of legislation is an important factor in the success of ICZM.

Since there is such a wide variety of legal structures and legal problems (some common and some individual) in the coastal zones of European States, whatever mechanisms for ICZM may ultimately be chosen by the European Community must be sensitive to the legal variations between those States, and must permit the most suitable approaches to be adopted by each. There is a range of statutory and non-statutory mechanisms available at both national and European Community level that could be employed for the purposes of ICZM, and they all offer their respective advantages and disadvantages. It is clear that the legal opportunities exist for effective ICZM legislation. However, law is not an end in itself - it is a tool to facilitate the translation of policy into practice. In the final analysis, the decision to use that tool for the achievement of ICZM must depend upon a political judgement.

CHAPTER 1 . INTRODUCTION

1.1 BACKGROUND

The achievement of integrated coastal zone management inevitably involves considerations of law. Whether ICZM is implemented by statutory or non-statutory means, it is important that legal principles should be used in the most effective way.

Law defines the powers and duties of the many public and private bodies and individuals involved in the management and use of the coastal zone, and it provides the legal framework within which they operate. It therefore has the potential to assist the process of ICZM, but it also has the capacity to impede it. Although ICZM is a modern development, it must inevitably function within a complex framework of existing laws, most of which pre-date the concept of ICZM and were created for different purposes. The aim of this report is to evaluate the appropriateness of such laws to achieve the objectives of ICZM within the European Community, and to make recommendations for future action.

The coast has traditionally been regarded as a jurisdictional boundary between land-based laws and marine laws, and has rarely been recognised as an integrated zone of legal competence. The earliest laws concerning the coast generally relate to the ownership of coastal land and the division between public and private property. They also provide the basis for public rights of access to coastal waters for such purposes as navigation and fishing. In this context, restricted concepts of the seashore have arisen within the legal systems of Member States, which are defined by reference to selective tidal criteria.

On this historic foundation, a large number of administrative laws has subsequently been superimposed. Such laws usually deal with particular sectoral issues on land or sea, and prescribe the functions of individual regulatory bodies responsible for them. Thus, separate codes of law exist for such matters as land-use planning, local government, flood prevention, nature conservation, shipping, ports, pollution, fisheries, minerals, recreation, defence and archaeology. Inevitably, these have often been produced in isolation from each other, and tend to exclude issues outside their own sectoral remit or ignore their relationship with other laws.

Coastal zone laws exist on a range of different levels. Within a State, laws affecting the coastal zone may be national, regional or local in scope, which not only results in complexity, but may also produce inconsistencies or conflicts between tiers of jurisdiction and between the legal regimes of particular localities. In addition, the coastal laws of individual States are also increasingly influenced by supra-national legislation. Relevant international measures include the UN Convention on the Law of the Sea, regional agreements on the Mediterranean, the Baltic and the North Sea, international shipping conventions on marine pollution and the Ramsar Convention on wetlands. At the European Community level, EC legislation has a major and growing impact on national coastal laws, particularly in the context of fisheries, water quality, nature conservation and environmental impact assessment. The implementation of international and Community obligations by Member States may exert a unifying influence on national laws and transcend traditional legal concepts, but it can also be adversely affected by the legacy of national jurisprudence.

This report analyses the role of law at national, European Community and international levels, and considers how these mechanisms may best be applied to promote the achievement of ICZM in the European Union.

1.2 METHODOLOGY

The methodology on which the report is based involves a combination of research techniques:

- A desk study was undertaken of national, European Community and international laws affecting the coastal zone. This covered the national legal systems of the 13 coastal Member States of the European Union: Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. In addition, it included the laws of Latvia and Norway, which participated in the EU Integrated Coastal Zone Management Demonstration Programme, and compared the approaches of selected States outside Europe. The desk study also reviewed existing European Community and international laws that have an impact on coastal zone management.
- Questionnaires were sent to the leaders of all the Demonstration Projects, seeking to ascertain their views and experience about the practical effect of legal principles and instruments upon their projects, and to identify the strengths and weaknesses of such measures in practice. A separate questionnaire, focusing on the national legal context, was submitted to the National Experts representing each State within the Demonstration Programme. The information obtained from these questionnaires was supplemented and elaborated through a series of visits to individual projects.

1.3 REPORT STRUCTURE

The structure of the report follows the following format:

- **Chapter 2** analyses the national laws that affect the management of the coastal zone in each of the Member States of the European Union which border on the sea, together with a summary of the laws of Latvia and Norway. The purpose of this chapter is to identify common features in national legal systems which may assist or impede the achievement of ICZM, and to draw lessons for their future use and improvement.
- **Chapter 3** compares approaches to ICZM in countries outside the European Union. It describes the situation in the United States, New Zealand, Australia, Canada and South Africa, and considers the lessons for Europe about the contribution of law that may be learned from their experience.
- **Chapter 4** discusses the role of European Community law in ICZM. It examines the constitutional basis for action by the Community in this field, and discusses the advantages and disadvantages of European legal measures. It also reviews the considerable body of Community law that already affects the coastal zone.
- **Chapter 5** describes the range of international legal instruments relevant to coastal management, and considers the influence of international law on ICZM. It evaluates the effectiveness of legally binding treaties and conventions at the global and regional levels, and compares the merits of non-binding instruments such as declarations.
- **Chapter 6** uses the results of the questionnaires and project visits to identify and discuss the principal legal issues that have arisen in practice in the course of the Demonstration Programme. These are explained and illustrated by practical examples.

- **Chapter 7** presents the conclusions and recommendations of the report. First, it assesses the role of national laws in ICZM, and suggests the ways in which such laws could be improved and the types of legal instrument that could be used for this purpose. Second, it considers the future role of European Community law in ICZM, and compares the range of legal options potentially available for action by the Community in this field.

CHAPTER 2 . COASTAL ZONE LAWS IN MEMBER STATES OF THE EUROPEAN UNION

2.1 INTRODUCTION

This chapter analyses the national laws that affect the management of the coastal zone in each of the 13 Member States of the European Union which border on the sea. These States are Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. In addition, a summary of the laws of Latvia and Norway is included, because these States have participated in the EU Integrated Coastal Zone Management Demonstration Programme. The purpose of this review is to identify common features in national legal systems which may assist or impede the achievement of ICZM, and to draw lessons for their future use and improvement.[1]

2.2 SUMMARY OF NATIONAL LAWS

2.2.1 Belgium

Belgium is a federal State made up three communities[2] and three regions,[3] which are sub-divided into provinces and communes. The Belgian coast lies within the West Flanders province of Flemish Region. Under the Constitution,[4] powers are divided between the Federal Government and the communities and regions, and the Special Institutional Reform Law of 8 August 1980,[5] defines their areas of competence. The responsibilities of the Federal Government include the protection of the North Sea and the co-ordination at national and regional level of the preparation and implementation of European environmental policy. However, most environmental functions, including zoning and planning, are attributed to the regions. The role of the provinces and communes in environmental matters is more limited, and is largely confined to administration and supervision.

The Federal Government has exclusive competence in the sea beyond low water mark, and several national departments are involved in its administration. A new Federal Bill on the marine environment will provide for the preparation of management plans for marine areas, including plans for conservation areas, and will require environmental impact statements for certain activities at sea.

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[1] This chapter cannot list every national law affecting the European coastal zone, but it selects the most relevant examples, including some, but not all, national laws implementing EC legislation.

[2] French Community, Flemish Community and German-speaking Community.

[3] Walloon Region, Flemish Region and Brussels Regions.

[4] Art 35.

[5] Art 6.

Federal departments with national responsibilities in the Belgian coastal zone

- Ministry of Agriculture (nature conservation and marine living resources)
- Ministry of Communications (marine transport)
- Ministry of Economics (submarine resources)
- Ministry of National Defence (response to marine pollution)
- Ministry for Public Health and the Environment (national environmental policy)

The sea and beaches are public domain, and subject to public rights of access, but the coastal dunes in the Flemish Region are either privately owned, or belong to local authorities or water companies. A Flemish decree of 29 November 1995 introduced regulations providing for the designation of "protected dune areas", in which building is prohibited, although there are exemptions for certain works.

At the regional level, the general framework of Flemish environmental policy is defined in a decree of the Flemish Parliament of 5 April 1995.[6] This was followed by a decree of 24 July 1996 on spatial planning, which provides for the preparation of spatial structure plans by regional, provincial and municipal authorities.[7] Overall responsibility for environmental protection is exercised by the regional Department of the Environment and Infrastructure.[8]

There is no legislation for ICZM in Belgium, and the division of marine and terrestrial responsibilities between federal and regional authorities reflects the legal dichotomy between land and sea. However, a co-operation agreement on ICZM between the Federal Government and the Government of the Flemish Region is now being prepared, which should lead to a more co-ordinated approach.

2.2.2 Denmark

In Denmark, the Ministry of Environment and Energy, which was established in 1994, is the national government department responsible for environmental and planning policy. It is supported by specialist agencies, including the Danish Environmental Protection Agency. Regional planning is undertaken by the counties, and the municipalities carry out local planning.

2.2.2.1 Planning Act

The Planning Act of 1992, which was revised in 1994, defines a coastal planning zone that extends three kilometres inland from the coast. The Act specifies regulations on land use within this zone, which differ in urban, summer cottage and rural areas, and must be implemented by county and municipal councils in their plans. This approach does not involve separate coastal planning, but is integrated into the ordinary planning process. The aim is to

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[6] The first Flemish Environmental Policy Plan was approved in 1997.

[7] Planning was previously governed by the federal Urban and Regional Planning Act 1962.

[8] AMINAL (*Administratie Milieu, Natuur en Landinrichting*) is a specialist division concerned with environment, nature and construction.

preserve undeveloped coasts, and ensure that coastal areas are kept free from developments that do not need to be located near the shore. Environmental impact assessment and public participation are also key elements in the Planning Act.

2.2.2.2 Protection of Nature Act

The Protection of Nature Act of 1992, which was amended in 1994, establishes a protection zone outside urban areas, extending 300 metres inland along the coast. With few exceptions, new developments are prohibited in this zone. A narrower protection zone of 100 metres previously applied in summer cottage areas, but this is extended to 300 metres in 1999.

Denmark is a party to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, and the coastal planning zone and protection zone are intended to implement HELCOM Recommendation 15/1 concerning the protection of the coastal strip.[9] Denmark is also a member of the Trilateral Co-operation on the Protection of the Wadden Sea, and has designated the Wadden Sea as a nature and wildlife reserve for this purpose.[10]

The measures in the Planning Act and Protection of Nature Act concentrate on land use, and are inapplicable to the sea, which is regulated instead by sectoral legislation. These laws, which are administered by the national government, include the Marine Environment Protection Act, the Harbour Act, the Fishery Acts and the Raw Materials Act. Another national measure is the Coast Protection Act, which deals with coastal erosion, and is implemented by the Danish Coastal Authority under the supervision of the Ministry of Transport. The Danish Coastal Authority is also responsible for issuing permits for various offshore activities. The legal framework in the Danish coastal zone is complicated, and this complexity presents a potential obstacle to integrated management.[11]

2.2.3 Finland

In Finland, the Ministry of the Environment is responsible for national environmental policy, while the Ministry of Agriculture and Forestry supervises water resources.[12] Both ministries are supported by the Finnish Environment Agency. Environmental administration in Finland was streamlined on 1 March 1995 with the establishment of 13 regional environmental centres. Planning control is decentralised, and is largely undertaken by municipalities, of which about 100 are situated on the coast.[13]

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[9] See Section 5.4.2.

[10] The designation was by statutory order in 1982, which has been amended twice, most recently in 1992.

[11] Anker, H T, Nelleman, V, and Sverdrup-Jensen, S, *Integrated Coastal Zone Management in Denmark - ways and means for further integration*, Discussion paper for the Transnational Seminar on the European Spatial Development Perspective, Göteborg, 26 & 27 October 1998.

[12] Relevant legislation includes: Building Act 1958; Water Act 1961; Fishing Act 1982; Act on the Protection of Rapids 1987; Wilderness Act 1991; Act on Environmental Impact Assessment 1994; Nature Conservation Act 1996; Forest Act 1996.

[13] The Åland Islands in the Gulf of Bothnia between Finland and Sweden are an autonomous region with wide legislative and executive powers over matters including building and planning and the protection of nature and the environment. Different legal principles apply in this area.

2.2.3.1 Building Act

The planning system is regulated by the Building Act of 1958, which was amended on 1 January 1997 to remove the landowner's right to build unplanned, dispersed structures on the shore. The previous situation had led to a proliferation of summer houses along the coast. Under the new law, it is unlawful to construct new buildings or extract land resources in the shore zone of the sea unless there is a master plan, town plan, building plan or shore plan.[14] There are some statutory exceptions, and others may be granted by the regional environmental centre. The Building Act does not define "shore zone", which must be determined on a case by case basis. However, some guidelines are provided in the preparatory notes to the Act, which suggest that it will vary between 50 and 200 metres landward from the mean water line, and will generally be about 100 metres wide; this is arguably too narrow for effective planning. Plans require ratification by a State authority (normally the regional environmental centre) and are usually prepared by the municipality, although it is still possible for a landowner to produce one.

Finland is a party to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, and the requirement for plans in shore zones is intended to implement HELCOM Recommendation 15/1 concerning the protection of the coastal strip.[15]

2.2.3.2 Land Use and Building Act

A new Land Use and Building Act has been approved, which will replace the existing Building Act, and will enter into force on 1 January 2000. This provides for the establishment of national land use goals by the Council of State, and reforms the procedure for the adoption and implementation of plans. It strengthens public participation at the local level, and requires participation and assessment in every planning project. In addition, it continues the guidelines for planning and building in coastal areas that were introduced in 1997.

2.2.3.3 Nature Conservation Act

The Nature Conservation Act of 1996 is also relevant to coastal management. It provides for the implementation of the EC Habitats Directive in Finland,[16] and requires the Ministry of the Environment to draw up a Nature Conservation Programme.[17] In addition, it regulates the designation of nature reserves[18] and landscape conservation areas,[19] and introduces protected habitat types,[20] several of which occur on the coast. The Nature Conservation Act amends the Building Act to require land-use planning to take account of national nature conservation programmes, and to promote the preservation of habitats types and landscape conservation areas.

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[14] Building Act, s 6a.

[15] See Section 5.4.2.

[16] Nature Conservation Act, s 3.

[17] *Ibid*, s 7 *et seq*.

[18] *Ibid*, s10 *et seq*.

[19] *Ibid*, s 32 *et seq*.

[20] *Ibid*, s 29.

2.2.3.4 Everyman's Right

In Finland, the public have a common right of access to nature, known as "Everyman's Right", which is a traditional privilege not based on legislation. This includes the right to go on undeveloped shores by the sea, and to use water areas for boating and swimming. The picking of berries, mushrooms and flowers is allowed, provided that they are not protected by law, but fishing rights are limited. Everyman's Right is subject to a reciprocal obligation not to harm the natural environment, which is recognised in Section 14a of the Constitution of Finland.[21] Its exercise is also restricted by several laws, including the Building Act, Nature Conservation Act and Water Act.

2.2.4 France

In France, the most important legislation affecting coastal management is planning law, which is supervised by the *Ministère de l'Equipement, des Transport et du Logement*, whose responsibilities also include the administration of navigable waters. Other national government departments with functions in the coastal zone are the *Ministère de l'Aménagement du Territoire et de l'Environnement* (responsible for environmental protection[22] and nature conservation) and the *Ministère de l'Agriculture et de la Pêche* (responsible for agriculture and fisheries). There are five levels of regional and local administration below the national government, of which the *régions*, *départments* and *communes* are involved in environmental management. There are also national agencies, including the *Conservatoire du Littoral.*

2.2.4.1 Conservatoire du Littoral

The *Conservatoire du Littoral* was established by legislation in 1975,[23] and the law defining its constitution and functions is now consolidated in the Rural Code.[24] It is a public administrative body, whose purpose is to protect outstanding natural areas of coast, lake shores and stretches of water at least 1,000 hectares in extent. Protection is achieved through the ownership of property, and by 1 June 1998 the *Conservatoire* had acquired 750 kilometres of shore line. Most acquisitions are made by private agreement or the exercise of a right of pre-emption, but compulsory expropriation is also occasionally necessary in the public interest. Land owned by the *Conservatoire* is inalienable, and so cannot be sold, but management is generally entrusted to local authorities or sometimes to other bodies. Public access is normally provided, in so far as it is compatible with the conservation of the site.

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[21] "(1) Everyone shall be responsible for the natural world and for its diversity, for the environment and for the cultural heritage. (2) Public authorities shall strive to ensure for everyone the right to a healthy environment as well as the opportunity to influence decision-making concerning his living environment."

[22] Relevant legislation on water quality includes Loi n° 92-3 du 3 janvier 1992 sur l'eau (*Journal Officiel*, 4.1.1992) which provides for two types of integrated water basin management plan: *schéma directeur d'aménagement et de gestion des eaux* (SDAGE) and *schéma d'aménagement et de gestion des eaux* (SAGE).

[23] Loi n° 75-602 du 10 juillet 1975 portant création du Conservatoire de l'espace littoral et des rivages lacustres (*Journal Officiel*, 11.7.1975).

[24] Code Rural, arts L243 and R243.

2.2.4.2 Planning legislation

The main legislation governing the spatial planning system is the *Code de l'Urbanisme*. Communes are responsible for preparing *plans locaux d'occupation des sols* (POS), which are detailed local land-use plans. Groups of communes may also collaborate in the production of a *Schéma Directeur* (SD) defining general planning objectives for a wider area. The role of central government policy was strengthened in 1995 by a law providing for a national *Schéma national d'aménagement et de développement du territoire*.[25] However, in the coastal zone, the ordinary principles of planning law are modified by the provisions of the *Loi Littoral* and the system of *schémas de mise en valeur de la mer* (SMVM).

2.2.4.3 Loi Littoral

The *Loi Littoral*,[26] which was passed in 1986, amends the *Code de l'Urbanisme* by inserting national provisions on coastal planning that must be observed by communes when preparing their plans. In particular, urban expansion is restricted to the vicinity of existing developments, and, within urban areas, a coastal strip extending 100 metres from the landward limit of the shore is declared (*la bande littorale non constructible*) in which most construction is prohibited.[27] Other requirements are the interruption of urban development by natural spaces,[28] the maintenance of public access to the shore[29] and the protection of sensitive sites.[30] In addition, new transit routes must normally be located at least 2,000 metres from the shore.[31]

The *Loi Littoral* also contains provisions concerning public maritime property (*domaine public maritime*), which was defined by legislation in 1963 to incorporate the bed and subsoil of the territorial sea, foreshores and future accretions, and lands artificially reclaimed from the sea.[32] Under the *Loi Littoral*, the precise delimitation of the shore may be administratively determined by the State.[33] Pedestrian access to the beach is generally guaranteed, and motor vehicles are normally excluded; beach concessions may be issued subject to public inquiry, but must not impede free circulation along the shore.[34]

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[25] Loi n° 95-115 du 4 février 1995 d'orientation pour l'aménagement et le développement du territoire (*Journal Officiel*, 5.2.1995).

[26] Loi n° 86-2 du 3 janvier 1986 relative à l'aménagement, la protection et mise en valeur du littoral (*Journal Officiel*, 4.1.1986).

[27] Code de l'Urbanisme, art L146-4.

[28] *Ibid*, art L146-2.

[29] *Ibid*, art L146-3.

[30] *Ibid*, art L146-6.

[31] *Ibid*, art L146-7.

[32] Loi n° 63-1178 du 28 novembre 1963 relative au domaine public maritime (*Journal Officiel*, 29.11.1963).

[33] Loi Littoral, art 26.

[34] *Ibid*, art 30.

2.2.4.4 SMVM

In 1983, Article 57 of Loi n° 83-8[35] introduced the option of development plans for the sea, called *schémas de mise en valeur de la mer* (SMVM). The detailed procedure for their preparation was subsequently elaborated in a Decree of 1986.[36] SMVM are zoning plans for areas of sea and adjacent coast, adopted by the *Ministère de l'Equipement, des Transport et du Logement* on the submission of the *Préfet du Département*, after consultation with local authorities and other interests, and following a public inquiry. They are legally superior to local plans, which must conform to them, but they have proved difficult to agree in practice due to a lack of resources.

The SMVM is predominantly a marine planning mechanism, whereas the focus of the *Loi Littoral* is primarily terrestrial. Although the relationship between them is not entirely clear, together they provide a potential statutory planning framework for the whole coastal zone. On 24 February 1999, the *Ministre de l'Equipement, des Transport et du Logement* submitted to Parliament the first report on the operation of the *Loi Littoral*, which noted the need to simplify the procedure for the adoption of SMVM.[37]

2.2.5 Germany

Germany is a federal State, and legislative competence is divided between the national government (*Bund*) and the regions (*Länder*) by the Basic Law for the Federal Republic of Germany (*Grundgesetz*). There are also local authorities (*Selbstverwungsköperschaften*), which administer counties, towns and municipalities. The coastal *Länder* of Schleswig-Holstein, Hamburg, Bremen and Lower Saxony adjoin the North Sea, while Schleswig-Holstein and Mecklenburg-Western Pomerania border on the Baltic.

Federal responsibility for the environment is primarily exercised by the Ministry for the Environment, Nature Conservation and Nuclear Safety, but other federal ministries are also involved, including:

- Ministry for Regional Planning, Building and Urban Development;
- Ministry of Food, Agriculture and Forestry
- Ministry of Transport;
- Ministry for Research and Technology;
- Ministry of Defence;
- Ministry of Economics.

Under Article 20a of the Basic Law, which was added in 1994, the State has a general duty to protect the natural sources of life. In most areas of environmental protection (including coastal fishing, coastal preservation and coastal shipping) both the *Bund* and the *Länder* have

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[35] Loi n° 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, les départements, les régions et l'Etat (*Journal Officiel*, 9.1.1983).

[36] Décret n° 86-1252 du 5 décembre 1986 relatif au contenu et à l'élaboration des schémas de mise en valeur de la mer (*Journal Officiel*, 9.12.1986).

[37] Nine SMVM are still under negotiation. On 6 November 1995, a SMVM was approved for Réunion.

concurrent jurisdiction.[38] However, for nature conservation, regional planning and water management, the *Bund* may only enact framework legislation, which must be implemented through laws of the *Länder*.[39]

Important federal legislation includes:

- Federal Nature Conservation Act (*Bundesnaturschutzgesetz*);
- Federal Regional Planning Act (*Bundesraumordnungsgesetz*);
- Federal Building Code (*Baugesetzbuch*);
- Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitprüfung*);
- Water Act (*Wasserhaushaltsgesetz*);
- Waste Water Charges Act (*Abwasserabgabengesetz*);
- Federal Emission Control Act (*Bundes-Immissionsschutzgesetz*);
- Waste Act (*Abfallgesetz*);
- Federal Soil Protection Act (*Bundes-Bodenschutzgesetz*);
- Environmental Information Act (*Umweltinformationsgesetz*);
- Environmental Liability Act (*Umwelthaftungsgesetz*).

The *Bund* is currently preparing an Environmental Code, which will harmonise and consolidate federal environmental law.

Under the planning system, the federal Ministry for Regional Planning, Building and Urban Development is responsible for drawing up national guidelines (in conjunction with the *Länder*) and for co-ordinating planning policy. Each of the *Länder* adopts its own planning legislation, and prepares a comprehensive development programme and various types of plan. Plans are also produced by the municipalities and towns. Permits for development are issued by the municipalities and counties in accordance with the new Federal Building Code, which entered into force on 1 January 1998 and adopts the principle of sustainability as a planning guideline.

