

“Integrated Marine Governance: Rethinking Legitimacy and Accountability”

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1. Introduction

Marine ecosystems are threatened by several economic activities, such as fisheries, commercial shipping, oil- and gas production, offshore windmill parks, tourism etceteras. The specifics of these marine activities (varying from fixed static place bound structures to temporary dynamic activities in a three dimensional space), combined with the fragmented regulatory systems of governance of sectoral marine activities hinders to find solutions for several environmental problems, such as the overexploitation of non-renewable resources, the destruction of ecosystems and the exceeding of the waste repository system.

An important initiative to enhance the optimal development of all sea-related activities in a sustainable way is the EU Integrated Maritime Policy (IMP). IMP demands novel institutional arrangements, the inclusion of new actors, levels and steering mechanisms. More general, forms of integrated marine governance will raise new questions about the participation of actors, the power relations between these actors, and the legitimacy and accountability of marine governance arrangements.

In section 2 the theoretical framework of this paper is presented. Central theoretical concepts are policy arrangements, political modernization and governance. In section 3, I discuss the dynamic of sectoral marine policy arrangements, such as fisheries, shipping, and nature conservation. This paper aims to understand the development of integrated marine governance and the possibilities to realize an integrated marine policy. After defining integrated marine governance I describe the integrated maritime policy initiative of the EU in (section 4.1). According to the Commission an “integrated governance framework for maritime affairs requires horizontal planning tools that cut across sea-related sectoral policies and support joined up policy making” (EC, COM(2007) 575 final: 5). In subsection 4.2 I discuss the three tools for integrated marine policy-making: a European network for maritime surveillance, data and information, and Maritime Spatial Planning. In section 4.3, integrated marine governance is analyzed as the development of transnational reflexive marine policy arrangements. The leading question of this sub-section is why and how to coordinate and to integrate which activities in which marine spaces? Answers to this question are formulated by analyzing the power dynamics of these arrangements. An important challenge for the years to come is to understand the different institutional dynamics of the sectoral marine policy domains, and to design accountable and legitimate integrated region-oriented marine governance arrangements. Therefore in section 5, new relations and forms of legitimacy and accountability in reflexive marine policy arrangements are discussed. The paper ends with conclusions.

2. Policy Arrangements and Governance

To understand the dynamics of marine governance, the conflicts between sectoral activities and policies on different levels and the way processes of structural transformation influence policymaking on the one hand and interactions in maritime practices on the other I make use of the policy arrangement approach.

The policy arrangement approach has been developed to understand the dynamics of policies, especially processes of change and stability. Central theoretical concepts are policy arrangements and political modernization. The central line of argument of this approach is that the on-going *institutionalization* of *policy arrangements* is the result of both the day-to-day interactions of actors in policy practices and long-term processes of social and political

change (*political modernisation*). The interplay of policy practices (agency) and processes of political modernization (structure) results in specific policy arrangements and new forms of governance as an expression of changing relations between state, market and civil society.

Institutionalisation refers to the phenomenon whereby patterns arise in people's actions; fluid behaviour gradually solidifies into structures, and those structures in their turn structure behaviour. When applied to policy processes, institutionalisation refers to the fact that relatively stable definitions of problems and approaches to solutions gradually arise in and around policy, more or less fixed patterns of divisions of tasks and interaction develop between actors, policy processes develop in accordance with more or less fixed rules and so on. The concept, therefore, incorporates the development of structures, stabilisation and change: institutions, no matter how stable they appear at first sight, are subject to continual change and adjustment, deconstruction and reconstruction (Van Tatenhove & Leroy, 2000; Arts *et.al.*, 2006)

2.1 Policy Arrangements

Policy arrangements are defined as “the temporary stabilisation of the content and the organisation of a particular policy domain” (Van Tatenhove *et.al* 2000; Liefferink 2006). The structure of a policy arrangement can be analysed along four dimensions, the first three referring to the organisational, the last to the substantial, aspects of policy (Arts *et al.* 2000; Liefferink 2006):

- The actors and their coalitions involved in the policy domain.
- The division of resources between these actors, leading to differences in power and influence, where power refers to the mobilisation and deployment of the available resources, and influence to who determines policy outcomes and how.
- The rules of the game currently in operation, in terms of formal procedures of decision making and implementation as well as informal rules and “routines” of interaction within institutions.
- The current policy discourses, where discourses entail the views and narratives of the actors involved (norms, values, definitions of problems and approaches to solutions).

These four dimensions of a policy arrangement are inextricably interwoven. This means that any change in one of the dimensions induces change on the other dimensions.

2.2 Political Modernization and Governance.

The concept of political modernization tries to capture those structural transformations in political domains in contemporary societies, which have or may have consequences for day-to-day practices. I define political modernization as the shifting relationships between the state, the market and civil society in political domains of societies – within countries and beyond – as a manifestation of the ‘second stage of modernity’¹, implying new conceptions and structures of governance (Arts and Van Tatenhove 2006: 29). The concept of political modernization expresses the shifting locus and focus of politics. This has resulted in shifting relationships between state, civil society and market due to ‘horizontal’ as well as ‘vertical’ processes. In general, policy and politics are no longer framed within the nation state model alone, but within a diversity of society-centred forms of governance.

According to different authors “changes have taken place in the forms and mechanisms of governance, the location of governance, governing capacities and styles of governance” (Van Kersbergen and Van Waarden, 2004). Traditionally, governance was

associated with government, i.e. the formal institutions of the state and its monopoly of legitimate coercive power (Stoker, 1998). Horizontal and vertical processes have resulted in an erosion of the traditional bases of power of the nation states. The former refers to the blurring of the distinctions between state, market and civil society at the national levels, the latter to a relocation of politics below and beyond the nation state.

Governing increasingly is a shared responsibility of state, market and civil society actors. Besides these ‘horizontal shifts’, the nation-state model has also lost its exclusiveness under the influence of ‘vertical shifts’, like globalization, Europeanization and regionalization. From the perspective of the nation-state, one can witness a vertical upward trend to the international and supranational level (EU, WTO and NAFTA) and a downward trend to the sub national level (Marks and Hooghe, 1996; Hooghe and Marks, 2001; Held and McGrew, 2002; Mak and Van Tatenhove, 2006).

