

THE BIOREGIONAL PLAN OF AUSTRALIA AND ITS SUITABILITY AS GOOD PRACTICE FOR THE UNITED KINGDOM AND IRELAND'S EMERGING SYSTEMS^{*/}**

Abstract

This paper appraises the procedure and plans preparatory to the entrenchment of an effective Bioregional plan for the United Kingdom, most especially Great Britain and Ireland using the Bio-Regional plan of Australia as a template for emulation because of the widespread adulation of Australia as one of the most developed countries in terms of bio-regional plans in the world. This Article realises that there exists a yearning need to herald an ecosystem approach in the planning and management of land and seas through proper planning. This is particularly so as it has become increasingly recognised all over the world the need for the planning and management of the natural environment and the natural resources which are consequent on the proper functioning of the component ecosystems. The aim of this paper is therefore to find out whether the continued sustainability of economic systems, prevention of extinction of animal life (biodiversity and wildlife conservation), the preservation of the quality of human life are dependent on the maintenance of healthy ecosystems through the hatching of a plausible bioregional plan and whether or not the absence of a holistic action plan and management is capable of combatting the challenges occasioned by the complex interactions of humanity with its environment who are ultimately at the receiving end of all the fallouts of an unplanned ecosystem. This paper employs a doctrinal (desk-based) approach and relies on secondary data from statutes and reports by agencies of several governments. This study concludes that since there is no centrally created government-hatched bioregional plan for the United Kingdom as a whole including its component regions (Great Britain, Northern Ireland, Wales and Scotland) with Ireland inclusive, it is desired that a bio-regional plan that would maximize and encourage living without injuring the earth and its abundant resources and consequently achieving sustainable biodiversity be formulated for them, irrespective of the structural inapplicability of Australia's Bioregional plan for both countries.

1.0 Introduction

The growing need for an ecosystem approach in the planning and management of the land and the seas predates the 1992 UN Convention on Biological Diversity, CBD and a plethora of other international conventions and policy documents like the 2002 Plan of Implementation of the World Summit on Sustainable Development.¹ Bioregional Plans and Biodiversity Action Plans are thus very important at this material time the world over when it has become increasingly recognised the need for the planning and management of the natural environment and the natural resources derivable therein to have emanated from the proper functioning of the component ecosystems. This viewpoint is grossly

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¹ S Kidd, *et al*, 'The Ecosystem Approach and Planning and Management of the Marine Environment' in Sue Kidd, Andy Plater and Chris Frid (eds), *The Ecosystem Approach to Marine Planning and Management* (Earthscan 2011).

predicated upon the notion that the continued sustainability of economic systems, prevention of extinction of animal life (biodiversity and wildlife conservation), the preservation of the quality of human life are unavoidably dependent on the maintenance of healthy ecosystems through a plausible bioregional plan, especially as humans are a key feature of ecosystems and not a distinct creation from it, the absence of a holistic action plan and management therefore cannot fully combat the challenges occasioned by the complex interactions of humanity with its environment and the ensuing plan fallouts of stakeholders in the use of the environment.²

It is instructive to state the basis of comparison of Australia's well-developed Bio-regional plan with the emerging systems of the United Kingdom and Ireland- first, for many generations, Australians have enjoyed a unique relationship with the sea as their oceans play a very massive role in Australian life, providing them with a lot of revenue from fishing, business opportunities and tourism potentials, thus, the emplacement of the Bioregional plan of Australia is a veritable way of ensuring its oceans remained healthy and sustainable.³ United Kingdom and Ireland on the other hand have no fully developed bioregional plans, even though they have well-groomed marine environment with a lot of stakeholders calling for the adoption of Australia's well-developed bio-regional plan.⁴ This study is thus a legal enquiry to find out the suitability of such proposed adoption and the focus would primarily be on Australia as the United Kingdom and Ireland have very little developed experience in Bioregional plan work as newly emerging systems.