The *Länder* are also responsible for establishing nature conservation areas, landscape reserves and national parks under the Federal Nature Conservation Act, and 80% of national parks are tidal flats and water on the North Sea and Baltic coasts.[40] Germany is a member of the Trilateral Co-operation on the Protection of the Wadden Sea, and national parks are the principal legal designation used for this purpose.[41] In addition, the Federal Nature Conservation Act prohibits any action that may destroy or seriously damage specified

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[38] Basic Law, Art 74.

[39] *Ibid*, Art 75.

[40] Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, *1998 Report on the Environment*, Bonn, 1998.

[41] National parks for the major parts of the Wadden Sea have been established by Schleswig-Holstein (1985), Lower Saxony (1986) and Hamburg (1990). A small part of the Wadden Sea is situated in the federal state of Bremen, and has been partly designated as a nature reserve.

biotopes, including “rocky and steep coastlines, beach banks as well as dunes, salt marshes and Wadden Sea areas in coastal regions”.[42]

Germany is also a party to Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea, and, in accordance with HELCOM Recommendation 15/1,[43] the *Länder* have established a 200 metre terrestrial protected strip on the coast of Mecklenburg-Western Pomerania and a 100 metre strip in Schleswig-Holstein.

2.2.6 Greece

Article 24 of the Constitution of Greece, which was adopted on 11 June 1975, declares that “the protection of the physical and cultural environment constitutes an obligation of the State”, and “the State must take special preventive or repressive measures for the conservation thereof”.

There are three tiers of government in Greece (national, prefectures or *nomoi*, and municipal) and four levels of administration (national, regional, prefectural and municipal). The national government department responsible for environmental policy, both terrestrial and marine, is the Ministry of Environment, Physical Planning and Public Works (YPEHODE). However, the Ministry of the Merchant Navy deals with marine pollution, and other departments, such as the Ministry of Agriculture, are also involved in the coastal zone.

There is currently no legislation for ICZM, but Law 1650/1986 is a framework enactment covering the general principles of environmental regulation. It includes provisions for the establishment of protected areas (national parks, aesthetic landscapes and areas of significant ecological value) and also for areas where productive activities may be developed. It contains powers for the compulsory expropriation or exchange of land, and also powers to prohibit or postpone building operations while protected areas are designated. However, Law 1650/1986 is only an enabling act, and insufficient Presidential Decrees have been made to implement it effectively.

Law 2344/1940, which concerns the shore and foreshore, defines the “foreshore” as a strip of land washed by the highest winter waves. This is a Roman law concept, which is found in many legal systems based on the civil law, and refers to an area under public ownership. The same Law defines the “shore” as the adjoining strip of land within 50 metres from the landward limit of the foreshore, on which the erection of buildings is prohibited.

Land-use planning in Greece is based on Law 1337/83 on the extension of towns and urban development and Law 360/1976 about regional planning and development. The system is highly centralised, and most policies originate from government ministries. There is a hierarchy of national, regional and local development plans, which are legally binding; there are also general building regulations (GOK), which apply across the whole country and are governed by Law 1577/1985. However, the legislation is complicated, and its implementation is impeded by the inadequacy of local control and the lack of effective land registration. Although Law 1337/1983 includes policies for the protection of beaches and natural coastal areas, and for the maintenance of public access, efficient mechanisms for the application of the law have not been developed. A review of planning legislation in Greece is currently

[42] Federal Nature Conservation Act, Art 20c.

[43] HELCOM Recommendation 15/1 concerning the protection of the coastal strip, 8 March 1994. See Section 5.4.2.

being undertaken, and it is likely to be amended in the future. In addition, a national directive on coastal zone management is being planned.

2.2.7 Ireland

In Ireland, the main bodies concerned with the administration of the coastal zone are the Department of the Marine and Natural Resources, the Department of the Environment and Local Government, the Department of Arts, Heritage, Gaeltacht and the Islands, and the local authorities. Their functions are governed by a large number of enactments, most of which deal separately with issues such as planning, coastal protection, fisheries, minerals exploration and water quality. This sectoral approach does not assist the development of integrated policy, and there is an obvious division between terrestrial and marine measures. Another problem is the lack of adequate statutory provision for consultation.

Principal legislation concerning the coastal zone in Ireland

- Coast Protection Act 1963
- Continental Shelf Act 1968
- Dumping at Sea Act 1996
- Environmental Protection Agency Act 1992
- European Communities (Environmental Impact Assessment) Regulations 1989
- European Communities (Natural Habitats) Regulations 1997
- Fisheries Acts 1959-1998
- Foreshore Acts 1933-1998
- Harbours Act 1996
- Local Government (Planning and Development) Acts 1963-1998
- Minerals Development Acts 1940-1995
- Sea Pollution Act 1991
- Waste Management Act 1996
- Water Pollution Acts 1977-1990
- Wildlife Act 1976

An example of the deficiencies of existing legislation can be seen in the law controlling developments on the foreshore. State foreshore (between mean high and low water marks[44]) and the territorial sea bed are owned by the Department of the Marine and Natural Resources, and their use is regulated by the Foreshore Acts 1933-1988, which empower the Department to grant leases and licences for developments and activities in these areas. However, there are

[44] The legal definition of the foreshore is based on the common law. The common law also confers public rights of navigation and fishing in tidal waters.

no time limits for deciding applications, there is little opportunity for public participation, and the procedure is not integrated with the planning system.[45] The legislation is seriously outdated, and is due to be reviewed. In contrast, the law on aquaculture licensing, which also suffered from major defects, has recently been reformed.[46]

In 1997, a discussion document[47] published by the Irish Government accepted that the legislative framework for the coastal zone is very complex and intricate, and that a fundamental restructuring of legislation would be difficult to achieve. It concludes that a more realistic and desirable approach would be to build on the existing systems, but argues that any model for ICZM in Ireland must include amendments to legislation.

2.2.8 Italy

The two national government departments most concerned with coastal management are the Ministry of Environment (*Ministero dell'Ambiente*) and the Ministry of Transport and Navigation (*Ministero dei Trasporti e della Navigazione*). However, many administrative functions are currently in the process of being transferred to the regions under the Bassanini Laws.[48] Although there is no specific law for ICZM, there are several legal provisions that are relevant to coastal management.

2.2.8.1 Public maritime domain

Under the Civil Code[49] (*Codice Civile*) of 1942, the sea shore, beaches, roadsteads, ports and rivers belong to the State as part of the public domain (*demanio pubblico*). This is repeated in the 1942 Navigation Code[50] (*Codice della Navigazione*) which regulates the grant of concessions for the occupation and use the public maritime domain.[51] The extent of this area is not precisely defined,[52] although there is a procedure for its administrative determination in particular places.[53] Article 55 of the Navigation Code declares a 30 metre zone behind the public maritime domain, in which the consent of the maritime authority must be obtained for the execution of new works.

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[45] Planning control in Ireland ends at the mean high water mark.

[46] Fisheries (Amendment) Act 1997; Fisheries and Foreshore (Amendment) Act 1998.

[47] *Coastal zone management: a draft policy for Ireland: discussion document*, Government of Ireland, Dublin, 1997.

[48] Legge 15 marzo 1997, n 59, Delega al Governo per il conferimento di funzioni e compiti alla regioni ed enti locali, per la riforma della Publica Amministrazione e per la semplificazione amministriva (*Gazetta Ufficiale* n 63, Suppl Ord n 56/L, 17.3.1997); Legge 15 maggio 1997, n 127, Misure urgenti per lo snellimento dell'attività amministrativa e dei procedimenti di decisione e controllo (*Gazetta Ufficiale* n 113, Suppl Ord n 98-L, 17.5.1997).

[49] Art 822.

[50] Art 28.

[51] Art 36 *et seq*.

[52] In Roman law, the shore extends up to the highest winter flood: *est autem litus maris quatenus hybernus fluctus maximus excurrit*.

[53] Art 32.

2.2.8.2 Galasso Law

In 1977, a Presidential Decree[54] required that any development on coastal land within 300 metres of the water's edge must be authorised by the regional authorities and the agencies responsible for natural property belonging to the State. This was reinforced in 1985 by the Galasso Decree,[55] and confirmed by the Galasso Law,[56] which also requires the regions to prepare territorial and landscape plans limiting or prohibiting building in this zone, although few have actually been produced .

2.2.8.3 Marine environmental protection

Law 979 of 1982[57] makes the Minister of Environment (*Ministro dell'Ambiente*) responsible for implementing policies for marine environmental protection.[58] Under Article 1, he must prepare a general national plan (in co-operation with the regions) to prevent pollution of the sea and coasts, and to protect the marine environment. This Law also contains regulations for controlling pollution from ships, and responding to accidents and emergencies. In addition, it provides for the designation of marine reserves.[59]

2.2.8.4 Water basin management

Another measure that is potentially important for ICZM is Law 183 of 1989,[60] supplemented by Law 36 of 1994,[61] which deal with the management of water resources, and require the establishment of basin authorities for catchments of national and regional importance. These authorities must prepare basin plans for the conservation of water and the protection of the environment within their areas. Specific legislation has recently been introduced by the *Regione Abruzzo* to constitute a basin authority of regional importance, whose objectives include the integrated management of the coastal zone in order to prevent erosion.[62]

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[54] Decreto del Presidente della Republica 24 luglio 1977, n 616, Attuazione della delega di cui all'Art 1 della Legge 22 luglio 1975, n.382 (*Gazetta Ufficiale* n 234, Suppl Ord, 29.8.1977). See Article 82.

[55] Decreto-Legge 27 giugno 1985, n 312, Disposizioni urgenti per le zone di particolare interesse ambientale (*Gazetta Ufficiale* n.152, 29.6.1985).

[56] Legge 8 agosto 1985, n 431, Conversione in legge, con modificazioni, del Decreto-Legge 27 giugno 1985, n 312, recante disposizioni urgenti per la tutela delle zone di particolare interesse ambientale (*Gazetta Ufficiale* n 197, 22.8.1985).

[57] Legge 31 dicembre 1982, n 979, Diposizioni per la difesa del mare (*Gazetta Ufficiale* n 16, Suppl, 18.1.1983).

[58] This function was taken over from the Minister of the Merchant Marine (*Ministro della Marina Mercantile*) after the creation of the Ministry of Environment in 1986.

[59] Art 26.

[60] Legge 18 maggio 1989, n 183, Norme per il risassetto organizzativo e funzionale della difesa del suolo (*Gazetta Ufficiale* n 120, Suppl Ord, 25.5.1989).

[61] Legge 5 gennaio 1994, n 36, Disposizioni in materia di risorse idriche (*Gazetta Ufficiale* n 14, Suppl Ord n 11, 19.1.1994).

[62] Legge Regionale 16 settembre 1998, n 81, Norme per il riassetto organizzativo e funzionale della difesa del suolo (*Bollettino Ufficiale della Regione Abruzzo* n 24, 9.10.1998). See Article 3.

2.2.8.5 Nature conservation

Law 394 of 1991[63] is a framework law on protected areas, which provides for the designation and management of national parks, regional nature parks and nature reserves. Protected areas may apply to the marine environment as well as land,[64] and should therefore be a potentially useful instrument for ICZM. However, this Law only creates a general framework for nature conservation, and further legislation by the regional governments will be needed to implement many of its provisions.

2.2.9 Latvia

Article 115 of the Constitution of Latvia, which was inserted in October 1998, requires the State to "protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment." Latvian environmental law is derived from a variety of sources, including the pre-Soviet Civil Law, some Soviet statutes, and new legislation adopted during the 1990s in the transition to a market economy or to harmonise with EC law.

Under the Civil Law 1937, both the sea and the coast up to the limit of the highest waves is State property. The Ministry of Environmental Protection and Regional Development (MEPRD) is the principal government department concerned with environmental matters, although others, including the Ministry of Agriculture and the Ministry of Transport, are also involved. The National Board of Fisheries of the Ministry of Agriculture manages fisheries in inland waters, the territorial sea and the exclusive economic zone under the Fishing Law 1995.

The main legal measures relevant to coastal management are:

- Environmental Protection Law 1991;
- Law on State Ecological Expertise 1990;
- Natural Resources Tax Law 1995;
- Regulations on Territorial Planning 1994;
- Law on Specially Protected Nature Territories 1993;
- Law on Protected Zones 1997.

The Environmental Protection Law 1991 is a framework law, which describes the fundamental principles and legal instruments of environmental protection, many of which are elaborated in further legislation. For example, pollution is controlled by sectoral legislation, including the Water Law 1973 and the Regulations on Water Use Permits 1997.

The Law on State Ecological Expertise 1990 requires environmental impact assessment of significant developments of land and natural resources, and of polluting activities. It also applies to plans and programmes, but is being replaced by new EIA legislation harmonised with the EC Directive on environmental impact assessment. The Natural Resources Tax Law 1995 provides economic incentives and sanctions to regulate the use of natural resources and fund environmental management by the State and municipal authorities.

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[63] Legge 6 dicembre 1991, n 394, Legge Quadro sulle Aree Protette (*Gazetta Ufficiale* n 292, Suppl Ord n 83, 13.12.1991).

[64] Art 2.

2.2.9.1 Regulations on Territorial Planning 1994

The land-use planning system is governed by the Regulations on Territorial Planning 1994. These provide for the adoption by the national government of strategic national and regional plans, which are administered by MEPRD and are legally binding on district planning. The local district governments prepare district plans, which take an overview of the whole of their area. District plans are binding on the townships (pagasts), which produce both general and detailed plans regulating the usage of individual plots of land. The law allows for public participation in all these levels of planning.

2.2.9.2 Law on Specially Protected Nature Territories 1993

The Law on Specially Protected Nature Territories 1993 provides for the designation and management of a range of protected areas: nature reserves, national parks, biosphere reserves, restricted nature territories, nature parks, protected landscape territories and natural monuments.

2.2.9.3 Law on Protected Zones 1997

The Law on Protected Zones 1997 creates a protected coastal belt in the Baltic Sea and Gulf of Riga This is divided into a 300 metre zone landward from the mean tide line and another 300 metre zone seaward from that line. In addition, there is a restricted terrestrial belt up to 5 kilometres wide. The restrictions ensure free access to the sea, and impose limitations on building, draining and other operations; exceptions are only allowed after a favourable impact assessment. The objective of the protected coastal belt is to reduce pollution, retain forests, prevent erosion and conserve natural and recreational resources. Latvia is a party to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, and this measure implements HELCOM Recommendation 15/1 concerning the protection of the coastal strip.[65]

2.2.10 Netherlands

Public administration in the Netherlands is divided between the national government, provincial governments and municipalities. Article 21 of the Dutch Constitution states that public authorities shall endeavour to ensure a good quality of life in the Netherlands, and to protect and enhance the living environment. Legislation takes the form of Acts of Parliament, supplemented by ministerial orders, decisions and directives.

The national government departments most concerned with the environment are:

- Ministry of Housing, Spatial Planning and the Environment (VROM);
- Ministry of Transport, Public Works and Water Management;
- Ministry of Agriculture, Nature Management and Fisheries.

VROM is responsible for developing, implementing and co-ordinating environmental policy, and it published the Third National Environmental Policy Plan (NEPP3) in 1998. The remit of the Ministry of Transport, Public Works and Water Management includes water pollution, flood prevention and shipping. Together with its technical agency (*Rijkswaterstaat*), it supervises the provincial water management bodies (*Provinciale Waterstaat*) which in turn

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[65] See Section 5.4.3.

oversee the Water Boards (*Waterschappen*). Several other ministries also have some environmental functions.[66]

Legislation relevant to coastal zone management includes:

- Environmental Protection Act;
- Spatial Planning Act
- Nature Conservation Act;
- Water Management Act;
- Pollution of Surface Water Act (WVO);
- Reclamation and Dike Building Act;
- Fishing Act;
- Excavation Act;
- Shipping Traffic Act.

The Environmental Protection Act, which came into force in 1993, integrates several previous pieces of sectoral legislation. A new Water Control Act will regulate the management of water control structures, and replace old laws on the construction and reinforcement of dikes.

The planning system in the Netherlands is regulated by the Spatial Planning Act. VROM determines national planning policy and takes decisions on major projects. Provincial authorities prepare indicative spatial plans for their regions, while municipalities may make strategic structure plans. In addition, the municipalities must produce local land-use plans, which are legally binding when they consider applications for building permits.

The Netherlands is a participant in the Trilateral Co-operation on the Protection of the Wadden Sea, which it implements mainly through a combination of a national planning policy decision (PKB)[67] and the designation of nature reserves under the Nature Conservation Act.

2.2.11 Norway

Norwegian law affecting the coastal zone is predominantly sectoral. Important legislation includes the Planning and Building Act,[68] the Nature Conservation Act,[69] the Sea-Water Fisheries Act,[70] the Pollution Control Act[71] and the Harbour Act.[72] Both the shore and the sea out to a depth of 2 metres can be privately owned, beyond which the territorial sea is State property. The public enjoy “Everyman’s Right” to walk, bathe, fish and land boats anywhere,

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[66] *Eg* Ministry of Health and Cultural Affairs (recreation)and Ministry of Economic Affairs (energy).

[67] The PKB, which is also called the Wadden Sea Memorandum, is a national physical planning document defining the overall objectives of conservation, management and use of the Wadden Sea. It was amended in 1993.

[68] No 77 of 14 June 1985.

[69] No 63 of 19 June 1970.

[70] No 40 of 3 June 1983.

[71] No 6 of 13 March 1981.

[72] No 51 of 8 June 1984.

except in built-up or cultivated areas and places (such as nature reserves and military zones) where those activities are prohibited by law.

2.2.11.1 Planning and Building Act

Although there is no specific legislation for ICZM in Norway, there are some relevant provisions in the Planning and Building Act. This Act applies not only to the land, but also to sea areas out to the base lines,[73] and the Government has a power to extend it further offshore in special cases. Section 17-2 of the Act prohibits the building or substantial alteration of structures inside a 100 metre wide belt along the shore measured horizontally from normal high water, and also forbids the partitioning of property within the same limits. However, these restrictions do not extend to built-up areas or places covered by local development plans or shore plans, to areas designated for development or mineral extraction in municipal master plans, or to various other specified categories of land use. Accordingly, in those cases where the national ban on shoreline development is inapplicable, the local planning system is the principal mechanism for coastal management.

A system of local shore plans was originally introduced in 1971 by the Shore and Mountain Planning Act,[74] but this has now been replaced by the Planning and Building Act. Under the two-tier system of local government, each county council must prepare a strategic "county plan",[75] which requires the approval of the Ministry of the Environment, and is intended to co-ordinate the activity of national and municipal sectors. Local planning is the responsibility of municipal councils, who must adopt a "municipal master plan",[76] which may include a part concerning land use. Municipal master plans may designate areas in which detailed "local development plans" and "building development plans" will be prepared by the municipal council.[77] Environmental impact assessment is integrated into the planning system by the Planning and Building Act[78] and subordinate EIA regulations, which have been harmonised with EC Directive 85/337.

2.2.12 Portugal

Environmental policy in Portugal is administered nationally by the Ministry of the Environment and Natural Resources (*Ministério do Ambiente e Recursos Naturais*) which was created in 1990. Planning is primarily a responsibility of the municipalities. There are several laws that relate specifically to the coast.

2.2.12.1 Public maritime domain

In 1971, a Decree-Law[79] clarified and revised the legal rules governing public aquatic property, including the sea bed and coastal margin. This declares State ownership of the sea

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[73] Planning and Building Act, § 1. The base lines are the lines from which the territorial sea is measured. Although this is normally the low water line, Norway has established a system of straight base lines linking islands and fjords along its coast in accordance with international law.

[74] No 103 of 10 December 1971.

[75] Planning and Building Act, Chapter V.

[76] *Ibid*, Chapter VI.

[77] *Ibid*, Chapter VII.

[78] Chapter VIIa.

[79] Decreto-Lei n° 468/71, *Diário da República* n° 260, 5.11.1971, p 1.

bed up to the high water mark of equinoctial tides, together with an adjoining strip of coastal land extending 50 metres inland from that line, or as far as the beach continues beyond it; the same principles apply to the bed and shore of navigable waters under the jurisdiction of marine or port authorities. Private ownership that can be proved to have existed in these areas before the 1860s is preserved, but the bed and coastal margin are subject to public rights of access, fishing, navigation and swimming, and private uses of public property may only be carried out under licence or concession.

2.2.12.2 Implementation of European Coastal Charter

A Decree-Law[80] was passed in 1990 to implement the objectives on organising and administering the coastal area that were laid down in the European Coastal Charter[81] adopted by the Conference of Peripheral Maritime Regions in 1981. The Decree-Law defines a coastal strip extending two kilometres inland from the line of highest equinoctial tides, and specifies policies[82] for the occupation, use and development of that area, which should be applied by the authorities involved in licensing and planning. Municipal plans must contain rules for the coastal strip, and should normally be approved only if they conform to the policies in the Decree-Law. Where there are no planning instruments, it is the duty of the government to establish appropriate rules, and land subdivision and construction works should not normally be authorised unless they comply with the statutory coastal policies.

2.2.12.3 Coastal strip classification plans (POOC)

In 1993, another Decree-Law[83] was passed to provide for the preparation of specific "coastal strip classification plans" (POOC)[84]. These can apply to a "terrestrial zone of protection" extending to a maximum distance of 500 metres from the water's edge and a "marine zone of protection" up to a depth of 30 metres, but exclude areas under port jurisdiction. It is the responsibility of the national Water Institute (INAG)[85] to draft POOCs, with the assistance of a representative technical commission, and, after a public inquiry, to submit them for approval to the Ministry of the Environment and Natural Resources.[86] The plans require the agreement of the government ministers responsible for national defence, planning and territorial administration, commerce and tourism, environment and natural resources and the sea. In the terrestrial zone of protection, POOCs should observe the same coastal policies as are specified in the 1990 Decree-Law, but if there is no POOC or municipal plan in force, the licensing of works must be approved by the respective regional directorate of the environment and natural resources (DRARN).[87] In addition, the 1993 legislation contains criteria for the classification

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[80] Decreto-Lei n° 302/90, *Diário da República* n° 223, 26.9.1990, p 3982.

[81] Chapter II. The Charter was endorsed by the European Parliament on 18 June 1982: OJ No C 182, 19.7.1982, p 124.

[82] The principles, which are contained in an Annex to the Decree-Law, relate to occupation of the soil, access to the coast, infrastructure, constructions and green spaces, and shipyards.

[83] Decreto-Lei n° 309/93, *Diário da República* n° 206, 2.9.1993, p 4626.

[84] *Planos de ordenamento da orla costeira*.

[85] *Instituto da Água*.

[86] *Ministério do Ambiente.*

[87] *Direcção regional do ambiente e recursos naturais.*

of bathing beaches and principles for their management that should be reflected in POOCs, and private uses of beaches need a concession or licence from the DRARN or port captain.

2.2.13 Spain

In Spain, the Ministry of Environment (*Ministerio de Medio Ambiente*), which was created in 1996, has national responsibility for environment policy. Within the Ministry, there is a specialist Directorate General for the Coasts (*Direccion General de Costas*).

