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THE POLISH LEGAL REGIME ON MARINE SPATIAL PLANNING

Abstract

Marine governance is an essential way of achieving the objectives of sustainable development. It ought to be understood as the process of planning, as well as decision-making and management at the national and regional levels taking into account the global ocean as an ecological unity. The process of decision-making is closely interrelated with the regional and transnational cross-border cooperation. The adoption of the EU Directive establishing a framework for maritime spatial planning (hereinafter: MSP Directive) plays an important role in developing of marine spatial planning in Europe by promoting MSP instruments. MSP Directive requires all coastal EU Member States to prepare cross-sectoral maritime spatial plans by 2021. The development of spatial plans for Polish marine areas was started in 2013. The MSP legal bases are included in the Marine Areas of the Republic of Poland and Maritime Administration Act of 1991 amended in 2015 and its implementing regulations.

Keywords: Polish marine areas, marine spatial planning, ecosystem approach

INTRODUCTION

Nowadays, the international law of the sea, as well as public administrative maritime law, is not able to give an answer to all new questions arising in sustainable marine governance. Therefore, it would seem that there is a great need to provide more pragmatic approaches to regional and national marine governance

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and spatial planning by the European Union and its Member States, using the holistic paradigm of sustainable development.¹ Maritime spatial planning is an open process of analysing and planning marine space with temporal distribution of various types of human activities in the marine areas, leading to the achievement of economic, social and environmental goals, including the sustainable development goals.

Essentially, problems related to efficient maritime spatial planning may include: lack of maritime space monitoring, inconsistency and fragmentation of research programs related to the sea, locating maritime spatial planning at the regional level, weak connection between land and marine spatial planning (no vision of the entire area covering the entire marine area, including the exclusive economic zone), poor coordination in various policies and strategies provided for marine areas (energy, transport, defence policy, coastal management strategies, environmental protection, coastal protection, tourism development)².

1. DEFINITION OF MARINE SPATIAL PLANNING

Marine spatial planning is a process that is to distribute space dynamically for many types of the sea use by humans, also introducing time constraints in its use, and even exclusion, in order to avoid conflicts between various users of the environment and to improve management of human activities directed towards the use of the resources of the marine and coastal environment.

In international law, a universal definition of maritime spatial planning has not been formulated, although such attempts have been made. The first international meeting devoted to maritime spatial planning was held in 2007 by the Intergovernmental Oceanographic Commission of the United Nations Educational and Scientific Organization (IOC UNESCO) workshops on MSP. Then, the definition of maritime spatial planning was formulated, recognizing thereof as a way to improve decision making and implementation process, based on an ecosystem approach to managing human activities in the marine environment. MSP has been brought to the planning process, which enables integrated, forward-looking and consistent decision-making regarding the use of the sea by humans³.

¹ See: M. Gilek, B. Hassler, S. Jentoft, *Marine Environmental Governance in Europe: Problems and Opportunities*, [in:] ed. M. Gilek, K. Kern, *Governing Europe's Marine Environment. Europeanization of Regional Seas or Regionalization of EU Policies?*, Ashgate 2015, pp. 255–257.

² D. Pyć, *Zasady morskiego planowania przestrzennego i zintegrowanego zarządzania strefą przybrzeżną*, Prawo Morskie vol. XXIX, Gdańsk 2013, pp. 117–135.

³ C. Ehler, F. Douvère, *Marine Spatial Planning: A Step-by-Step Approach Toward*

In the meaning of the MSP Directive⁴, maritime spatial planning involves identifying possible uses of marine resources and their rational distribution, as well as providing sustainable activity in terms of the ecosystem, all of which is performed in the marine environment in order to achieve economic, social and environmental objectives arising from regional and national policies in accordance with international rules and standards, recommended practices and procedures for the protection and preservation of the marine environment.⁵ In the European Union, in those Member States, which have developed marine spatial planning instruments, the implementation thereof remains at the national level and is carried out by the authorities of those States. The planning process is subject to analysis of the use of the marine environment and its resources, necessary for decision making.

2. PRINCIPLES OF MARINE SPATIAL PLANNING

Marine spatial planning is an instrument of the maritime policy, both at the national and regional levels. In the Baltic Sea region, the development of common principles of maritime spatial planning is associated with the involvement of all relevant entities and bodies. In that area, the following approaches are included: holistic, ecosystem and precautionary⁶ ones. Maritime spatial planning in the area of the Baltic Sea is of interest to international organizations and institutions, including the European Union and the Baltic Marine Environmental Protection Commission (HELCOM).