2.0 Australian Bioregional Plan in Focus

The relevant Australian Government department saddled with the preservation of the Environment; the Department of Sustainability, Environment, Water, Population and Communities has a range of bureaucratic scope ranging from marine bioregional plans, marine pollution, fisheries and the environment, the Great Barrier Reef, water quality maintenance and preservation, international maritime activities, marine species protection, commonwealth marine, reserves and even sea dumping, but the discussion of this study is centred only on the bioregional plan of Australia. The focus of this paper is on Australia because it has developed a detailed and a rigorous Biodiversity Action Plan, BAP⁵ and it is intended that this work would attempt to explicate on the reasons why her plan would be unsuitable for United Kingdom and Ireland's emerging systems despite continuous call for same by relevant stakeholders.⁶

For instance, Australia has a seeming pioneer workable and developed history in maritime spatial planning, (MSP). The Commonwealth of Australia, Department of the Environment and the Heritage in its "Great Barrier Reef Water Quality Protection Plan Annual Report 2004-2005" puts the total number of her aboriginal species at 560,000. The component of BRP as a valuable tool for the protection of the Great Barrier Reef is largely considered to be in a much better state of health than most reefs

² *Ibid.*

³ T Burke- 'Ministerial Foreword', *North Marine Bioregional Plan*. <<https://www.environment.gov.au>> Accessed 26th April, 2021.

⁴ National Biodiversity Planning – World Resources Report. <<https://www.pdf.wri.org/nationalbiodiversityplanning.pdf>> Accessed 26th April, 2021.

⁵ Natural Resource Management Ministerial Council (2011) Australia's Biodiversity Conservation Strategy *Action Plan 2012-2030* <http://www.au.gov/biodiversity_strategy.index.html> Accessed 8th March, 2021.

⁶ Multi-Stakeholder Partnerships- Sustainable Development Knowledge. <<https://www.sustainabledevelopment.un.org.html>> Accessed 26th April, 2021.

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within the planet, this is also coupled with the enviable status of Australia as the country with the highest volume of treated wastewater in the world.⁷

The bioregional plan for Australia is therefore an integral part of the MSP framework for Australia. It is a new ecosystem-based approach for use at the crux of her ocean zoning policy to provide a clearer focus on the protection, conservation and the sustainable use of Australia's marine environment. Marine bioregional plans have been developed by the Australian Government under the Environment Protection and Biodiversity Conservation EPBC Act 1999 (Australia) to improve the way its oceans are managed and help them remain healthy and productive.⁸ It is instructive to note that Section 176 of the EPBC Act requires the Commonwealth Environment Minister to have regard to a bioregional plan in making any decision under the EPBC Act for which the plan has relevance. A Bill was introduced to the Commonwealth of the Australian Parliament's Senate on the 2nd day of March 2011 to amend the existing EPBC Act in order to incorporate the Bioregional Plans and its related purposes⁹. How this has affected the planning of the ecosystem in Australia is yet to be tested.

3.0 The Scope of the EPBC Act and the Bioregional Plan

The EPBC Act is the Australian Government's central environmental legislative framework. It provides a legal tool to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places which are defined therein as matters of national environmental significance.¹⁰ The plans were developed by the Department of Sustainability, Environment, Water, Population, and Communities, DSEWPC and it primarily covers the entire Exclusive Economic Zone, (EEZ) of Australia. The management plans are statutory and binding on the stakeholders and users of the Environment. The application of the initial plan has some merely persuasive and advisory effect apart from its broad ended scope. It was contended that the Australian marine bioregional plan has the capacity to improve understanding of Australia's oceans by presenting a vivid and a consolidated picture of the biophysical attributes and diversity of marine life. The MBP describes the marine environment and conservation values of each marine region; it sets out in great detail broad biodiversity objectives¹¹, it identifies each core regional priorities and provided the strategies and actions to address the highlighted priorities. Cogently, it will harmonize scientific knowledge, existing regulation and available relevant data from many sources for a successful marine bioregional plan.¹²

4.0 Objectives of the Australian Bioregional Plan

The Australian Bioregional Plan aims at actualizing the following objectives:

- (1) to assist the Commonwealth Environment Minister in making a strategic, consistent and informed decision under the EPBC Act in relation to Commonwealth waters;
- (2) It hopes to engender an effective administration of the EPBC Act to promote the ecologically sustainable use of the marine environment and its resources;

⁷ The Commonwealth of Australia, Department of the Environment and Heritage; 'Great Barrier Reef Water Quality Protection Plan Annual Report 2004-20005' <<http://www.environment.gov.au.barrierreefwater>> Accessed 08 November 2020.

