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# The EU and Marine Environmental Policy: A Leader in Protecting the Marine Environment

**Angela Carpenter** *University of Leeds*

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## Abstract

The European Commission (2006) introduced a Green Paper on a future Maritime Policy for the Union (COM (2006) 275 final), identifying the need for EU policies on sustainable development (SD) and management of the oceans to preserve and protection the marine environment and ecosystems, and develop a thriving maritime economy. Those policies would have to take account the global nature of the oceans, the leadership role of the EU for its regional seas, and its role in wider international governance of the oceans. This paper examines the development of the EU's Integrated Maritime Policy, a vision for the seas and oceans, in which it seeks a leading role in environmental protection of the marine environment. It considers how developments in EU maritime policy over the last decade have strengthened protection of the marine environment, regionally and globally, through the introduction of standards which go beyond what is required by international conventions, resulting in those conventions being amended to meet those higher EU standards, and considers the example of the introduction of double hulls for oil tankers. The paper concludes that the EU can and does play a leadership role through its maritime policies, both internally and externally, and across the economic, social and environmental and temporal dimensions of SD.

## Keywords

EU maritime policy, marine environment, marine pollution, sustainable development, international conventions

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In its Green Paper "Towards a Future Maritime Policy for the EU" (hereinafter Green Paper), the European Commission (EC, 2006) highlighted the special significance of the seas and oceans to Europe and its citizens. Two thirds of the EU's[1] borders are coastal, while its maritime spaces are larger than its land area (EC, 2006, p. 3). The EU has around 89,000 km of coastline bounded by 22 Member States (MS) and a large number of islands (see Figure 1) (EC Research Information Centre, 2009). However, if MS overseas territories are included (for example the Portuguese territories of Madeira and the Azores), the coastline of Europe is 136,106 km long (Eurostat, 2009, p. 4).The EU therefore has significant geographical coverage of the seas and oceans regionally and through the overseas territories of MS, offering it the potential to extend its internal policies beyond national jurisdiction (Suárez de Vivero, 2007, p. 413).

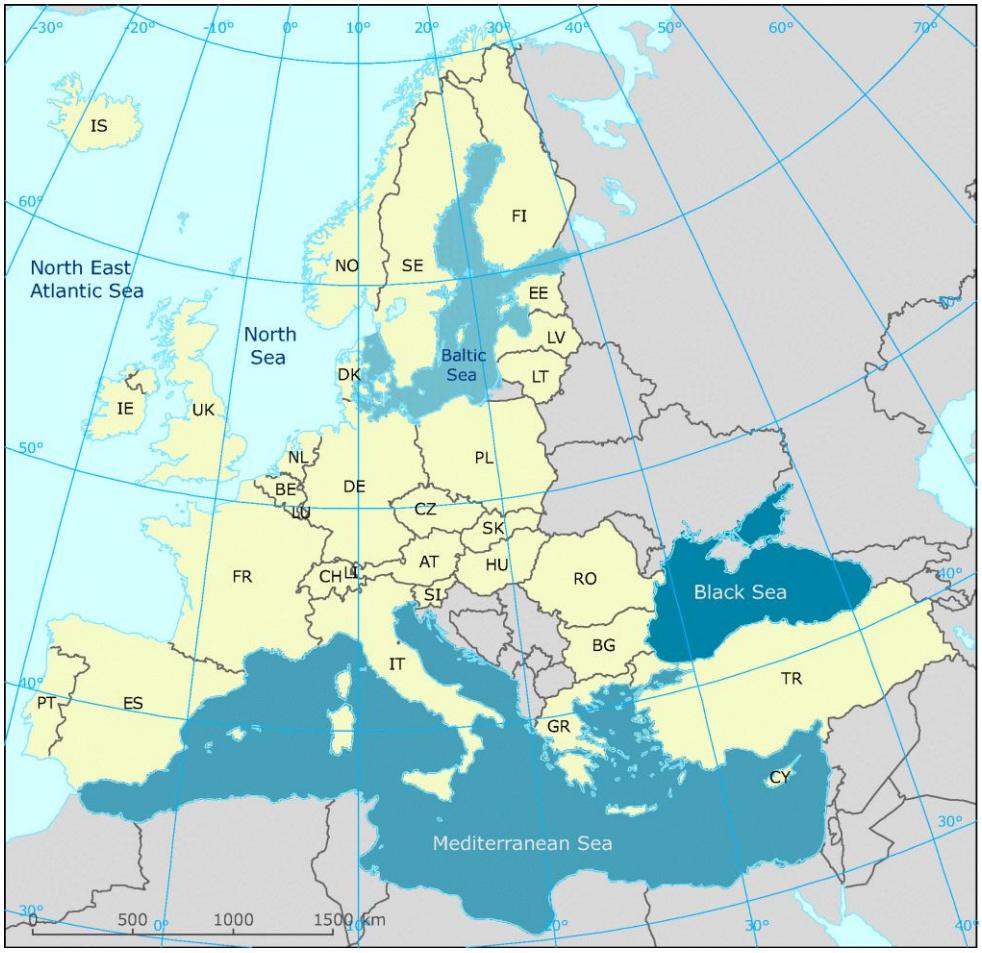
The EU's geographical make-up in relation to the "political entities coinciding around its coasts" is complex, with divisions under different bodies and treaties, and for different policy actions including fisheries management, ecological management and marine policy (Suárez de Vivero et al., 2009, pp. 629-670).