Ecosystem-Based Management, Intergovernmental Oceanographic Commission and Man and the Biosphere Programme, IOC Manual and Guides No. 53, ICAM Dossier, No 6, Paris 2009, p. 99, [in:] A. Deidun, S. Borg, A. Micallef, *Making the Case for Marine Spatial Planning in the Maltese Islands*, Ocean Development & International Law 2011, vol. 42, p. 137.

⁴ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, Official Journal of the European Union, L257/135, 28.8.2014.

⁵ See: E. De Santo, *The Marine Strategy Framework Directive as a Catalyst for Maritime Spatial Planning: Internal Dimensions and Institutional Tensions* [in:] M. Gilek, K. Kern, *Governing Europe's Marine Environment. Europeanization of Regional Seas or Regionalization of EU Policies?*, Ashgate 2015, p.95.

⁶ D. Pyć, *Prawo Oceanu Światowego, Res usus publicum*, Gdańsk 2011, pp. 97-105; J. Zaucha, *The Key to Governing the Fragile Baltic Sea. Maritime Spatial Planning in the Baltic Sea Region and Way Forward*, VASAB 2014; J. Zaucha, *Sea basin maritime spatial planning: A case study of the Baltic Sea region and Poland*, Marine Policy 50 (2014), pp. 34-45; H. Backer, *Marine spatial planning in the Baltic Sea* [in:] eds. D. Hassan, T. Koukkanen, N. Soininen, *Transboundary Marine Spatial Planning and International Law*, Routledge 2015, p. 132.

The HELCOM Action Plan of 2007⁷ contained a commitment addressed to the State Parties to the Helsinki Convention for the Protection of the Marine Environment of the Baltic Sea Area to jointly develop the implementation of general cross-sectoral maritime spatial planning principles based on an ecosystem approach in cooperation with other international bodies. It is worth noting that the document on general principles of maritime spatial planning in the Baltic Sea⁸, developed by the HELCOM Joint Group and VASAB, defined the following ten principles of maritime spatial planning: sustainable management, ecosystem approach, long term perspective, precautionary principle, participation and transparency, high quality data and information bases, transnational coordination and consultation, coherent terrestrial and marine spatial planning, planning adapted to characteristics and special conditions at different areas and continuous planning. In order to facilitate the protection and sustainable use of the Baltic Sea alongside with the ten principles set out above, HELCOM Recommendation 28E/9 on the development of broad-scale marine spatial planning principles in the Baltic Sea area was adopted. These rules remain in the close relation with the MSP Directive. The first of the ten HELCOM/VASAB principles, the principle of sustainable management, subordinates maritime spatial planning as a tool to achieve the goals of balancing economic, social and environmental interests by dividing marine space, managing different types of the sea use, integrating sectoral planning, applying an ecosystem approach in the long-term. The precautionary principle and the ecosystem approach⁹ determine the current framework for spatial planning in marine areas and regulate various human activities in the marine environment, taking into account the protection of marine and coastal ecosystems and biological diversity.

⁷ <http://www.helcom.fi/baltic-sea-action-plan>

⁸ *Marine Spatial Planning: Joint HELCOM VASAB Principles and Working Group*, HELCOM HOD 31/2010; http://meeting.helcom.fi/c/document_library/get_file?p_l_id=18975&folderId=1029231&name=DLFE-41478.pdf; <http://www.helcom.fi/action-areas/maritime-spatial-planning/msp-principles>

⁹ S. Söderström, *Regional Environmental Governance and Avenues for the Ecosystem Approach to Management in the Baltic Sea Area*, Linköping 2017; J. Ansong, E. Gissi, H. Calado, *An Approach to ecosystem-based management in maritime spatial planning process*, *Ocean & Coastal Management*, 141 (2017), pp. 65-81.

3. MARINE SPATIAL PLANNING AND POLISH MARITIME POLICY

At the regional level, the European Union promotes an integrated maritime policy (IMP)¹⁰. In accordance with the policy of the IMP, maritime spatial planning involves the process of planning and regulating all human activities in marine areas, including maintaining the good condition of marine ecosystems, as well as marine biodiversity. This approach is the essence of the maritime policy for both European Union and its Member States in their national and regional maritime relations.

