

## **-MODULE 11-**

# **MARINE PROTECTED AREAS -SPECIAL LEGAL CONSIDERATIONS FOR NATIONAL FRAMEWORKS-**

### **CONTEXT OF MODULE WITHIN BROADER COURSE**

- This is the eleventh Module in the Course.
- This Module covers special legal considerations that need to be addressed in national legal frameworks for MPAs, in addition to the generic issues of protected areas law covered in Modules 2 through 6.
- It provides the Learners with an introduction to special legal elements required for MPAs in national legal frameworks in order to reflect current science, best management principles, international law and guidance, and connectivity needs.
- The issues highlighted in this Module are important to consider when reviewing, advising on, or drafting MPA legislation.
- The Module builds on Module 10 which covers special features of marine environments and special international law considerations for MPAs under national jurisdiction.

### **OVERVIEW OF KEY CONTENT**

In this Module the Educator will introduce the Learners to five main legal areas for MPA-specific attention:

- **Preparations**
  - Consultations
  - Existing legal framework
  - Conservation objectives
  - Legislative approaches
- **Preliminary provisions**
  - Policy
  - Objectives
  - Key definitions
  - Institutional arrangements
- **Substantive legal elements**
  - Strategic planning
  - Establishment
  - Management
  - Governance

- **Tools for implementation**
  - Regulations
  - Promoting compliance
  - Enforcement and surveillance
  - Financing
- **Tools for marine connectivity**
  - Definitions
  - Special considerations
  - Management approaches
    - MPA networks
    - Ecosystem-based management
    - Area-based management
    - Coastal development controls

## **MODULE OBJECTIVES & OUTCOMES**

- **Objectives**
  - Outline preparation tasks for reviewing, advising on, or drafting MPA legislation
  - Examine preliminary elements for MPA law: policy, objectives, definitions, and institutional arrangements
  - Elaborate on special substantive aspects of MPA law: planning, establishment, management, governance
  - Provide an overview of special implementation elements for MPA law: regulation, enforcement, financing
  - Explore legal tools to support marine connectivity conservation needs of MPAs.
- **Desired Outcomes**
  - Understanding of preparation tasks for reviewing, advising on, or drafting MPA legislation.
  - Knowledge of preliminary provisions for MPA law: policy, objectives, definitions, and institutional arrangements.
  - Understanding of special substantive aspects of MPA law: planning, establishment, management, governance.
  - Awareness of special legal tools for implementation of MPA law, regulations, enforcement, and financing
  - Familiarity with legal tools to support marine connectivity conservation needs of MPAs.

## **READINGS & RESOURCES**

- *PA Law Guidelines* (Pgs. 242-264), and accompanying case studies
- *Legal Aspects of Connectivity Conservation* (Pgs. 164-169)
- *Guidelines for Applying Protected Areas Categories* (especially pgs. 7-33 and 55-58)

## **STRUCTURE & DURATION OF MODULE**

- This Module is structured into **two main components**:
  - **Seminar Presentation**
  - **Exercise**
- The approximate **duration** of the Module is 4 hours comprising:
  - Seminar Presentation (2 hours)
  - Exercise (2 hours)

[These time estimates are indicative only; actual duration of the Module will vary depending on the audience, setting, and content used.]

## REFLECTIVE EXERCISES

In this Module the Educator has the choice of **two Exercises**.

- **Exercise 1** – *Thinking about the Regulation of Activities and Compliance and Enforcement for MPAs*
  - **Nature of the Exercise**
    - Knowledge-reinforcing exercise.
    - Large Group Exercise.
    - Factual Scenario/Generic Example.
    - Legal Analysis.
    - Discussion Forum.
  - **Purpose of the Exercise**
    - Build awareness of the kinds of activities that require regulation in the marine context and the particular challenges posed to compliance and enforcement efforts.
    - Provide Learners with an opportunity to practically use their knowledge.
    - Develop Legal drafting skills.
  - **Structure of the Exercise** (times are indicative, may vary according to audience and setting)
    - Introduction by Educator (10 minutes)
    - Large group exercise (60 minutes)
    - Joint group discussion (30 minutes)
    - Consolidation by Educator (20 minutes)
  - **Method Methodology/Procedure**
    - Divide Learners into two groups.
    - Each group will be given the same generic factual scenario of a fictional ocean area in the country of Atlantis that is proposed to be declared a marine protected area. Alternatively, the Educator may select a real-life example of an ocean area from the region or situations of the Learners that is currently or potentially under consideration for designation as an MPA.
    - Each group will be tasked with studying the generic scenario and associated map, and identifying recommendations for building a regulatory framework for the MPA, with particular attention to the following (1 hour):
      - which activities require regulation,
      - how such activities might be regulated,
      - what innovative measures could be put in place in terms of legislation to implement an effective compliance and enforcement regime, and ensure collaboration across the many management needs and interests.
    - The groups will then be brought together and the Educator will facilitate an open discussion of the activities that require regulation and the particular challenges for compliance and enforcement.