⁸ Environmental Protection and Biodiversity Conservation Act 1999 (Australia).

⁹ The Commonwealth of Australia Parliament <<http://www.comlawaustralia.com>> accessed 08 November 2020.

¹⁰ Part 2, Environment Protection and Biodiversity Conservation Act 1999 (Australia).

¹¹ Coastal and Marine Spatial Planning 'Ocean Policy Task Force' <http://www.maritimespatialplanning_law.management/index/html> Accessed 16th September 2020.

¹² United Nations' Educational Scientific and Cultural Organisation 'Australia Bioregional Plan' <http://www.unesco-ioc-marinesp.be/spatial_management_practice/australia_bioregions> Accessed 6th November 2020.

(3)It seeks to provide the much-needed policy framework for strategic intervention and investment by government to meet policy objectives and statutory obligations, responsibilities and duties.¹³

The Marine Bioregional Plan will equally enable the Environment Minister and the Australian government to have access to comprehensive information about each marine region, thus assisting the Minister and his officers to make informed decisions under the EPBC Act. Information provided in marine bioregional plans and supporting information tools will be of tremendous benefit to stakeholders; Government, industry practitioners, vessel owners, shipping practitioners, energy providers, conservation sector practitioners, coastal tourism and recreation practitioners, fishermen, coastline residents, ocean resources conservation charities and anyone genuinely affected by marine activities, most especially the people planning to undertake activities within a marine region to determine how to minimize the potential environmental impacts of their proposals and/or whether their proposals should be referred and dealt with in accordance with the EPBC Act provisions.

5.0 Projected Users of the Bioregional Plan

According to the Department of Sustainability, Environment, Water, Population, and Communities, DSEWPC, Marine Bioregional Plans, MBPs are an important document for individuals and organizations with an interest in the region and the way national environmental law is administered within Commonwealth waters. The plans provide information that enables people to better understand the Australian Government's marine environment protection and biodiversity conservation responsibilities, objectives and priorities in the four marine regions. Australia's marine bioregional planning program therefore seeks to improve the way its oceans are managed to ensure that her inhabitants can continue to use and enjoy them into the future. MBPs are being prepared to improve the way decisions are made about the protection of marine biodiversity and the sustainable use of the oceans. New Commonwealth Marine reserves (sometimes called Marine Protected Areas, MPAs or Marine Parks) are also being identified through the MBP process as part of Australia's commitment to establish a National Representative System of Marine Protected Areas (NRSMPA) as far back as 2012.¹⁴ There are three main steps in the marine bioregional planning process, they are:

- Preparation of a bioregional profile;
- Release of a draft marine bioregional plan and a Commonwealth marine reserve network proposal for public consultation; and
- Completion of a final marine bioregional plan and a final Commonwealth marine reserve network proposal.¹⁵

It should be noted that bioregional profiles have been completed for the Southwest, North-west, North and East (Temperate East and Coral Sea) marine regions and these bioregional profiles for these marine regions were developed as an aftermath of a wide range of information including scientific papers, commissioned reports, industry performance reporting, census data and expert advice. Bioregional

¹³Australian Government, 'Department of Sustainability, Environment, Water, Population and Communities' <<http://www.environment.gov.au/home>coasts and marine>> Accessed 8th November, 2020.

¹⁴Australian Government, 'Department of Sustainability, Environment, Water, Population and Communities' <<http://www.environment.gov.au/marinereserves/index.html>> Accessed 20th September 2020.

¹⁵United Nations' Educational Scientific and Cultural Organisation 'Spatial Management Practice' <http://www.unesco-ioc-marinesp.be/spatial_management_practice/australia_bioregions> Accessed 6th November, 2021.

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profiles describe the ecosystems of each marine region, their conservation values and the goals and principles that guide the identification and design of new Commonwealth marine reserves.¹⁶

MBPs and regional marine reserve network proposals were prepared across Australia's marine regions and a public feedback was invited during a 90-day consultation period.¹⁷ By public in this sense, it is meant that both the traditional and the emerging users of the marine environment; fishermen, shipping industry practitioners, energy producers, coastline residents and tourists and other marine environment users were consulted in the hatching and the preparation of the Marine Bioregional Plan.