The EC set out the need for a "thriving maritime economy [which should be developed] in an environmentally sustainable manner" (2006, p. 5), moving away from a focus on policy measures linked to specific environmental problems, to become an actor carrying the "sustainable development (SD) flag" internationally (Lightfoot and Burchell, 2004, p. 337). The EU role was set out in a strategy document which noted that SD offered the EU a positive long-term vision for a prosperous and just society, and a cleaner, safer, healthier environment (EC, 2001, p. 2), discussed in the next section, and integrated an

[1] This article refers to the EU (European Union) throughout, that acronym being used even where European Community might be more accurate. The acronym EC refers to the European Commission.

environmental dimension into the EU's economic and social policy objectives to produce an EU concept of SD (Lightfoot and Burchell, 2004, p. 339).

Figure 1: EU's Regional Seas




Source: European Environment Agency - Data for Sea Regions.

A prosperous EU marine economy is generated by many diverse uses of the marine environment and its resources including: fisheries and aquaculture; renewable and non-renewable energy; coastal tourism and passenger cruises; and the transport sector (EC, 2006, pp. 6-9), with the EU's shipping and port industries generating around 20 billion EUR per annum (pp. 6-7), and marine tourism worth around 72 billion EUR in 2004 (p. 7). The EC Directorate-General for Maritime Affairs and Fisheries indicates that there are economic assets worth an estimated 500–1000 billion EUR within 500 metres of EU coasts, and around 3.5 trillion EUR (35 per cent) of total GDP of coastal states is generated within 50 kilometres of the coast (2009, p. 3). Its maritime regions are therefore highly significant to EU economic prosperity which may be one reason why it has sought to introduce more stringent standards that can reduce economic costs and generate positive incentives domestically, resulting in adoption of some of the world's strictest and most ambitious environmental regulations (Keleman and Vogel, 2010, pp. 431-432).

The EU's marine environment is also complex in terms of the political make-up of the various states, bodies and agencies which govern different aspects of its use, Henrik Ringbom noting that the EU has been described as a "hybrid conglomeration situated somewhere between a state and an intergovernmental organization" and this, he considers, is reflected in the EU's external relations (2008, p. 56). Such a hybrid of supranational and international forms of governance is the result of post-war European nations moving away from nationalism and towards a Europe of pooled resources and common principles (Manners, 2002, p. 240), with policy actions being diffused from the EU to third parties through either unintentional or intentional mechanisms (pp. 244-245). Within this context the maritime sector faces particular challenges in the development of any legal relationship between community legislation and international conventions (Ringbom, 2008, p. 56). However, in meeting those challenges, and by setting strong environmental regulations which influence and ultimately strengthen international conventions, the EU has the opportunity to gain greater legitimacy "as an international power [that is] more than the sum of its parts" (Lightfoot and Burchell, 2004, p. 338).