These processes of political modernisation reflect different structures and patterns of governance (Kohler-Koch et al., 1999; Héritier, 2001, 2002; Pierre, 2000; Jordan, 2001; Hajer and Wagenaar, 2003; Van Kersbergen and Van Waarden, 2004; Kjaer, 2004). Some refer to this as a ‘shift from government to governance’ or as ‘governance without government’ (Rosenau, 2000; Van Kersbergen and Van Waarden, 2004). In general, we are witnessing a shift in the locus and focus of governance (Van Leeuwen and Van Tatenhove, 2010). The shift in the locus refers to the emergence of new coalitions of actors and new levels. Interest groups, pressure groups, firms, citizens and other non-state actors enter the arena of policy making. The participation and influence of players from the market and civil society – e.g. epistemic communities, NGOs or business - has recently increased, at all levels of policy-making (Haas, 1992; Kooiman, 1993; Princen and Finger, 1994; Rhodes, 1997). The increase of actors in processes of governance goes hand in hand with the increasingly multi-level character of politics and policy making. Besides a shift in the locus of policy and politics, one can witness a shift in the focus of policy and politics, referring to shifts in the rules of the game and the steering mechanisms developed.

The shifts in governance, especially the new relations between state, civil society and market actors in processes of policymaking and decision-making, will affect legitimacy and accountability relations. After discussing the changes in sectoral marine governance (section 3) and the development of integrated marine governance (section 4), I discuss the concepts of legitimacy and accountability in section 5. Here I will formulate questions and issues of legitimacy and accountability which are relevant to understand the new governance setting of integrated marine governance and the tensions with the developments in the sectoral marine activities.

3. Sectoral Marine Policy Arrangements

Sectoral maritime activities, such as fisheries, shipping, oil- and gas production, windmill parks, tourism and nature conservation have different policy dynamics and developed separately as policy domains on different governmental levels. For example, fisheries policy is formulated on the EU level and implemented on the national level, the designation and construction of windmill parks and the development of coastal and maritime tourism are mainly a national and sub-national responsibility, while decisions about commercial shipping are taken on the international and national levelⁱⁱ. This has resulted in the co-existence of traditional and innovative policy arrangements within the sectoral domains. The difference

between these sectoral policy domains will affect the development of integrated marine governance.

3.1 Fisheries

The fisheries policy domain consists of variety of policy arrangements, such as supranational transnational, neo-corporatist, statist policy arrangements and more liberal-pluralist arrangements.

The EU has exclusive competence for the formulation of *fisheries policy*, while the implementation of fisheries policies is left to the individual member states. At the EU level, the Common Fisheries Policy (CFP) is developed in a mixture of intergovernmental and transnational policy arrangements (see Van Hoof and Van Tatenhove 2009: 729). Intergovernmental as the CFP accommodates to solve the conflicting interests of the member states; for example the sharing of resources. Supranational as the core competence lies with the institutions of the European Union. Yet concurrently trans-national in its diversity of committees and European agencies in which co-operation between the sub-national, national and supra-national levels is shaped where policy ideas can be deliberated upon, policy proposals can be discussed and policy implementation can be monitored. Examples of the latter are ACFA, the Advisory Committee on Fisheries and Aquaculture, created as early as 1971 to have stakeholder input into the implementation of the rules of the CFP and the formulation of analyses and joint positions. An example of a statist policy arrangement is the regulatory EU Fisheries Control Agency. The primary role of this Agency is to organise coordination and cooperation between national control and inspection activities so that the rules of the EU Common Fisheries Policy (CFP) are respected and applied effectivelyⁱⁱⁱ. The Agency is designed to enhance the cooperation between the Member States and third countries and to ensure that legislation is implemented in a systematic, uniform and effective way.

At member state level, fisheries management shows a combination of neo-corporatist and liberal-pluralist characteristics. In neo-corporatist arrangements, functional interest organisations, such as fisheries organisations, possess a representational monopoly, co-operating between each other and with the state based on apolitical-economic consensus at the top. The participating organisations are granted privileged influence on public policy-making in exchange for disciplining their constituency (the fishermen) and restraining their demand (Van Hoof and Van Tatenhove 2009: 727). Each country has its own specific corporatist signature. The corporatist signature varies from formal structures (such as the Consultative Board in Denmark and the Management Council (Reguleringsradet) in Norway), to more traditional structures (the prud'homies in France and the Spanish cofradias), and informal structure such as the several overleggen (an informal mix of discussions and negotiations) in the Netherlands (Van Hoof et al., 2005).

Examples of more liberal-pluralist and participatory policy arrangements are co-management systems and the Regional Advisory Councils (RACs). *Co-management* involves sharing of fisheries management decisions between centralized government agencies and user groups. Raakjaer Nielsen and Vedsmand define co-management as “a dynamic partnership, using the capacities and interests of user groups, complemented by the ability of the particular fisheries administration to provide enabling legislation and administrative assistance” (1999: 21). Co-management arrangement involves delegation of management responsibilities, where user groups take responsibility for management tasks. Co-managements systems are

institutional and organizational arrangements (rights and rules), which define the cooperation between the particular fisheries administration and its related user groups, and they vary from government-based management to forms of self-governance. An example of a co-management system are the Dutch “Biesheuvel groups”. Primary task of these groups is to manage and to control the quota of their members. Within these groups, fishermen pool their individual quota and their days-at-sea. They remain the owners of their catching rights and days-at-sea, but within the group they can buy, sell or lease quotas and days-at-sea, when they face a shortage or a surplus. The creation of *Regional Advisory Councils (RACs)* was one of the pillars of the 2002 reform of the CFP. The EC was seeking, through this reform, to create the conditions for responsible, well-informed and transparent dialogue with all those actively concerned by the common fisheries policy. The RACs are (regional) arrangements to allow stakeholder participation (representatives of the fisheries sector, environmental organizations, scientists and consumers), in the decision-making process. They are advisory bodies and their opinion is requested on all proposals made by the EC.