2.2.13.1 Shores Act 1988

In 1988, Spain enacted a national Shores Act (*Ley de Costas*),[88] which was intended to reassert State ownership over "coastal public property",[89] which had increasingly become privatised, and to protect it from the effects of inappropriate development on adjoining land.

The Shores Act builds on the declaration in the Spanish Constitution[90] that the coastal strip, beaches, territorial sea and the natural resources of the exclusive economic zone and continental shelf are State public property. This area is defined in more detail in the Shores Act to cover the shore of the sea and its inlets, including the foreshore between high and low water marks of equinoctial tides (or up to the limit of the largest storm waves), the banks of tidal rivers, and low-lying land (such as wetlands, lagoons and marshes) that is flooded by the action of the sea; it also applies to beaches and deposits of sand, gravel and pebbles (including escarps, berms and dunes) formed by natural or artificial causes.[91] In order to prevent private acquisition of this area, the Act stipulates that land added to the shore by accretion or as a result of works becomes State coastal public property, as well as land flooded by encroachment of the sea.[92]

In accordance with the Constitution,[93] coastal public property is inalienable, imprescriptible and nonseizable.[94] It is the responsibility of the national government to approve its boundaries under a statutory procedure in which the autonomous communities, municipal councils, adjoining landowners and other interested parties are entitled to be heard.[95]

2.2.13.2 Restricted zones

The Shores Act defines four landward zones adjacent to coastal public property, and imposes restrictions on development and the exercise of private property rights within them. An "easement of protection"[96] extends for a minimum of 100 metres from the inland limit of the shore, and may be enlarged where necessary to a maximum of 200 metres by the national

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[88] Ley 22/1988, de 28 de julio, de Costas, *Boletin Oficial del Estado*, 29.7.1988 (núm 181).

[89] *Dominio público marítimo-terrestre*.

[90] Art 132.2.

[91] Shores Act, art 3.

[92] *Ibid*, art 4.

[93] Art 132.1.

[94] Shores Act, art 7.

[95] *Ibid*, art 12.

[96] *Servidumbre de protección*.

government, with the agreement of the autonomous community and municipal council.[97] Within this zone, there is a general prohibition on residential development, major road schemes, destruction of sand deposits and siting of high tension electricity cables, waste disposal and advertisements, although developments that cannot be located elsewhere or which provide necessary or convenient services may be authorised, as well as outdoor sports facilities; exceptions may also be granted for reasons of public utility or economic importance.[98]

There is an "easement of passage"[99] over a strip of 6 metres from the landward limit of the shore, which must be left permanently clear for pedestrians or search and rescue vehicles.[100] It may be enlarged up to 20 metres in places where passage is difficult or dangerous, but may exceptionally be blocked by public works or promenades.

An "easement of free public access to the sea"[101] exists on land adjoining coastal public property, which must be reflected in land-use zoning plans.[102] In urban and development zones outside protected areas, vehicular access roads should be a maximum of 500 metres apart, with access for pedestrians at least every 200 metres. Works or facilities that impede public access to the sea are prohibited unless alternative compensatory measures are taken.

In addition, an "influence zone"[103] with a minimum width of 500 metres from the landward limit of the shore must be included in land-use plans, which should incorporate the following principles for the protection of coastal public property: sufficient land must be reserved for car parks to guarantee parking outside the "easement of passage" area; building density must not exceed the average allowed for urban or potential urban land in the municipal area in order to avoid screens of buildings or over-development; and the same authorisations for waste disposal must be required as apply to coastal public property.[104]

2.2.14 Sweden

In Sweden, the Ministry of Environment (*Miljö-departementet*) is responsible for national environmental policy, but the county administrative boards play an important role at regional level. At the local level, municipal boards are also involved in environmental protection, particularly in relation to land-use planning and nature conservation.

2.2.14.1 Environmental Code

Environmental legislation in Sweden has recently been consolidated in a new Environmental Code (*Miljöbalk* 1998:808) which was approved by the Swedish Parliament, the *Riksdag*, in June 1998 and came into force on 1 January 1999. The Environmental Code amalgamates fifteen existing laws, including the Nature Conservation Act 1964, the Environment

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[97] Shores Act, art 23.

[98] *Ibid*, art 25.

[99] *Servidumbre de tránsito*.

[100] Shores Act, art 27.

[101] *Servidumbre de acceso público y gratuito al mar*.

[102] Shores Act, art 28.

[103] *Zona de influencia*.

[104] Shores Act, art 30.

Protection Act 1969, the Marine Dumping Prohibition Act 1971, the Environmental Damage Act 1986, the Natural Resources Act 1987 and parts of the Water Act 1983. It also introduces important amendments, including:

- the creation of third-party rights for environmental organisations to appeal against decisions concerning permits, approvals and exemptions under the Code.
- the extension of participation in environmental impact assessments. County administrative boards will decide whether proposals that may result in significant environmental impacts should be subjected to a wider environmental impact investigation, involving a larger number of authorities and a broader section of the general public.
- the establishment of regional environmental courts to replace the National Licensing Board for Environment Protection and the Water Courts, and the affiliation of an Environmental Court of Appeal to the Svea Court of Appeal.

In addition, the new Environmental Code makes consequential amendments to more than 50 other laws, and establishes legally binding principles and general rules of consideration which constitute a minimum basis for their application. These include the precautionary principle, the polluter pays principle and the use of the best possible technique to prevent damage and nuisance.

The Code replaces special management provisions of the Natural Resources Act 1987 on coastal areas, including places where tourism and outdoor recreation should be given particular consideration, places where major new industrial installations may not be established, and places where holiday homes are normally restricted to infill development among existing buildings. A shore protection area is defined, which generally extends to 100 metres landward and seaward from the shoreline, and may be enlarged up to 300 metres in individual cases.[105] Within the shore protection area, there is a prohibition on all developments, including the construction of new buildings, fences or piers and the placement of waterline cabins for leisure houses, although the county administrative board or municipality may grant exemptions in special circumstances.[106]

2.2.14.2 Environment Bill

In May 1998, the Swedish Government presented an Environment Bill (prop 1997/98:145) which specifies 15 environmental objectives that should be met within a generation. A parliamentary committee and various sectoral authorities will develop the strategies and intermediate targets required to achieve these objectives by the year 2010, and different sectors of society must formulate their own goals in order to meet them. Environmental indicators will be published to enable the public to monitor progress, and the Government must make a report to the *Riksdag* every four years. The 15 objectives, which are expressed in simple terms, include a balanced marine environment and sustainable archipelagos and coastal areas. The Bill explains the implications for each objective, and states intermediate goals for further development, including a reduction in the supply of nutrients to coastal areas and seas to the levels in the 1940s.

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[105] Protection may be limited if the area is obviously of no significance, or is subject to a detailed plan or area regulations under the Planning and Building Act.

[106] Sweden is a party to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, and the shore protection area implements HELCOM Recommendation 15/1 concerning the protection of the coastal strip. See Section 5.4.2.

2.2.14.3 Planning and Building Act

Development control is governed by the Planning and Building Act, which applies to both land and water areas, and thus extends as far as the 12 mile limit of the territorial sea. Municipal authorities are required to prepare a comprehensive plan for the whole of their area, together with one or more detailed plans, and regional plans may also be adopted to co-ordinate the policies of several municipalities. Permits from the municipalities are required for construction, demolition or site improvement. County administrative boards are responsible for supervising planning and building activities in their counties, and must co-operate with the municipalities in their planning work.

2.2.14.4 Everyman's Right

The traditional "Everyman's Right" (*Allemansrätt*) in Sweden entitles any person to roam freely in the countryside, and to cross other people's land, except private plots around dwelling houses. It includes a right to fish with a rod or hand tackle along the coast[107] (apart from salmon fishing on the coast of Norrland) and a right to pick wild berries, flowers and mushrooms that are not protected species. It also includes the right to navigate or swim, to moor a boat temporarily, and to go ashore everywhere (except close to dwellings or where entry has been prohibited by an authority). Although Everyman's Right is subject to some restrictions, it is capable of abuse and exploitation, which the Swedish Environmental Protection Agency seeks to curb by information and guidance.

2.2.15 United Kingdom

The law concerning the coastal zone in the United Kingdom is complicated by the different constitutional status of England, Wales, Scotland and Northern Ireland. Since 1 July 1999, many statutory responsibilities have been transferred to the National Assembly for Wales[108] and the Scottish Parliament,[109] and others should be assumed in the future by the Northern Ireland Assembly.[110] There are also differences between the official bodies and local authorities in each part of the United Kingdom. Moreover, some legislation applies throughout the UK, but in other cases its geographical extent is limited, and there may be different or equivalent national provisions.

In England, the Department of the Environment, Transport and the Regions (DETR) and the Ministry of Agriculture, Fisheries and Food (MAFF) are the main national government departments responsible for the coastal environment,[111] but others, such as the Ministry of

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[107] The sea is normally public water, but there is also some private water, which usually extends 300 metres from the mainland or from islands over 100 metres long. Fishing in private water belongs to the landowner, but the Fishery Act, §§ 8-13, provides limited rights for Swedish citizens to fish in private water along the coast.

[108] Government of Wales Act 1998.

[109] Scotland Act 1998.

[110] Northern Ireland Act 1998. The transfer of powers and functions to the Northern Ireland Assembly will depend on the progress made in implementing the Belfast Agreement.

[111] In Wales, many of the equivalent functions are performed by the National Assembly for Wales, and in Scotland by the Scottish Executive. In Northern Ireland, the main government departments are the Department of the Environment for Northern Ireland, the Department of Agriculture for Northern Ireland and the Department of Economic Development.

Defence, the Department of Trade and Industry, and the Department for Culture, Media and Sport are involved as well. In addition, there are statutory bodies, including the Environment Agency,[112] English Nature,[113] the Countryside Agency and the Crown Estate Commissioners. Local authorities (county, district or unitary councils) also play an important role, particularly in land-use planning and coast protection.

The foreshore (between mean high and low water marks[114]) and the territorial sea bed are *prima facie* Crown property, and are managed by the Crown Estate Commissioners under the Crown Estate Act 1961. Some foreshore is now in private ownership,[115] but about 55% of the coastline is still owned by the Crown. All of these areas are subject to public rights of navigation and fishing, which are based on the common law.

There is a considerable amount of legislation concerning the coastal zone, most of which is sectoral and applies either to the land or the sea. The planning system under the Town and Country Planning Act 1990[116] is essentially terrestrial, and does not normally extend beyond the mean low water mark,[117] although planning authorities are required to take account of national policy guidelines on coastal planning which recognise the impact of land use on the sea.[118]

The complexity and sectoral nature of the legal framework are a potential impediment to ICZM,[119] but in recent years some of the constraints on co-operation have been reduced by the imposition of statutory duties on some authorities to consider environmental factors when exercising other administrative functions.[120] Alternatively, they may have been given statutory rights to use their existing powers for environmental purposes.[121] In 1998, the DETR published a review of byelaw-making powers for the coast, which recommends that legislation authorising the creation of byelaws should be consolidated and modernised.[122]

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[112] The Environment Agency operates in England and Wales. The equivalent body in Scotland is the Scottish Environment Protection Agency.

[113] The equivalent body in Scotland is Scottish Natural Heritage. In Wales, the Countryside Council for Wales combines functions of English Nature and the Countryside Agency.

[114] The legal definition of the foreshore is based on the common law. In Scotland, the foreshore is bounded by the high and low water marks of mean spring tides.

[115] *Eg* the National Trust owns 575 miles of coastline in England, Wales and Northern Ireland, some of which includes the foreshore.

[116] In Scotland, the equivalent legislation is the Town and Country Planning (Scotland) Act 1997, and in Northern Ireland it is the Planning (Northern Ireland) Order 1991.

[117] Mean low water springs in Scotland and mean high water mark in Northern Ireland.

[118] Department of the Environment, Planning Policy Guidance Note 20, *Coastal Planning*, HMSO, 1992. There are separate guidance notes for Scotland and Wales.

[119] In 1992, the House of Commons Environment Committee recommended that coastal legislation should be consolidated and updated, but this was rejected by the Government as impractical.

[120] Harbours Act 1964, s 48A; Water Resources Act 1991, s 15; Water Industry Act 1991, s 3; Sea Fisheries (Wildlife Conservation) Act 1992; Environment Act 1995, s 7.

[121] Harbours Act 1964, Sch 2, para 16A; Environment Act 1995, ss 102-103.

[122] Department of the Environment, Transport and the Regions, *Review of Byelaw Powers for the Coast: Report of the Inter-Departmental Working Party*, 1998.

Principal legislation concerning the coastal zone in England and Wales

- Coast Protection Act 1949
- Conservation (Natural Habitats, &c) Regulations 1994
- Continental Shelf Act 1964
- Crown Estate Act 1961
- Dockyard Ports Regulation Act 1865
- Environment Act 1995
- Environmental Protection Act 1990
- Fisheries Act 1981
- Fishery Limits Act 1976
- Food and Environment Protection Act 1985
- Harbours Act 1964
- Harbours, Docks and Piers Clauses Act 1847
- Land Drainage Act 1991
- Merchant Shipping Act 1995
- Merchant Shipping and Maritime Security Act 1997
- Petroleum Act 1998
- Pilotage Act 1987
- Protection of Military Remains Act 1986
- Protection of Wrecks Act 1973
- Salmon and Freshwater Fisheries Act 1975
- Sea Fisheries Act 1968
- Sea Fisheries Regulation Act 1966
- Sea Fisheries (Shellfish) Act 1967
- Sea Fisheries (Wildlife Conservation) Act 1992
- Sea Fish (Conservation) Act 1967
- Town and Country Planning Act 1990
- Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
- Water Industry Act 1991
- Water Resources Act 1991
- Wildlife and Countryside Act 1981

Despite the variety and scale of laws affecting the coastal zone, there is no body with comprehensive powers of management, and it is therefore necessary for many organisations to work together within a complicated legal framework. The view of the Government is that this is best achieved on a voluntary basis, and it does not propose to introduce specific legislation for ICZM in the United Kingdom. However, the difficulty with this approach is that existing

laws are not always sufficient for the purpose, and may impose limitations on the ability of authorities to co-operate in pursuit of integrated management.

2.3 CONCLUSION

This chapter demonstrates the diverse range and complex nature of the national laws affecting the management of the coastal zone in European States. Despite this, there are nevertheless some similarities and common features among them. Not surprisingly, the resemblance tend to be greatest between States that share a legal background based on the common law, Roman law, Scandinavian or Germanic traditions.

Public ownership of the shore and territorial sea bed is a characteristic feature, but the precise extent and delimitation of the shore varies between countries. There are also public rights of access to coastal land and water, which are derived from common law, Roman law or the Scandinavian "Everyman's Right".

The designation of protected coastal belts along the shoreline, in which prohibitions and restrictions are imposed on development, is also popular. This is particularly apparent in the Baltic States, where HELCOM Recommendation 15/1 concerning the protection of the coastal strip has exerted a unifying influence, although there is again considerable variation in the width of the protected belts. The establishment of coastal planning zones has also been encouraged by HELCOM. Sometimes these designations are incorporated in wider systems of planning or nature conservation law, while others are independent measures such as the Shores Act in Spain. The French *Loi Littoral* and SMVM are interesting examples of the specialised development of existing planning laws.

A less desirable feature is the frequent distinction between laws that apply to the land and those that govern the sea. The typical dichotomy between terrestrial and marine measures militates against integrated management. Coastal planning laws are predominantly concerned with land use, and although they can be employed to control the influence of land-based activities on the sea, the reverse seems harder to achieve. It is also generally apparent that the role of local authorities is largely confined to land management, whereas the sea is treated as a national resource to be administered by central government.

Another disadvantage of most legal systems is the adoption of sectoral laws dealing with particular parts of the environment or particular types of activity. This approach hinders integrated management of coastal zones unless effective co-ordination mechanisms are included. A further area of concern is the frequent failure to implement laws properly. All these, however, are defects that can in principle be remedied.

A final observation on the analysis of national laws is that, whatever their merits, they are established principles with which ICZM must necessarily deal, and their complexity and variety mean that it is unlikely to be possible to superimpose a uniform legal model upon them all.

CHAPTER 3 . COASTAL ZONE LAWS OUTSIDE THE EUROPEAN UNION

3.1 INTRODUCTION

Coastal zone management initiatives have a longer history outside Europe than within the countries of the European Union. In particular, the United States has had experience of ICZM for more than a quarter of a century. The United States is also an interesting example because of its federal structure, and because it has enacted national ICZM legislation which has stimulated action by its constituent states. Although the analogy is not exact, the example of a federal system inevitably invites comparison with the relationship between the European Union and its Member States. Different approaches to ICZM within the federal systems of Australia and Canada provide alternative examples, while the comprehensive reform of environmental resource management in New Zealand and the proposals for ICZM in South Africa illustrate the range of potential mechanisms available for co-ordinating the different levels of government within non-federal states.

Law is a factor in all of these systems, but its function and significance vary widely between them. They include comprehensive coastal zone legislation, framework statutes and non-statutory co-ordination of existing laws. This chapter compares the approaches to ICZM in the United States, New Zealand, Australia, Canada and South Africa, and considers the lessons for Europe about the contribution of law that may be learned from their experience.

3.2 UNITED STATES

The United States pioneered the use of legislation as an instrument of coastal zone management, and the federal structure of the US administration provides an important illustration of the role of law at different levels of government.

3.2.1 Coastal Zone Management Act of 1972

In 1972, Congress passed the federal Coastal Zone Management Act,[123] which has been amended several times since then.[124] This Act creates a framework for voluntary co-operation between the federal government and coastal states or territories, and offers incentives to encourage their participation. It is supervised by the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce.

The legislation contains a broad definition of the "coastal zone", which is based on the mutual influence of land and water. This generally includes coastal waters out to three miles offshore, but the landward boundary is more flexible, and applies to areas where control is needed to protect the sea from the effects of land-based activities or to deal with the consequences of sea level rise.

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[123] 16 USC § 1451 *et seq.*

[124] *Eg* Coastal Zone Management Act Amendments of 1976; Coastal Zone Management Reauthorization Act of 1985; Coastal Zone Act Reauthorization Amendments of 1990; Coastal Zone Protection Act of 1996. A Bill has also been published for a Coastal Management Enhancement Act of 1999 to re-authorize and amend the 1972 Act.

Definition of "coastal zone" in the US Coastal Zone Management Act of 1972, § 1453(1)

"The term 'coastal zone' means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership ... The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents."

The Act identifies 10 national policy objectives of coastal management:[125]

- protection of natural resources;
- management of coastal development;
- priority consideration for coastal-dependent uses;
- public access to the coasts for recreation purposes;
- assistance in the redevelopment of deteriorating urban waterfronts and ports;
- co-ordination and simplification of procedures;
- consultation and co-ordination with federal agencies;
- public and local government participation in decision making;
- assistance to support comprehensive planning, conservation, and management for living marine resources; and
- study and development of plans for addressing the adverse effects of land subsidence and of sea level rise.

[125] 16 USC § 1452.

3.2.2 Federal grants for coastal management programs

The Secretary of Commerce is empowered to make financial grants to coastal states to enable them to develop[126] or administer[127] a management program for their coastal zone. The state itself is also required to provide a proportion of matching funds. Management programs need the approval of the Secretary of Commerce, and must include the following elements:[128]

- an identification of the boundaries of the coastal zone;
- a definition of permissible land and water uses within the coastal zone;
- an inventory and designation of areas of particular concern within the coastal zone;
- an identification of the means by which the state proposes to control the land and water uses;
- broad guidelines on priorities of uses in particular areas;
- a description of the organisational structure proposed to implement the management program;
- a definition of "beach" and a planning process for protection of, and access to, public beaches and other valuable public coastal areas;
- a planning process for energy facilities likely to be located in or significantly affect the coastal zone;
- A planning process for assessing and controlling shoreline erosion, and restoring eroded areas.

The Secretary of Commerce must be satisfied that the program complies with Federal rules and regulations, and that the state has consulted federal, state and local agencies, interested parties and the public. He must also ensure that the state has co-ordinated its program with other plans applicable to areas within the coastal zone, and has established an effective mechanism for continuing consultation and co-ordination.[129]

States with approved coastal management programs are also eligible for additional funding from several federal schemes authorised by the legislation: Resource Management Improvement Grants,[130] Coastal Zone Enhancement Grants[131] and the Coastal Zone Management Fund.[132]

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[126] *Ibid*, § 1454.

[127] *Ibid*, § 1455.

[128] *Ibid.*

[129] *Ibid.*

[130] *Ibid*, § 1455a.

[131] *Ibid*, § 1456b.

[132] *Ibid*, § 1456a.

3.2.3 Federal consistency

An important feature of the Coastal Zone Management Act, which provides an additional incentive to encourage the involvement of states in ICZM, is the principle of "federal consistency".[133] After a state has a coastal management program approved by the Secretary of Commerce, federal agencies whose activities affect the coastal zone must comply with the enforceable policies of that program to the maximum extent possible, and must provide a consistency statement to the state. Only the President can grant an exemption on the grounds of paramount national interest. Grants of federal licences and permits must also be certified as consistent, subject to an appeal to the Secretary of Commerce. Similar requirements apply to plans for offshore petroleum development, and to applications from local governments for federal assistance.

3.2.4 Other programs

Under amendments to the Coastal Zone Management Act in 1990,[134] states and territories with approved coastal management programs must also develop Coastal Nonpoint Pollution Control Programs to deal with diffuse sources of coastal water pollution. These programs require the approval of both the Secretary of Commerce and the Environmental Protection Agency (EPA), and are implemented through co-ordinated changes to state coastal management programs and state nonpoint source management programs under the federal Clean Water Act.[135]

The Coastal Zone Management Act[136] also establishes a National Estuarine Research Reserve System (NERRS) under which the Secretary of Commerce may make grants to coastal states for the acquisition and management of lands and waters as national estuarine reserves, and to support education, research and monitoring within them. So far, 25 estuarine reserves have been designated, and other proposed reserves are under consideration.

3.2.5 Implementation by states and territories

Coastal management programs have been approved for 27 states and five island territories, and two more[137] are being developed. Since the Coastal Zone Management Act does not dictate the structure of programs, provided that they include the prescribed elements, states have the discretion to chose from a variety of legal and non-statutory mechanisms. Some states have enacted comprehensive ICZM legislation,[138] while others have adopted a statutory framework for co-ordinating existing laws,[139] or have relied on non-statutory methods.[140]

The Coastal Zone Management Act has also allowed states to define the coastal zone in different ways according to their local circumstances. Thus, in Florida, for geographical

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[133] *Ibid*, § 1456.

[134] *Ibid* § 1455b.

[135] 33 USC § 1329.

[136] 16 USC § 1461.

[137] Minnesota and Ohio. Illinois (on Lake Michigan) is the only non-participating state.

[138] *Eg* California, North Carolina and South Carolina.

[139] *Eg* Connecticut and Florida.

[140] *Eg* Massachusetts, New Jersey, New York and Oregon.

reasons, the coastal management program includes the whole of the state in the coastal zone. Other states prescribe specific boundaries, which may be depicted on maps. For example, the California Coastal Act adopts a setback line, which is generally located 1,000 yards inland from the mean high tide mark; the Californian coastal zone is usually narrower in urban regions, but may extend up to five miles inland in significant estuaries, habitats and recreational areas.[141]

California Coastal Act of 1976[142]

This *comprehensive* ICZM statute:

- defines the coastal zone;
- specifies policies for coastal resources planning and management;
- establishes the California Coastal Commission;
- co-ordinates the functions of other state agencies;
- requires the preparation of local coastal programs by local governments;
- provides for coastal development permits;
- makes special provision for ports and port master plans; and
- provides for judicial review, enforcement and penalties.