This paper examines the development of an EU integrated marine policy over the last decade, arising from the Green Paper. It considers how the EU has developed marine environmental legislation which goes beyond the requirements of existing international legislation, resulting in changes to that international legislation to roll-out the standards set by the EU at a more global level.

## Development of an Integrated EU Approach to Marine Environmental Protection

José Manuel Barroso noted that for far too long the EU's maritime policies had been "developed in separate compartments" with no-one looking at the links between them or examining how they could be combined to reinforce each other (2005, p. 2). This statement came only a few years after the EU had developed a concept of SD, John Vogler and Hannes Stephan indicating the EU had already developed an "impressive array of internal legislation ... to cope with the effects of the success of economic integration in Europe", although those SD priorities continued to be tilted towards economic aspects, remaining "far from the centre of decision-making in the multi-lateral system" (2007, p. 393).

The lack of links identified by Barroso (2005) may be the result of that situation, the economic impacts of maritime policies being considered first, and environmental impacts only considered at a later date. The structure of the EU, with many Directorates-General responsible for different aspects of EU policy (Maritime Affairs and Fisheries, Environment, Mobility and Transport, and Energy etc.), and the responsibilities of the various institutions (Commission, Council, Parliament, etc.) also makes development of cross-cutting policies a far from simple process (see Carpenter, 2006, for example). Juan Luis Suárez de Vivero et al. also consider that achieving success in implementing its maritime policies required an EU maritime governance policy which harmonised the needs of political institutions with those of states and autonomous bodies, and for a maritime authority to execute policy that meets its economic, social and environmental objectives, concluding that a long-term systematic approach is required, taking account of both different scales of territorial division and interactions between political and other bodies managing those divisions (2009, p. 633). However, there is much debate on how

much power the EU has to influence maritime governance at a global level, Vogler and Stephan highlighting that although the EU and the EC have the power to set policy and introduce legislation to be implemented by all its MS, that power does not extend outside the EU, also noting that the EU has much lower status than its MS at the United Nations and its various agencies (2007, p. 390).

*Sustainable Development and the EU*

Barroso (2005) set out how the Green Paper was the first step towards an EU Integrated Maritime Policy (IMP), an EU vision for the seas and oceans which would realise the economic potential of Europe's marine environment, conserve biodiversity, and make use of the seas and oceans in a sustainable way. While acknowledging the environmental aspects of SD, this statement reinforces the suggestion that the EU's SD priorities are mainly tilted towards the economy (Vogler and Stephan, 2007, p. 393). However, the IMP may arguably be "among the most important ongoing policy processes in Europe" for the realisation of all facets of SD, by integrating scientific advice into policy making (Fritz, 2010, p. 1). This section will, therefore, examine the concept of SD, what it means, how it has changed over time, and its place in EU policy making.

The Brundtland Commission (1987) report on Our Common Future was widely acknowledged as the source of the definition of SD over many years, although Rodrigo Lozano notes that there were at least 70 different definitions of SD by 1991 (2008a, p. 1838). Biliana Cicin-Sain explains SD as being: economic development which improves the quality of life; environmentally appropriate development using natural resources in an environmentally sensitive manner; and equitable development where any benefits are distributed across society and generations (i.e. current actions should not harm future generations), and across international boundaries (1993, p. 16).

The definition of SD is rather vague according to John Robinson, meaning different things to different people and organisations, and reflecting political and philosophical positions rather than a scientific viewpoint (2004, pp. 373-374), while Becky Brown et al. (1987) identify the need to set sustainability in the context of the discipline being considered (1987, p. 713). Desta Mebratu also questions the concept of SD, noting that widening discourse since the 1970s had resulted in many different definitions and interpretations of the term (1998, p. 494), and concluding that the vagueness of the Brundtland Commission definition had resulted in a "diverse spectrum of definition and interpretation" and a "narrow framework of interpretation that does not capture the whole picture" (p. 518).