Precisely by June 2012, Australia had announced the creation of the largest network of marine parks in the world, protecting waters covering a large expanse of space, while it banned oil and gas exploration activities in the area and limited commercial fishing in some of the most sensitive areas that are of peculiar interest to stakeholders.¹⁸ Flowing from this move, Australia's marine reserves is envisaged to witness a tremendous increase from 27 to 60 under the new scheme, covering more than 3 million km², or approximately one third of Australia's marine waters. The holiday icing on the cake will be the protection of the Coral Sea area that surrounds the Great Barrier Reef in the northeast, combined with the Great Barrier Reef area, which makes it arguably the largest marine protected area in the world.¹⁹ The plan will prevent oil and gas exploration in all marine national parks to the Coral Sea. It should however be stated that although environment activists supported the overall proposal and the ensuing take-off, but they still contended that the proposal as laudable as it seems does not take cognizance of all the most important areas and thus offering them the requisite protection due to them.

6.0 Major Components and Purpose of the Marine Spatial Planning of Australia

The purpose of any laudable MSP is to help a given country to effectively run, control and allocate her marine environment amongst the users or the stakeholders and fashion out an ecosystem-based management by finding space for biodiversity conservation and sustainable economic development in its marine environment. There must be a conscious move and deliberate effort to take MSP beyond mere rhetoric predicated on descriptive and definitive concepts.

The DSEWPC has the following statistics about the plan²⁰:

Authority from which the plan derived its powers: Environment Protection and Biodiversity Conservation Act 1999. The Lead Planning Agency: Department of Sustainability, Environment, Water, Population and Communities. The Size of Planning Area: The plan will cover a total of almost 7 million km² (beginning 3 nm from coast and extending to 200 nm from shore) divided into five bioregional planning areas: Southwest Marine Region (1.3 million km²); Northwest Marine Region (1.0 million km²); North Marine Region (625,000 km²); Temperate East Marine

¹⁶United Nations' Educational Scientific and Cultural Organisation 'Spatial Management Practice' <http://www.unesco-ioc-marinesp.be/spatial_management-practice/Australia-bioregions> Accessed 2nd November, 2021.

¹⁷ *Ibid.*

¹⁸United Nations' Educational Scientific and Cultural Organisation 'Public participation directive' <http://www.unesco-ioc-marinesp.be/spatial_management_practice/Australia-bioregions_public> Accessed 21st March, 2021.

¹⁹Australian Government, 'Department of Sustainability, Environment, Water, Population and Communities' <<http://www.environment.go.au/home.coasts/international/index.html>> Accessed 2nd November 2020.

²⁰ *Ibid.*

Region (1.47 million km²) and the Coral Sea (972,000 km²); and the Southeast Marine Region (1.6 million km²).²¹

Estimated duration of Plan Completion: This is expected to be a 3-4-year plan and the Australian government completed all the plans by mid-2013. This was just a projection at the time of creation irrespective of it's considering the realization variables. There was no known financing for the plans.

Stated feature of Maritime Spatial Planning: There is a yearning to improve the management of whole ecosystems; improve the way decisions are made particularly in relation to the protection of marine biodiversity and the sustainable use of their oceans and resources by marine-based industries. By so doing, it is believed that at full implementation, it can be said that a careful analysis and allocation of spatial and temporal distribution of human activities in marine areas in order to achieve ecological, economic and social objectives that were previously spelt out through a political process has been achieved.

Stakeholder participation is only limited to formal consultation with stakeholders (industry, government, multiple users of the sea, conservation and recreation interest owners and practitioners at various stages of the MSP process). It is a laudable and an all inclusive plan as all sectors are included. Coastal management is limited. The plans start at three nautical miles from the baseline and as such have a restricted interference beyond its territory. A proposed representative network of marine reserves is the major output of each bioregional plan for all the five regions it plans to cover.

Plan Approval: Five Bioregional Plans covering Australia's EEZ were completed in 2012; after a 60-day consultation, the Australian government will approve the plans; consequently, a management plan will then be prepared for the reserve network and after two 30-day consultation periods, the plan can then be approved. It is instructive to note that this plan has only an advisory legal status.

