



# Scalar reorganisation of marine governance in Europe? The implementation of the marine strategy framework directive in Spain, Portugal and Germany

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## ABSTRACT

European marine policies have recently been consolidated, and the scalar organisation of marine governance has been questioned. This paper examines this phenomenon in Europe as a result of implementation of the European Marine Strategy Framework Directive (MSFD) and examines changes in the role of the national state vis à vis other levels of jurisdiction in marine policy. The relevance of use pressures differs across European member states, as do national policy styles and institutional configurations. Therefore, a nuanced picture is needed regarding the ways European marine policy is being implemented. To this end, the paper employs a co-evolutionary perspective studying the cases of Germany, Spain and Portugal. European marine policy has become anchored in the most relevant policy fields except agriculture and fisheries, and competency regarding its environmental dimension has been strengthened, formalized and clarified as a result of the MSFD. Its implementation, tied to international marine protection, comes following initiatives to develop maritime economies. In Portugal, implementation of the MSFD did not change the scalar organisation of natural resource governance. In Spain and Germany, the MSFD led to disputes regarding clarification of competencies. In the course of implementing the MSFD in Germany, challenges are tied to the political dimensions of formalizing practices and producing integrated policies. In Spain and Portugal, comprehensive stock-taking is itself a challenging task.

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## 1. Introduction

The European Seas cover an area that is larger than the European landmass, with a coastline three times longer than that of Africa. Throughout the last decade, the reworking of European marine policies<sup>1</sup> has significantly intensified. The European Commission has developed its own marine policy framework parallel to a set of international conventions that cover all European seas [1]. Relying on an assessment of the Spanish case, Suarez de Vivero and Rodriguez Mateus [2], as well as Salomon [3] and Degnbol [4] observe a significant scalar reorganisation of marine governance as a part of the overall reconfiguration of European marine policies. They write that “maritime policies are beginning to shift and extend to the domain of internal State affairs even developing into a territorial policy”. The ‘maritimisation’ of the economy ... has been transferred to the institution of the State (maritime nationalism) and is beginning to be a feature of the

political structure as a whole on the intermediate scale (federated States, autonomous regions, and provinces) [2]. The present paper aims to examine this statement with particular regard to a comparative case study of the currently ongoing implementation of the European Marine Strategy Framework Directive (MSFD, [5]) in Germany, Spain and Portugal. Further, the role of the national state vis à vis other levels of jurisdiction will be examined, as regions vie to become leading players, creating a territorial patchwork that is beginning to question the supremacy of the national state in maritime policy.

Broadly, a set of overlapping issues related to use pressures (expansion of offshore wind energy, fishing and aquaculture, dredging, mineral extraction, shipping) and international requirements concerning biodiversity protection have been made responsible for the recent intensification of European and national-level policy making on marine issues [6]. Drivers for this have been framed as “the reinforcement of security, the development of advanced technologies, and new social and political values” [7]. The motivation for this study is that the relevance of these issues seems to in fact differ significantly across member states of the European Union. Furthermore, national policy styles and institutional configurations that need to be mobilized or changed in order to meet European requirements differ significantly. Therefore, we argue that it is necessary to draw a more

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<sup>1</sup> In European policy-speak, a distinction seems to be made between marine policy, as emphasising the environmental dimension, and maritime policy, as specifically addressing the economic dimension, for policies addressing the sea. In what follows, they are used synonymously concerning the sea in general.

nuanced picture regarding the determinants of the ways European marine policy is being implemented. To illustrate the relevance of these dimensions to specific, national policy pathways, the paper employs a co-evolutionary perspective and develops an analytical framework relying on theories of institutional change and multi-level governance to reconstruct the dynamics that led up to changes in marine policy and to account for the way the requirements for implementing the MSFD changed competencies. Of particular concern is how the development of specific marine uses, national competencies, decision making structures with regard to the set-up of competencies in the marine sector shaped the scalar (re-)organisation of marine governance, as a result of implementation of the MSFD.

Questions of scalar organisation of natural resource governance have already been well studied in the area of water governance (cf. [8–13]). Some authors frame the changes taking place regarding scale in terms of the politics of scale, referring to the outstanding role of state agency [14–16] in boundary re-drawing, re-shuffling of competencies and associated changes in accountability mechanisms and overall governance regimes [11,17]. A second strand of the literature is related to the discussions of normative institutional configurations that condition the “fit” between social-ecological problem characteristics and the way(s) they are institutionally addressed. This approach emphasises the problem-solving characteristics of the scalar organisation of governance (cf. [18]). In any case, such scalar reorganisation affects governance outcomes; thus actors can be expected to hold preferences concerning it.