While there are a range of graphical representations of SD (Lozano, 2008a, pp. 1840-1843), they do not include the time dimension - that SD should not just considered the complex relationships between the economic, social and environmental aspects of sustainability, but should also take into account temporal (short-, long- and longer-term) aspects (Lozano, 2008a, pp. 1843-1844). He therefore proposes a new way of looking at sustainability which uses "holistic, continuous and interrelated phenomena amongst economic, environmental and social aspects" and recognises that every decision "has implications for all the aspects of today and in the future" (Lozano, 2008a, p. 1845).

While the debate on the concept of SD is ongoing, in relation to the EU's policy on SD, Vogler and Stephan identify that at its heart lies a vision which is quite different from

"that traditionally pursued by sovereign nation states" (2007, p. 390). This vision, which pursues multilateralism and sustainability through collective action, actively advances an EU model for regional integration. It is in line with the proposition of Lozano who emphasises the need for collaborative approaches to help build stronger and more sustainability-oriented organisations (2008b, p. 499) which are "composed of individuals and groups with interactions and mutual interdependencies amongst the individuals, groups and the organisation" (Lozano, 2008b, p. 508). It can be argued that the EU is an organisation, made up of individual MS, acting not as sovereign nations but within groups formed by representatives of those states. The organisation (EU) works with external stakeholders - other countries or international organisations such as the UN - to expand its sustainability visions and values and extend the remit of its regulations beyond its own borders.

The EC (2001) put forward a SD Strategy, adopted by the European Council that same year. The definition of SD contained in that document offers the EU "a long-term vision of a society that is more prosperous and more just, and which promises a cleaner, safer, healthier environment – a society which delivers a better quality of life for us, for our children, and for our grandchildren" (EC 2001, Section I, paragraph 6). The full definition considers the economic, social and environmental aspects and also the temporal aspect set out by Lozano (2008a, pp. 1843-1844) through the requirement that it delivers a better quality of life across the generations. That 2001 Strategy also noted that in order to achieve SD, a change was needed in the way policy is made at EU and MS level, taking into account the impacts of any policy development on other policy areas, and including estimates of economic, environmental and social impacts, both inside and outside the EU (Section II). Subsequently, the EC again placed SD at the heart of EU policy-making, noting that it is the overarching long term goal of the European Union (2005b, p. 4).

While a SD Strategy has been high on the EU agenda since the early 2000s, there was only limited attention paid to the marine environment, although individual MS were taking action to manage the multiple use of that environment for offshore wind energy, fishing, mineral extraction and other activities, taking both a spatial and temporal perspective (see Douvere and Ehler, 2009, pp. 77-78). The EU has, however, developed policy competencies in areas such as water quality, marine conservation, waste management, and conservation measures relating to fisheries (Vogler and Stephan, 2007, p. 394). There has also been expansion of international environmental policy and law towards the marine environment over several decades through measures such as the 1982 UN Convention on the Law of the Sea (UNCLOS), the 1992 "Agenda 21" (Chapter 17 dealing specifically with SD of the marine environment and its resources), and the 2002 World Summit on Sustainable Development (Douvere and Ehler, 2009, pp. 79-80), and the EU is signatory to more than 60 multilateral environmental agreements (Vogler and Stephan, 2007, p. 394)..

It can be argued, therefore, that the EU came fairly late to taking multilateral action, in line with the proposition of Vogler and Stephan (2007, p. 390), with the launch of the Green Paper in 2006 setting SD at the heart of the EU policy on the marine environment. It is that Green Paper which is considered in more detail below.

*The Green Paper on Maritime Policy*

In launching its Green Paper, the EC identified how fragmentation in policy making could lead to the adoption of contradictory measures with negative consequences for the marine environment and the various activities which take place within it (2006, p. 4). This description of fragmented management is also identified by Betty Queffelec et al. who identify Europe's maritime sector as being "arguably one of the greatest influences on coastal and marine biodiversity' but one that 'was managed in a fragmented manner" (2009, p. 871). However, they also note that it is an area which plays an essential role in the economy of Europe and, as such, they consider that an EU maritime policy, alongside the EU's policy on Integrated Coastal Zone Management (ICZM[2]), will be "critical, contemporary milestones towards the management of coastal and marine environments within the EU" (Queffelec et al., p. 876).