Each of the EU coastal Member States is obliged to prepare a national integrated maritime policy as part of the integrated maritime policy of EU. The Polish Maritime Policy of 2015 is the fulfilment of an obligation addressed to the EU Member States to develop their own national maritime policies in accordance with the IMP and “The guidelines for an integrated approach to maritime policy”¹¹.

The Maritime Policy of the Republic of Poland up to 2020 (with perspective up to 2030) was approved by the Council of Ministers on 17 March 2015¹². The draft of the Maritime Policy of Poland had been prepared on the governmental level by the Inter-Ministerial Committee on Maritime Policy of Poland¹³.

The Maritime Policy of Poland is based on the constitutional principle of sustainable development¹⁴. The priorities of the Maritime Policy of the Republic of Poland up to 2020 (with perspective up to 2030) are: strengthening the position of Polish sea ports, enhancing maritime transport competitiveness, ensuring maritime safety and security; improvement of the state marine environment and coastal protection, creating conditions for the development of the economy based on

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 10 October 2007 on an Integrated Maritime Policy for the European Union, COM(2007)575.

¹¹ COM(2008)395.

¹² The Maritime Policy of the Republic of Poland up to 2020 (with perspective up to 2030), https://www.mgm.gov.pl/images/gospodarka-morska/uchwala_nr_33-2015_rady_ministrow.pdf, https://www.mgm.gov.pl/images/gospodarka-morska/polityka_morska_rzeczypospolitej_polskiej_do_roku_2020-z_perspektywa_do_2030

¹³ The Inter-Ministerial Committee on Maritime Policy of Poland is a main governmental body responsible for formulation of the national maritime policy and implementation of an Integrated Maritime Policy for the European Union. The Inter-Ministerial Committee has been established by the Prime Minister and is chaired by the Minister of the Maritime Economy and Inland Transport, who is responsible for maritime affairs. In September 2009 the Government of Poland approved the general principles and objectives of maritime policy of Poland up to 2020.

¹⁴ The Constitution of the Republic of Poland of 2 April 1997, Article 5, Journal of Laws of the Republic of Poland 1997, No 78, item 483.

knowledge and qualifications, rational use of the natural resources of the marine environment, sustainable management of marine fisheries, strengthening the national energy security, streamlining maritime governance. The Maritime Policy of the Republic of Poland up to 2020 (with perspective up to 2030) promotes marine spatial planning and an ecosystem approach¹⁵.

4. LEGAL BASIS OF MARINE SPATIAL PLANNING ACCORDING TO THE MARINE AREAS OF THE REPUBLIC OF POLAND AND MARITIME ADMINISTRATION ACT

In 2003, the Polish legislator introduced into Polish law the possibility of developing maritime spatial development plans. The need to introduce maritime spatial planning instruments in Poland was explained by natural and anthropogenic factors, including in particular, threats such as: erosion of the sea shore and the disappearance of beaches, and negative effects of human activity. It was found that these hazards might have a negative effect: creating a flood hazard in coastal areas (due to the risk of the sea level rise as a result of the shifted coastline or storm floods), the economy of coastal communes (tourism, fisheries) and coastal biodiversity¹⁶.

In comparison with the regulations in the field of maritime spatial planning in force in European countries in this period, and in particular in the countries in the Baltic Sea area, it can be stated that Poland was one of the first countries, apart from Germany, to introduce provisions on spatial planning and spatial development. They have not been used for many years. In 2013, proper actions were taken to implement maritime spatial planning in Poland.

According to the Polish Planning and Spatial Planning Act¹⁷, spatial order, as a normative concept, refers to such space shaping that creates a harmonious whole and takes into account, in the organised relations, all the functional and socio-economic, environmental, cultural and compositional as well as aesthetic considerations and requirements. In practice, spatial order, understood as a functional order of space, is analysed primarily in the field of planning and land-use

¹⁵ D. Pyć, *Global Ocean Governance*, TransNav – The International Journal on Marine Navigation and Safety of Sea Transportation - 2016, vol. 10, No 1, pp. 159-162.

¹⁶ *Marine Spatial Planning and the protection of biodiversity. Beyond national jurisdiction (BBNJ) in the Mediterranean Sea*, UNEP(DEPI)/MED WG.431/Inf.8, 17.02.2017.