3.2 Commercial shipping

Shipping policies are formulated on the international level. In this intergovernmental arrangement, the International Maritime Organization (IMO) and port and flag states play key roles. International conventions regulate for example the environmental effects of shipping. Examples are the 1973 International Convention for the Prevention of Pollution from Ships and the 1979 Protocol to this Convention (MARPOL 73/78) and the United Nations Conventions on the Law of the Sea (UNCLOS). Besides environmental rules, these conventions define the rights and obligations of flag states, port and coastal states (Van Leeuwen 2010). Also, in shipping there is a co-existence of traditional and innovative arrangements. The International Maritime Organization – with a central role of flag and port states, and a growing influence of the EU – has regulated shipping traditionally. New initiatives are taking place outside IMO and the EU. Examples are the Clean Ship Concept developed by the environmental NGO the North Sea Foundation to trigger debates about the future of shipping and The Green Award^{iv} (Van Leeuwen 2010). The Green Award is awarded to individual ships that meet the Green Award requirements. Currently over 200 ships carry the Award and ports in some countries (the Netherlands, Belgium, Lithuania, Spain, Portugal, South Africa and New Zealand) have started to give a differentiated port fee to ships that carry a Green Award.

3.3 Nature Conservation

Nature conservation is an important issue for a sustainable management of seas and oceans. One of the instruments to realize sustainable management of marine ecosystems is the designation of Marine Protected Areas (MPA). MPAs have been defined by IUCN, the World Conservation Union, as: “Any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment” (IUCN 1988). Marine Protected Areas are specified areas in which there is partial or total protection from fishing and other potentially damaging impacts (e.g. dredging, drilling). Objectives are stock maintenance or recovery habitat restoration, protection of non-target species, and development of recreational and educational activities and promotion of scientific understanding. There are many examples of the planning and implementation of individual

MPAs (Gleason et al. 2010). An important instrument for the designation of MPAs in the EU is the designation of Special Protection Areas (SPA) under the Bird Directive and the designation of Special Areas of Conservation under the Habitat Directive. Implementation takes place in different policy arrangements: the formal compliance in a supranational arrangement, while the practical compliance –the designation of areas – in national arrangements. There are also regional initiatives, such as the OSPAR initiative to establish a network of MPAs in the North Sea by 2010 (Van Haastrecht and Toonen, forthcoming). Also, according to Gleason et.al. (2010), it is more beneficial to move beyond individual MPAs to more carefully designed networks of ecologically-connected MPAs at larger scales to sustain and to restore marine populations (Sala et al. 2000; Gleason et al. 2010). Networks of well-designed and well-managed MPAs may provide more resilience than individual MPAs, will protect better a range of habitats and will sustain more marine populations across a larger geographic region (WWF Germany 2009; Gleason et al. 2010). The selection of a network of MPAs depends on what to protect (what Good Environmental Status has to be realized), and how to deal with the different activities in that maritime region.

4. Integrated Marine Governance

In this section I will develop an integrated marine governance framework. Section 4.1, gives a definition of integrated marine governance (IMG), followed by a description of the EU integrated maritime policy and the three horizontal and cross-cutting tools to realize this integrated governance framework: a European network for maritime surveillance, data and information, and Maritime Spatial Planning (section 4.2). In section 4.3, integrated marine governance is analyzed as the development of transnational reflexive marine policy arrangements. The leading questions of this sub-section are how to understand the institutionalization of integrated marine governance and how to coordinate and to integrate which activities in which marine spaces? By analyzing the power dynamics and how to deal with the different policy dynamics of the sectoral marine activities and the institutional settings an outline is given of possible reflexive marine policy arrangements to deal with environmental, economic, spatial and nature conservation problems in an integrated way.

4.1 Marine Governance^v: a definition

Marine Governance is the “sharing of policy making competencies in a system of negotiation between nested governmental institutions at several levels (international, (supra) national, sub-national) on the one hand and state actors, market parties and civil society organizations of different maritime activities on the other in order to govern activities at sea and their consequences” (Van Tatenhove 2008; Van Leeuwen and Van Tatenhove 2010).

More specifically, marine governance is about:

- Processes of marine policy making, which take place in different policy arrangements. These marine policy arrangements consists of different coalitions which mobilize discourses and resources, and define rules of the game (on different levels);
- The way stakeholders mobilize discourses and how these discourses influence the definition of problems, which solutions are legitimate and which rules of the game are negotiable;
- The power relations between these actors and how power balances between the actors in a coalition influence participation (inclusion and exclusion);

- The institutional setting (or system of rules of the game) in which maritime policies take place.

4.2 EU Integrated Maritime Policy

The development of integrated maritime policy has taken central stage on Europe's policy and political agendas. With regard to the marine environment, the European Commission's Strategic Objectives for 2005-2009 state that:

“In view of the environmental and economic value of the oceans and the seas, there is a particular need for an all-embracing maritime policy aimed at developing a thriving maritime economy and the full potential of sea-based activity in an environmentally sustainable manner” (EC, COM(2005) 12 final cited in De Santo 2010).

This commitment resulted in the Green paper^{vi} in June 2006 and after a consultation round of one year with stakeholders in the Blue paper^{vii}, in October 2007. In the Blue paper, the Commission proposes an Integrated Maritime Policy for the European Union, “based on the clear recognition that all matters relating to Europe's oceans and seas are interlinked, and that sea-related policies must be developed in a joined-up way if we are to reap the desired results” (EC 2007: 2). According to the Commission, a more collaborative and integrated approach is needed to deal on the one hand with the “increasing competition for marine space and the cumulative impact of human activities on marine ecosystems” (EC 2007: 4) and on the other hand, to overcome the inefficiencies, incoherencies and conflicts of use caused by fragmented decision-making in maritime affairs.

Leading discourses for the development of IMG are integration and eco-system based management. Its starting point lies in a search for integration over maritime sectors, such as shipping, fisheries, energy production, tourism etceteras and the integration of sectoral policy domains. Besides this integration discourse characteristic for IMG is also an eco-system based management. As we shall see, these discourses influence the coalitions, rules of the game and the resources of integrated marine governance arrangements.

According to the Blue book, an Integrated Maritime Policy requires a governance framework that applies the integrated approach at every level as well as horizontal and cross-cutting policy tools, such as maritime spatial planning, an integrated approach to data collection processing and delivery, and the coordination of surveillance and monitoring activities and processes (EC SEC(2007)1278). As previous institutional settings have been optimised for classical, non-integrated policies, these policies demand novel institutional arrangements.

4.2.1 A European network for maritime surveillance

Maritime surveillance is needed to ensure safe use of the seas and in securing Europe's maritime borders. The improvement and optimisation of maritime surveillance activities, and interoperability at the EU level, are important for Europe to meet the challenges and threats relating to safety of navigation, marine pollution, law enforcement, and overall security. Member States carry out surveillance activities (concerning fisheries, the environment, policing of the seas, immigration), but most of the activities and threats that they address are transnational in nature. The Commission therefore advocates the need for a higher degree of coordination on maritime surveillance through deeper cooperation within and among the Members States' coastguards and other appropriate agencies. One of the suggested policy

instruments is an integrated network of vessel tracking and e-navigation systems for European coastal waters and the high seas, including satellite monitoring and long range identification and tracking (LTIR).