Connecticut Coastal Management Act[143]

This *framework* ICZM statute:

- prescribes legislative goals and policies;
- defines the coastal area;
- makes the state commissioner of environmental protection responsible for supervising the implementation of the Act;
- requires the commissioner to assist municipal councils in preparing municipal coastal programs;
- requires municipal plans and zoning regulations to be consistent with the goals and policies in the Act, and provides for reviews of developers' coastal site plans;
- requires the commissioner to co-ordinate permitting and licensing procedures to ensure that they are consistent with the Act;
- provides for financial assistance for coastal management.

[141] *Ibid*, § 30103

[142] California Public Resources Code, § 30000.

Non-statutory approaches, such as that adopted by Massachusetts, rely on existing statutory powers to implement the policies contained in a coastal management program. Those policies guide the decisions of regulatory bodies, but are not themselves embodied in legislation. The Massachusetts Coastal Zone Management Program is, however, given formal recognition in memoranda of understanding between the Massachusetts Coastal Zone Management Office[144] and other state environmental agencies.

Massachusetts Coastal Zone Management Program

This *non-statutory* framework for co-ordinating existing legislation formulates policies and identifies applicable laws on:

- water quality;
- habitat;
- protected areas;
- coastal hazards;
- port and harbour infrastructure;
- public access;
- energy;
- ocean resources; and
- growth management.

It also contains policy statements that are not enforceable through current legislation, but are issued as guidance to users of the coastal zone.

3.3 NEW ZEALAND

Coastal zone management in New Zealand is a component of a comprehensive reform of environmental legislation introduced by the Resource Management Act 1991, which replaced more than 20 major statutes dealing with land use planning, water, soil, geothermal resources, air and noise pollution, and coasts.

3.3.1 Resource Management Act 1991

The Act seeks to provide an integrated framework for managing the sustainable development of land, water and air, and promotes community involvement in decision-making It concentrates on the effects of activities instead of prescribing the types of activity that should be prohibited or restricted. It also gives most of the managerial functions to regional or

[143] Connecticut General Statutes, § 22a-90.

[144] An agency of the state Executive Office of Environmental Affairs.

territorial authorities,[145] and provides for community involvement in decision-making. Regional councils share responsibility for land use with the territorial authorities, and for coastal marine areas with the Minister for Conservation.

3.3.2 Policy statements and plans

Under the Resource Management Act, there must always be at least one national coastal policy statement prepared by the Minister of Conservation.[146] Regional councils must prepare regional policy statements,[147] and must have at least one regional coastal plan for their coastal marine area,[148] which extends from high water mark on the foreshore to the 12 mile limit of the territorial sea;[149] they have a discretion to produce other regional plans as well.[150] In addition, district plans must be produced by the territorial authorities,[151] whose functions include the control of land development. To promote compatibility, regional coastal plans require the approval of the Minister of Conservation,[152] and, when preparing district plans, territorial authorities must have regard to regional policy statements and plans, and to the need for consistency with adjacent district plans.[153] The first New Zealand Coastal Policy Statement was published by the national government in 1994.[154]

3.3.3 Resource consents

The Resource Management Act reduces the multiple permissions required for the use of resources under the previous law to five types of resource consent:

- land use consent;
- subdivision consent;
- water permit;
- discharge permit; and
- coastal permit.

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[145] New Zealand is divided into 12 regions, each of which has a regional council. There are 70 territorial authorities, which are district or city councils. There are also four unitary authorities, which combine the functions of regional and territorial authorities.

[146] Resource Management Act 1991, s 57.

[147] *Ibid*, s 60.

[148] *Ibid*, s 64.

[149] *Ibid*, s 2.

[150] *Ibid*, s 65.

[151] *Ibid*, s 73.

[152] *Ibid*, Schedule 1.

[153] *Ibid*, s 74.

[154] Minister of Conservation, The New Zealand Coastal Policy Statement, *New Zealand Gazette*, 5 May 1994, p 26.

Part III of the Act prescribes the duties and restrictions on land use, coastal marine areas and other resources. Land use is permitted unless it contravenes a rule in a district plan, in which case a resource consent from the territorial authority will be required. In most other cases, including specified activities in the coastal marine area,[155] the presumption is reversed, and the use of a resource is prohibited unless it is expressly permitted by a rule in a regional plan or a resource consent. Special provisions apply to "restricted coastal activities" that are likely to have a significant or irreversible effect on a coastal marine area, or which involve an area of high conservation value.[156] These need a consent from the Minister of Conservation, whose decision is based on a recommendation from a committee of the regional council, including a representative of the Department of Conservation.[157] If there is an appeal against the committee's recommendation, the Minister's decision must take account of the Environment Court's report on that appeal.

The approach of the Resource Management Act is not completely integrated, since it does not extend to fisheries, which are separately administered by the Ministry of Fisheries under the Fisheries Act 1996. Nevertheless, although that Act expressly prohibits regional plans or coastal permits from awarding preferential access to fishery resources in the coastal marine area, it does not prevent them authorising the erection of fish farm or other structures there.[158]

3.3.4 Participation

Other authorities and the public are entitled to participate at several stages in the implementation of the Resource Management Act:[159]

- They are consulted before policy statements and plans are prepared.
- They may make written submissions and speak at hearings after public notification of proposed regional and district plans, plan changes and applications for resource consents.
- They may propose changes to regional and district plans at any time.

Any persons who make submissions on proposed plans or applications for resource consents have a right to appeal against the decision to the Environment Court. In addition, they may participate in an appeal initiated by someone else, and this also applies to representatives of a relevant public interest or anyone with a greater interest.[160]

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[155] Resource Management Act 1991, s 12.

[156] *Ibid*, s 68.

[157] *Ibid*, ss 117-119.

[158] Fisheries Act 1996, s 6.

[159] Resource Management Act 1991, Schedule 1.

[160] *Ibid*, ss 271A, 274, amended by Resource Management Amendment Act 1996, ss 11, 13.

3.3.5 Effectiveness of the reforms

The reforms resulting from the Resource Management Act are fundamental and far-reaching. Inevitably, such an experimental innovation has produced problems as well as benefits. This has necessitated a series of amendments: there have already been five amending statutes,[161] consultative proposals for further changes were published in November 1998,[162] and a Resource Management Amendment Bill was introduced in Parliament on 13 July 1999. Most of the amendments are procedural and practical, and do not indicate dissatisfaction with the general approach of the Act in relation to coastal management. However, the Department of Conservation is currently undertaking a review of restricted coastal activities to assess the effectiveness of that system and the New Zealand Coastal Policy Statement. Possible future changes could involve the abolition of the restricted coastal activity regime or the transfer of responsibility for consents from the Minister of Conservation to the regional councils.[163]

3.4 AUSTRALIA

Australia is a federal State, and powers are divided between the Commonwealth government and the state or territory governments. However, most legislation affecting the management of the coastal zone is made at the state or territory level. Under the Offshore Constitutional Settlement (OCS), which was implemented by the Coastal Waters (State Title) Act 1980 and the Coastal Waters (State Powers) Act 1980, the states were given property in the sea bed and legislative powers over coastal waters out to three nautical miles.[164] Commonwealth legislation for the protection of the Great Barrier Reef Marine Park has also existed since 1975.[165]

3.4.1 Resource Assessment Commission

In 1991, the Resource Assessment Commission[166] was directed by the Prime Minister to conduct an inquiry into the use and management of Australia's coastal zone resources, and its final report was published in November 1993.[167] The report identified the following major shortcomings in the management of Australia's coastal zone:[168]

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[161] Resource Management Amendment Act 1993; Resource Management Amendment Act 1994; Resource Management Amendment Act (No 2) 1994; Resource Management Amendment Act 1996; Resource Management Amendment Act 1997.

[162] Ministry for the Environment, *Proposals for Amendment to the Resource Management Act*, Wellington, 1998.

[163] *Ibid*, p 27.

[164] Equivalent jurisdiction was given to Northern Territory by the Coastal Waters (Northern Territory Title) Act 1980 and the Coastal Waters (Northern Territory Powers) Act 1980.

[165] Great Barrier Reef Marine Park Act 1975.

[166] Established under the Resource Assessment Commission Act 1989.

[167] Resource Assessment Commission, *Coastal Zone Inquiry - Final Report*, AGPS, Canberra, 1993.

[168] *Ibid*, chapter 19.3.

- Different and usually unco-ordinated approvals systems operated for public and private land.
- Management and use of resources spanning marine and terrestrial areas were particularly impeded by a lack of integration and co-ordination of management systems.
- Existing mechanisms did not provide for effective long-term management of coastal zone resources.
- Approvals procedures were complex, time consuming and often sequential rather than concurrent, making them costly for applicants and governments.
- Although some Commonwealth, state and local government agencies had developed policies to achieve coastal zone management objectives, the policies and objectives were not often implemented, and they were rarely integrated with social, economic and environmental goals.

The Resource Assessment Commission recommended that a National Coastal Action Program should be adopted, which should contain national coastal zone objectives, arrangements for implementing and managing the Program, mechanisms for community and industry involvement, and innovative management mechanisms.[169] It also proposed that a co-operative agreement for implementing the Program should be signed by the various governments, and that the Commonwealth government should take the lead. However, it concluded that the Commonwealth should not attempt to impose a uniform coastal regulatory regime, but should nevertheless enact a Coastal Resource Management Act to guide the allocation of central funding and incorporate the objectives of the National Coastal Action Program.[170]

3.4.2 Commonwealth Coastal Policy

The Resource Assessment Commission's recommendations were generally regarded by the states as intruding unduly on their sphere of responsibility. The Australian government decided not to legislate, but published a Commonwealth Coastal Policy in May 1995.[171] This presents the Commonwealth's vision for a co-operative, integrated approach to coastal management, and contains a range of initiatives targeted at achieving specific improvement: they include the Coastcare Program, which provides funding and other resources to support community participation in coastal and marine management. The Policy also aims to improve communication by the establishment of a Commonwealth Coastal Coordinating Committee and an Intergovernmental Technical Group. The Commonwealth Coastal Policy is a non-statutory mechanism, and it produces no direct changes in the law, but non-binding memoranda of understanding have been signed between the Commonwealth and individual states.

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[169] *Ibid*, chapter 19.5.

[170] *Ibid*, chapter 19.7.

[171] Commonwealth of Australia, *Living on the Coast: The Commonwealth Coastal Policy*, Canberra, 1995.

3.4.3 State legislation

Several states, including South Australia,[172] New South Wales[173] and Queensland[174] have enacted specific coastal zone legislation, of which the Queensland Coastal Protection and Management Act 1995 is a recent example.

Coastal Protection and Management Act 1995 (Queensland)

The Queensland legislation:

- defines the objectives of coastal management;
- establishes a coastal protection advisory council and a regional consultative council;
- provides for state and regional coastal zone management plans;
- allows the declaration of control districts covering land and water;
- provides for the issuing of coastal protection and tidal works notices; and
- enables coastal building lines to be defined, seaward of which construction is generally prevented.

3.4.4 Australia's Oceans Policy

In March 1997, the Commonwealth launched a discussion paper[175] and funding initiatives as the first stage of a consultative process in the development of an oceans policy. This was followed in May 1998 by an issues paper[176] for public comment, describing a vision for Australia's oceans and goals for achieving it. The final text of Australia's Oceans Policy,[177] together with an outline of specific sectoral measures,[178] was launched December 1998. This proposes the development of regional marine plans, based on large marine ecosystems, which will be binding on all Commonwealth agencies. It also provides for the establishment of a National Oceans Ministerial Board, a National Oceans Advisory Group, Regional Marine Plan Steering Committees and a National Oceans Office. State and territory governments will be encouraged to participate in the Regional Marine Plan Steering Committees and the preparation of the regional marine plans, and should play an important part in implementing the Oceans Policy.

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[172] Coast Protection Act 1972.

[173] Coastal Protection Act 1979.

[174] Coastal Protection and Management Act 1995.

[175] Commonwealth of Australia, *Australia's Oceans: New Horizons*, Oceans Policy Consultation Paper, Canberra, 1997.

[176] Commonwealth of Australia, *Australia's Oceans Policy - An Issues Paper*, Canberra, 1998.

[177] Commonwealth of Australia, *Australia's Oceans Policy*, Canberra, 1998.

[178] Commonwealth of Australia, *Australia's Oceans Policy - Specific Sectoral Measures*, Canberra, 1998.

3.5 CANADA

Canada is a federal State, and statutory responsibilities for the coastal zone are divided between the federal government and the provincial or territorial governments. Oceans and marine resources are under the primary jurisdiction of the federal Department of Fisheries and Oceans. The provincial and territorial governments have authority over shorelines and some marine areas; land use planning is also their responsibility, although local planning has largely been delegated to municipalities, subject to co-ordination at provincial or territorial level.

ICZM is a recent development in Canada, and has emerged as part of a new strategy for marine resources, which has moved from a traditional concentration on fisheries to a broader focus on oceans management. The principal legislative instrument is the Oceans Act 1996.

3.5.1 Oceans Act 1996

In 1994, the Committee on Oceans and Coasts of the National Advisory Board on Science and Technology recommended that Canada should develop an Oceans Strategy and enact legislation for this purpose. The resulting Oceans Act 1996, which came into force on 31 January 1997, is divided into three parts:

- Part I defines Canada's maritime zones of jurisdiction (*ie* 12-mile territorial sea, 24-mile contiguous zone, 200-mile exclusive economic zone, and continental shelf) in accordance with the United Nations Convention on the Law of the Sea.
- Part II requires the Minister of Fisheries and Oceans to lead the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems in Canadian waters (in collaboration with other ministers, boards and agencies of the federal government, with provincial and territorial governments, and with aboriginal organisations, coastal communities and other persons and bodies). This oceans management strategy must be based on the principles of sustainable development, integrated management of activities and the precautionary approach.

  The Act instructs the Minister to collaborate with the various stakeholders in promoting the preparation and execution of integrated management plans. It provides him or her with instruments and mechanisms for the implementation of these plans, including the co-ordination of federal policies and programmes, the appointment of advisory or management bodies, and the establishment of marine environmental quality guidelines, objectives and criteria. The Minister is also given general duties to co-operate with stakeholders, and powers to enter into agreements with them, to collect and disseminate information, and to make financial grants and incur expenditure. In addition, the Act provides for the creation of a national system of marine protected areas, and confers regulatory and enforcement powers for their management.
- Part III consolidates most federal responsibilities for oceans under the jurisdiction of the Minister of Fisheries and Oceans, including coast guard services, marine scientific functions and hydrography. It also provides for a comprehensive review of the provisions and operation of the Act by the Standing Committee on Fisheries and Oceans within three years of its entry into force.

The Oceans Act creates an overall statutory framework for integrated management of the sea, but its effectiveness will necessarily depend on the way in which it is implemented and the administrative policies that are adopted under it. In 1997, the Department of Fisheries and

Oceans produced two reports describing the current role of the federal, provincial and territorial governments in the oceans sector.[179] In 1998, a discussion paper[180] was published, which provides an overview of the main issues related to oceans management, and invites views on the prospective content of the Oceans Strategy. The results of this exercise are expected to be released at the end of the consultation process in 1999.

Although the Oceans Act concentrates on the protection of the marine environment, the integrated management plans must also cover all activities or measures *affecting* estuaries, coastal waters and marine waters, and will therefore include land uses that have impacts on those waters. In 1995-96, Environment Canada and the Department of Fisheries and Oceans initiated a National Program of Action for the Protection of the Marine Environment From Land-Based Activities (NPA), which addresses land-based sources of marine pollution and other effects of land uses. A new Canadian Environmental Protection Act, which received the Royal Assent on 14 September 1999 and is expected to be in force early in 2000, will provide for environmental objectives, release guidelines and codes of practice to prevent and reduce marine pollution from land-based sources. In addition, the Department of Fisheries and Oceans will soon publish a National Framework for Integrated Coastal Zone Management in Canada.

3.6 SOUTH AFRICA

South Africa is currently in the process of developing an integrated coastal policy. The Department of Environmental Affairs and Tourism initiated a Coastal Management Policy Programme in May 1997, which led to the publication of a Green Paper[181] for public consultation in September 1998. This was followed in March 1999 by a Draft White Paper[182] containing the government's conclusions and proposals for action.

3.6.1 Green Paper

The Green Paper found that the existing institutional and legal arrangements for coastal management in South Africa were inefficient and fragmented, and failed to co-ordinate activities at the coast.[183] It invited comments on several options for strengthening institutions and legislation, and for promoting co-ordination and integration of planning, management and investment strategies.

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[179] *Role of the Federal Government in the Oceans Sector*, Department of Fisheries and Oceans, Canada, 1997; *Role of the Provincial and Territorial Governments in the Oceans Sector*, Department of Fisheries and Oceans, Canada, 1997.

[180] *Towards Canada's Oceans Strategy: Discussion Paper*, Department of Fisheries and Oceans, Canada, 1998.

[181] Department of Environmental Affairs and Tourism, *Coastal Policy Green Paper: Towards Sustainable Coastal Development in South Africa*, Cape Town, 1998.

[182] Department of Environmental Affairs and Tourism, *Draft White Paper for Sustainable Coastal Development in South Africa*, Cape Town, 1999.

[183] *Op cit,* p 17.

3.6.2 Institutional arrangements

Under the Constitution of the Republic of South Africa,[184] there are three tiers of government at national, provincial and local levels. Three alternative models for the institutional structure of coastal zone management were suggested in the Green Paper:[185]

- a national Coastal Commission and formal coastal management structures in national, provincial and local government;
- coastal units in the national Department of Environmental Affairs and Tourism and in provincial environmental or planning departments, and local co-management arrangements using existing local authority structures; or
- fostering strategic alliances between the Department of Environmental Affairs and Tourism and other key national, provincial and local agencies.

3.6.3 Legal arrangements

The Green Paper considered two main options for possible future legal arrangements. These involve either using existing laws or enacting new coastal legislation. The key existing laws are:

- Sea Shore Act;[186]
- National Environmental Management Act;[187]
- Environment Conservation Act;[188] and
- Development Facilitation Act[189] and provincial planning legislation.

According to the Green Paper, new ICZM legislation could take various forms:[190]

- a comprehensive coastal management Act;
- a framework coastal Act;
- provincial coastal management Acts; or
- amendments to existing national and provincial legislation.

A comprehensive coastal management Act governing all activities in a defined coastal area was considered by the Green Paper to be of questionable practicality in a South African context and unlikely to be politically acceptable.[191] A framework Act, however, could build on the existing Seashore Act, and could extend and modernise it by:[192]

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[184] Act 108 of 1996.

[185] *Op cit*, chapter 10.

[186] Act 21 of 1935.

[187] Act 107 of 1998.

[188] Act 73 of 1989.

[189] Act 67 of 1995.

[190] *Op cit*, p 165 *et seq*.

[191] *Ibid*, p 165.

[192] *Ibid*.

- providing for public access to the coast;
- clarifying the roles and responsibilities of national, provincial and local government;
- specifying coastal principles, requiring development of coastal management programmes, providing for institutions and interaction between them, requiring provinces to formulate their own ICZM Acts and providing financial incentives; and
- suggesting model coastal management legislation for adaptation by provinces.

Coastal provinces already have the constitutional power to introduce their own ICZM Acts, even if a national framework Act is not adopted. Alternatively, existing national and provincial legislation could be amended to incorporate coastal principles. The Green Paper did not express a preference for any particular approach, but was intended to stimulate debate.

3.6.4 Draft White Paper

The Draft White Paper, which incorporates feedback from the consultation exercise on the Green Paper, sets out a policy for sustainable coastal development through ICZM, and proposes a plan of action to implement it. However, this will not become official policy until it has been considered by the Cabinet and Parliament, and is formally adopted by the South African government.

The recommendations in the Draft White Paper[193] include the creation of a new Directorate of Coastal Management within the Department of Environmental Affairs and Tourism to act as national lead agent for ICZM. In addition, a Coastal Management Subcommittee of the existing Committee for Environmental Co-ordination[194] would be appointed to promote co-ordination with other national departments and the provinces. A provincial lead agent for ICZM and a co-ordinating Coastal Working Group would also be established in each of the four coastal provinces.[195] Local authorities would continue to carry out many functions above high-water mark, such as land use planning, and co-ordination at local level could be assisted by new local coastal forums.

The Draft White Paper[196] also adopts the option proposed in the Green Paper for the introduction of a national Coastal Management Act, which would update and enlarge the provisions of Seashore Act to create a framework for sustainable coastal development and provide for the institutions needed for ICZM. A detailed assessment of the deficiencies of existing legislation will need to be undertaken in order to determine the exact contents of a new Act, but legislative amendments would be made to incorporate coastal considerations into national, provincial and local laws.

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[193] *Op cit*, chapter 9.

[194] The Committee for Environmental Co-ordination was established under the National Environmental Management Act 1998, s 7.

[195] Northern Cape, Western Cape, Eastern Cape and KwaZulu Natal.

[196] *Op cit*, section 9.3.

Proposed provisions of a South African Coastal Management Act

- Developing norms, standards, principles, goals and objectives for coastal management;
- Preserving the philosophy of public status and State custodianship of the sea and sea shore, including making provision to ensure public access to the sea and sea shore, while respecting private property rights (consideration could be given to extending the principles of public ownership/State custodianship to appropriate areas above the high water mark);
- Clarifying responsibilities and rationalisation of the Admiralty Reserve and other State land along the coast, including establishing principles and procedures for management;
- More clearly delineating the respective roles and responsibilities of national, provincial and local spheres of government and other agencies with respect to coastal areas, including the possibility of delegation of functions below the high water mark, for example, in estuaries and in-shore waters;
- Requiring that the Policy be incorporated into other national, provincial and local legislation, policies, programmes and projects;
- Making provision for the institutions needed to implement the Policy;
- Making provision for dedicated mechanisms or institutions, for example, a coastal trust or board to provide financial support to coastal management.

Source: *Draft White Paper for Sustainable Coastal Development in South Africa.*[197]

3.7 COMPARISON OF COASTAL ZONE LAWS OUTSIDE THE EUROPEAN UNION

A comparison of coastal zone laws outside the European Union demonstrates the variety of legal and non-statutory instruments available for the purposes of ICZM. No single approach is clearly superior to all the others, and countries have chosen those that they consider most appropriate to their own legal and administrative systems.

The example of the United States, which has the most mature experience of ICZM, indicates the importance of flexibility within a federal structure. A broad definition of the coastal zone at federal level permits individual states to adopt more precise boundaries that suit their particular geographical situation. While the US Coastal Zone Management Act specifies the national objectives of ICZM policy, it does not coerce states to develop coastal management programs, but successfully provides incentives for them to do so by offering the benefits of financial grants and “federal consistency”. The methods of implementation selected by US states are equally varied, and include comprehensive ICZM legislation, framework acts and non-statutory co-ordination schemes.

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[197] *Op cit*, section 9.3.2.

By comparison, the approach of the Australian federal system is to adopt a non-statutory ICZM policy at national level, and to encourage and support the participation of states and territories through funding and other initiatives. ICZM legislation is a regional mechanism that has been chosen by some, but not all, Australian states. In Canada, the analogy of the Oceans Act is not exact, since its focus is primarily marine, but it provides an example of federal legislation establishing a broad framework for integrated management co-ordinated by a national government.