¹⁷ Article 2 point 1 of the Planning and Spatial Planning Act of 2003 (i.e. Journal of Laws of 2017, item 1073 as amended).

planning. In the Polish legal system there is no definition of the maritime spatial order.

Regulations concerning marine spatial planning are contained in the Marine Areas of the Republic of Poland and Maritime Administration Act of 1991 amended in 2015¹⁸ (the Polish Marine Areas Act) and its implementing regulations. This Act implements in its regulation the European Parliament and Council Directive 2014/89/EU of 23 July 2014 establishing a framework for maritime spatial planning¹⁹, as well as the European Parliament and Council Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)²⁰.

The Polish Marine Areas Act defines the legal situation of the marine areas of the Republic of Poland, the coastal area, the sea ports and harbours, and the rules for the use of those areas, as well as the maritime administration authorities and their competences. The Polish marine areas are: the marine internal waters; the territorial sea; the contiguous zone, and the exclusive economic zone (art. 2.1.).

The marine internal waters and the territorial sea are part of the territory of the Republic of Poland. The Polish marine internal waters are:

- 1) the part of Nowowarpno Lake and the part of the Bay of Szczecin, together with the Świna and the Dziwna and the Kamieński Bay, situated east of the State frontier between the Republic of Poland and Germany, and the river Odra between the Bay of Szczecin and the waters of the port of Szczecin;
- 2) the part of the Bay of Gdańsk closed with the basic line of the territorial sea;
- 3) the part of the Vistula Bay situated south-west of the State frontier between the Republic of Poland and the Russian Federation on that Bay;
- 4) port waters defined on the sea side by the line connecting the outermost permanent port works which form an integral part of the port system;
- 5) waters located between the Sea coast line established in accordance with the Act of 20 July 2007- Water Law, and the basic line of the territorial sea.

The territorial sea of Poland consists of the marine area of 12 nautical miles (22 224 m) wide, measured from the baseline of that sea. The baseline of the territorial sea is a line connecting the corresponding points defining the lowest water level along the coast or other points designated in accordance with the principles set out in the United Nations Convention on the Law of the Sea (UNCLOS)²¹.

¹⁸ The Act of 5 August 2015 amending the Act on the Marine Areas of the Republic of Poland and the Maritime Administration and Certain Other Acts (Journal of Laws, item 1642), which entered into force as of 19 November 2015.

¹⁹ OJ. EU L 257 of 28.08.2014, p. 135.

²⁰ OJ. EU L 164 of 25.06.2008, p. 19.

²¹ The United Nations Convention on the Law of the Sea (UNCLOS), done at Montego Bay on 10 December 1982; Journal of Laws of 2002, item 543.

The outer limit of the territorial sea is the line, where each point is 12 nautical miles from the nearest point of the baseline, but roadsteads which are normally used for the loading, unloading and anchoring of ships and which are situated, wholly or partly, outside the outer limit of the sea waters areas, are included in the territorial sea.

In January 2017 the Council of Ministers determined, by means of a regulation, a detailed course of the baseline in the textual and graphical format in accordance with the national spatial reference system, taking into account the principles set out in the UNCLOS, as well as the detailed course of an outer limit of the territorial sea in the textual and graphical format, according to the national spatial reference system, taking into account the international treaties relating to the State frontier.

The Act of 5 August 2015, amending the Act on the Marine Areas of the Republic of Poland and the Maritime Administration and Certain Other Acts²², which entered into force as of 19 November 2015, established a contiguous zone adjacent to the territorial sea of the Republic of Poland, the outer limit of which is not more than 24 nautical miles from the baseline. In January 2017, the Council of Ministers determined, by means of a regulation, a detailed course of the outer limit of the contiguous zone in the textual and graphical format in accordance with the national spatial reference system, taking into account the principles set out in the UNCLOS.

In the contiguous zone²³, the Republic of Poland is entitled to: prevent any violations, on the territory of the Republic of Poland, any Polish customs, treasury regulations relating to illegal immigration and sanitary regulations; prosecute, arrest and punish the perpetrators of the breaches of the regulations referred to in above, if they took place on the land territory, internal marine waters or the territorial sea of the Republic of Poland or if the obligation to prosecute, stop and punish the perpetrators results from the European Union law or international treaties to which the Republic of Poland is a party.

The Polish Marine Act has established an exclusive economic zone (art.14) which is situated beyond and adjacent to the Polish territorial sea. It includes the waters, the seabed and its subsoil. The exclusive economic zone is governed by Polish law relating to the protection of the environment (art. 19).