It can then be safely said that the bioregional plan is not a regulatory framework with the accompanying force of law, but a prescriptive guide for the government department designed on the EPBC Act's fulcrum and to serve as a persuasive radar to guide government's action and inaction through its final management plans in its all important task of providing a truly national scheme of environment, heritage protection and biodiversity conservation. Estimated review and revision of the Plan: there is likelihood to review the plan at 5 and 10-year interval.²² A very important index of any plan is the drive to ensure its performance and measuring its effectiveness over time. This is only possible with a carefully set out performance, monitoring and evaluation mechanism. It is planned that once marine bioregional plans are in place, monitoring and evaluation activities will draw on "scientific information from a range of sources to provide up to date information on marine conservation values, the pressures on them and the status of regional conservation priorities"; but performance monitoring of management measures was not mentioned.²³

²¹ *Ibid.*

²² Marine Bioregional Plan for the Temperate East Region
<http://www.environment.gov.au/coasts/marine_bioregionalplan.index.html> Accessed 20th November 2020.

²³ United Nations' Educational Scientific and Cultural Organisation 'Spatial Management Practice'
<http://www.unesco-ioc-marinesp.be/spatial_management-practice/Australia-bioregions> Accessed 2nd March, 2021.

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The National marine bio-regionalization of Australia has further made it the third largest marine estate owned by any nation in the world.²⁴ This is on a mass area larger than the Australian land mass and which extends from the tropical seas of the north to the sub-Antarctic waters of the Southern ocean. In the year 1998, the Commonwealth and the State and territory governments committed themselves to creating the NRSMPA by the year 2012. One move made by the Australian Government for the purpose of biodiversity conservation apart from the creation of the bioregional plans for the region is the establishment of the commonwealth reserves which brings her marine reserve estate to a total area of 3.1million square kilometers.²⁵

7.0 The Concept of Good Practice: Australian Bioregional Plan as a Good Practice?

It is imperative that we acknowledge that the concept, 'good practice' is difficult to define, apart from the peculiarity of jurisdiction, the specificity of various plans for a territory and its gross inappropriateness for another. What constitutes good practice in one MSP situation may not necessarily be good for another, moreover, there are no strait-jacket ways to carry out MSP. The major aim of good practice is to get everyone to deliberate on the favourable practices that have worked in their system so that others can gain an insight into the internal workings of the scheme and learn therefrom via a transfer of knowledge.²⁶

A good practice will thus be a very attractive and a worthy example capable of being emulated showcasing the best possible and successful way of performing a particular process and when these practices are implemented, there are new lessons to be learnt, put differently, better ways of doing something are thereby discovered. In any case, the socio-cultural, political and environmental peculiarity of Great Britain and Ireland must be critically considered before copying or altogether adopting the Bio-regional plan to avoid failure predicated on custom-fit error. It flows therefore from this explanation that until a plan or process has been implemented, tested, worked and evaluated with regards to its effectiveness or otherwise, it does not qualify to be called a process of 'good practice' as no 'practice' has in fact been made of it. It is called 'good practice' in contradistinction with 'best practice' because best practice presupposes a final approval; it is suggestive of the fact that a final solution has been found to a pressing concern.

7.1 The Objective of Good Practice

Maritime Spatial Planning is a novel concept; it has not gained the equivalent prominent attention as terrestrial planning because of the prevalence of the seeming silent maritime actors and practitioners and the passive disinterestedness of coastline stakeholders. Due to the relative newness of MSP, good practice is thus essential to the success of the MSP practice most especially in newly emerging systems that have given less attention to MSP in times past.²⁷ It is thus presumed that examples of good MSP practice will inadvertently help the growth of MSP all over the world, most especially Great Britain and Ireland. Discovering and identifying another country's MSP good practice will enable the newly emerging systems to rethink their applicable process, reflect on the pitfalls and positively alter her position in view of the present circumstance and availability of the new information.

²⁴ Australian Government, 'Department of Sustainability, Environment, Water, Population and Communities' <<http://www.environment.gov.au/marinereserves/index.html>> Accessed 2nd November 2020.

²⁵ Australian Government, 'Department of Sustainability, Environment, Water, Population and Communities' <http://www.australia.network_commonwealthmarinereserves.index.html> Accessed 2nd March, 2021.