- **Exercise 2 – Improving Protected Area Legislation for MPAs**
  - **Nature of the Exercise**
    - Knowledge-reinforcing exercise.
    - Legal analysis in small groups.
    - Providing practical legal advice.
    - Discussion forum.
  - **Purpose of the Exercise**
    - Give Learners practice reading and analysing protected areas legal provisions for MPAs.
    - Provide Learners with an opportunity to practically apply their knowledge regarding the special considerations applicable to MPAs and how to address those in legislation.
    - Build/improve legal analysis and drafting skills.
  - **Method Methodology/Procedure**
    - Divide Learners into two groups
    - Each group will be given a hypothetical/generic example of a Marine Protected Areas Act, or the Educator may choose to provide an existing law relevant to the Learners' context.
    - Each group will be tasked to read carefully through the generic law (or other assigned law), work together to discuss the law and each of its provisions, and make recommendations on its strong points, gaps, and areas needing strengthening through amendments in order to ensure effective MPA legislation (1.0 hour).
    - The groups will then be brought together as a group and report on their recommendations. Thereafter the Educator will facilitate an open discussion (30 minutes), followed by a discussion, facilitated by the Educator, of aspects of the law that are strong points, gaps, and areas needing strengthening through amendment (45 minutes).

## NOTES FOR THE EDUCATOR

### • **General Preparations for the Module**

- Read the main texts and the additional readings and resources.
- Work through the relevant Seminar Presentation and supporting Presentation Notes.
- Tailor the Presentations to suit your purpose and audience.
- Read through the relevant Exercises.
- Tailor the Exercises to suit your purpose and audience.

### • **Facilitation of the Module**

- The Educator may wish to consider the following factors in tailoring the Seminar Presentation to the specific context and audience:
  - Where this Module is presented as a stand-alone Module, the Educator may wish to spend some time introducing him/herself and allowing each Learner to introduce him/herself.
  - This Module builds on Module 10 (MPA Part 1 – Special Features and International Law Obligations & Guidance). Where the situation permits, the two modules are best studied together.
- Because this Module on MPA law builds on generic elements of protected areas-related law covered in Modules 2 through 6, the Educator may wish to cross-reference relevant generic principles in those Modules as context for this Module. Where Learners are taking the full course the Educator should encourage their review of corresponding generic elements for different sections of this Module. Where Module 11 is presented as a stand-alone Module, it will be especially useful for the Educator link key elements of this Module to relevant generic elements of Modules 2 through 6. In particular, the Educator should be aware of the links between this Module and other Modules in the Course, most notably:
  - Module 2 (Governance Principles and Approaches) provides background for the MPA Governance discussion, slide 30.
  - Module 3 (PA Definitions, Objectives & Institutions) provides background for the discussion in MPA Module 11, slide 8 on preliminary provisions for MPA law and slide 17 on MPA institutional arrangements.
  - Module 4 (Planning, Types, and Establishment) provides context for MPA Module 11, slide 25 on MPA establishment, slide 24 on strategic planning, and slides 28 and 29 on management categories applicable to all PAs, including MPAs.
  - Module 6 (Regulation, EIA, Compliance and Enforcement, Financing) provides context and foundation elements for MPA Module 11, slide 37 on MPA enforcement and surveillance, and 39 on MPA financing.
  - Modules 8 and 9 (Connectivity Conservation) provides background and context for the fifth section of MPA Module 11 dealing with tools for implementation, starting with slide 40.
  - Module 10, MPA Part I (Special Features and International Law) provides background and context for MPA Module 11, slide 10 on international sources of policy, slide 13 on international definitions,

- and slide 40 which introduces the discussion on tools for marine connectivity.
- Module 12 (Transboundary Protected Areas) provides background for MPA Module 11, slide 20 on options for MPA transboundary management institutions.
- Module 11 contains several optional slides which the Educator may choose to use, tailor to the class, substitute with other examples, or skip, depending on what best suits the purposes and audience involved. The main optional slides are:
    - Slide 11 on Objectives for MPAs: consider drawing more examples from the main sourcebook and consider putting some examples from those guidelines (pp. 248-249) into a separate handout.
    - Slide 26 with table of CBD scientific criteria and guidance for selecting MPAs and building MPA networks.
    - Slide 20 on management institutions and levels of management, the Educator may want to add the example of a situation where management is a collaborative arrangement between central and provincial MPA authorities. The Educator may wish to provide his/her own example, or use the example of the Great Australian Bight Marine which was collaboratively established in the late 1990s by a legal arrangement between the federal and state governments of Australia (case write-up in the main sourcebook, p. 216, Box III(2)-4).
    - Slide 29 which is the table of IUCN management categories with a description of each category (generic material covered in Module 4).
    - Slide 31 presents the example of the Fiji Locally Managed Marine Area, as an illustration of a governance arrangement where local communities manage the marine resources for conservation and sustainable use.
    - Slide 38 presents the example of the Gully MPA in Canada as a deepwater site to illustrate the special measures and new technologies being used for enforcement and surveillance.
    - Slide 47 expands on the ecosystem-management approach and how its application to marine and coastal environments requires attention to marine connectivity by presenting eleven key principles for marine and coastal ecosystem-based management. These principles provide insights worth considering in law and policy instruments are drawn from the sourcebook: Legal Aspects of Conservation Connectivity, pp. 152-153.