The boundaries of the exclusive economic zone are defined by international treaties. In the exclusive economic zone Poland is entitled to sovereign rights to explore, manage and exploit the natural resources, whether living or non-living,

²² Journal of Laws of 2015, item 1642.

²³ D. Pyć, *The Polish contiguous zone – the exercise of the coastal state jurisdiction and control*, TransNav – The International Journal on Marine Navigation and Safety of Sea Transportation - 2017, vol. 11, No 3, pp. 453–456.

the seabed and its subsoil and the waters covering them as well as has the right to preserve those resources, and also has the sovereign rights with respect to other economic undertakings in the zone and has jurisdiction with regard to the establishment and use of artificial islands, installations and other structures, marine scientific research, the protection and preservation of the marine environment, as well as other rights provided for under international law.

In the exclusive economic zone, the Polish Republic has an exclusive right to construct, or to authorize and regulate the construction and utilization of, artificial islands, installations and structures of any kind assigned for the conduct of scientific research, exploration or exploitation of resources, as well as in relation to other undertakings in the field of economic research and exploitation of the exclusive economic zone, in particular the use of water, sea currents and wind for energy purposes. The artificial islands, installations and structures are subject to Polish law (art. 22).

According to Article 37 of the Section 9 of Marine Areas of the Republic of Poland and Maritime Administration Act, spatial planning and development covering the marine internal waters, territorial sea and the exclusive economic zone mean the process through which the competent authorities analyse and organize the use of marine areas to achieve ecological, economic and social objectives. The authorities competent for the maritime spatial planning are the minister in charge of the maritime economy and the director of the maritime office (art. 37a. para. 5).

An instrument of maritime spatial planning is a spatial planning plan. The maritime spatial plans covering the marine internal waters, the territorial sea and the exclusive economic zone are adopted by the minister in charge of maritime economy and the minister in charge of the construction industry, spatial planning and development as well as housing in cooperation with the ministers in charge of environment, water management, culture and protection of national heritage, agriculture, fisheries, transport, internal affairs and the Minister of National Defence (art. 37a para. 1). The Polish maritime spatial plans covering the marine internal waters, the territorial sea and the exclusive economic zone are adopted by a regulation.

According to the Polish legal provisions, the maritime spatial development plans covering the marine internal waters, the territorial sea and the exclusive economic zone, are determined by:

- 1) the purpose, including the basic functions, of the marine internal waters area, the territorial sea and the exclusive economic zone;
- 2) prohibitions or restrictions of using the areas, referred to above, taking into account the requirements of nature protection;
- 3) deployment of the public purpose investments;
- 4) directions of the development of transport and technical infrastructure;

5) areas and conditions of: protection of the environment and cultural heritage, fishing activities and aquaculture; acquiring renewable energy and investigation, exploration of deposits, and the extraction of minerals from deposits.

It should be noted that the maritime spatial plans of the marine internal waters, the territorial sea and the exclusive economic zone, may contain information arrangements on the expected deployment of the public purpose investments, other than those referred to above.

The Polish legislator has distinguished two main functions' types of allocations of the marine area, namely: the basic functions and the acceptable functions. The basic functions mean the leading allocations of the area established in the plan, which cannot be interfered by any other acceptable functions. The acceptable functions of the area mean the possible ways of using the area, the coexistence of which does not adversely affect sustainable development of the area.

The minister in charge of the maritime economy provides to the European Commission and the respective Member States the copies and all subsequent amendments to the plans within three months from the date of their proclamation.

According to the procedure of Article 37b para. 1 of Marine Areas of the Republic of Poland and Maritime Administration Act, the draft plan is prepared by a territorially competent director of the maritime office, using the ecosystem-based approach and taking into consideration:

- supporting the sustainable development in the maritime sector, taking into account the economic, social and environmental aspects, including the improvement of the environment and the resilience to climate change impacts;
- defence and national security;
- coordination of actions by relevant parties and the methods of using the sea.

The ecosystem-based approach is defined in Article 37b para. 1a and means that in management of human activities, the following three conditions must be satisfied cumulatively, namely:

- 1) maintaining an impact of the planned human activities on the ecosystem at a level enabling to achieve and maintain a good environmental status;
- 2) maintaining both the ability for the proper functioning of the ecosystem, as well as resilience to environmental changes, arising from human activities;
- 3) enabling the sustained and at the same time sustainable use of the marine goods and services by the present and future generations.