In the 'Blue paper', the Commission formulates the following actions:

- Promote improved cooperation between Member States' Coastguards and appropriate agencies
- Take steps towards a more interoperable surveillance system to bring together existing monitoring and tracking systems used for maritime safety and security, protection of the marine environment, fisheries control, control of external borders and other law enforcement activities.

In the Communication from the Commission, "Towards the integration of maritime surveillance" (EC, COM(2009)538 final and SEC(2009) 1341 final)^{viii}, the following guiding principles for the development of a common information sharing environment for the EU maritime domain are formulated: (1) An approach interlinking all user communities; (2) Building a technical framework for interoperability and future integration; (3) Information exchange between civilian and military authorities, and (4) Specific legal provisions

4.2.2. Data and Information

The availability and access to a wide range of natural and human activity data on the oceans is the basis for strategic decision-making on maritime policy. Data are collected and stored all over Europe for a wide variety of purposes. The establishment of an appropriate marine data and information structure is of utmost importance. "This data should be compiled in a comprehensive and compatible system, and made accessible as a tool for better governance, expansion of value-added services and sustainable maritime development" (EC COM(2007) 575 final). The Commission wants to take steps towards a European Marine Observation and Data Network (EMODNET), and promote the multi-dimensional mapping of Member States' waters, in order to improve access to high quality data.

4.2.3 Marine Spatial Planning

Marine Spatial Planning (MSP) is "a process of analyzing and allocating parts of the three-dimensional spaces to specific uses, to achieve ecological, economic and social objectives that are usually specified through the political process; the MSP process usually results in a comprehensive plan or vision for a marine region" (Ehler and Douvere 2007; Douvere 2008). Specific for MSP is the balancing and integration of sectoral activities^{ix} in a three dimensional marine space; (a) on the surface (fisheries, shipping, dredging, oil- and gas platforms, windmill parks and recreation); (b) in the water column (fisheries (pelagic gear), dredging, recreation and oil- and gas production; (c) on the seabed (pipelines, fisheries (benthic gear), dredging, oil- and gas winning).

In November 2008, the European Commission published its Roadmap for Maritime Spatial Planning (MSP)^x. MSP is a key instrument for IMP. "It helps public authorities and stakeholders to coordinate their action and optimise the use of marine space to benefit economic development and the marine environment" (EC, 2008: 2). The rationale for developing MSP is that the increased activity on Europe's seas leads to competition between sectoral interests, such as shipping and maritime transport, offshore energy, ports development, fisheries and aquaculture and environmental concerns.

“MSP is a tool for improved decision-making. It provides a framework for arbitrating between the competing human activities and managing their impact in the marine environment. Its objective is to balance sectoral interests and achieve sustainable use of marine resources in line with the EU Sustainable Development Strategy. MSP should be based on the specificities of individual marine regions or sub-regions. It is a process that consists of data collection, stakeholder consultation and the participatory development of a plan, the subsequent stages of implementation, enforcement, evaluation and revision” (EC, 2008: 2-3).

Implementation of MSP is the responsibility of the Member States. In its roadmap, the Commission formulated the following benefits for MSP. (1) Joint work on MSP provides a framework for coordinating sectoral approaches. It increases the effectiveness and coherence of EU and national policies, reducing economic costs of non-coordination. (2) Maritime activities have a cross-border dimension. The role of the EU is to promote a common approach among Member States that take account of cross-border impacts. (3) For the Internal market, MSP provides a basis for simplified permit systems and for reducing the costs of regulatory and administrative procedures, providing a transparent and reliable planning framework. (4) Work on MSP on EU level provides an appropriate forum for Member States to discuss and develop a holistic approach to the management of maritime activities in line with ecosystem requirements.^{xi}

4.3 Integrated Marine Governance: the development of reflexive marine policy arrangements

Integrated Marine Governance is more than the sum of marine spatial planning, improving and optimising maritime surveillance activities and data collection and storage at EU level. What is needed are forms of collaborative planning (Healey, 1998; Innes and Booher, 2003: 36) or reflexive policy making which can deal with novel problems, which cannot be dealt with in the institutions of the sectoral maritime policy domains. To deal with environmental, spatial, and economic problems in an integrated way for specific marine regions require reflexive policy arrangements for experimental policy design, which are tailored to a particular problem in a particular context (Healey, 1998; Arts and Van Tatenhove, 2004; Grin 2010).

Reflexive policy arrangements consist of coalitions of public and private actors who have the ability to change the rules of the game (rule-altering politics) and to mobilise resources in processes of policy making, in order to alter the foundations of traditional arrangements based on rule-directed politics^{xii}. Translated to reflexive marine policy arrangements, these arrangements consist of coalitions of governmental representatives of several levels and representatives of sectoral maritime activities (fishing, shipping, renewable and non-renewable energy-production, nature conservation, tourism), who have the ability to change the rules of the game and to mobilize resources for a specific (sub-) regional marine space. The definition of problems and the formulation of problems is an active social process of the construction of social meanings through discourse and language, and in which social practices are shaped and given legitimacy (cf. Healey, 1998: 1543). A reflexive marine policy arrangement is an example of a transnational policy arrangement. Characteristic for transnational policy arrangements is that they consist of flexible coalitions of governmental and non-governmental stakeholders, global – local linkages, diffusion of power among the stakeholders, rules based on the political legitimacy of stakeholders and by integrative (consensual) discourses (Arts, 2000).

This general positioning of (transnational) reflexive marine policy arrangements is not yet useful to design legitimate and accountable governance arrangements for specific marine regions. As we have seen the institutionalization of policy arrangements is the result of the interplay of processes of political modernization and interactions in policy practices. In general, institutionalization is the process of production and reproduction of policy arrangements, by which rules of the game and power architecture are formed and defended. On the hand, governmental actors, market parties and NGOs from several sectoral maritime domains in interaction produce marine policy arrangements, resulting in accepted rules, coalitions and discourses ('structuration'). On the other hand, once formed marine policy arrangements and the rules and power architecture, which go along with them, constrain the interactions of the agents involved ('stabilization').