New Zealand is exceptional in incorporating ICZM into a comprehensive reform of environmental law. Such a fundamental change inevitably requires considerable political will, and could not be introduced without the general consent of participants. It may be significant that New Zealand is not a federal State, and its example would be difficult to follow within the European Union as a whole. Experience in New Zealand has also shown that complex new legislation is unlikely to be perfect in its initial form, and will usually require further amendment. However, the Resource Management Act reflects the important principle that the coastal zone is part of a wider environment, and legislation for the coast should not be considered in isolation, but must be compatible with other environmental laws.

It is too early to draw conclusive lessons from the South African initiative in ICZM, which is still at a preparatory stage, but it provides a useful review of practical problems and potential solutions. In particular, it is noteworthy that the preferred option at present is for a national framework act, rather than comprehensive legislation or a non-statutory approach.

In conclusion, this comparative analysis of selected coastal zone laws outside the European Union shows the importance of diversity and the need to adapt mechanisms to suit national circumstances. Accordingly, it suggests that the European Union should not seek to be over prescriptive. At the same time, it is clear that law has the capacity to make important contributions to ICZM, stimulating and facilitating the implementation of policy at national, regional and local levels. While the uses of legislation vary, no approach can be completely independent of the law, which should therefore be seen as a complimentary tool rather than a substitute for non-statutory methods.

CHAPTER 4. THE IMPACT OF EUROPEAN COMMUNITY LAW ON ICZM

4.1 INTRODUCTION

This chapter discusses the role of European Community law in integrated coastal zone management. It examines the constitutional basis for action by the Community in this field, and discusses the advantages and disadvantages of European legal measures. It also reviews the considerable body of Community law that already affects the coastal zone.

4.2 THE CONSTITUTIONAL BASIS OF EC LAW

The functions of the Community institutions and the matters over which they have legal authority depend upon the Treaty establishing the European Community, the EC Treaty. Although the word "coast" does not appear anywhere in that document, there are many aspects of European Community law that are directly or indirectly relevant to the subject of ICZM.

Article 3 of the EC Treaty stipulates that the activities of the Community must include, *inter alia*, common policies in the sphere of the environment, transport, agriculture and fisheries, the strengthening of economic and social cohesion, and measures in the sphere of energy, civil protection and tourism. All of these are matters that affect the coastal zone, and the legitimate scope of Community activities is therefore broad enough to embrace the subject of ICZM.

Moreover, as a result of amendments by the Treaty of Amsterdam, which entered into force on 1 May 1999, the fundamental objectives of the European Community under the EC Treaty now include "a harmonious, balanced and sustainable development of economic activities" and "a high level of protection and improvement of the quality of the environment".[198] In addition, environmental protection requirements must be integrated into the definition and implementation of other Community policies, in particular with a view to promoting sustainable development.[199]

EC environmental legislation must be based on either Article 95[200] of the EC Treaty, which is concerned with environmental aspects of harmonisation in the Single Market, or Article 175,[201] which is a purely environmental provision. The choice of legal basis is important mainly because Article 175 allows more opportunity for Member States to adopt more stringent national measures. Article 175 also provides specific authority for Community legislation concerning town and country planning, although unanimity is required for their adoption by the Council of Ministers.

There are three alternative types of secondary legislation that may be enacted by the Community. Directives, which are the most common form of EC environmental legislation, require Member States to introduce their own laws and measures in order to achieve specified

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[198] Art 2 EC.

[199] Art 6 EC.

[200] Previously Art 100a.

[201] Previously Art 130s.

objectives, and thus require implementation. Regulations, on the other hand, are directly binding in Member States, and so do not involve transposition into national law. Decisions, which are comparatively rare in the environmental context, are selective measures that are binding only on the parties to whom they are addressed.

4.3 SUBSIDIARITY AND PROPORTIONALITY

Any measures taken by the European Community in relation to ICZM must be compatible with the principles of subsidiarity and proportionality, which were introduced into the EC Treaty[202] by the Maastricht Treaty. This provides that in areas which do not fall within its exclusive competence:

- the Community shall take action only if the objectives cannot be sufficiently achieved by Member States, and can therefore be better achieved by the Community *(subsidiarity)*;
- any action by the Community shall not go beyond what is necessary to achieve the objectives of the EC Treaty *(proportionality)*.

These are imprecise legal principles, and are difficult to interpret in practice. At the Edinburgh Summit in December 1992, the Council of Ministers agreed an overall approach to their application, which has now been endorsed in a formal protocol to the EC Treaty[203] inserted by the Treaty of Amsterdam. This protocol includes the following guidelines, which suggest that Community measures may be compatible with the conditions of subsidiarity if:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.

In addition, the protocol stipulates that the form of Community action should be as simple as possible, consistent with achieving the objective of the measure and the need for effective enforcement. The Community should legislate only to the extent necessary, and, other things being equal, directives should be preferred to regulations and framework directives to detailed measures. Directives should also leave the form and methods of implementation to the national authorities.

Community measures should leave as much scope for national decision as possible, and care should be taken to respect well established national arrangements and the organisation and working of Member States' legal systems. Where appropriate, Community measures should provide Member States with alternative ways to achieve their objectives. However, where the principle of subsidiarity leads to no action being taken by the Community, Member States are themselves required to take all appropriate steps to ensure fulfilment of their own obligations under the EC Treaty.

[202] Art 5 EC.

[203] Protocol (No 30) on the application of the principles of subsidiarity and proportionality (1997).

4.4 STRENGTHS AND WEAKNESSES OF EC LEGISLATION

If the Community decided to enact specific legislation for the purpose of ICZM, the complexity of national laws and the requirements of subsidiarity mean that the most appropriate instrument would be a directive (probably a framework directive) rather than a regulation. The main advantages of directives are as follows:

- Flexibility

  Directives can specify the objectives and standards that must be achieved, but leave it to Member States to devise the laws and measures necessary to meet those targets, which should enable them to adopt mechanisms appropriate to their own political and administrative systems.

- Stimulate reform

  Directives can require Member States to legislate in matters that they would prefer to ignore, or to legislate when they would otherwise rely on unenforceable non-statutory measures.

- Overcome conceptual barriers

  Directives can oblige Member States to transcend entrenched conceptual boundaries that may no longer have a logical justification, such as the jurisdictional dichotomy between land and sea.

On the other hand, there are a number of disadvantages associated with directives:

- Delay

  Directives are a slow way of dealing with environmental problems, because they involve two legislative processes: the agreement of the directive and the enactment of national legislation to implement it. For example, it took eight years to negotiate and implement the EIA Directive.[204]

- Discourage interim measures

  The prospect of Community legislation may discourage Member States from taking national action beforehand, since national legislation may subsequently prove to be incompatible with EC requirements.

- Produce uncertainty

  There are often legal difficulties in interpreting imprecise provisions in EC directives, which frequently lead to litigation. In addition, there is an increasing tendency for legislative draftsmen to copy the wording of EC directives verbatim into national legislation without attempting to explain or interpret it; although this is designed to ensure that national legislation does not conflict with Community law, it makes it harder to understand.

Implementation and enforcement is crucial to the effectiveness of EC directives, but it also tends to be the weakest link in the chain. A directive will only achieve its purpose if Member States comply with it both formally and actually, and Community law provides the following enforcement mechanisms that can be invoked against Member States:

[204] Directive 85/337/EEC, OJ No L 175, 5.7.1985, p 40.

- Complaint to the European Commission

  Anyone may complain about a breach of European law to the European Commission, which has power under Article 226[205] of the EC Treaty to issue a letter of formal notice to the Member State, followed if necessary by a reasoned opinion and an application to the European Court of Justice. However, the Commission is overloaded with environmental complaints, which can take several years to be decided by the Court.

- Action in the national courts

  It is possible to take legal action against the government of a Member State[206] in its own national courts for breach of a directive that is "directly effective" (*ie* precise and unconditional). However, most environmental directives are insufficiently specific to qualify, and the potential success of such actions may also be limited in practice by the rules and procedures of national courts.

The need to improve compliance with EC Directives is widely recognised, and the Commission, in its Communication on Implementing Community Environmental Law,[207] issued in October 1996, proposed to consider:

- the establishment of guidelines to assist Member States in carrying out environmental inspection tasks, and the possibility of a Community body with auditing competencies;
- the establishment of minimum criteria for the handling of complaints and carrying out environmental investigations in Member States where such mechanisms/procedures are lacking; and
- the need for guidelines on the access to national courts by representative organisations with a view to encouraging the application and enforcement of Community environmental legislation in the light of the subsidiarity principle, taking into account the different legal systems of the Member States.

The Communication also recognised that the availability of information about the state of application of the law is an important factor in improving performance, and the Commission has now commenced publication of an annual survey of the implementation and enforcement of Community environmental law.[208]

4.5 APPLICATION OF EC LEGISLATION TO THE COASTAL ENVIRONMENT

Since the EC Treaty defines the competence of the Community in terms of issues rather than geography, it is not surprising that much EC legislation is equally vague about its jurisdictional extent. While this is not a significant problem in relation to matters that arise on land, it creates uncertainty about the application of some EC laws to the marine environment. This is particularly so in the case of procedural measures such as the EIA,[209] Birds[210] and

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[205] Previously Art 169.

[206] This also applies against "emanations of the State", *ie* bodies providing public services under the control of the State.

[207] COM (96) 500 final.

[208] SEC 1999/592.

[209] Directive 85/337/EEC, OJ No L 175, 5.7.1985, p 40.

Habitats[211] Directives, and has led to doubt about the adequacy of their implementation. For example, there has been litigation in the United Kingdom about its failure to apply the Habitats Directive to the continental shelf.[212]

R v Secretary of State for Trade and Industry, ex parte Greenpeace *

In 1997, the UK Government granted petroleum production licences to oil companies, authorising them to drill for petroleum on the Atlantic Frontier of the UK continental shelf. Greenpeace sought judicial review of the legality of these licences, claiming that serious damage would be caused to a species of coral, *Lophelia pertusa*, which should be protected under the Habitats Directive. In implementing the Habitats Directive, the UK Government had not identified any candidate Special Areas of Conservation on its continental shelf, believing that the Directive did not apply beyond the territorial sea. This was challenged by Greenpeace, but the British High Court ruled in 1998 that although there was evidence to justify bringing the action, the application was too late for procedural reasons.

* [1998] Environmental Law Reports 415

The European Community and its Member States are parties to the UN Convention on the Law of the Sea, and it is arguable that marine areas attributed to States under international law should also come within the jurisdiction of the Community in relation to matters that would be within its competence elsewhere. Although States do not have complete sovereignty outside their territorial sea, they are entitled to exercise sovereign rights in a 200-mile exclusive economic zone for the purpose of exploring, exploiting, conserving and managing its living and non-living resources.[213] On the continental shelf, which may extend beyond 200 miles, their sovereign rights are limited to mineral and other non-living resources together with sedentary species of living organisms.[214] States also have a general obligation to protect and preserve the marine environment,[215] and to prevent pollution from activities within their jurisdiction.[216] It would logically follow that the Community too should have the competence to take environmental measures with these areas, but it is important that any exercise of this power should be made explicit in the relevant EC legislation.

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[210] Directive 79/409/EEC, OJ No L 103, 25.4.1979, p 1.

[211] Directive 92/43/EEC, OJ No L 206, 22.7.1992, p 7.

[212] *R* v *Secretary of State for Trade and Industry, ex parte Greenpeace* [1998] Environmental Law Reports 415.

[213] UN Convention on the Law of the Sea, Art 56.

[214] *Ibid*, Art 77.

[215] *Ibid*, Art 192.

[216] *Ibid*, Art 194.

4.6 EXAMPLES OF EC LEGISLATION AFFECTING THE COASTAL ZONE

Although there is no specific EC legislation for ICZM, there are numerous Community laws that already affect the management of the coastal zone, because they concern activities or issues that arise in or have an impact on that area. While the most significant of these are environmental directives, they also include regulations such as the Agri-Environment Regulation[217] and measures under the Common Fisheries Policy. Some Community laws deal with general approaches to environmental management, and are sometimes described as "horizontal" legislation, whereas others focus on specific sectors such as water quality and nature conservation. Examples of each type are considered in this section.

4.6.1 Horizontal legislation

The most significant EC legislation of the horizontal kind relates to environmental impact assessment and public access to information. These reflect fundamental principles that are crucial to the concept of ICZM.

4.6.1.1 Environmental Impact Assessment Directive

The Environmental Impact Assessment Directive 85/337/EEC,[218] which was adopted in 1985 and substantially amended in 1997,[219] requires that certain categories of development project must be subject to an assessment of their potential effects on the environment before consent may be given by a governmental authority. Projects listed in Annex I of the Directive must always have an EIA, whereas those listed in Annex II (and modifications to Annex I projects) need an EIA if they are likely to have significant environmental effects. The jurisdictional scope of the Directive, therefore, depends upon the type and significance of the project proposed rather than its geographical position, and many of those projects are by their nature likely to be located in the coastal zone.

Examples of coastal projects in Annex I of the EIA Directive

- Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes
- Waste water treatment plants with a capacity exceeding 150,000 population equivalent
- Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500,000 m3/day in the case of gas
- Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km

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[217] Regulation 2078/92/EEC, OJ No L 215, 30.7.1992, p 85.

[218] OJ No L 175, 5.7.1985, p 40.

[219] Directive 97/11/EC, OJ No L 73, 14.3.1997, p 5.

Examples of coastal projects in Annex II of the EIA Directive

- Intensive fish farming
- Reclamation of land from the sea
- Extraction of minerals by marine or fluvial dredging
- Installations for hydroelectric energy production
- Installations for the harnessing of wind power for energy production (wind farms)
- Shipyards
- Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I)
- Oil and gas pipeline installations (projects not included in Annex I)
- Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works
- Waste-water treatment plants (projects not included in Annex I)
- Marinas
- Holiday villages and hotel complexes outside urban areas and associated developments
- Permanent camp sites and caravan sites

Member States must implement a formal “screening” procedure (involving a case-by-case examination and/or thresholds or criteria) in order to determine whether Annex II projects require assessment, and these decisions must be published. It is the responsibility of the developer to produce an environmental impact statement, although authorities with relevant information must make it available to him on request. Member States must also offer voluntary or mandatory “scoping”, whereby the decision-making authority determines in advance (in consultation with the developer) the scope of the information to be included. Environmental authorities and the public must be consulted, and offered an opportunity to comment before the application for development consent is decided, and the environmental impact statement and the results of the consultation must be taken into account. In accordance with the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, other Member States must also be consulted about proposals that are likely to have significant effects on the environment in their territory. Finally, the decision to grant or refuse consent, the reasons on which it is based and a description of the main measures to deal with major adverse effects must then be made public.

The EIA Directive is an important tool for ICZM, which embodies crucial elements of public information and participation, but because it is limited to certain categories of development project, it is necessarily a selective instrument for that purpose.

4.6.1.2 Strategic Environmental Assessment Directive

A proposal for a directive on environmental assessment of plans and programmes (Strategic Environmental Assessment or SEA) which was put forward by the Commission in 1996 and amended in February 1999, is currently under negotiation.[220] The objective is to supplement the existing EIA system by ensuring that an environmental assessment is also carried out of plans and programmes that are likely to have an environmental impact. The proposed directive would apply to plans and programmes prepared or modified by public authorities that set a framework for future development consents of projects. These will include plans and programmes in areas such as transport (including port facilities), energy, waste management, water resource management, industry (including extraction of mineral resources), tourism, town and country planning and land use. The procedure will require the preparation of environmental statements, which must be subject to consultation with environmental authorities and the public, and must be taken into account before the plan or programme is adopted. Other Member States must also be consulted about transboundary environmental effects, and the decision to adopt a plan or programme, together with the reasons for it, must be published.

4.6.1.3 Directive on Freedom of Access to Information on the Environment

Directive 90/313/EEC[221] on Freedom of Access to Information on the Environment imposes a general duty on public authorities and publicly accountable bodies to make environmental information held by them available to any person on request. There are some exceptions, such as commercial or personal confidentiality, and reasonable charges may be imposed. The information must be supplied within two months, and judicial or administrative appeals may be made against a refusal or failure to provide it. In addition, Member States must publish periodic reports on the state of the environment.

This Directive has broadened the approach in Member States from exclusive reliance on statutory registers, and has facilitated access to other sources of information. There have been some difficulties of interpretation about the identity of public authorities and the scope of environmental information; the grounds for exemption, the reasonableness of charging arrangements and the effectiveness of appeals and enforcement mechanisms have also been controversial in practice. The Directive will be supplemented in the future by the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which contains some wider provisions. The success of such measures, however, depends crucially on the public exercising their rights, and it is therefore important that sources of information are well publicised, conveniently located, clearly presented and economical to use.

4.6.2 Water quality legislation

Since all environmental media are represented in the coastal zone, most sectoral legislation on environmental quality can be said have some relevance to ICZM. However, the most directly significant legal instruments are those dealing with water quality. These include the early EC directives on bathing water, dangerous substances and shellfish waters, and the later measures concerning urban waste water treatment and nitrate pollution. The most recent developments

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[220] COM (96) 511 final, COM (99) 73 final.

[221] OJ No L 158, 23.6.1990, p 56.

reflect a movement away from a purely sectoral approach, with the introduction of integrated pollution prevention and control and the proposal for an new water framework.

4.6.2.1 Bathing Water Directive

The Bathing Water Directive 76/160/EEC[222] was introduced originally for the benefit of public health rather than to protect the environment. It applies to both fresh waters and the sea where bathing is either officially authorised or traditionally practised. The Directive prescribes 19 physical, chemical and microbiological parameters, including both mandatory and guide values. Member States are required to ensure that the quality of their bathing waters complies with the mandatory values, and should also endeavour to observe the guide values. They must monitor water quality through frequent sampling, and submit regular returns to Commission, which publishes this information in an annual report. However, the Bathing Water Directive has suffered from enforcement problems, and has achieved only limited environmental improvement. A proposal to revise the Directive, in order to simplify, consolidate and update it, was put forward by the Commission in 1994, but has not been adopted.[223]

4.6.2.2 Dangerous Substances Directive

The Dangerous Substances Directive 76/464/EEC[224] creates a general framework for the control of discharges of dangerous substances to water. It applies to territorial and internal coastal waters, as well as to inland surface water. Member States are required to take steps to eliminate water pollution by the dangerous substances identified in List I, and to establish programmes for the reduction of pollution by the substances in List II. Discharges of both List I and List II substances need prior authorisation by authorities in Member States, which must impose emission standards, although quality objectives may be used as an alternative in certain circumstances. The Dangerous Substances Directive does not itself define emission standards or quality objectives, but provides for their subsequent establishment, and seven daughter Directives[225] have now been adopted covering 18 substances. The criteria introduced by these measures will in future be included in the proposed Water Framework Directive (see Section 4.6.2.7) and the Dangerous Substances Directive will be repealed.

4.6.2.3 Shellfish Waters Directive

The Shellfish Waters Directive 79/923/EEC[226] sets water quality standards for coastal and brackish waters designated by Member States as needing protection or improvement in order to support the life and growth of bivalve and gastropod molluscs. It is intended to contribute

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[222] OJ No L 31, 5.2.1976, p 1.

[223] COM (94) 36 final.

[224] OJ No L 129, 18.5.1976, p 23.

[225] Mercury Discharges Directive 82/176/EEC, OJ No L 81, 27.3.1982, p 29; Cadmium Discharges Directive 83/513/EEC, OJ No L 291, 24.10.1983, p 1; Mercury Directive 84/156/EEC, OJ No L 74, 17.3.1984, p 49; Hexachlorocyclohexane Discharges Directive 84/491/EEC, OJ No L 274, 17.10.1984, p 11; Dangerous Substance Discharges Directive 86/280/EEC, OJ No L 181, 4.7.1986, p 16, amended by Directives 88/347/EEC, OJ No L 158, 25.6.1988, p 35 and 90/415/EEC, OJ No L 219, 14.8.1990, p 49.

[226] OJ No L 281, 10.11.1979, p 47.

to the quality of edible shellfish products, but has environmental as well as public health goals. Member States have been obliged to establish pollution reduction programmes to ensure that their designated shellfish waters comply with the water quality parameters prescribed in the Directive, which also specifies requirements for sampling and monitoring. The Shellfish Waters Directive will be replaced by the Water Framework Directive (see Section 4.6.2.7) which will incorporate its obligations within a new integrated structure.

4.6.2.4 Urban Waste Water Treatment Directive

The Urban Waste Water Treatment Directive 91/271/EEC[227] regulates the collection, treatment and disposal of urban waste water and certain biodegradable wastes. It requires Member States to establish sewerage systems for all agglomerations with a population over 2,000. Secondary (*ie* biological) treatment is normally necessary, but more stringent tertiary treatment is required for discharges to sensitive areas, and a lower level of primary treatment may be permitted for certain discharges to coastal waters and estuaries identified as less sensitive areas. The timetable for achieving these standards has been phased between 1998 and 2005 depending on the size of the agglomeration and the sensitivity of the receiving waters. In addition, the dumping of sewage sludge into surface waters has been prohibited since the end of 1998.

4.6.2.5 Nitrates Directive

The Nitrates Directive 91/676/EEC[228] aims to reduce and prevent the pollution of water by nitrates from agricultural sources such as fertilisers and livestock manure. It is concerned not only with protecting the quality of drinking water supplies, but also with preventing eutrophication of fresh, estuarial and coastal waters. Member States are required to identify waters that are affected or threatened by nitrate pollution, and designate the agricultural areas that drain into them as vulnerable zones. Action programmes must be prepared containing mandatory measures to regulate the application and storage of fertilisers; these programmes must be applied either in the designated vulnerable zones or, if a Member State wishes, across its whole territory. In addition, Member States must have at least one voluntary code of good agricultural practice, in order to provide a general level of protection for all waters. Implementation of the Nitrates Directive has been phased since 1993.

4.6.2.6 Integrated Pollution Prevention and Control Directive

The IPPC Directive 96/61/EC[229] introduces an integrated regulatory approach to the protection of the environment as a whole, which aims to prevent or reduce pollution of air, water and land from a range of industrial activities listed in the legislation. All of these activities require a permit (or co-ordinated multiple permits) from authorities in Member States, which must ensure that:

- all the appropriate preventive measures are taken against pollution, in particular through the application of the best available techniques (BAT);
- no significant pollution is caused;

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[227] OJ No L 135, 21.5.1991, p 40.

[228] OJ No L 375, 31.12.1991, p 1.

[229] OJ No L 257, 10.10.1996, p 26.

- waste production is avoided, and any waste that is produced is either recovered or (where that is impossible) is disposed of while avoiding or reducing any impact on the environment;
- energy is used efficiently;
- the necessary measures are taken to prevent accidents and limit their consequences; and
- the necessary measures are taken upon the cessation of activities to avoid any pollution risk and return the site to a satisfactory state.

Permits must include emission limit values for pollutants based on BAT, taking account of the potential of pollutants to transfer from one medium to another, and should contain other necessary conditions for the protection of soil and groundwater and the management of waste. Permit conditions must be periodically reviewed and updated where necessary. There is provision for IPPC emission limit values to be set by the Community itself, but otherwise the limits prescribed in other EC legislation should be applied as the minimum permissible standards. In addition, the permit procedure must satisfy specific requirements for public participation and access to information. The provisions of the Directive apply to new installations from October 1999 and to existing ones from October 2007.