For a draft maritime spatial plan of the marine internal waters, the territorial sea and the exclusive economic zone, an environmental impact assessment is made.

The costs of drawing up of the maritime spatial plan of the marine internal waters, the territorial sea and the exclusive economic zone, and of developing an environmental impact assessment, are borne by the State budget or an investor

implementing the investment, if the findings of that plan are a direct consequence of that investment's implementation.

The minister in charge of marine economy and the minister in charge of construction industry, spatial planning and development as well as housing in cooperation with the minister in charge of fisheries and the minister in charge of environment determine, by means of a regulation, the required range of the plans contained in the textual and the graphical parts drawn up in the form of the digital chart study developed on the basis of the databases specifying, in particular, the planning materials, the type of chart studies, the scale of chart studies, the designations, names, standards applied, and how to document planning works, with regard to clarity and transparency of the plans, as well as the guidelines adopted by the Baltic Marine Environment Protection Commission²⁴ and the authorities of the European Union in the field of marine spatial planning.

Due to the development of a marine spatial plan, the maritime administration authorities have an opportunity to conduct analyses and studies, as well as to develop the concepts and programs. In order to ensure the consistency of that plan with the studies of determinants and directions of spatial development of the municipalities, the local spatial development plans and the spatial development plans of voivodships, the maritime administration authorities should cooperate with the self-governments of the coastal voivodships and municipalities (art. 37c).

According to Article 37d, the plan may include the arrangements, binding upon the self-governments of voivodships and the municipalities, within which there are the marine internal waters, or the municipalities adjacent to the plan area by the coastline or the maritime areas' boundaries, corresponding to that line, when drawing up, respectively, the spatial development plans of voivodships, the studies of conditions and the spatial development directions of the municipalities, as well as the local spatial development plans in the field of: deployment of public purpose investments of the national significance specified in the medium-term national development strategy and other development strategies, the concepts of the national spatial development and the programs which specify the tasks of the government,²⁵ protected areas (including the areas of the protected space), the manner of using of the marine areas (including the restrictions and approvals).

Drafting of the plan requires that a territorially competent director of the maritime office makes known to the public, through an announcement in the nationwide newspapers, posting on the notice board and the publication in the Public Information Bulletin on the website of an office supporting that director,

²⁴ www.helcom.fi

²⁵ See: Article 48 of the Act of 27 March 2003 on Spatial Planning and Development, Journal of Laws of 2016, items 778, 904, 961, 1250 and 1579.

information on: commencement of drawing up the draft plan²⁶ and the possibility of submitting comments and motions relating to the draft plan specifying the form, place and deadline for submission of those comments and motions, not less than 60 days from the date of making information known to the public.

The territorially competent director of the maritime office examines the comments and motions, and decides on how to include them in the draft plan as well as prepares a list of comments and motions²⁷ submitted to the draft plan, including the comments and motions, together with the submitted description of an undertaking (referred to in Article 37f para. 3), as well as the general justification relating to the method of taking into account the motions for the draft plan. The director of the maritime office applies, to the relevant authorities, for consulting the scope and degree of information details required in the environmental impact assessment²⁸.

Taking into account, in particular, the alternative deployment of the selected undertakings and the reasons for their deployment, as well as an environmental impact assessment for that draft, the director of the maritime office draws up a draft plan.

In relation to the procedure for evaluating the draft plan, the director issues requests for the opinions on the draft plan to: the voievodship conservator of historical items (competent within the areas under the conservation protection and the areas proposed to be covered with such protection), the director of the regional water management board PGWWP²⁹ (in terms of: the impact on the areas of the special flood hazard with the exception of the technical area, adjustment of the draft plan arrangements to the requirements arising from the conditions for the use of waters of the water region and the conditions for the use of waters of the catchment area, as far as they have been drawn up, in compliance with the water management plans in the river basins areas), the minister in charge of health (in the field of the development of the protective zones of the health resorts and the areas of the health resorts protection), the competent mining supervisory authority (in the field of the mining areas and their development), the authorities

²⁶ The territorially competent director of the maritime office notifies, in writing, of the commencement of drawing up the draft plan, the institutions and authorities in charge of consulting and reviewing a draft plan.