How to understand the institutionalization of reflexive marine policy arrangements? How do structural processes and structural properties (rules, resources and discourses) constrain and enable agencies within these arrangements? How do actors in these arrangements act upon the structural properties and opportunities of policy arrangements, in other words, how do actors mobilise resources, make use of rules, frame discourses and build coalitions?

Starting on the level of reflexive marine policy arrangements the leading question is why and how to coordinate and to integrate which activities in which marine region? This question refers to the power to define the boundaries of the marine region, the power to define the problems for this region, to select the relevant actors (participation), and to define the rules of the game and the leading discourses. To understand the power dynamics of reflexive marine policy arrangements I make a distinction between three chronological stages (of policy making). These stages are: (1) establishing the power architecture of an arrangement; (2) the negotiations within arrangements; and (3) the way that outcomes of negotiations in these arrangements are translated into formal decision-making circuits (Van Tatenhove et al., 2010).

Ad 1) Establishing the power architecture defines the borders of a marine region, the organizational rules and the rules through which participants are included and excluded. This involves dispositional power^{xiii}, the positioning of actors vis-à-vis each other based on an unequal distribution of resources. Setting the borders of a marine region could be based on the specific physical, biological and ecological characteristic of that region. Starting point for selecting marine regions could be the division of marine regions and sub-regions as defined in the Marine Strategy Directive (EC, COM(2005) 505 final), the environmental pillar of the EU Integrated Maritime Policy^{xiv}. However, the size of marine regions cannot be based on biological and ecological factors alone, but also depends on the interests and problem definition of the involved actors, the conflicts between different sectoral activities, and the institutional setting. This could result in a redefinition of the boundaries of a marine region. What are the problems, caused by what activities and who has the power to define those problems? Defining the environmental, economic, nature conservation and spatial problems for a marine region is a joint operation of the actors involved in which for example the European Commission could take the lead. As a possible initiator of integrated marine governance arrangements, the Commission than plays a key role in designing the architecture by selecting participants and formulating the initial definition of the problem. Stakeholder participation will increase the legitimacy of these processes of balancing and integrating

sectoral activities. As we shall see in section 5, different forms of legitimacy are needed when integrated marine plans are legally binding.

Ad 2) Power within the reflexive policy governance arrangement is about the capacity of actors to mobilize resources and to receive their desired outcomes, more specific to find solutions for user-user and user-environment conflicts^{xv}. The relational power of the selected participants is played out within the specific dispositional power structure. The power struggle within reflexive policy arrangements is influenced by the sectoral activities involved, the formal rules and regulations of the multi-level institutional setting and the involved policy domains.

To start with the multi-level institutional setting, rules and regulations of the international, regional, supranational, national and sub-national level come together in reflexive marine policy arrangements. First integrated marine policy is influenced by formal *international rules*, for example UNCLOS (United Nations Convention on the Law of the Sea)^{xvi}, the Convention on Biological Diversity^{xvii} and IMO (International Maritime Organisation). Second, these arrangements are influenced by *regional conventions*, such as OSPAR, the North Sea Conferences, The Helsinki Commission (HELCOM)^{xviii}, The Mediterranean Action Plan^{xix}, and the Bucharest Convention of 1992 to protect the Black Sea marine environment. Third, policy making in these arrangements is influenced by the *sectoral marine policies and other EU regulations*, such as the Marine Strategy Framework Directive (MSFD)^{xx}, The Water Framework Directive (WFD)^{xxi}, The Habitats Directive and the Birds Directive (NATURA 2000)^{xxii}, The Strategic Environment Assessment Directive (SEA)^{xxiii}, and the Common Fisheries Policy (CFP) and the EU ICZM Recommendation^{xxiv}. Depending on the problem definition and the involved maritime activities in a specific region, realizing integrated marine governance initiatives has to deal with the different policy dynamics of the diversity of policy arrangements of the different sectoral policy domains.

Ad 3) Power and decision making is about the way in which the results of negotiations within reflexive marine policy arrangements are translated into the formal decisions making and implementation circuits of the EU, IMO and/or member states. Central is the connection between the negotiations results between coalitions in the reflexive marine policy arrangement and the institutional context (formal processes of decision-making). This is what we called institutional embedding (Edelenbos et al., 2009: 130), which can appear (simultaneously) in three forms: *administrative–bureaucratic embedding* (embedding of the outcomes of negotiations within the bureaucratic apparatus of the EU and Member States departments or government agencies); *executive embedding* (the correspondence between the outcome of the negotiations and the executive side of decision making, European Council, Council of ministers and by ministers or state secretaries in the Member states); *representative–political embedding* (the correspondence between the outcomes of the negotiations and the democratic procedure for decision making by the people's representatives within the European Parliament and the national parliaments).

5. Legitimacy and Accountability

5.1 Legitimacy

The multiplication of levels, rules, and actors in practices of governance point to the empirical and theoretical need to find new modes of legitimacy production (Scharpf 2004). In general,

legitimacy refers to the acceptance of the political system, the outcome of policy processes and the quality of policy making. More specifically, legitimacy refers to the notion or perception that the actions and products of a certain entity are wishes for and in accordance with a socially constructed set of norms, values, principles and definitions.

Four forms of legitimacy can be distinguished: *input legitimacy*, *throughput or process legitimacy*, *output legitimacy* and *feedback legitimacy* (Scharpf 1999, 2004; Engelen and Sie Dhian Ho 2004; Van Tatenhove 2008a; Edelenbos et al. 2009). **Input-legitimacy** emphasizes ‘government by the people’. Political choices are legitimate if they reflect the ‘will of the people’ – that is, if they can be derived from the authentic preferences of the members of a community. Input-oriented legitimacy thus refers to the reflection of the interests of involved participants in the formulation of politics and policy in a give polity. The emphasis is on the support of citizens and other stakeholders for politicians and rules of the game, participation of those affected by decisions and representation of interests and preferences. **Output legitimacy** emphasizes ‘government for the people’: political choices are legitimate if and because they effectively promote the common welfare of the constituency in question (Scharpf 1999: 6). “‘Government for the people’ derives legitimacy from its capacity to solve problems requiring collective solutions because they could not be solved through individual action, through market exchanges, or through voluntary cooperation in civil society” (Scharpf 1999: 11). Institutions of power wielding can be legitimate in the eyes of citizens either because they ‘work’, ‘perform’, are able to ‘deliver goods’ (output legitimacy), or because they result from decisions made according to procedures that include some minimal forms of accountability, such as the rule of law, democracy, or political or economic competition (input legitimacy) (Van Kersbergen and Van Waarden 2004). The democratic dilemma has gone beyond weighing input (government by the people) and output (government for the people) legitimacy and has come to include considerations of throughput and feedback legitimacy. **Throughput legitimacy** refers to the concern for the quality of the structure and procedure of a policy-making *process* in terms of legality, transparency, fairness, responsiveness, deliberation, openness and efficiency (Risse and Kleine 2007). Throughput legitimacy asks how a decision is taken, who is responsible for them and which issues are at stake. **Feedback legitimacy** refers to the way politicians and administrators give account to stakeholders about the outcome of policy processes and the quality of the feedback relations. Approval or rejection of the outcomes of political and policy interventions will be new input for the policy making or decision-making process.