4.6.2.7 Water Framework Directive

The draft Water Framework Directive,[230] which has been under negotiation since March 1997, will replace seven existing Directives on water quality. It will establish a comprehensive framework for water policy, and aims to improve the quantity and quality of water, promote sustainable water consumption, control transboundary pollution problems, protect aquatic and terrestrial ecosystems, and safeguard the recreational potential of Community waters.

The significance of the Water Framework Directive for ICZM lies in the fact that water management will be based on the natural unit of river basins. Member States will be required to identify river basin districts, and prepare river basin management plans to ensure that most waters are of “good status” (defined in terms of environmental objectives and quality standards) by 2010. These requirements will apply to not only to surface fresh water and groundwater, but also to estuaries and coastal waters up to one nautical mile from the baseline of the territorial sea. The Directive also seeks to co-ordinate the application of other Community laws, including the IPPC Directive, to meet its objectives. In addition, it will apply the environmental standards of EC legislation and the UN Convention on the Law of the Sea to territorial and marine waters within the 200-mile exclusive economic zone.

Public participation is an important element in the Directive, and will be sought through publicity and consultation on the preparation of river basin management plans. It is also intended that full cost recovery changes should be imposed by 2010 for the use of water resources and the treatment of waste water.

4.6.3 Nature protection legislation

The two principal pieces of EC legislation on nature protection are the directives on wild birds and natural habitats. These are crucial to ICZM because many of the species and habitat types to which they relate are found in the coastal zone.

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[230] COM (97) 49 final, COM (97) 614 final, COM (1998) 76 final, COM (1999) 271 final.

4.6.3.1 Birds Directive

The Birds Directive 79/409/EEC[231] relates to the conservation of all species of naturally occurring birds in the European territory of the Member States. It covers the protection, management and control of these species, and lays down rules for their exploitation.

Member States have a general obligation to take the requisite measures to maintain the population of these species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level. They are also obliged to take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all these species. The measures to achieve these objectives include primarily:

- creation of protected areas;
- upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;
- re-establishment of destroyed biotopes;
- creation of biotopes.

Annex I of the Birds Directive lists particularly vulnerable species that must be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. In this connection, account must be taken of the following factors:

- species in danger of extinction;
- species vulnerable to specific changes in their habitat;
- species considered rare because of small populations or restricted local distribution;
- other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels must be taken into account as a background for evaluations.

Member States must in particular classify the most suitable territories in number and size as “special protection areas” (SPAs) for the conservation of these species, taking into account their protection requirements in the geographical land and sea area. They must also take similar measures for regularly occurring migratory species not listed in Annex I, as regards their breeding, moulting and wintering areas and staging posts along their migration routes, and for this purpose must pay particular attention to the protection of wetlands, especially those of international importance. All relevant information must be sent to the European Commission, so that it can take appropriate initiatives to ensure that SPAs form a coherent whole.

4.6.3.2 Habitats Directive

The Habitats Directive 92/43/EEC[232] aims to promote the maintenance of biodiversity, and to ensure the restoration or maintenance of natural habitats of Community interest at a

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[231] OJ No L 103, 25.4.1979, p 1.

[232] OJ No L 206, 22.7.1992, p 7.

favourable conservation status. It extends many of the protection mechanisms originally established for wild birds under the Birds Directive to other species and habitat types. In particular, it provides for the designation of "special areas of conservation" (SACs) in order to create a coherent European ecological network called "Natura 2000". The Habitats Directive has now been amended by Council Directive 97/62/EC,[233] which revises the lists of habitat types and species.

Under the Directive, candidate sites were required to be notified to the European Commission by 1995 and a definitive list agreed with the Commission by 1998; those sites must now be designated by Member States by 2004. The Directive[234] states that it applies throughout the European territory of Member States, which thus includes their marine waters as well as their land territory.[235]

The Habitats Directive complements, but does not replace the Birds Directive, which remains in force. However, all SPAs designated under the Birds Directive automatically become SACs under the Habitats Directive as well. In addition, the Habitats Directive amends the protective obligations of Member States in relation to SPAs for birds, which now apply to both SACs and SPAs:

- Member States must take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive.
- Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, must be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site, the competent national authorities may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned, and, if appropriate, after having obtained the opinion of the general public.
- If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State must take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected, and must inform the European Commission of the compensatory measures adopted. (Where the site concerned hosts a priority natural habitat and/or priority species listed in the Annexes to the Directive, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment, or, further to an

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[233] OJ No L 305, 8.11.1997, p 42.

[234] Art 2.

[235] Coastal species listed in Annex II include the common porpoise (*phocoena phocoena*), bottlenose dolphin (*tursiops truncatus*), grey seal (*halichoerus grypus*), common seal (*phoca vitulina*) and Baltic ringed seal (*phoca hispida bottnica*). Priority species include the loggerhead turtle (*caretta caretta*) and monk seal (*monachus monachus*).

opinion from the European Commission, to other imperative reasons of overriding public interest.)

Coastal Habitats in Annex I of the Habitats Directive

Open sea and tidal areas

- Sandbanks which are slightly covered by sea water all the time
- *Posidonia* beds (*Posidonion oceanicae*) *
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Coastal lagoons *
- Large shallow inlets and bays
- Reefs
- Submarine structures made by leaking gases

Sea cliffs and shingle or stony beaches

- Annual vegetation of drift lines
- Perennial vegetation of stony banks
- Vegetated sea cliffs of the Atlantic and Baltic Coasts
- Vegetated sea cliffs of the Mediterranean coasts with endemic *Limonium* spp
- Vegetated sea cliffs with endemic flora of the Macaronesian coasts

Atlantic and continental salt marshes and salt meadows

- *Salicornia* and other annuals colonizing mud and sand
- *Spartina* swards (*Spartinion maritimae*)
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)

Mediterranean and thermo-Atlantic salt marshes and salt meadows

- Mediterranean salt meadows (*Juncetalia maritimi*)
- Mediterranean and thermo-Atlantic halophilous scrubs (*Sarcocornetea fruticosi*)
- Halo-nitrophilous scrubs (*Pegano-Salsoletea*)

Salt and gypsum inland steppes

- Mediterranean salt steppes (*Limonietalia*) *
- Iberian gypsum vegetation (*Gypsophiletalia*) *
- Pannonic salt steppes and salt marshes *

Boreal Baltic archipelago, coastal and landupheaval areas

- Baltic esker islands with sandy, rocky and shingle beach vegetation and sublittoral vegetation
- Boreal Baltic islets and small islands
- Boreal Baltic coastal meadows *
- Boreal Baltic sandy beaches with perennial vegetation
- Boreal Baltic narrow inlets

** Denotes priority habitat type*

Coastal Sand Dunes in Annex I of the Habitats Directive

Sea dunes of the Atlantic, North Sea and Baltic coasts

- Embryonic shifting dunes
- Shifting dunes along the shoreline with *Ammophila arenaria* (‘white dunes’)
- Fixed coastal dunes with herbaceous vegetation (‘grey dunes’) *
- Decalcified fixed dunes with *Empetrum nigrum* *
- Atlantic decalcified fixed dunes (*Calluno-Ulicetea*) *
- Dunes with *Hippophaë rhamnoides*
- Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*)
- Wooded dunes of the Atlantic, Continental and Boreal region
- Humid dune slacks
- Machairs (* in Ireland)

Sea dunes of the Mediterranean coast

- *Crucianellion maritimae* fixed beach dunes
- Dunes with *Euphorbia terracina*
- *Malcolmietalia* dune grasslands
- *Brachypodietalia* dune grasslands with annuals
- Coastal dunes with *Juniperus* spp. *
- *Cisto-Lavenduletalia* dune sclerophyllous scrubs
- Wooded dunes with *Pinus pinea* and/or *Pinus pinaster* *

** Denotes priority habitat type*

In addition, Member States are required to establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types and species listed in the Annexes to the Directive.

4.7 CONCLUSION

Despite the absence of any reference to the “coast” in the EC Treaty, the legal competence of the European Community is wide enough to embrace the concept of ICZM, and this has been strengthened by the inclusion of sustainable development in the Treaty and the requirement to integrate environmental protection into other EC policies. However, the principles of subsidiarity and proportionality impose some limitations on the extent of Community action in this field, and any legal measure for the establishment of ICZM would need to be of a fairly general nature. Directives offer greater flexibility than other forms of EC legislation, since they allow for national discretion in the method of implementation, but they also have disadvantages in terms of time-scale and enforceability. Moreover, directives cannot be expressed in too general terms, since compliance with their requirements must be verifiable and normally needs national legislation.

Irrespective of the introduction of a specific ICZM directive, there are numerous existing EC laws that affect the coastal zone, which must be taken into account and could be used to assist the promotion of ICZM. These range from horizontal measures, such as the EIA and proposed SEA Directives, which are basic tools of environmental management, to specific measures on environmental quality and nature protection. Public participation and information is an increasing feature of such instruments, but a common deficiency is a lack of clarity about their jurisdictional application to marine areas. On the other hand, the most recent environmental measures reflect a welcome trend towards a more integrated approach, particularly in the proposed Water Framework Directive and the IPPC Directive.

CHAPTER 5 . THE IMPACT OF INTERNATIONAL LAW ON ICZM

5.1 INTRODUCTION

Many of the issues that integrated coastal zone management must address have an international dimension. For example, several States border the same sea, and need to adopt common policies for the management of a shared resource. Alternatively, the actions of one State may cause transboundary environmental impacts in the coastal zone of another, such as the pollution of international rivers. Such problems require an international solution, and this chapter examines the role of international law in ICZM.

International environmental law often takes the form of treaties or conventions, which may be either bilateral (between two States) or multilateral (between more than two States). Multilateral agreements may be either global (between as many States as possible to deal with issues of universal concern) or regional (confined to particular geographical areas). Although such treaties and conventions are legally binding, they can only bind those States that agree to join them, and therefore their effectiveness depends on the principle of consent.

Some other international agreements affecting the environment take the form of declarations, in which States declare their intention to achieve specified objectives, but do not make legally binding commitments. Such non-binding instruments are often described as "soft law".

5.2 GENERAL INTERNATIONAL MEASURES

Many international legal instruments have an indirect relevance to coastal zone management, because the matters with which they deal occur in or affect the coastal zone as well as other places. Examples are the Convention on Biological Diversity,[236] the UN Framework Convention on Climate Change,[237] the Bonn Convention on the Conservation of Migratory Species of Wild Animals[238] and the Bern Convention on the Conservation of European Wildlife and Natural Habitats.[239]

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[236] The Biodiversity Convention is a global treaty, agreed at UNCED in 1992, to which the European Community, all EC Member States, Latvia and Norway are parties.

[237] The Climate Change Convention is a global treaty, agreed at UNCED in 1992, to which the European Community, all EC Member States, Latvia and Norway are parties. They have also signed, but not ratified, the 1997 Kyoto Protocol. The Preamble to the Convention recognises the need to combat the effects of sea-level rise on coastal areas, and Article 4(1)(e) requires the preparation of ICZM plans.

[238] The Bonn Convention is a global treaty, agreed in 1979, to which the European Community, Norway, Latvia and all EC Member States except Austria are parties, although Greece has not yet ratified it. Co-operative agreements concluded under the Bonn Convention include the Agreement on the Conservation of Seals in the Wadden Sea 1990, the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas 1991 (ASCOBANS) and the Agreement on the Conservation of Small Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area 1996 (ACCOBAMS).

[239] The Bern Convention is a Council of Europe treaty, agreed in 1979, to which the European Community, all EC Member States, Latvia and Norway are parties.

Other measures, such as the Espoo Convention on Environmental Impact Assessment in a Transboundary Context[240] and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,[241] are relevant to ICZM because they concern the role of authorities and the public in administrative decisions affecting the environment.

5.3 GLOBAL MARINE AND COASTAL MEASURES

In addition to general international measures, there are various global instruments that specifically relate to marine and coastal areas. The most important are the UN Convention on the Law of the Sea, Agenda 21, IMO Conventions and the Ramsar Convention on Wetlands

5.3.1 UN Convention on the Law of the Sea

The UN Convention on the Law of the Sea (UNCLOS), which was concluded in 1982 but did not enter into force until 16 November 1994, defines the international legal framework for oceans and seas. It has been ratified by all EC States except Denmark,[242] and the European Community is also a party to Convention.[243] UNCLOS establishes the general principles of jurisdiction and responsibility in the marine environment to which other international, regional and national laws must conform. It is important for coastal management because it prescribes the international legal structure within which ICZM must operate.

UNCLOS defines the maximum extent and delimitation methods of maritime zones, together with the powers and duties of States within them. Coastal States are entitled to claim a territorial sea up to 12 nautical miles from their baselines, where they enjoy sovereignty subject to a right of innocent passage by foreign vessels.[244] They may also declare a contiguous zone up to 24 miles from the baselines, in which they may exercise the control necessary to prevent and punish infringement of their customs, fiscal, immigration and sanitary laws within their territory or territorial sea.[245]

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[240] The Espoo Convention is a UN/HCE treaty, agreed in 1991, to which the European Community, all EC Member States, Latvia and Norway are parties, although Belgium, France, Germany, Ireland, Latvia and Portugal have not yet ratified it.

[241] The Aarhus Convention is a UN/ECE treaty, agreed in 1998, which has been signed by all EC Member States, Latvia and Norway. None has ratified it, and the Convention is not yet in force.

[242] Denmark has signed, but not ratified UNCLOS. Norway has ratified UNCLOS, but Latvia is not a party to the Convention.

[243] Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention, *UN Law of the Sea Bulletin*, No 37, 1998, p 7.

[244] UNCLOS, Part II. The baseline is normally low water mark, but straight baselines may be used in certain places such as bays.

[245] *Ibid*, Art 33.

Summary of claims to maritime zones					
State	**Territorial sea (nm)**	**Contiguous zone (nm)**	**Exclusive economic zone (nm)**	**Fishery zone (nm)**	**Continental shelf[(a)]**
Belgium	12			(b)	(c)
Denmark	3	4	200		200m/EXP
Finland	12			12	200m/EXP
France	12	24	200		200m/EXP
Germany	12		(d)		200m/EXP
Greece	6/10[(e)]				200m/EXP
Ireland	12			200	(f)
Italy	12				200m/EXP
Latvia	12		200		
Netherlands	12			200	200m/EXP
Norway	4	10	200		200 + np[(g)]
Portugal	12		200		200m/EXP
Spain	12	24	200		200m/EXP
Sweden	12		(b)		200m/EXP
UK	12			200	200m/EXP

[(a)] 200m/EXP = up to depth of 200 metres plus depth of exploitability.

[(b)] Up to equidistant line with neighbouring States.

[(c)] Delimitation with opposite and adjacent States in conformity with Art 83 of the UN Convention on the Law of the Sea.

[(d)] Line connecting with geographical co-ordinates.

[(e)] The 10-mile limit applies for the purpose of regulating civil aviation.

[(f)] Claim not precise.

[(g)] 200 nautical miles plus natural prolongation of continental margin.

Source: *UN Law of the Sea Bulletin*, No 34, 1997.

UNCLOS approved the concept of the exclusive economic zone (EEZ), which stretches from the outer limit of the territorial sea to a maximum distance of 200 miles from the baselines.[246] Within the EEZ, a coastal State has sovereign rights for the purpose of exploring, exploiting, conserving and managing the living and non-living resources of the sea-bed, its subsoil and the superjacent waters. In addition, coastal States have sovereign rights over the natural resources of their continental shelf, but these are confined to mineral and other non-living resources together with sedentary species of living organisms.[247]

An important feature of UNCLOS is the prominence accorded to marine environmental protection. Part XII of the Convention imposes a general obligation on States to protect and preserve the marine environment, and requires them to prevent, reduce and control marine pollution. This is elaborated in specific provisions on global and regional co-operation, technical assistance, monitoring and environmental assessment, enforcement, and responsibility and liability. States must also establish international rules and national legislation for pollution from land-based sources, sea-bed activities, dumping, vessels and the atmosphere. Other environmental provisions appear throughout the Convention.

5.3.2 Agenda 21

Agenda 21, which was agreed at the UN Conference on Environment and Development (UNCED) at Rio de Janeiro in 1992, is not legally binding, but is an important declaration of policy. Chapter 17 of Agenda 21 deals with the protection of oceans, sea and coastal areas, and with the rational use and development of their living resources. It recognises that the principles of international environmental law expressed in UNCLOS create a need for new approaches to marine and coastal area management and development. Seven programme areas are identified, the first of which is “integrated management and sustainable development of coastal areas, including exclusive economic zones”.[248] To achieve the commitment of coastal States to ICZM in areas under national jurisdiction, Chapter 17[249] declares that it will be necessary, *inter alia*, to:

- provide for an integrated policy and decision-making process, including all involved sectors, to promote compatibility and a balance of uses;
- identify existing and projected uses of coastal areas and their interactions;
- concentrate on well-defined issues concerning coastal management;
- apply preventive and precautionary approaches in project planning and implementation, including prior assessment and systematic observation of the impacts of major projects;
- promote the development and application of methods, such as national resource and environmental accounting, that reflect changes in value resulting from uses of coastal and

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[246] *Ibid*, Part V. Not all EC States have declared an EEZ, and some have confined their claims to a 200-mile fishery zone.

[247] *Ibid*, Part VI. The continental shelf is defined as the natural prolongation of the land territory to the outer edge of the continental margin or a minimum distance of 200 nautical miles from the territorial sea baselines, subject to a maximum of 350 miles from the baselines or 100 miles from the 2,500 metre isobath.

[248] Agenda 21, para 17.1(a).

[249] *Ibid*, para 17.5.

marine areas, including pollution, marine erosion, loss of resources and habitat destruction;

- provide access, as far as possible, for concerned individuals, groups and organisations to relevant information and opportunities for consultation and participation in planning and decision-making at appropriate levels.

Chapter 17 suggests a range of appropriate activities for this purpose, which are divided into the categories of management-related activities, data and information, and international and regional co-operation and co-ordination.[250] It also describes the means of implementation, including financing and cost evaluation, scientific and technological means, human resource development and capacity-building.[251]

5.3.3 IMO Conventions

The International Maritime Organization (IMO) is the UN agency responsible for improving maritime safety and preventing pollution from ships. Since 1959, it has promoted a series of global conventions and protocols regulating the conduct of international shipping. Several of these measures are environmental, and include the London Dumping Convention, the MARPOL Convention and other agreements on pollution by oil and hazardous substances. Although none of these specifically relate to ICZM, they are legal instruments that can be used to protect the coastal zone from environmental risks arising from ships.

IMO Conventions related to marine environmental protection

- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969
- International Convention on Civil Liability for Oil Pollution Damage 1969
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971
- London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972
- International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL)
- International Convention for the Safety of Life at Sea 1974
- International Convention on Salvage 1989
- International Convention on Oil Pollution Preparedness, Response and Co-operation 1990
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996

[250] *Ibid*, paras 17.6-17.11.

[251] *Ibid*, paras 17.12-17.17.

5.3.4 Ramsar Convention on Wetlands

The Convention on Wetlands of International Importance especially as Waterfowl Habitat, which was agreed at Ramsar in 1971 and entered into force in 1975, has 116 contracting parties throughout the world, including all EC States and Norway and Latvia. It was the first of the modern global treaties on nature conservation, and its provisions are comparatively simple, although the text was amended in 1982 and 1987, and its application has been developed by conference decisions.

The Ramsar Convention applies areas of marsh, fen, peatland and water, including marine waters up to six metres deep at low tide. States must designate at least one significant wetland for inclusion in a List of Wetlands of International Importance, and must formulate and implement their planning so as to promote the conservation and wise use of the listed sites. A definition of wise use and guidelines for its achievement were adopted at the Regina Conference in 1987, and amplified by additional guidance at the Kushiro Conference in 1993. States are also required by the Ramsar Convention to establish nature reserves on wetlands, and to consult each other in relation to transboundary wetlands and water systems. The operation of the Convention is supported by the Ramsar Convention Bureau, which is based in Gland, Switzerland.

5.4 REGIONAL MARINE AND COASTAL MEASURES

As well as global agreements, several international measures to protect the marine and coastal environment have been introduced on a regional basis. They include the Mediterranean Action Plan and the Barcelona Convention, the Helsinki Conventions on the Baltic Sea, the OSPAR Convention, the North Sea Conferences, the Trilateral Wadden Sea Co-operation, the RAMOGE Agreement and the proposed Council of Europe Model Law on Sustainable Management of Coastal Zones.

5.4.1 Mediterranean Action Plan and Barcelona Convention

The Mediterranean Action Plan (MAP), which was adopted by 16 Mediterranean States (including France, Italy, Greece and Spain) in 1975, was the first initiative under the UNEP Regional Seas Programme. MAP originally concentrated on the prevention of marine pollution, and was intended to assist national governments in the formulation and implementation of effective anti-pollution policies. It was followed by the Barcelona Convention,[252] which is a legally binding treaty establishing a common framework for action. The Barcelona Convention was amended in 1995, and renamed the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, in order to reflect a broader commitment to integrated coastal planning and management. Six Protocols[253] to the Convention have so far been adopted, dealing with specific environmental

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[252] Convention for the Protection of the Mediterranean Sea Against Pollution.

[253] Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea 1976; Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency 1976; Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities 1980; Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean 1982; Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil

issues. The Dumping, Emergency, Land-Based Sources and Offshore Protocols and the Protocol Concerning Specially Protected Areas are already in force, while the Offshore Protocol and the Hazardous Wastes Protocol are awaiting ratification.

In 1995, the original Mediterranean Action Plan was replaced by an updated Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II). This also includes the Barcelona Resolution on the Environment and Sustainable Development in the Mediterranean Basin and a list of Priority Fields of Activities for the Environment and Development in the Mediterranean Basin (1996-2005).

5.4.2 Helsinki Conventions on the Baltic Sea

The first Convention on the Protection of the Marine Environment of the Baltic Sea Area was signed in 1974. The present contracting parties are Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia and Sweden, together with the European Community. A new Helsinki Convention was signed by the same parties in 1992, but is not yet in force because it is awaiting ratification by Poland and Russia. The Conventions are administered by the Baltic Marine Environment Protection Commission (HELCOM).

The aim of the 1974 Convention is "to prevent and abate pollution and to protect and enhance the marine environment of the Baltic Sea Area",[254] and to ensure that its implementation does not cause an increase in pollution elsewhere. It applies outside the internal waters of the contracting parties, and contains general commitments supplemented by specific obligations in six Annexes dealing with:

- hazardous substances;
- noxious substances and materials;
- goals, criteria and measures concerning the prevention of land-based pollution;
- prevention of pollution from ships;
- exceptions from the general prohibition of dumping of waste and other matter in the Baltic Sea Area; and
- co-operation in combating marine pollution.

The inability of the 1974 Convention to prevent serious pollution of the Baltic Sea, particularly from sources in Eastern Europe, has led to its prospective replacement by the 1992 Convention, which will extend its geographical scope to include internal waters. The new objectives of the 1992 Convention are "to prevent and eliminate pollution in order to promote the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance";[255] they include the use of the precautionary principle, the polluter pays principle, best environmental practice and best available technology. There are new provisions on environmental impact assessment, pleasure craft, nature conservation and biodiversity,

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1994; Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal 1996.