²⁶ United Nations' Educational Scientific and Cultural Organisation 'Spatial Management Practice' <http://www.unesco-ioc-marinesp.be/msp_good_practice> Accessed 28 January, 2021.

²⁷ *Ibid.*

8.0 Conclusion and Recommendations

There is no centrally created government bioregional plan for the United Kingdom as a whole and its component States (Great Britain, Wales, Northern Ireland and Scotland), Republic of Ireland inclusive, the Bioregional organization in the United Kingdom is a Partner non-governmental initiative of the global One Planet living, heralding the call for projects and partnerships that demonstrate living without injuring the earth and its abundant resources and consequently achieving biodiversity.²⁸

The only semblance of the bioregional plan is the effort of the United Kingdom, including Great Britain and Northern Ireland's participation in the 2019 voluntary national review of the high-level political forum on sustainable development²⁹.

The 2030 Agenda and the Global goals thus reinforce the way the United Kingdom thinks about development, about taking responsibilities towards the environment, towards the poorest and the most vulnerable, towards planning the planet and the ecosystem and towards having a fuller conception of human life³⁰, thus justifying the call for evincing a bioregional plan, incorporating the Australian bioregional plan for Great Britain and Ireland would have been a very apposite adoption of good practice, but this will not be very possible for a number of reasons:

First, the political, administrative and geographical structure of Australia differs largely from that of Great Britain and Ireland. Australia is a sovereign State with a number of provinces and territories under its control; thus, it is easier and more administratively convenient for the State through its DSEWPC to design a broad and centralized bioregional plan for her EEZ, unlike Great Britain and Ireland which are saddled with semi-autonomous component-states under the rule of the United Kingdom. The remarkable difference in the structure, size and location of their marine environment will naturally inhibit any adoption of Australia's MBP for the two territories. The fact that the Bioregional plan has not been tested despite being created close to a decade ago and its effectiveness measured for a long time also hampers its suitability as good practice for the emerging systems of the United Kingdom and Ireland.

It should be noted that the fact that most living organisms in the marine environment are not seen, they easily migrate owing to the fluidity of oceans and the microscopic nature of the other species in the aquatic habitat continually impede the effort of law in making a workable plan for an effective biodiversity conservation. The lack of sufficient data, the complexity of the aquatic habitat and the uncertainty of the biodiversity components, insufficient scientific research effort in marine science,³¹ the inability to clearly set out what constitutes a nation's biodiversity objective have all made this example of maritime spatial planning very difficult and as such inappropriate for the United Kingdom and Ireland.³²

²⁸ Bioregional Solutions for Sustainability 'The One Planet Initiative'

<<http://www.bioregional.co.uk/about-us/aroundtheearth>> Accessed 12th March, 2021.

²⁹ Voluntary National Review 2019. <<https://www.sustainabledevelopment.un.org>> Accessed 12th April, 2021.

³⁰ *Ibid.*

³¹ M Barange, 'The Science for Sustainable Marine Bio Resources' *Report for the Natural Environment Research Council, Defra and the Scottish Executive for Environment and Rural Affairs, Plymouth Marine Laboratory*, (Plymouth 2005).

³² S Kidd, *et al.*, 'The Ecosystem Approach and Planning and Management of the Marine Environment' in Sue Kidd, Andy Plater and Chris Frid (eds), *The Ecosystem Approach to Marine Planning and Management* (Earthscan 2011).

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Also, the fact that the bioregional plan is a mere advisory guidance for facilitators and stakeholders undermines its effective capacity for implementation, since guidelines are mostly bereft of the requisite compulsive force of law.

Consequently, the creation of a situation-specific bioregional plan that will take into consideration the structure and peculiarity of the marine environment and the territorial administration, a prohibitive and a prescriptive, not merely an advisory bioregional plan, the testing and attendant success of the plan to qualify as good practice, getting financial support, preparing and approving, the improvement of data and understanding of bio-dynamics, a closer collaboration between scientific research and policy making for a better understanding of biodiversity by decision makers, a more inclusive stakeholder participation, documenting MSP initiatives, developing more capacity and training for MSP and creating more awareness for MSP, proper monitoring and evaluation of maritime spatial planning performance are some of the ways of achieving a good example of maritime spatial planning, not only for a country's marine environment, but for emerging systems to learn from.