

§ 6 Multi-level and cross-sectoral: marine conservation law

I. Backgrounds

1) The need for marine conservation law

- the seas perform vital ecological functions, especially
 - as a habitat for numerous species, many of which serve as a food source, in various kinds of ecosystems
 - to regulate the climate (CO₂ absorption, heat reservoir)
 - to produce a significant share of Earth's oxygen
- but they are threatened in many ways by human activities
 - depletion of marine resources
 - pollution by land-based sources, vessels, waste dumping
 - underwater mining
 - noise pollution
 - global warming
 - microplastic pollution (→ an urgent issue in Indonesia)
- countering these threats requires a dedicated, specialised body of law that
 - introduces the appropriate principles
 - sets out the necessary regulations
 - provides the necessary instruments

2) The need for a combination of global, geo-regional and national marine conservation law

- under the law of the sea the regulatory power of the individual state by virtue of its sovereignty only extends to its 12-mile territorial sea and to a limited extent to its 200-mile exclusive economic zone but not to the use of the high seas
 - cf. art. 86 et seq. UN Convention on the Law of the Sea [UNCLOS]
- consequently, marine conservation can only succeed through international cooperation
 - therefore, its law largely consists of international regulation
- international regulation is primarily necessary at the global level (→ global international treaties) but also at the geo-regional level (geo-regional treaties, European Union law), since the problems and problem-solving capabilities can vary across different seas or parts of seas

3) The cross-sectoral character of marine conservation law

- marine conservation law addresses a range of threats and affects a wide range of human activities and therefore encompasses regulation in a range of fields of law
 - environmental law, climate protection law, waste law, mining law, fisheries law, land law, planning law etc.
- it is not regulated in a few comprehensive treaties and laws but rather a multitude of specific legal instruments

II. International law on marine conservation

1) United Nations Convention on the Law of the Seas (UNCLOS) of 1982

a) Art. 192 et seq. UNCLOS

- sovereign right of states to exploit their natural resources (art. 193) but general obligation to protect & preserve the marine environment (art. 192)
- obligation to take measures to prevent, reduce and control marine pollution (art. 194)
- obligation of global and regional cooperation and to provide technical assistance for the protection of the marine environment (art. 197 et seq., 202 et seq.)
- states shall establish international rules and national legislation to prevent, reduce and control marine pollution (art. 207 et seq.)

b) Art. 116 et seq. UNCLOS

- right to fish but obligation of states to adapt measures for the conservation and management of the living resources of the high seas

2) Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) of 2023

(in force since January 2026)

- a comprehensive treaty on the protection of the marine environment at the high seas
- rules on activities with respect to *marine genetic resources* (Part II, art. 9 et seq.)
 - including rules for the fair and equitable sharing of benefits (art. 14)
 - including the obligation to *ensure that traditional knowledge of indigenous peoples and local communities is only accessed with their free, prior and informed consent* or approval and involvement (art. 13)
- envisages the establishment of area-based management tools (Part III, art. 22 et seq.)
 - including rules on *marine protected areas*
- obligation to conduct *environmental impact assessments* of activities under the states' jurisdiction or control (e.g. by its national companies or vessels) (Part IV, art. 27 et seq.)
- rules on capacity-building and the transfer of marine technology (Part V, art. 40 et seq.)
 - will support particularly the Global South
- institutional arrangements (Part VI, art. 47 et seq.)
 - Conference of the Parties (COP), Scientific and Technical Body, Secretariat, Clearing-House Mechanism (primarily an open-access platform)
- funding mechanism (Part VII, art. 52)

3) Other global international treaties

a) Convention on Biological Diversity (Biodiversity Convention) of 1992

- protects ecosystems and habitats in the states' 12-mile territorial seas and 200-mile exclusive economic zones
- obliges to cooperate also on high seas

b) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) of 1972 with London Protocol of 1996

- since the London Protocol almost total ban of dumping waste into the sea
 - except only for possibly acceptable wastes on a so-called "reverse list"

c) International Convention for the Prevention of Pollution from Ships (MARPOL) of 1973

- with Protocols of 1978 and 1997

4) Geo-regional international treaties

- on marine conservation in individual oceans or seas, or parts thereof

III. European Union law on marine conservation

1) The European Union's Marine Strategy Framework Directive (MSFD) of 2008 (Directive 2008/56)

- an attempt to achieve a "good environmental status" of all European marine waters by 2020 and to sustainably protect the resource base for marine-related activities
- a contribution to the ambition of the European Green Deal (→ § 2 I.4)
- categorises the marine waters around Europe into marine regions
 - which the member states can divide into subdivisions

- obliges member states to develop coordinated *national marine strategies* to achieve and maintain the "good environmental status" (art. 5, 8 et seq.), which
 - set objectives and targets
 - include *regular marine environment assessments*
 - establish *monitoring programs*
 - include programs of measures, including the creation of *marine protected areas*
- the "**good environmental status**" is defined as "the environmental status of marine waters where these provide an ecologically diverse and dynamic ocean and seas that are clean, healthy and productive" (art. 3 no. 5); this is outlined by *11 descriptors* (in Annex I):
 - 1. biodiversity is maintained
 - 2. non-indigenous species do not adversely alter ecosystems
 - 3. commercial fish and shellfish populations are healthy
 - 4. food webs ensure long-term abundance and reproduction of species
 - 5. reduced eutrophication
 - 6. sea floor integrity
 - 7. no detrimental permanent alteration of hydrographical conditions
 - 8. no pollution caused by concentrations of contaminants
 - 9. safe levels of contaminants in seafood
 - 10. no harm caused by marine litter
 - 11. no harm of the ecosystem by underwater noise or other introduced energy
- the Directive brought some progress but failed to achieve the "good environmental status" in many European marine regions
 - because of sluggish implementation in the member states and a lack of measurable, legally binding commitments and clear rules
 - presently, the Directive is under review

2) Other European legislation

- the Marine Strategy Framework Directive is supported by other EU legislation, which, however, is not formally linked to it:
- the Water Framework Directive (WFD) of 2000 (Directive 2000/60) and other EU legislation on water resources law
- the Maritime Spatial Planning Directive of 2014 (Directive 2014/89)
- the Directive on Safety of Offshore Oil and Gas Operations (Directive 2013/30)
- see also for the *preservation of fish populations* the European legislation on fisheries law and the European Common Fisheries Policy (CFP)

IV. German law on marine conservation

- mainly federal legislation implementing the international treaties (also geo-regional treaties covering the North Atlantik, North Sea or Baltic Sea) or European Union law
- see in particular the Law on the Prohibition of the Dumping of Waste and Other Substances and Objects into the High Seas (High Seas Dumping Act) [Gesetz über das Verbot der Einbringung von Abfällen und anderen Stoffen und Gegenständen in die Hohe See (Hohe-See-Einbringungsgesetz)]
- see also the Ordinance on Environmentally Sound Conduct in Maritime Shipping (Maritime Environmental Conduct Ordinance) [Verordnung über das umweltgerechte Verhalten in der Seeschifffahrt (See-Umweltverhaltensverordnung)]
- the Federal Nature Conservation Act [Bundesnaturschutzgesetz] also regulates marine nature conservation in the coastal waters and the exclusive economic zone (sect. 56 et seq.)
- see also special legislation on spatial planning (also on the sea), offshore installations and offshore wind farms