Considering the negative consequences mentioned above, one example of an activity which may have both positive and negative impacts is the development of offshore wind farms to generate energy. While providing employment during the manufacture, installation and maintenance of wind turbines, and potentially benefitting the economy by securing longer term energy generation, there is also the potential for negative impacts, for example a reduction in amenity value for tourists or residents living near offshore wind farms, impacting on the economy in the surrounding area and on quality of life of local residents; or for problems to arise from noise and vibration from turbines, impacts on bird populations, disturbance of marine mammals and fish stocks - while the electromagnetic fields around cables delivering electricity to shore may impact on a many species including migratory fish, mammals and crustaceans (Gill, 2005, pp. 607-608). This does not consider any benefits or dis-benefits or negative impacts of the production of the wind turbines away from the coastal regions where they are being used or end of life impacts when they are eventually removed and dismantled.

The development and implementation of a cohesive and comprehensive maritime strategy would, the Commission considered, allow the EU to both apply SD principles to the oceans and also lead to new ways of developing and implementing policies at both EU and national levels. In order to do so, the EC set out the necessity to "increase cooperation and to promote effective coordination and integration of ocean and sea-related policies at all levels" (2006, p. 5). The significance of the EU maritime policy also potentially extends outside its borders (if it were to be extended to include EU MS overseas territories), and so it can be viewed as "the beginning of a new era for the oceans within the paradigm of globalization" (Suárez de Vivero, 2007, p. 413).

The Green Paper and its associated background papers is a wide-ranging document covering: employment, training aspects of maritime and fishing industries; exclusive economic zones; underwater resources; maritime safety and security; and climate change, etc. The Green Paper formed the basis of a consultation (between June 2006 and June 2007) with stakeholders on how to strike a balance between all the varying elements of SD of the marine environment, and was broken down into a number of specific areas for consideration, each of which was described in detail followed by questions. In the conclusions from the consultation process, the EC (2007a) key findings included that stakeholders were in favour of an integrated approach and expected it to

[2] Recommendation of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe. Official Journal of the European Communities, OJ L 148/24 of 6 June 2002.

have a beneficial impact through integration of policies (EC, 2007a, p. 2), and agreement that benefits arise from the EU setting a good example. However, competitiveness was identified as an issue requiring a level playing field which might not exist if the EU regulated further than international bodies (EC, 2007a, pp. 4-5). The findings also confirmed an explicit link between competitiveness and sustainability (EC, 2007a, pp. 5-6), emphasising that the EU must seek to protect European competitiveness by trying to ensure consistency in actions taken by EU and international regimes through the pursuit of its maritime environmental objectives internationally (see Frank, 2007, p. 106). Promoting its policies for SD of the marine environment at a global level would emphasize the EU's commitment to taking a leadership role, and would meet the call by Non-Governmental Organisations that the EU should be a champion for SD (Lightfoot and Burchell, 2004, p. 337). While Veronica Frank concludes that the EU will "continue to pursue its maritime environmental objectives ... at the international level" (2007, p. 106), the issue of the EU's inferior status at the UN, together with a "disturbing mismatch between the aspirations and the demands of the EU and its relatively limited ability to deliver" (Vogler and Stephan, 2007, pp. 390-391), make it unclear how successful the European Community can be in pushing forward its objectives at an international level.