[254] Convention on the Protection of the Marine Environment of the Baltic Sea Area 1974, Art 3.

[255] Convention on the Protection of the Marine Environment of the Baltic Sea Area 1992, Art 3.

reporting and exchange of information, and information to the public. The Annexes are also replaced by seven new Annexes on:

- harmful substances;
- criteria for the use of best environmental practice and best available technology;
- criteria and measures concerning the prevention of pollution from land-based sources;
- prevention of pollution from ships;
- exemptions from the general prohibition of dumping of waste and other matter in the Baltic Sea Area;
- prevention of pollution from offshore activities; and
- response to pollution incidents.

HELCOM Recommendation 15/1 concerning the protection of the coastal strip

The Commission recommends to the Governments of the Contracting Parties to the Helsinki Convention:

(a) that the Contracting Parties take all appropriate measures to ensure the protection of the coastal strip;

(b) that a generally protected coastal strip therefore be established outside urban areas and existing settlements, the width of which shall be determined by the nature and landscape values of the coast, extending at least 100 to 300 meters from the mean water line landwards and seawards;

(c) that in this protected coastal strip

- activities which would permanently change the nature and landscape such as extraction of soil and minerals, construction of buildings (except for buildings necessary for existing farming or fishing and saunas in connection with existing buildings), marinas, roads, camping grounds etc not be allowed except when proved overwhelmingly in the public interest and when it is proved that no less sensitive site can be found;
- intensive forestry and intensive farming including drainage be restricted;

(d) that exceptions can be made from the provisions in points (b)-(c) by a land use plan approved and sanctioned by an appropriate authority;

(e) that a zone of at least 3 kilometres landwards from the mean water line be established as a coastal planning zone where major building development and other major permanent changes in nature and landscape be preceded by an appropriate land use plan, including environmental impact assessment, approved at least on regional level.

The Conventions are supplemented by Recommendations of the Helsinki Commission, which should be incorporated in the legislation of the contracting parties. On 8 March 1994, the Commission adopted HELCOM Recommendation 15/1, which advocates the establishment of a protected coastal strip outside urban areas and existing settlements, extending at least 100 to 300 metres landwards and seawards from the mean water line. In addition, it recommends that a coastal planning zone, at least 3 kilometres inland from the mean water line, should be established. This was followed by HELCOM Recommendation 15/5 on the system of coastal and marine protected areas (BSPA)[256] and HELCOM Recommendation 16/3 on the preservation of natural coastal dynamics.[257] Taking these into account, the Fourth Conference of Ministers responsible for Spatial Planning and Development in the Baltic Sea Region adopted common recommendations in 1996 for spatial planning of the coastal zone.[258]

5.4.3 OSPAR Convention

The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) has been signed and ratified by 15 States[259] and the European Community, and entered into force on 25 March 1998. It replaces the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft 1972 and the Paris Convention for the Prevention of Marine Pollution from Land-Based Sources 1974, and combines and modernises the provisions of these earlier treaties.

The OSPAR Convention covers parts of the Atlantic and Arctic Oceans, but excludes the Baltic and Mediterranean Seas. It imposes general obligations on the contracting parties to prevent and eliminate pollution, and to take measures to protect the maritime area against the adverse effects of human activities. They are required to harmonise their policies and strategies, and to apply the precautionary principle, the polluter pays principle, best available techniques, best environmental practice and clean technology. They must also provide public access to information about the maritime area. The Convention establishes the OSPAR Commission to supervise its implementation, and provides for the participation of observers (including non-governmental organisations) in its work. The Commission, which is based in London, has the power to make recommendations and binding decisions.

The OSPAR Convention also incorporates four Annexes on the following specific areas:

- prevention and elimination of pollution from land-based sources;
- prevention and elimination of pollution by dumping or incineration;
- prevention and elimination of pollution from offshore sources; and
- assessment of the quality of the marine environment.

A fifth Annex, which is not yet in force, contains provisions with regard to the protection and conservation of the ecosystems and biological diversity of the maritime area.

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[256] 10 March 1994.

[257] 15 March 1995.

[258] Committee for Spatial Development in the Baltic Sea Region, *Common Recommendations for Spatial Planning of the Coastal Zone in the Baltic Sea Region*, Stockholm, 22 October 1996.

[259] Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom.

5.4.4 North Sea Conferences

The International Conferences on the Protection of the North Sea are periodic ministerial meetings to discuss the common marine environmental policies of North Sea States. The participants are Belgium, Denmark, France, Germany, the Netherlands, Norway, Sweden, the United Kingdom, the European Community and (since 1990) Switzerland. Conferences have been held in Bremen (1984), London (1987), the Hague (1990) and Esbjerg (1995), with intermediate ministerial meetings in Copenhagen (1993) and Bergen (1997), and the next conference will be in Norway in 2002. Since the London Conference, non-governmental organisations have been permitted to attend parts of the proceedings.

There are now also regular meetings of a Committee of North Sea Senior Officials (CONSSO), who organise the work needed to follow up the decisions of the last conference, and are supported by a secretariat based in the Norwegian Ministry of Environment.

The North Sea Conferences are political meetings, and their decisions take the form of Ministerial Declarations, which are statements of political intent rather than legally binding commitments. The fact that these undertakings are not enforceable in law encourages the adoption of ambitious targets, which may have an important influence on the subsequent formulation of national and international rules. Policies that have been adopted in Ministerial Declarations include:

- a ban on the dumping and incineration of waste at sea;
- a 50% reduction of inputs of nutrients;
- cessation of all inputs of hazardous substances within one generation (by 2020);
- a ban on the dumping of offshore installations; and
- a ban on the application of TBT.

Among the issues currently under consideration are the integration of fisheries and environmental policies and the development of an integrated ecosystem-based approach to the management of the North Sea.

5.4.5 Trilateral Wadden Sea Co-operation

The Netherlands, Germany and Denmark have worked together on conserving the Wadden Sea since 1978, and have held eight trilateral governmental conferences[260] to discuss common policies. On 9 December 1982, they signed a Joint Declaration on the Protection of the Wadden Sea, in which they agreed to consult each other in order to co-ordinate their national activities and measures implementing international legal instruments on nature conservation.[261]

In 1987, the Common Wadden Sea Secretariat, based in Wilhelmshaven, was established to support the trilateral co-operation. An Agreement on the Protection of Seals was adopted at in 1988, and common guiding principles and objectives were agreed in 1991. In 1994, common

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[260] The Hague (1978), Bonn (1980), Copenhagen (1982), the Hague (1985), Bonn (1988), Esbjerg (1991), Leeuwarden (1994) and Stade (1997). The next conference will be held in Denmark in 2001.

[261] In particular the Ramsar, Bonn and Bern Conventions and the EC Birds Directive.

ecological targets and a geographical boundary for the Wadden Sea co-operation area[262] were adopted.

The original focus of the trilateral Wadden Sea co-operation was directed at the protection of birds and seals. However, this has now developed into a more integrated approach to nature conservation, addressing a whole range of human activities. In 1997, the eighth conference produced the Stade Declaration adopting the Wadden Sea Plan, which is a comprehensive statement of common policies, measures, projects and actions.

5.4.6 RAMOGE Agreement

RAMOGE[263] (St Raphael-Monaco-Genoa) is a sub-regional Mediterranean agreement between France, Monaco and Italy on the protection of the coastal waters of the Côte d'Azur. It was signed in 1976, and entered into force in 1981. Under this agreement, the three Governments set up a Commission, based in Monaco, to establish closer collaboration between their authorities with a view to combating pollution of their territorial sea and internal waters.

5.4.7 Council of Europe Model Law on Sustainable Management of Coastal Zones

The Council of Europe, which has 41 Member States, has drafted a Proposal for a Model Law on Sustainable Management of Coastal Zones, together with a draft European Code of Conduct for Coastal Zones, although neither of these has yet been approved. The purpose of model laws is to provide a standard text that States can use as a basis for national legislation. They do not have the status of international conventions, since there is no obligation on any State to apply them, and they can be modified to suit national circumstances.

The Model Law proposed by the Council of Europe defines a legal structure for ICZM, including a definition of the coastal zone and general principles for integrated management. These are elaborated under the following headings:

- Definitions and national framework policy;
- General principles concerning coastal zones;
- Delimitation and division of the coastal zones;
- Setting up of appropriate bodies;
- Towards a better knowledge of coastal zones;
- Financial instruments and incentives for the management of coastal zones;
- Land ownership and coastal zones;
- Free access to the shore;
- Control of certain recreational activities;

[262] The geographical scope of the trilateral co-operation is: the area seaward of the main dike and the brackish-water limit, or where the main dike is absent, the spring high-tide-water line; an offshore zone 3 nautical miles from the baseline; the corresponding inland areas to the designated Ramsar and/or EC Bird Directive areas; and the islands.

[263] Agreement concerning the protection of the Mediterranean coastal waters, Monaco, 10 May 1976, *UN Treaty Series*, Vol 1263, p 247.

- Protection of ecosystems and fragile natural areas;
- Coastline and soil erosion control;
- Pollution control and prevention of disasters;
- Public information and participation;
- International co-operation;
- Monitoring and sanctions.

Definition of "coastal zone" in the draft Council of Europe Model Law

Article 1

"For the purposes of this law, 'coastal zone' shall be taken to mean a geographical area covering both the maritime part and the terrestrial part of the shore, including salt-water ponds and wetlands in contact with the sea.

It shall include at least all or part of the territorial waters together with the maritime public property of the State and the territories of local administrative areas bordering on seas and oceans.

The coastal zone shall be precisely delimited at national level. It may be extended, according to specific local economic and/or ecological requirements, to include local authorities contiguous with local administrative areas bordering on seas and oceans as well as authorities bordering on estuaries and deltas situated downstream from the salt-water limit."

Most of the draft provisions of the Model Law are expressed in terms of the actions that governments should take in order to implement ICZM. It is a framework law that would require further legislation to give effect to the principles that it describes, and it therefore resembles a directive more than a comprehensive text to be incorporated in national enactments.

5.5 CONCLUSION

This chapter demonstrates the range of international legal instruments affecting the coastal zone. It also shows that most of these measures have been introduced to deal with specific sectoral issues, such as marine pollution and nature conservation. Inevitably, they have focused more upon the sea than the land, because it is an area of international concern, much of which is beyond the sovereignty of individual States. The UN Convention on the Law of the Sea now provides a comprehensive jurisdictional framework for maritime zones, which will be an important basis for further action. However, although international law has sought to prevent marine pollution from land-based sources for some years, the integrated management of land and sea has not traditionally been an objective. Nevertheless, following Agenda 21, the need to integrate management policies is beginning to be reflected in such contexts as the North Sea Conferences and the Trilateral Co-operation on the Wadden Sea.

These regional arrangements, together with the Barcelona, Helsinki and OSPAR Conventions, are dynamic initiatives which continue to develop and generate further measures.

International law has one obvious advantage over EC legislation, because it can apply also to States outside the European Community, and can thus embrace entire natural ecosystems such as regional seas. The different levels and types of international measures provide considerable flexibility, and regional agreements tend to be more ambitious than global ones. On the other hand, membership of conventions is optional, ratification can take a long time, and the pace of implementation is often dictated by the slowest parties. Enforcement also tends to be weak, since compliance ultimately depends on the political will of the participants. However, the European Community is itself a party to many international conventions, and has the capacity to enforce compliance by Member States with provisions within its competence. Thus, despite some limitations, international law clearly possesses the potential to be a valuable aid to ICZM in conjunction with national and EC legislation.

CHAPTER 6 . LESSONS FROM THE DEMONSTRATION PROGRAMME

6.1 INTRODUCTION

This chapter identifies and discusses the principal legal issues that have arisen in practice during the course of the EU Integrated Coastal Zone Management Demonstration Programme. It draws on the results of the questionnaires submitted to the leaders of the Demonstration Projects and to the National Experts, supplemented by information obtained from visits to individual projects. The Demonstration Projects are not, of course, primarily concerned with the operation of law, and most involve non-statutory co-operation between the participants. However, they are all subject to the laws of the State in which they take place, and consequently experience the effects of legal constraints and opportunities. Moreover, in some cases, they involve the performance of statutory functions by public authorities.[264]

6.2 DEFINITION OF THE COASTAL ZONE

None of States participating in the Demonstration Programme have legal definitions of the coastal zone involving both land and sea. On the other hand, many have narrow legal concepts of the coast, which originated a long time ago in the context of land ownership, and are too restrictive for ICZM, but are now sometimes used for administrative purposes.

Greece

In Greece, a 1940 law concerning the shore and foreshore (Law 2344/1940) defines the foreshore as a strip of land washed by the highest winter waves. This is a Roman law concept which is found in legal systems based on the civil law, and refers to an area under public ownership. The same Greek law defines the shore as the adjoining strip of land within 50 metres from the landward limit of the foreshore, on which the erection of buildings is prohibited.

United Kingdom

In the United Kingdom, the foreshore is defined as the intertidal area between high and low water marks. In England, Wales and Northern Ireland, medium tides are used for this purpose, whereas in Scotland the more extensive range of ordinary spring tides is employed instead. The separate status of the intertidal foreshore from other coastal land is a relic of the common law, and is due to the historical property rights of the Crown. However, the low water limit of the foreshore has also been adopted as the boundary of local government areas, and is consequently the normal seaward limit of planning control.[265]

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[264] *Eg* the **Gulf of Finland** project is based on the exercise of statutory land-use planning powers.

[265] In Northern Ireland, planning control ends at the mean high water mark.

It is important that legal definitions of the coastal zone should be specifically designed for the contemporary context in which they are used, and should be broad and flexible enough to embrace the dynamic nature of the coast.

Denmark

The Danish Planning Act was amended in 1994 to create a coastal planning zone, which extends 3 kilometres inland from the coast, and is protected from new development as far as possible through the regional and municipal planning system. In addition, the Protection of Nature Act prescribes a 300 metre protection zone outside urban areas, in which most developments are prohibited. However, neither of these zones includes the sea. This is an important issue in the **Storstrøm** project.

A good example is the US Coastal Zone Management Act 1972, which defines the coastal zone flexibly in terms of the interdependence of land and sea (see Section 3.2.1). It extends seaward to the outer limit of the territorial sea, and inland to the extent necessary to control the uses of shorelands which have a direct and significant impact on coastal waters.

6.3 OWNERSHIP AND PUBLIC RIGHTS

The earliest laws concerning the coast generally relate to the ownership of coastal land and the division between public and private property. They also provide the basis for public rights of access to coastal waters for such purposes as navigation and fishing. In offshore areas, rights are affected by more recent principles of international law.

The shore is generally public or State property, but inland from this point most land is privately owned. In contrast, the sea as far as the limit of territorial waters (up to a maximum of 12 miles) is usually in the public domain, although a distinction may also be made between the sea bed and the water column. Beyond the territorial limit, States have rights of exploitation rather than ownership in their continental shelf or exclusive economic zone (200 miles).

Spain

In Spain, the *Ley de Costas* 1988 (Shores Act) declares the extent of coastal public property. It also defines the width of four overlapping zones measured from the landward limit of the seashore in which the rights of private landowners are subject to restrictions in order to protect public use, passage and access to the sea, and to ensure that development is compatible with the protection of coastal public property.

Where coastal land is privately owned, the legal property rights of individual landowners may sometimes conflict with the public needs of management.

Finland

In Finland, until 1997, landowners had a right to construct dispersed buildings on the shore without planning control. This resulted in over-development of summer cottages. When the Building Act was amended in 1997 to create a planning requirement in shore zones, landowners who acquired their property before that date were still given a conditional right to a building permit. This is a problem in the **Gulf of Finland** project.

Spain

In the **Barcelona** project, private land of high ecological value near the airport cannot be protected from development under the *Ley de Costas* 1988 (Shores Act), although the planning authorities would like to do so, because it is defined as urban land and is excluded from the controlled zone.

However, the powers associated with ownership can also be used to facilitate management. The public acquisition of coastal land by negotiation or compulsory purchase confers the opportunity to manage it, and is therefore an important method of safeguarding sensitive sites. For example, in the United Kingdom, an independent charity, the National Trust, currently protects 565 miles of outstanding coastline in England, Wales and Northern Ireland.

France

In France, the *Conservatoire du Littoral*, which is a public administrative body established in 1975, has acquired 750 km of shoreline. Most acquisitions are made by private agreement, but compulsory expropriation is occasionally used in the public interest. The land cannot be sold thereafter, and public access is generally provided. It is managed primarily by local authorities on their behalf.

Nevertheless, State or public ownership does not necessarily guarantee protection, and some public purposes, such as military defence, may themselves create conflicts (*eg* between national security and public access).

As an alternative approach, public authorities may be able to enter into contractual agreements with private landowners who accept restrictions or undertake positive measures on their own land in return for compensation.

EC Agri-Environment Regulation

Under the Agri-Environment Regulation 2078/92/EEC, national schemes may provide financial aid for farmers who undertake to set aside farmland for at least 20 years for purposes connected with the environment. In the United Kingdom, this has led to the Habitat Scheme,[266] which offers payment for the conversion of land to saltmarsh, and can be used to support the managed retreat of coastal defences.

In addition to ownership, the coast is subject to important public rights, which may be claimed by everyone, and allow activities such as navigation and fishing. Historically, these public rights originated from practical or economic necessity, but they are now increasingly used to support recreational and leisure activities as well. Although the exercise of ownership and rights may be regulated by legislation, measures that interfere with fundamental interests may be legally and politically difficult to achieve.

Finland

In Finland, “Everyman's Right”, which has evolved from custom and practice over the centuries, entitles the public to go where they like on land and water in the countryside, including shore zones, provided that they behave responsibly. They also have the right to take berries, mushrooms and some wild plants, and to fish with hook and line. Everyman's Right inevitably leads to multiple recreational activities in natural areas, which can produce conflicts of use.

United Kingdom

In the United Kingdom, the Courts have ruled that fishermen have a public right to take shellfish (and also lugworms for bait) on the foreshore, despite the risk that it may lead to a decline in species diversity.[267] However, in May 1998, the UK Government used statutory powers to ban dredging for razor shells in the Wash because the mudflats are important feeding grounds for wintering birds.[268]

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[266] Habitat (Salt-Marsh) Regulations 1994, SI 1994/1293.

[267] *Adair* v *National Trust* [1998] Northern Ireland Law Reports 33.

[268] Razor Shells, Trough Shells and Carpet Shells (Specified Sea Area) (Prohibition of Fishing) Order 1998, SI 1998/1276.

6.4 DIVERSITY OF LAWS

The coastal zones of EU Member States are already governed by a complex framework of existing administrative laws, which are usually sectoral, unco-ordinated and unsuited to ICZM.

United Kingdom

In the United Kingdom, the House of Commons Environment Committee, in its 1992 report on *Coastal Zone Protection and Planning*,[269] identified over 80 Acts dealing with the regulation of activities taking place in the coastal zone of England and Wales. It concluded that current legislation was too diffuse to provide an integrated or efficient framework for coastal protection and planning, and recommended that this legislation be reviewed for consolidation and updating.

However, this recommendation was rejected as impracticable by the UK Department of the Environment, which responded:

"The Government does not consider that it would be feasible to attempt to consolidate the whole range of legislation affecting the coastal zone, although the need for updating is kept continually under review. ...

Legislation relevant to the coastal zone can be found in many different Acts. But the same could equally be said of legislation relating to the land. It would be extremely difficult to bring together succinctly legislation applying to the planning system, coastal defence, ports, fisheries, water quality and pollution, navigation, the marine oil and gas industry, construction projects in tidal waters, nature conservation designations on both land and sea, and so on. Nor would it be desirable to do so. The coast cannot be isolated and treated as entirely separate from the broader land mass or separate from the management of territorial and international waters."[270]

Existing sectoral legislation should be reviewed to identify its deficiencies, and should then be amended or, if necessary, replaced. New Zealand provides a good example of this approach (see Section 3.3). Until 1991, there were over 50 laws governing the use of land, water and air in New Zealand, which often served contradictory purposes, and overlapped or conflicted with each other. After four years of legislative review and public consultation, the Resource Management Act 1991 introduced a fundamental reform of those laws, and created a single legislative framework to replace over 20 major statutes, including legislation relating to coasts, planning, water, soil, geothermal resources and air and noise pollution.

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[269] House of Commons Environment Committee, *Coastal zone protection and planning*, Second Report, HC (1991-92) 17, HMSO, London, 1992, para 19.

[270] Department of the Environment, *Coastal zone protection and planning: the Government's response to the second report from the House of Commons Select Committee on the Environment*, Cm 2011, HMSO, London, 1992, paras 26-27.

Ireland

The 1997 Irish discussion document, *Coastal zone management: a draft policy for Ireland,*[271] accepts that the legislative framework for the coastal zone is very complex and intricate, and that a fundamental restructuring of legislation is very difficult to achieve. It concludes that a more realistic and desirable approach is to build on the existing systems, but argues that any model for ICZM in Ireland must include amendments to legislation.

6.5 DIVISION BETWEEN LAND AND SEA

A common feature of most European legal systems is the division of jurisdiction between land and sea areas. Land-use planning and the involvement of local authorities is largely confined to the terrestrial environment, whereas the sea is predominantly the preserve of central government.

This artificial dichotomy inevitably creates problems for integrated management. For example, **Storstrøm County** in Denmark is unable to prevent the authorisation of offshore wind farms by the Ministry of Environment and Energy, despite their proximity to sensitive nature conservation areas on land, because its powers under the Planning Act do not extend into the sea. The situation is preferable in Sweden, where the planning powers of local authorities already cover the territorial sea, while in Finland and Norway they apply to more limited coastal waters.

The **Irish Dunes** and **Kent** projects would welcome an extension of the land-use planning powers of local authorities into the sea, and the **Côte d'Opale** has proposed the promotion of legislation to manage the terrestrial and marine environments together.

France

In France, a 1983 law provides for the preparation of *Schémas de Mise en Valeur de la Mer* (SMVM). These are zoning plans for areas of sea and adjacent coast, adopted by the State on the submission of the *Préfet du Département*, after consultation with local authorities and interests. They are legally superior to local plans, which must conform to them, but they have proved difficult to agree in practice due to a lack of resources. In addition, the *Loi Littoral* 1986 amends the *Code de l'Urbanisme* by introducing national land use planning restrictions to control urban expansion on the coastline, and protects a 100 metre coastal strip from construction (*la bande littorale non constructible*). Although the relationship between the SMVM and the *Loi Littoral* is not entirely clear, they provide a potential statutory planning framework for the coastal zone, and the **Côte d'Opale** project is proposing an SMVM to support ICZM in their area.

[271] Government of Ireland, *Coastal zone management: a draft policy for Ireland: discussion document*, Dublin, 1997.

In the United Kingdom, the **Kent** project relies on byelaws made by district councils and sea fisheries committees to regulate coastal waters. At present, the byelaw-making powers of local authorities are limited in their subject matter and the purposes for which they can be made. However, the Department of the Environment, Transport and the Regions intends to introduce national legislation to consolidate and modernise these powers.[272]

Another problem experienced in the United Kingdom is that estuaries have traditionally been used as jurisdictional boundaries between local government areas, which results in more than one authority having responsibility for the same natural ecosystem.