²⁷ The list of comments and motions is presented to the public by the territorially competent director of the maritime office and this list is available in the Public Information Bulletin on the website of the maritime office until the day of ceasing the draft plan's presentation.

²⁸ Article 53 of the Act of 3 October 2008 on Providing Information on the Environment and its Protection, Public Participation in Environmental Protection and on Environmental Impact Assessments, Journal of Laws of 2016, items 353, 831, 961, 1250 and 579.

²⁹ *Państwowe Gospodarstwo Wodne Wody Polskie* (State Waterworks – "Polish Waters").

competent in the field of the strategic environmental impact assessment in accordance with Act of 3 October 2008 on Providing Information on the Environment and its Protection, Public Participation in Environmental Protection and on Environmental Impact Assessments, attaching the environmental impact assessment,³⁰ the director of the regional water management board PGWWP in the field of the compliance with the programme for the protection of the marine waters and in the field of environmental objectives for marine waters, laid down in accordance with the provisions of the Act of 20 July 2017 – Water Law³¹.

The draft plan is then agreed at the municipality level in the field of the impact of its findings on the development of the technical area, the protective area, the sea ports and harbours, as well as the municipality spatial development. The draft plan is also agreed with a regional director for environmental protection within the arrangements of the draft plan, which might have an impact on the objectives of the nature reserve protection, on the nature protection of the landscape park and the protected landscape area and within the arrangements relating to the draft plan, which might significantly adversely affect the Natura 2000 site in accordance with the Act of 16 April 2004 on the Nature Protection³². In addition, the draft plan is subject to the procedure of agreeing with the Minister of National Defence and the ministers in charge of: economy, fisheries, environment, water management, internal affairs, tourism, communications, transport, culture and protection of national heritage within their respective competences, the Marshall of the voivodeship (in the scope of the deployment of the areas of the public purpose investments with the voivodeship significance in the spatial development plan of the voivodeship), the director of the national park (within the arrangements of the draft plans, which might affect the nature protection of the national park in accordance with the Act of 16 April 2004 on the Nature Protection) and the entities managing the sea ports of primary importance for the national economy (within the arrangements of the draft plan which might affect the development of the ports).

In order to determine its conformity with the objectives and directions set out in the long-term strategy for the national development, the arrangements of the medium-term strategy for the national development and other development strategies, the territorially competent director of the maritime office submits a draft plan to the minister in charge of the regional development. Due to verify the draft plan's conformity with the concept of the national spatial development and the programs specifying the tasks of the government³³, the territorially competent

³⁰ Journal of Laws of 2016, items 353, 831, 961, 1250 and 579.

³¹ Journal of Laws of 2017, items 1566, 2180.

³² Journal of Laws of 2016, item 2134.

³³ Article 48 of the Act of 27 March 2003 on Spatial Planning and Development, Journal of Laws

director of the maritime office submits a draft plan to the minister in charge of construction industry, spatial planning and development as well as housing.

In the case of finding the possibility of the significant transboundary environmental impact, as a result of the implementation of the objectives associated with the arrangements of the plan, on the possibility of the transboundary environmental impact of the effects of the plan's implementation, the territorially competent director of the maritime office notifies the General Director for Environmental Protection and provides him with the draft plan together with the environmental impact assessment. The director of the maritime office participates in the proceedings concerning the transboundary environmental impact³⁴.

In order to adopt the draft plan, agreed with the competent authorities, it is submitted to the minister in charge of maritime economy. If, after the submission of the draft plan for the adoption, any changes to the draft plan are made, the minister in charge of maritime economy, after the examination of the comments and motions submitted, may pass the draft plan to the territorially competent director of the maritime office in order to repeat the actions, within the extent necessary to make those changes. The subject of the repeated actions is solely that part of the draft plan which is covered by the changes (art. 37e.).

The authorities, involved in the assessment and agreeing process concerning the draft plan, are obliged to cooperate in drawing up the plan, involving the expression of opinions, submitting motions and making information available.

When taking the decisions in disputable matters, the director of the maritime office should take into account the following issues: the achievement of sustainable development of the area covered with the plan and the areas adjacent thereto in the economic, social and environmental terms, ensuring the national defence and security land-sea interaction.

The plan should be reviewed from time to time, at least every 10 years. In order to evaluate whether the plans are up to date, the territorially competent director of the maritime office applies to the competent authorities for providing information about the changes in the spatial development of the area covered with the plan and carries out an analysis of the changes in that area, taking into account the authorisations issued and the arrangements.