## **ASSESSMENT EXERCISES**

- **Nature of Exercises and Guidance on Using Them**
  - The module provides a series of essay-style assessment questions that are designed to broadly cover the content of the module.
  - The questions may be utilised for assessment purposes or as an opportunity for Learners to consolidate their knowledge.
  - The questions cover both theoretical and practical issues.

- No mark allocation for the questions has been provided.
- All of the questions are of equal weighting.
- It is recommended that in an exam-type setting, Learners should have 1 hour to answer each question.
- The answers for the questions can be drawn directly from the Seminar Presentation and the accompanying Notes for Educator.

- **Assessment Questions**

- *Question 1*

It is recognized internationally that MPAs need supportive legal frameworks to be effective in advancing marine biodiversity conservation. Many existing laws are outdated and need strengthening to reflect the latest science, management, and international law developments for MPAs. This seminar identified a number of preparatory tasks that are important to undertake as a basis for reviewing, advising on or drafting new MPA legislation that adequately supports modern MPA needs.

Write an essay on the main preparatory tasks important to undertake as a basis for conducting a review and providing advise on legal adequacy of existing MPA laws and areas for possible revision or new legislation. As part of this essay discuss guiding principles useful for defining the main conservation and management objectives that modern MPA legislation should incorporate.

- *Question 2*

As a general principle, MPA legislation should be linked to the overall protected areas legal framework and be guided by the nature of the sites to be protected, the strategy and objectives for declaring future sites, and what is feasible at the time. In this context, legislative approaches to MPAs vary and generally there are three options available: an umbrella law for MPA sites and the overall network, specific legislation for each area or group of areas, or some combination.

Prepare a memorandum for the Minister discussing these three options for an MPA legal framework, highlighting their strengths and application to different situations. You may include examples from case studies studied during this seminar or other experiences or research you have undertaken to illustrate the application of the different approaches.

- *Question 3*

MPA legislation should be supported by relevant national or sector policies and should contain clear provisions on objectives to guide decision making on establishment, management, control and monitoring of activities within particular sites or the network overall, and to serve as a tool for accountability.

Write an essay explaining the role of policy and the role of objectives in MPA legislation, distinguishing their different functions and purposes. Also, discuss possible sources of relevant policy in other documents that may provide relevant policy support for MPA legislation and international decisions that may provide guidance on objectives for MPA legislation. Finally, give examples of MPA network

objectives and site-specific objectives that could be incorporated into MPA legislation.

○ *Question 4*

Institutional arrangements for marine and coastal protected areas exist at different levels and have different functions and powers. MPA legal frameworks should be clear about the main institutions involved and the powers and responsibilities at each level to ensure effective implementation and accountability. You have been tasked by the Minister to elaborate different options for institutional arrangements for the high policy level and for MPA management levels.

Prepare a memorandum elaborating the main configurations that may be considered for policy level institutions, indicating the core functions and responsibilities at this level, including coordination and oversight. Then, elaborate institutional options and needs at management levels, for the network overall and individual sites. Include discussion of options for centralized and decentralized systems with on-the ground MPA management and possible roles for non-state actors (e.g., indigenous or local communities, NGOs, the business sector, and private owners of coastal property).

○ *Question 5*

To ensure that MPA sites proposed for establishment are given the most appropriate designation for conservation of their biodiversity values, the design and selection of proposed MPA sites should be guided by international criteria, best available science and technology, and certain core legal elements recognized as important to take into account in MPA legal frameworks.

Write an essay elaborating on international criteria for selection and design of sites proposed for establishment. Then, discuss other establishment considerations and what they mean in the context of MPAs, including issues of scale, building an MPA network with the full range of conservation objectives from highly protected areas to areas for sustainable use, interim protection, stakeholder participation and boundaries.

○ *Question 6*

A variety of tools for implementation of the objectives of MPAs should be authorized in modern MPA legislation. These range from regulations that require certain compliance measures to promoting voluntary compliance.

Write an essay discussing three main tools for implementation of MPA legislation: regulation, enforcement and surveillance, and promoting compliance. Discuss the approach of each, special requirements, distinguishing their differences, and key elements of each that need legal support.

○ *Question 7*

Marine biodiversity is declining due to a wide variety of stresses, particularly from overfishing, habitat loss, and climate change. While MPAs are a key tool for conserving marine biodiversity, MPAs alone will not achieve this goal. They need to

be managed in the context of their broader seascapes and taking into account their connectivity needs using the best available science and technology. Four area-based management tools already are beginning to be applied to address connectivity conservation needs of MPAs. These are: ecosystem-based marine management, marine spatial planning, ocean zoning, and integrated coastal and marine resource management.

Write an essay describing these four area-based management tools to support connectivity conservation needs of MPAs, distinguishing their different approaches, key principles, and legal elements important to support their implementation.