Case study selection first followed a most similar systems design [19]. Portugal and Spain were selected as highly similar countries with vast marine jurisdictions, similar marine economic structures and traditions, and which became members of the European Union in 1986. The initial question was, therefore, how state structure affected the scalar (re-)organisation of marine governance in these countries as a result of the MSFD. Germany is included as a contrasting case [20]. It is a country that has a uniformly established federal structure, whereas in Spain distribution of competencies between the federal level and Autonomous Communities (*Comunidades Autónomas* – ACs) varies in-between ACs, while Portugal is a unitary state. Germany also differs from the other two countries in that its maritime jurisdiction is much smaller but more intensely used, its maritime economy differs greatly, and it is a long-standing member of the European Union that prides itself of being a leading force in environmental protection [21].

Data has been gathered for this study from a literature review including peer-reviewed articles and official government reports. This secondary data has been verified and further elaborated via a number of semi-structured interviews with administrative actors involved at the national and partly at the regional scales in the case study countries. Interviewees have been identified through a document-based stakeholder analysis combined with a snowballing approach. Most of the data is of a qualitative nature and was coded in an interpretative fashion in order to link it to the explanatory framework.

## 2. Studying scale and the transformation of governance

The scale at which natural resources and their use is governed defines (a) the spatial extent of the area to which a specific institutional and actor configuration applies, (b) the administrative level with which resource management is associated, and (c) its horizontal and vertical interrelation to other governance structures (cf. [22]). From a co-evolutionary perspective, the object of analysis, formal institutions and governance are viewed

as designed cultural products. Therefore, processes of cognition and emergent social construction are predominant in understanding the design of governance; we argue that these co-evolve with changes in material use practices and inherent management challenges [23]. At times, challenges to regulation may in fact be introduced by external actors.

Our perspective on institutional change is embedded within Bromley's conception of volitional pragmatism [24], where upon being surprised actors re-evaluate what they consider to be the best means as well as best ends of social practices and institutions [24]. Actor-specific formulation of desirable institutional means and ends is followed by the need to enter into group action to reconcile disparate and contending individual expressions and imaginings, until a consensus emerges. In the conceptual framework it is proposed to combine theories of institutional change and multi-level governance in order to detail (a) what shapes actors' “created imaginings”, (b) what shapes what actors hold to be desirable institutions for achieving them, and (c) how to analyse the process of agreeing on specific institutions.

Institutions are understood as sets of working rules, such as property rights and governance structures [25] – as “rules of the game” external to the individual [26]. They can be formal, possibly written down, and sanctioned by higher authorities or informal, idiosyncratic. Property rights and governance structures are specific types of rules. The former are formulated and sanctioned by a higher body – usually the state [27] – while the latter coordinate processes such as nature-related transactions and enforcing of property rights. Governance is defined as “the establishment, reaffirmation or change of institutions to resolve conflicts [or to coordinate] over environmental resources” [28]. Specifically, this study investigates changes in the scalar organisation of the provision function of governance, which entails decisions about quantity and quality of specific “ecosystem services” that the marine environment provides and how they relate to each other [29].

We use economic theories of institutional change to conceptualize how change in contextual factors shapes actors' perceptions concerning preferred institutional means and ends. Governance changes either as a result of alterations in the negotiation constellation (actors participating and rules of negotiations) or as a result of changes in actors' perceptions and what they prefer as governance. Specifically, institutional change may be the result of contextual changes such as:

- (a) changes in the value of a resource that depends on factor and product prices, motivating changes in monitoring and sanctioning schemes and engagement of specific user groups as governance embodies the value of ownership [30];
- (b) technological change that alters costs of governance or costs of production of ecosystem services and their distribution, which can also change characteristics of transactions (e.g. rivalry, excludability, uncertainty) and motivate institutional modification because of changes in the cost-benefit calculus concerning specific rules;
- (c) changes in nested or interrelated institutions that can lead to changes in costs and benefits of coordination between sets of institutions [30]; or
- (d) changes in ideologies and derived mental models that alter people's evaluations and preferences regarding specific options [30,31].

Described, interrelated contextual factors shape what we call the eco-institutional setting, which is composed of actors (direct or indirect users, regulators and politicians, and the electorate), nature-related transactions [32] between individual users and, usually, a state (regulator) that acts on behalf of other users and

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