Once the review is completed, the director of the maritime office draws up a report on the status of the marine areas' development. The results of that evaluation and the report are submitted to the ministers in charge of: maritime economy,

of 2017, items 1073, 1566.

³⁴ The participation of the director of maritime office in the proceedings concerning the transboundary environmental impact is provided according to the provisions of Part VI of Section 3 of the Act of 3 October 2008 on Providing Information on the Environment and its Protection, Public Participation in Environmental Protection and on Environmental Impact Assessments.

water management, regional development, construction industry, spatial planning and development as well as housing. On the basis of the report, the minister in charge of maritime economy takes a decision on the commencement of changing the plan and the extent of the necessary changes. If, as a result of the amendment to the legal regulations, it is necessary to change the plan, the appropriate activities resulting from the provisions of the Act on the Maritime Areas of RP, should be performed respectively to the extent necessary to make those changes. The commencement of the plan changing should take place no later than within 6 months from the date of entry into force of any amended legal provision. The plan change is effected under the procedure, in which the plan has been adopted.

The minister in charge of maritime economy carries out the cross-border cooperation within maritime spatial planning and development of marine internal waters, the territorial sea and the exclusive economic zone as well as the cross-border exchange in the field of spatial data necessary in the process of maritime spatial planning.

The Council of Ministers may specify, by means of a regulation, the required scope and manner of crossborder arrangements of the maritime spatial plan covering the marine internal waters, the territorial sea and the exclusive economic zone, having regard, in particular, to the recommendations adopted by the Baltic Marine Environment Protection Commission and the authorities of the European Union in the field of spatial planning at sea.

The director of the maritime office collects and stores the materials relating to the plans.

CONCLUSIONS

Marine spatial planning is a process of managing human activities in the marine environment in order to achieve sustainable development. The dynamics of development in the maritime sectors, including new types of human activities in the marine environment (e.g. marine aquaculture, marine energy) and its impact on maintaining a good condition of marine ecosystems, requires continuous monitoring of economic, social and ecological processes taking place in marine areas. The use of the ecosystem approach and the precautionary principle in creating maritime spatial planning and decision making within the integrated coastal zone management requires the transparent procedures and a flexible system of institutional coordination and public consultations.

Although land-based activities may have a direct or indirect impact on the Polish coastal zone and sea areas, in Poland maritime spatial planning has so far

focused mainly on the maritime activities conducted in the coastal areas and on the processes taking place in the coastal belt. The fundamental change will therefore be, to change the pattern and move to a comprehensive, holistic model of managing the Polish land and sea space. Amendments to the legal provisions regarding the planned spatial marine areas, that have been introduced since 2015 to Polish law, should constitute the suitable grounds for drawing up spatial development plans for marine areas until 2021.

MORSKIE PLANOWANIE PRZESTRZENNE W POLSKIM PRAWIE

Słowa kluczowe: polskie obszary morskie, morskie planowanie przestrzenne, podejście ekosystemowe

Abstrakt

Morskie planowanie przestrzenne (MSP) jest jednym ze sposobów osiągania celów zrównoważonego rozwoju. MSP to proces planowania, a także podejmowania decyzji i zarządzania morskiego odbywający się na poziomie krajowym i regionalnym. Proces ten jest ściśle powiązany z regionalną i ponadnarodową współpracą transgraniczną. Przyjęcie dyrektywy UE ustanawiającej ramy planowania przestrzennego obszarów morskich (dyrektywa MSP) odgrywa ważną rolę w opracowywaniu planów zagospodarowania przestrzennego obszarów morskich w Unii Europejskiej przez promowanie instrumentów MSP. Dyrektywa MSP zobowiązuje wszystkie państwa członkowskie UE, posiadające dostęp do morza, do przygotowania międzysektorowych morskich planów zagospodarowania przestrzennego do roku 2021. Pomimo wprowadzenia do polskiego porządku prawnego w 2003 r. przepisów odnoszących się do morskiego planowania przestrzennego, efektywne prace skierowane na opracowanie planów zagospodarowania przestrzennego polskich obszarów morskich rozpoczęły się dopiero w 2013 r. Plany te opracowywane są w oparciu o przepisy ustawy o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej z 1991 r. zmienionej w 2015 r. oraz wydane na jej podstawie przepisy wykonawcze.