To understand the legitimacy of reflexive marine policy arrangements in more detail it is important to understand both the actions of involved actors in policy practices and the institutional embedding in which policy and politics takes place (Edelenbos et.al. 2009). March and Olson distinguish between two logics of action: the logic of consequentiality and the logic of appropriateness (March and Olson 1989, 2004). The **logic of consequentiality** refers to the rational choices made by individuals. Individuals who act on the basis of the logic of consequentiality or anticipatory action ask their selves the following questions, what are my alternatives, what are my values, and what are the consequences of my alternatives for my values? They choose the alternative that has the best-expected consequences for their individual or collective objectives. To act in conformity with rules that constrain conduct is then based on rational calculation and contracts, and is motivated by incentives and personal advantage. According to March and Olson (2004) human action is not only about pursuing a self-interest, but is driven by rules of appropriate or exemplary behavior, organized into

institutions. Institutions give order to social relations and reduce flexibility and variability in behavior. The **logic of appropriateness** is a perspective on how human action is to be interpreted. Action, policy making included, is seen as driven by rules of appropriate or exemplary behavior, organized into institutions. The appropriateness of rules includes both cognitive and normative components (March and Olsen 1995: 30-31). Rules are followed because they are seen as natural, rightful, expected, and legitimate. Actors seek to fulfill the obligations encapsulated in a role, an identity, a membership in a political community or group, and the ethos, practices and expectations of its institutions. Embedded in a social collectivity, they do what they see as appropriate for themselves in a specific type of situation (March and Olson 2004).

To create order in policy analyses Hemerijck (2003) formulated four core questions about policy. These questions were based on the logics of actions and two criteria of democratic legitimacy. Inspired by Hemerijck (2003) I have formulated eight central questions of legitimacy, based on the four forms of legitimacy and the two logics of action as formulated by March and Olson (see table 1). These questions make it possible to describe and to analyze democratic and political legitimacy of marine policy arrangements, both on the level of the choices the individual actors make in marine policy arrangements and on the level of the institutional embedding of these marine policy arrangements.

	Input legitimacy	Throughput legitimacy	Output legitimacy	Feedback legitimacy
Logic of consequentiality	Are all the relevant participants been selected to formulate solutions for the problems?	Does the process design of marine governance arrangements result in solutions for the problems?	Are the results of the reflexive marine policy arrangements in accordance with the desired outcomes of the actors involved?	Is there consensus and clearness about the political choices among the representatives of the different sectoral marine activities?
Logic of appropriateness	Do forms of cooperation connect to the interests, expectations, norms and values of the participants?	Does the process design fit with the institutional rules of the game?	Do public and private actors show their decisiveness? Are the outcomes political and administrative feasible?	Are there enough institutional mechanisms to involve the right actors and to translate the results in formal decision circuits (institutional embedding)?

Table 1 Eight central questions of legitimacy for reflexive marine policy arrangements

5.2 Accountability

According to Van Kersbergen & Van Waarden (2004), governability (the capacity to solve urgent societal problems) and accountability have developed hand in hand with the process of state formation. To control the exercise of power, prevent its abuse and arbitrary application societies developed a system of checks and balances. Consequences in shifts of authority and within governance mechanisms might be that instruments for control of power may become less effective.

In Western democracies, the dominant public accountability relationships traditionally have been vertical and follow principal-agent relationships (Bovens, 2007b: 109). When there is a shift from traditional etatist governmental arrangements to transnational, society centred or multi-level forms of governance new forms of accountability are required because appropriate accountability regimes are still missing. Bovens defines accountability in a sociological sense as a social relation. Accountability is “a relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences” (Bovens, 2007a: 450). Figure 1 illustrates the elements contained within the concept of accountability.

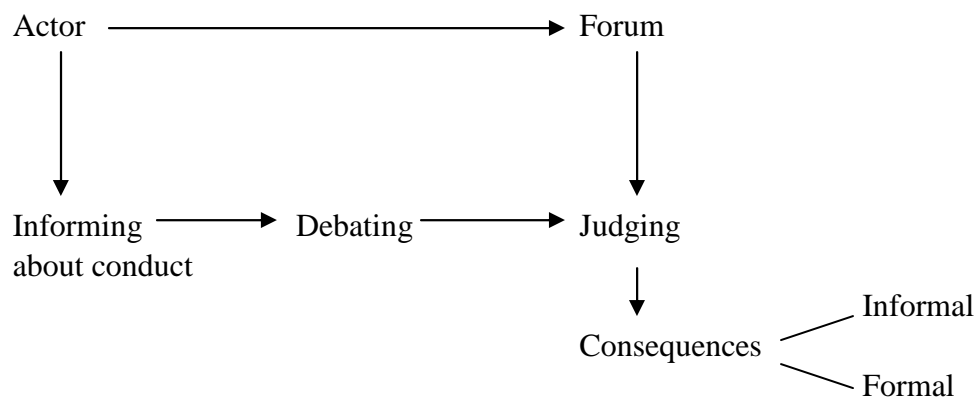


figure 1: elements within the concept of accountability (Bovens, 2007a: 454)

The relationship between the actor and the forum consists of at least three elements or stages: (1) the actor is obliged to inform the forum about his or her conduct, by providing various sorts of data about the performance of tasks, about outcomes or about procedures; (2) there needs to be a possibility for the forum to interrogate the actor and to question the adequacy of the information or the legitimacy of the conduct; (3) the forum may pass judgement on the conduct of the actor (Bovens, 2007a: 451).