6.6 NARROW SECTORAL LEGISLATION

Because the functions of public authorities are defined by legislation, they may be legally prevented from co-operating with others in the coastal zone if their statutory powers and duties are expressed in narrow sectoral terms. Legislation defining the functions of public authorities in the coastal zone should ideally provide them with powers and duties to co-operate with other authorities, and should be sufficiently flexible to enable them to exercise their functions in the overall public interest.

United Kingdom

Before 1992, most harbour authorities in the United Kingdom, which were established to serve the interests of commercial navigation, had no statutory powers or responsibilities to promote nature conservation in their harbours, even if they wished to do so.

Sea fishery committees, which were created to conserve commercial fish stocks, were arguably subject to a similar limitation, which restricted their legal ability to make byelaws protecting marine nature reserves.

In 1992, the Harbours Act 1964 was amended by the Transport and Works Act 1992 to place a statutory duty on British harbour authorities to take nature conservation into account when exercising their functions. They were also given a discretionary power to acquire the right to make byelaws regulating harbours for nature conservation purposes.

Likewise, the Sea Fish (Wildlife Conservation) Act 1992 gave sea fishery committees a responsibility to take account of nature conservation, and this was subsequently extended by the Environment Act 1995 to enable them to use their regulatory powers for the same purpose.

As a result, both harbour authorities and fishery authorities will now be able to participate in the protection of marine special areas of conservation (SACs) designated under the Habitats Directive 92/43/EEC.

[272] Department of the Environment, Transport and the Regions, *Review of Byelaw Powers for the Coast: Report of the Inter-Departmental Working Party*, London, 1998.

6.7 CONFLICTING SECTORAL LEGISLATION

Sectoral legislation is normally designed to serve a limited purpose, and tends to be conceived in isolation from other laws, which may have contradictory functions. Thus, in Denmark, there are conflicts between the construction of dikes under the Coast Protection Act and the need to preserve wetlands under the Protection of Nature Act. In Italy, restrictions on the dumping of waste under pollution control legislation has prevented the use of dredged material for beach nourishment in the **RICAMA** project.

Moreover, if the same activity in the coastal zone is regulated by more than one authority, and is governed by different legislation, confusion about responsibility may result in the law not being enforced by any authority.

Ireland

In the **Bantry Bay** project, there are environmental problems due to uncontrolled aquaculture developments. Although legislation to regulate aquaculture has existed for many years, it has not been adequately enforced. This is attributable to the jurisdictional uncertainty created by overlapping sectoral laws.

Aquaculture in Ireland is administered by a national government ministry, the Department of the Marine. Until 1997, aquaculture licences to cultivate fish or shellfish could be granted only in areas designated for that purpose under the Fisheries Act 1980. This procedure was intended to replace a more complex system of fish culture licences, oyster bed licences and oyster fishery orders under the Fisheries (Consolidation) Act 1959, although that legislation remained in force as well. In addition, the Department of the Marine had powers under the Foreshore Act 1933 to issue licences for aquaculture installations or structures on the foreshore and sea bed. However, these controls overlapped with local authority planning powers. Although planning jurisdiction in Ireland does not normally extend below the mean high water mark, Bantry Bay is unusual because its waters were included in the administrative county of Cork by the Local Government (Reorganisation) Act 1985. This was intended to give Cork County Council control over the waters around the oil terminal at Whiddy Island in response to the disaster there in 1979. However, the co-existence of complicated statutory powers created confusion about the division of responsibility between central and local government, which enabled illegal aquaculture to take place unchecked.

Overlapping sectoral legislation needs to be amended or replaced by provisions which explicitly define the responsibilities of each authority, and explain the relationship between them.

Ireland

New legislation to regulate aquaculture in Ireland was enacted in 1997.[273] The Fisheries (Amendment) Act 1997 introduces a new system of aquaculture licensing by the Department of the Marine. Applications for licences are no longer restricted to designated areas, but may be made in relation to any waters. Although there is a risk that this may lead to excessive aquaculture development, it should also discourage unlicensed activities. The legislation provides for consultative procedures, and the Department of the Marine is statutorily required to consider a variety of factors, including development plans and environmental and economic effects. Enforcement provisions and penalties are strengthened, and there are new powers to remove unauthorised aquaculture structures. In addition, an independent Aquaculture Licences Appeals Board, which must be representative of a wide range of interests, is established to determine appeals against the Department's decisions. Appeals may be submitted by any aggrieved person, including third parties, and statutory time scales (which are modelled on streamlined procedures for planning appeals) are set for their determination.

The new aquaculture licensing system does not replace local authority planning controls, but is intended to operate in conjunction with them and to follow a similar time scale. Following a decision of the State Planning Board (*An Board Pleanala*) in 1995, it is now clear that the mooring of mussel rafts in Bantry Bay is development requiring planning permission from the local authority. A foreshore licence from the Department of the Marine under the Foreshore Act 1933 will also continue to be required for aquaculture installations, but the new fishery legislation clarifies the relationship between the two regimes by requiring the decision on the aquaculture licence to be taken into account when the application for the foreshore licence is considered.

[273] Further amendments have now been made by the Fisheries and Foreshore (Amendment) Act 1998 to remove doubts about the status of licence applications submitted before the new system came into force.

6.8 IMPLEMENTATION AND ENFORCEMENT

However good a law may appear in principle, it will be ineffective unless it is properly implemented and enforced. Respondents to the questionnaires complained about a failure to apply existing laws in Greece,[274] but there were also comparable examples elsewhere.

Spain

In 1997, the Ministry of Defence illegally sold 22,000 square metres of protected coastal land at Oleiros, Galicia, for private development, in contravention of the *Ley de Costas* 1988 (Shores Act). This was subsequently discovered by the Director of Coasts (*director de Costas*) who was able to reclaim it for the public domain on payment of compensation to the purchaser.[275]

United Kingdom

In the **Isle of Wight** project, disagreement arose between the Isle of Wight Council and English Nature over the interpretation of the Habitats Directive 92/43/EEC. English Nature proposed the designation of two marine special areas of conservation (SACs) around the coast of the Isle of Wight, but the Council was concerned that this would threaten the economic development of the island.

Article 2(3) of the Habitats Directive states that "measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics." The Isle of Wight Council contends that this requires economic factors to be considered when SACs are identified. However, that is contrary to the interpretation of the Birds Directive 79/409/EEC by the European Court of Justice, which has ruled that only conservation should be taken into account when special protection areas (SPAs) for birds are designated.[276]

In order for environmental laws to be capable of implementation, they must be well drafted, solidly based on scientific knowledge, and not be administratively impractical or too expensive. The practicality and cost implications of legislation need to be known at the time when it is prepared, and it is important that wide consultation takes place at the preparatory stage.

The effective enforcement of environmental laws requires:

- monitoring and inspection to assess compliance;
- public access to the results of monitoring and inspection;

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[274] *Eg* the enforcement of penalties for illegal construction and land partition under Law 360/1976.

[275] *El Pais*, 16 November 1998.

[276] *R* v *Secretary of State for the Environment, ex parte RSPB* (Case C-44/95 [1996] European Court Reports I-3805.

- availability of appropriate legal remedies and sanctions; and
- public accountability of regulatory bodies.

6.9 INTERNATIONAL CO-OPERATION

Although most of the Demonstration Projects are confined within the jurisdiction of a single State, the **Wadden Sea** project is a collaborative venture involving three countries, which each use their own legislation to achieve a common purpose. It is therefore an important example of a international co-operative approach based on the needs of an ecosystem rather than political boundaries.

Wadden Sea

The Joint Declaration on Protection of the Wadden Sea, signed by Denmark, Germany and the Netherlands in 1982, has promoted trilateral co-operation between those States and has led to the adoption of a common Wadden Sea Plan.

International agreements can also encourage the introduction of consistent measures by several States. Thus, the Helsinki Conventions on the Protection of the Marine Environment of the Baltic Sea Area have stimulated Denmark, Finland, Germany,[277] Latvia and Sweden to introduce terrestrial protected strips and coastal planning zones.

Baltic Sea

In 1994, the Helsinki Commission adopted HELCOM Recommendation 15/1 on the protection of the coastal strip, which advised the Baltic Sea States to establish a protected coastal strip at least 100 to 300 metres landwards and seawards from the mean water line and a coastal planning zone extending a minimum of 3 km inland.

6.10 CONCLUSION

The experience of the Demonstration Programme confirms the diversity of coastal laws in the legal systems of EU Member States, but also shows a similarity of legal problems. There is no common State practice on the definition of the coastal zone, although restricted concepts of the seashore have arisen within the legal systems of some States (including Greece, Italy and the United Kingdom) which are defined by reference to selective tidal criteria and are too narrow to provide a basis for ICZM. While it is probably advisable not to have an exclusive legal definition of the coastal zone for general purposes, and preferable to include all areas

[277] In Germany, the planning zones of Schleswig-Holstein and Mecklenburg-Western Pomerania include the whole of the *Länder*.

where land and sea exert a mutual influence, specific boundaries do need to be defined at the stage when management is applied to particular places, and those boundaries may need to vary according to the matters that have to be managed.

Within Europe, there is a variety of legislative structures affecting the coasts of individual States, but a common feature is the use of sectoral laws governing uses of the coastal zone. There are also complications according to whether types of law apply to both land and sea or, more commonly, are confined to one medium. Coastal planning is still seen by most States as primarily an issue for land-use planning law, with the sea as a separate area generally under central government control.

Common problems include:

- inappropriate legal demarcation between land and sea, and the subdivision of natural areas such as estuaries that ought to be managed as a whole;
- conflicting and inflexible sectoral legislation;
- unnecessary legal restrictions on co-operation between authorities and on the purposes for which their powers may be used; and
- failure to implement and enforce laws that have been enacted.

However, there are also examples of good practice, such as:

- statutory obligations for consultation and participation;
- powers or duties for authorities to take account of factors outside their own sectoral remit;
- legally protected strips and coastal planning zones; and
- international co-operation between States bordering the same regional seas.

CHAPTER 7 . CONCLUSIONS AND RECOMMENDATIONS

7.1 INTRODUCTION

The previous chapters of this report have focused on the existing state of national, European Community and international laws affecting the management of the coastal zone, and have identified examples of good and bad practice. This final chapter looks instead towards the future, and considers the legal models and mechanisms that could prospectively be used to implement ICZM at the national and European Community level.

However, a thorough understanding of the strengths and weakness of a State's existing laws is an essential precondition for determining the need for reform and selecting the means of achieving it. The first stage in the improvement of any national system should therefore be a comprehensive review of the laws that already govern the State's coastal zone. Among the issues that must be considered are:

- the extent to which the coastal zone is recognised in the legal system;
- the division of laws between land and sea.;
- the distinction between laws that are specifically coastal and those that include the coastal zone within a larger area of jurisdiction;
- the levels and types of laws that affect the coastal zone;
- the effect of European Community and international measures on national coastal laws;
- the suitability of existing legal definitions of the coast for the purposes of ICZM;
- the existence of jurisdictional boundaries in the coastal zone that are inappropriate for ICZM;
- the extent to which the use of natural coastal features, such as estuaries, as jurisdictional boundaries impedes the process of ICZM;
- the influence of traditional issues of public and private ownership on administrative jurisdiction in the coastal zone;
- the nature and suitability of coastal laws that pre-date the concept of ICZM;
- the unnecessary or inappropriate division of related coastal issues between different bodies of law;
- the extent to which existing laws fail to deal with issues that need to be included for the purposes of ICZM;
- the ways in which coastal laws contradict or work against each other;
- the extent to which changes in one field of coastal law are adequately reflected in others;
- the ways in which sectoral laws facilitate or impede consultation and co-operation between authorities in the coastal zone;
- the inhibiting effect of laws that limit the purposes for which public authorities may act or the factors they are permitted to take into account;
- the existence and adequacy of legal mechanisms for public participation and information;

- the extent to which existing laws are implemented and enforced; and
- the relationship between statutory and non-statutory functions in the coastal zone.

7.2 NATIONAL LEGAL MECHANISMS FOR ICZM

In the national context, there is a range of different legal methods available to facilitate ICZM. None is necessarily better than the others, but they are alternatives with advantages and disadvantages. The United States, which pioneered the concept of ICZM, recognised the desirability of diversity (see Section 3.2). The US Coastal Zone Management Act 1972 sets out the basic objectives of ICZM, and requires American States to draw up coastal management programmes that will meet those objectives. However, it leaves each State free to choose its own methods, and consequently each has devised its own system. There is no necessity for each coastal State to have an identical system of ICZM, provided that the methods they adopt work and are capable of operating in harmony for the benefit of the coastal zone as a whole.

There are at least three main alternative approaches, although there could be many variations of detail in each. The choice should depend on the nature and quality of a country's existing laws, its economic circumstances, the characteristics of its coastline and its environmental problems.

7.2.1 Non-statutory co-ordination of existing laws

Every State already has many laws that govern its land and sea areas, but these are usually sectoral laws which operate independently of each other. One basic approach, which is currently adopted by the United Kingdom, is simply to attempt to co-ordinate the decisions of all the authorities responsible for every sector without new legislation, so that they act in accordance with commonly agreed objectives. Those objectives and the arrangements for mutual consultation can be contained in plans which need not themselves take the form of legislation, but are policy documents instead.

<u>Advantages</u>

- *Simplicity* - no change in the law is involved.
- *Flexibility* - non-legal arrangements can be introduced more quickly than laws, and can be altered without the need for amending legislation.
- *Acceptability* - voluntary participation is more likely to attract support and co-operation than legal compulsion.

<u>Disadvantages</u>

- Existing sectoral laws may not be adequate. For example:
  - They may not cover all the important land and sea areas of the coastal zone.
  - They may prevent co-operation by restricting the purposes for which they may legally be used, so that they focus exclusively on the sectoral interests that they were passed to protect.
- There is no guarantee that all authorities will follow voluntary policies, even if it is legally possible for them to do so. If they do not wish to co-operate, there is no legal mechanism to compel them.

- Voluntary initiatives depend on political will for their continuation, and may be less likely to receive government funding than statutory projects.

The non-statutory approach has tended to be favoured by States (including the United Kingdom) which already have highly developed environmental laws that their governments believe are working well, which are reluctant to increase their levels of regulation, and where there is a tradition of non-legal guidance by central government to regulatory agencies and local authorities. It is also the case that States which begin by introducing informal procedures may end by replacing them with laws. The reverse is much less likely to happen.

7.2.2 Statutory framework for co-ordination of existing laws

Another approach requires the enactment of ICZM legislation, setting out a framework within which existing laws can be co-ordinated. An example is Connecticut in the United States (see Section 3.2.5). The essential contents of such legislation are as follows:

- It should define the coastal zone. Different definitions are possible, but they must be sufficiently broad to cover the areas of coastal influence and interaction. For example, in Florida, the whole of that State is defined as the coastal zone.
- It should set out the broad objectives of ICZM, identify the levels of government (national, regional or local) responsible for producing coastal zone management plans, and place a legal duty on them to do so. It could also provide for the approval of those plans by a higher authority.
- It should provide for the financing of ICZM.
- It should specify how existing laws should be used to implement ICZM, for example:
  - by placing a legal duty on specified authorities to take account of or follow ICZM plans. This could include authorities at levels above those who make the plan. For example, Federal agencies in the United States must follow approved State plans, unless they are exempted by the Secretary of Commerce.
  - by creating duties for specified authorities to consult other authorities involved in ICZM before making decisions that affect the coastal zone.
  - by amending existing laws to remove impediments to ICZM, and enabling them to be used to achieve ICZM.

<u>Advantages</u>

- It gives legal recognition to ICZM.
- It give statutory status to plans.
- It creates legal duties to achieve ICZM.
- It creates the minimum disruption to existing laws and procedures.
- It maintains the maximum consistency with procedures outside the coastal zone.
- It should be cheaper to operate than adding new procedures.

Disadvantages

- *Fragmentation* - it is hard to co-ordinate a large number of sectoral authorities.
- Existing laws may not cover all the issues that need to be regulated in the coastal zone.
- Existing laws may not work.

7.2.3 New legal procedure for authorising developments in the coastal zone

A third approach also involves new coastal zone management legislation, which would do all the same things as the previous model, except that there would also be a new procedure for authorising developments in the coastal zone. This legislation should therefore identify an authority responsible for permitting developments, which could be either an existing body or a new one created for the purpose. It should also specify the type of projects or activities which must be submitted to this authority, but would probably retain some existing procedures and authorities for less significant matters. An example is the Resource Management Act 1991 of New Zealand, which abolished numerous existing authorities and Acts, and amalgamated all planning, water and soil legislation under the jurisdiction of the Department of Conservation and local authorities, which must follow a national coastal policy statement and regional coastal plans (see Section 3.3). However, while a State might choose to adopt such a fundamental reform, it is hardly a requirement that the European Community could impose.

Advantages

In addition to the advantages of the previous model:

- It creates a single integrated procedure for decision making, rather than co-ordinate a range of different decisions.
- It is designed for the purpose of ICZM, and so is not dependent on existing laws.

Disadvantages

- It requires major legislative and administrative changes, and is therefore more costly to introduce and politically difficult to agree.
- A single authority will not necessarily produce a balanced judgement. Wide consultation is therefore essential.
- It creates a new jurisdictional barrier between the coastal zone and inland areas, whereas many coastal problems originate from decisions relating to inland areas, such as polluting inputs into river catchments.

There are thus many different ways in which national laws could be used to facilitate the introduction of ICZM. Each has its own advantages and disadvantages, and it is important to choose a method that is suited to the local circumstances of the individual country. Nevertheless, the law itself is simply a instrument to achieve policy objectives. Good laws are necessary to implement policy, but they will only work if there is also the political will and the resources to use them effectively.

7.3 THE ROLE OF THE EUROPEAN COMMUNITY

The European Community already exercises considerable influence on Members States' legal practice in the coastal zone through existing measures, particularly directives on pollution, nature conservation and environmental impact assessment (see Chapter 4). Some of these

have stimulated Member States to overcome traditional sectoral and geographical barriers, but they have also caused legal problems due to a lack of clarity about their application to the sea, particularly in the case of the Habitats and Environmental Impact Assessment Directives (see Section 4.5).

In addition, there is already a significant transfrontier influence apart from the European Community through international agreements on shipping, fisheries, pollution, wetlands and regional seas, which apply to areas larger or smaller than the EU itself (see Chapter 5). These will need to be respected in any action taken by the European Community. Moreover, as the Community is itself a party to many of these agreements, it has the potential to use its own powers to require compliance with their provisions by Member States on matters within its competence.

The diversity of Member States' legal systems and the range of possible structures for change suggest that the European Community should not seek to be too prescriptive. Moreover, any intervention must be consistent with the legal competence of the EC and the principle of subsidiarity. It also seems appropriate that Community action should not simply focus on the obligations of Member States, but should address the role of the EC institutions themselves. This could include improving existing EC legislation, for example by clarifying the application of directives to the marine environment. In addition, it could involve the establishment of a legal commitment to the objectives of ICZM and to the promotion of measures for their achievement.

Under Article 249 of the EC Treaty, the institutions of the European Community have the power to make regulations and issue directives, take decisions, make recommendations or deliver opinions. A regulation has general application, is binding in its entirety and directly applicable in all Member States. A directive is binding on Member States as to the result to be achieved, but leaves the choice of form and methods to the national authorities. A decision is binding only on those to whom it is addressed, while recommendations and opinions have no binding force.

In the context of ICZM, the most useful of the potential measures available are a directive, a model law and a code of guidance, each of which has its strengths and weaknesses. They are not mutually exclusive alternatives, but could also be used in combination.

7.3.1 ICZM Directive

Because a directive is legally binding on Member States, it offers the benefit of legal enforceability. However, as a mechanism for ICZM, it lacks flexibility and would be politically the most difficult to agree. It would clearly be unworkable to impose a uniform ICZM structure on the varied and complex legal systems of Member States, and the requirements of a directive would therefore need to address fundamental principles rather than detailed mechanisms. However, a directive cannot be expressed in too general terms, since compliance with its requirements must be verifiable and normally needs national legislation.

The potential contents of a directive could be, *inter alia*:

- a statement of the objectives of ICZM and the creation of a general duty on Member States to pursue them;
- a broad definition of the coastal zone embracing both land and sea, and the imposition of an obligation on Members States to identify the limits of their own coastal areas;

- a legal requirement for Member States to establish procedures for co-operation between the sectors and levels of government involved in the management of the coastal zone;
- a duty to develop mechanisms for consultation with and participation by stakeholders in decisions affecting the coastal zone; and
- a duty to ensure the collection and availability of information about the state of the coastal zone and the matters affecting it;

Other possible elements could include obligations to prepare ICZM plans, to establish appropriate management structures, and to review and, if necessary, amend laws and policies in order to facilitate ICZM.

7.3.2 Model law

A model law, such as that proposed by the Council of Europe (see Section 5.4.7), is an optional legal text which a State may choose to adopt or ignore. Its provisions can, however, be adapted to suit the needs and legal systems of different States. Nevertheless, it is more appropriate to developing countries that either lack existing legislation or wish to replace their obsolete laws. It is also questionable whether the standard clauses of an ICZM model law could be sufficiently specific to be capable of incorporation in the diverse legal systems of EU Member States, or whether it would in reality be a non-binding directive to encourage further national legislation.

7.3.3 Code of Guidance

A code of guidance is the most flexible mechanism for ICZM, but, since it lacks legal force, its implementation depends on political will and cannot be guaranteed. On the other hand, non-statutory advice can be made more persuasive if it is accompanied by financial incentives. This could be achieved by making the eligibility of Member States for grants under Community funding schemes contingent on the adoption of appropriate ICZM policies and practices.

7.4 CONCLUSION

ICZM requires a comprehensive and integrated approach, which reflects the interdependent nature of land and sea and the relationship between the stakeholders involved in its administration and use. Laws that seek to promote ICZM at national, European Community or international levels should also exhibit the same integrated qualities. Artificial legal distinctions between terrestrial and marine jurisdictions must be avoided, but the integration of administrative functions should be specifically designed to suit the dynamic character of the coastal zone. This is likely to need a more sophisticated mechanism than a simplistic extension of land-based controls to the sea, since land-use planning laws generally deal with fixed areas of property under limited occupation, whereas the sea is a fluid environment subject to multiple public uses. Practical solutions must also overcome the jurisdictional barriers between overlapping sectoral authorities, removing legal impediments to co-operation and providing powers and duties for them to work together.

The complex framework of national laws affecting the coastal zone has inevitably produced many anomalies that can only be removed by legislation. Legal complexity also generates uncertainty and misunderstanding about the meaning and effect of laws, which could be mitigated by clearer drafting and better public information. Moreover, legislation that appears

good on paper is inevitably undermined by inadequate implementation or enforcement. Thus, attitudes to law exert a significant influence on its effectiveness, and a willingness to comply with legal principles and to make the best use of legislation is an important factor in the success of ICZM.

Since there is such a wide variety of legal structures and legal problems (some common and some individual) in the coastal zones of European States, whatever mechanisms for ICZM may ultimately be chosen by the European Community must be sensitive to the legal variations between those States, and must permit the most suitable approaches to be adopted by each. This chapter has demonstrated that there is a range of statutory and non-statutory mechanisms available at both national and European Community level that could be employed for the purposes of ICZM, and they all offer their respective advantages and disadvantages. It is clear that the legal opportunities exist for effective ICZM legislation. However, law is not an end in itself - it is a tool to facilitate the translation of policy into practice. In the final analysis, the decision to use that tool for the achievement of ICZM must depend upon a political judgement.

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