Bovens (2007a and 2007b) classifies accountability relations on the basis of four questions:

(1) To whom is the account to be rendered: The problem of many eyes.

Public organizations and officials operating in a constitutional democracy find themselves confronted with different types of forums and hence with different kinds of accountability^{xxv}.

(2) Who is the Actor: the problem of many hands?

Also, forums can be confronted with multiple potential actors. Policies pass through many hands before they are actually put into effect. New members of committees, departments, and administrative bodies conform to traditions, rules and existing practices or make new rules. Sometimes they leave the organization before the rules and ideas are put into practice. In this common organizational practice, the question is who should be singled out for accountability, blame and punishment?

(3) Which aspect of the conduct: financial, procedural, product?

In accountability relationships, the actor is obliged to explain and provide justification for his conduct. The many aspects of an actors' conduct and the relation to the forum are reflected in

forms of accountability and the dominant aspect of the conduct. For example in the case of legal accountability, the legality of the actor's conduct will be the dominant aspect.

(4) Why would an actor render account to a forum?

This is the question about the nature of the obligation: vertical, diagonal and horizontal accountability.

In general, accountability is important to “provide a democratic means to monitor and control government conduct, for preventing the development of concentrations of power, and to enhance the learning capacity and effectiveness of public administration” (Bovens, 2007a: 462). And indirectly accountability can help to ensure that the legitimacy of governance remains intact or is increased.

5.3 Rethinking legitimacy and accountability

The development and implementation of an integrated marine governance framework for the seas and oceans of the European Union will pose new questions of legitimacy and accountability.

In a government model there are clear forms of political accountability (voters delegate their sovereignty to members of Parliament, who delegate the majority of their authorities to a cabinet of ministers), hierarchical accountability (Ministerial responsibility) and vertical accountability (the executive organisation is accountable to the minister or to Parliament). With the shift from government to governance political, hierarchical and vertical accountability relations are under serious pressure, giving way to more diversified and pluralistic sets of accountability relationships and new forms of legitimacy. In reflexive marine policy arrangements there is increased stakeholder participation, in which governmental actors in negotiation with representatives of the sectoral marine activities define the problems and solutions for specific marine regions. Within these arrangements more and more relations of social accountability (more direct and explicit accountability relations between public agencies and NGOs and representatives of sectoral activities) and horizontal accountability will emerge.

These new accountability relations between public and private actors in reflexive marine policy arrangements will also result in new forms of legitimacy. For example, newly to be developed Integrated Marine Governance Councils (MSPC) based on horizontal accountability relations could enhance the input and throughput legitimacy of integrated marine governance, while the integration of different sectoral activities with the designation of MPAs could improve the output legitimacy. Table 1 provides a framework to discuss the changes in forms of legitimacy when innovative marine policy arrangements are developed, but also provides a guideline for the design of integrated marine governance arrangements. To illustrate this framework I take the (imaginary) example of designing an Integrated Marine Governance Council to find a solution for environmental, spatial, economic, and biodiversity problems at the North Sea. On the level of negotiations in the Council: which sectoral representatives need to be selected to formulate the problem definitions and solutions, who selects these representative (for example the European Commission) and is the participatory process design suitable for generating and selecting solutions and do these solutions meet the interest and wishes of the sectoral activities. On the level of the institutional embedding of the Integrated Marine Governance Council, relevant questions are: how are the results of the negotiations translated in formal decision-making? How will that affect the decisions and

policymaking processes within the sectoral policy domains and are the policy results accepted by the involved governments and other stakeholders?

With the 8 questions of legitimacy and the elements within the concept of accountability it is possible to understand the changing power dynamic of integrated marine governance in more detail and it gives more insight in the governance capacity of coalitions of actors within reflexive marine policy arrangements given the complex institutional setting in which the outcomes of negotiations have to be decided upon or implemented.

6. Conclusions

In this paper I discussed the development of Integrated Marine Governance and questions of legitimacy and accountability that are related to the shifts on governance in the marine policy domains.

Several countries in the world, among them Australia, United States, the United Kingdom, Belgium, Denmark, Poland, the Netherlands, and the EU have taken initiatives to develop integrated maritime policy or have initiated experiences with Marine Spatial Planning. In this paper integrated marine governance is theoretical positioned as a reflexive marine policy arrangement. The structural properties of policy arrangements (rules, resources and discourses) are the result of the interplay of interactions and negotiations between actors on the one hand and processes of structural change on the other. The multiplication of actors, levels, rules and resources in these reflexive arrangements ask for a rethinking of new modes of legitimacy and accountability. Policy formulation and implementation in these arrangements will result in social and horizontal accountability relations, in which the principal-agents relation is replaced by a setting in which agents render account to themselves in negotiations, but at the same time have to deal with complex relations with several institutional settings. Especially the design of accountable and legitimate reflexive marine governance arrangements to find solutions for the pressing problems oceans and seas are facing is an important challenges for the years to come.

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NOTES

ⁱ Inspired by Beck (2000) we make a distinction between the first and the second stage of modernity. The first phase of modernity is closely linked to the project of modernity itself. The dominant discourse is the ‘manageable society’. This is reflected in the centrality of the nation-state and the regulatory state. The second phase of modernity is closely linked to what some call post-modernity, and others late or reflexive modernity.

ⁱⁱ For this paper it is not possible to discuss all sectoral marine activities. I will concentrate on fisheries, commercial shipping and nature conservation. In the presentation I will also include tourism, oil and gas production and offshore windmill parks.

ⁱⁱⁱ <http://cfca.europa.eu/pages/home/home.htm>

^{iv} The Green Award Foundation has been initiated by Rotterdam Port and the Dutch Ministry of Transport, Public Works and Water Management, but currently has a committee with members from industry associations, ports associations, an environmental NGO and a classification society (Van Leeuwen, 2010: 100).

^v I use marine instead of maritime. Maritime refers to activities (fishing, shipping etc.), while marine refers to ecosystems and the sea. I use the concept of marine, in which both activities as ecosystems are included.

^{vi} EC, COM(2006) 275 final: “Towards a future Maritime Policy for the Union: A European vision for the Oceans and the Seas”

^{vii} EC, COM(2007) 575 final.

^{viii} According to the Commission the following challenges are currently being faced with regard to development of a common information sharing environment for the EU maritime domain: diverse user and operator communities; diverse legal frameworks; cross border threats and specific legal provisions (EC, COM(2009) 538 final).

^{ix} These sectoral activities range from fixed static place bound structures (e.g. oil rigs and wind farms) to temporary dynamic activities (e.g. surface and submarine navigation and fisheries).

^x EC, COM(2008) 791 final.

^{xi} “The sea is a complex ecosystem that cuts across administrative borders. For balanced long-term management, the whole ecosystem and its determining factors must be taken into account” (EC, 2008: 3).

^{xii} Beck (1994) makes a distinction between ‘rule-directed’ and ‘rule-altering politics’. Rule directed politics functions within the rule system of the nation state. Rule altering politics concerns changing the rules of the game. In reflexive political modernization rule-directed and rule-altering politics mingle, overlapping and interfering with each other.

^{xiii} Arts and Van Tatenhove (2004) developed a three-layered model for analysing power, consisting of relational, dispositional and structural power. Relational power is the capability of actors to achieve outcomes through interactions. Dispositional power shapes an agency’s capacity to act. Organizational rules and an unequal distribution of resources define and position actors *vis-à-vis* each other on the level of policy arrangements. These positions co-determine what agents may achieve in terms of relational power. The unequal distribution of resources, how they are applied the positioning of actors in an arrangement and the nature of negotiations in the face of external constraints are all factors that are the result of structural power. Structural power refers to the way in which macro-societal structures shape the nature and conduct of agents.

^{xiv} The Maritime Strategy Directive makes a distinction in the following marine regions and sub-regions: (1) The Baltic Sea; (2) the North-East Atlantic (the Greater North Sea; Celtic Seas, the Bay of Biscay and the Iberian Coast, Atlantic Ocean, the marine water covered by the sovereignty or jurisdiction of Portugal surrounding the Azores and Madeira, and of Spain, surrounding the Canary Islands) and (3) the Mediterranean (Western Mediterranean Sea, Adriatic Sea, Ionian Sea and the Aegean-Levantine Sea).

^{xv} User-user conflicts are conflicts between competing sectoral claims for space. Examples are conflicts between fishing and shipping; between fishing and the construction of windmill parks, and between oil- and gas production and fishing or shipping. User – environment conflicts refer to all those conflicts between economic maritime activities and marine ecosystems.

^{xvi} Adopted in 1982, entered into force in 1994. The European Community and all EU Member States are party to UNCLOS. Relevant UNCLOS rules are the right and interests of flag states, coastal states and port states; the division of seas and oceans into maritime zones and the principle of freedom of navigation.

^{xvii} For an extensive analysis of the international legal framework for especially maritime spatial planning, see Maes (2008). Maes analyses the rights and duties towards exploitation and protection of the marine environment under the jurisdiction of coastal states as reflected in two important global conventions, the United Nations Convention on the LAW of the Sea and the Convention on Biological Diversity. Both Conventions provide the main legal framework for marine spatial planning that has to be taken into account in planning at the regional and the national level.

^{xviii} HELCOM protects the marine environment of the Baltic Sea since 1974.

^{xix} The Mediterranean Action Plan is adopted in 1975, under the UN Environment Programme. The MAP is to be implemented through the Barcelona Convention. The Convention's recently adopted ICZM Protocol (signed in Madrid, 21.01.2008) requires contracting parties to establish a common framework for integrated management of the Mediterranean coastal zones (EC, COM(2008) 791 final).

^{xx} MSPD is the environmental pillar of the IMP and requires Member States to achieve a good marine environmental status by 2020, to apply an ecosystem approach, and to ensure that pressure from human activities is compatible with good environmental status (GES). MS are required to cooperate where they share a marine region or sub-region and use existing regional structures for coordination purposes, including with third countries.

^{xxi} WFD requires Member States to publish River Basin Management Plans (RBMP). MS have established water bodies that must cooperate to ensure WFD compliance with regard to transboundary river basin districts.

^{xxii} Natura 2000 requires MS to identify and protect areas for the conservation of species or habitats they host. The designation of coastal and marine special areas of conservation is ongoing.

^{xxiii} SEA requires an environmental assessment of certain plans and programmes, consultation provisions (including cross-border) assessment of alternatives, and measures to prevent and/or mitigate adverse effects.

^{xxiv} This recommendation (2002/413/EC, OJ L148) sets out common principles (including coherence of spatial planning across the land-sea boundary) and calls MS to develop ICZM strategies. It encourages MS to cooperate with neighbouring third countries.

^{xxv} Political accountability (elected representatives, political parties, voters, media); legal accountability (courts); administrative accountability (auditors, inspectors and controllers); professional accountability (professional peers) and social accountability (interest groups, charities and other stakeholders).

Re-building trust in government. Through Implementation of the United Nations Convention against Corruption. Recognizing the usefulness of the Convention in re-building public trust, the United Nations Department of Economic and Social Affairs (UN DESA), through the Division for Public Administration and Development Management (DPADM), organized an Ad Hoc Expert Group Meeting on Ethics, Integrity and Accountability in the Public Sector: Rebuilding Trust in Government through the implementation of the UN Convention. [18] context of rethinking how marine resource governance explained that in Norway, collaboration between univer- " using open innovation " can assist governments cities and vaccine producing marine biotechnology com- facing mounting pressure to "do something on SDG panies has radically reduced the incidence of disease in 14"™. Toolkit [32] launched in 2018, makes a start in bringing together experts to share lessons learned in developing an Marine Protected Areas (MPAs) integrated, collaborative approach to ocean and coastal One methodological aspect in marine conservation efforts management. that deserves more attention is the set-up of effective participation from a wide range of interest groups to The SDG target 14.5 which. Doing accountability: a discourse analysis of research ethics committee letters. *Sociology of Health & Illness*, Vol. 31, Issue. 2, p. 246. The legitimacy of private transnational governance: experts and the transnational market for force. *Socio-Economic Review*, Vol. 8, Issue. 1, p. 157. After defining integrated marine governance I describe the integrated maritime policy initiative of the EU in (section 4.1). According to the Commission an "integrated governance framework for maritime affairs requires horizontal planning tools that cut across sea-related sectoral policies and support joined up policy making" (EC, COM(2007) 575 final: 5). In subsection 4.2 I discuss the three tools for integrated marine policy-making: a European network for maritime surveillance, data and information, and Maritime Spatial Planning. Therefore in section 5, new relations and forms of legitimacy and accountability in reflexive marine policy arrangements are discussed. The paper ends with conclusions.