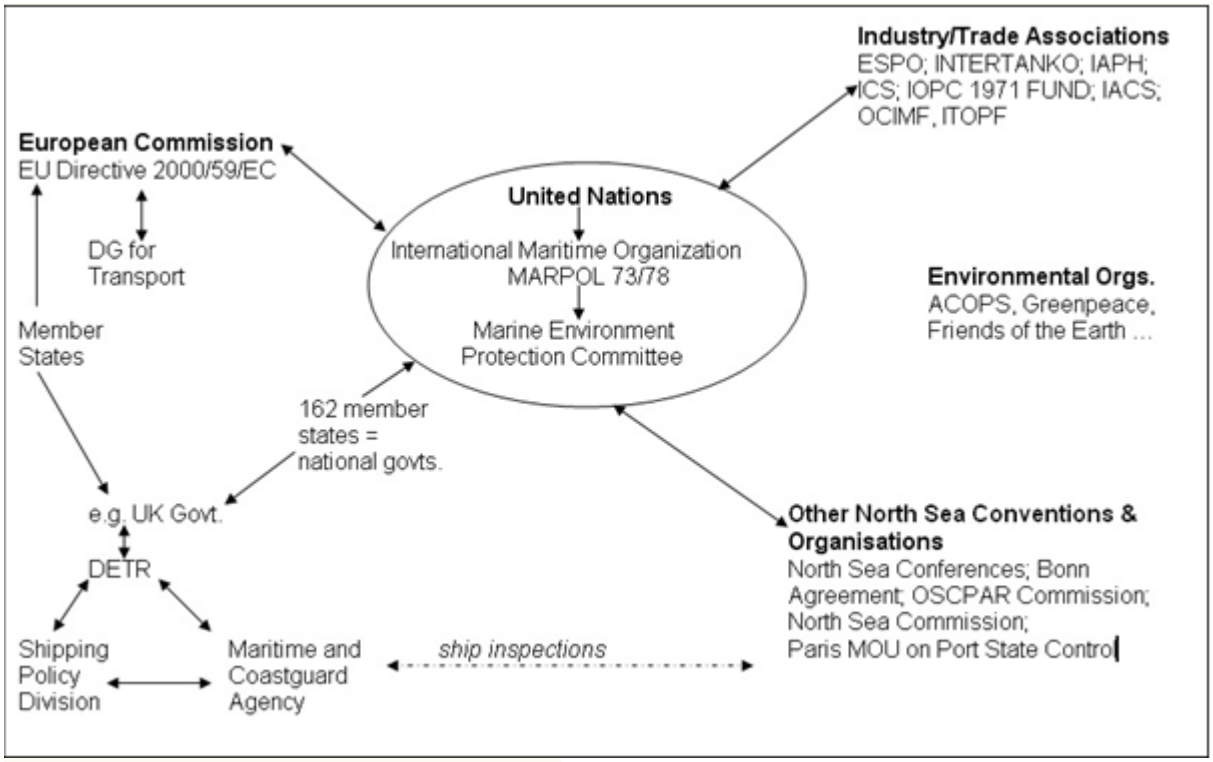
*EU Integrated Maritime Policy (IMP)*

Following the stakeholder consultations, the EC published its IMP, noting that it would "enhance Europe's capacity to face the challenges of globalisation and competitiveness, climate change, degradation of the marine environment, maritime safety and security, and energy security and sustainability" (2007b, p. 2). The IMP would change the way the Commission made policy and took decisions, and would develop and deliver a programme of work with a coherent policy framework across different sectors (EC, 2007b, p. 3).

A full summary of actions arising from the IMP was published in 2007 (EC, 2007c), with considerable numbers of interest groups and stakeholders having their own specific concerns and vested interests in respect of those actions. As an example of the complex inter-relationships between different interested parties, Angela Carpenter (2005) identified a range of bodies with either specific interest in, or responsibilities for, a single EU Directive (Directive 2000/59/EC[3]), and this is illustrated in Figure 2. That Directive is as an example of how EU legislation can go beyond what is required of an existing international convention (in this case the International Convention on the Prevention of Pollution from Ships 1973 and its Protocol of 1978 (MARPOL 73/78)[4] which requires all signatory states to provide facilities in ports into which ships can discharge a range of different types of waste.

[3] Directive 2000/59/EC of the European Parliament and Council of 27 November 2000 on port reception facilities for ship-generated wastes and cargo residues. Official Journal L332 of 28 December 2000, pp. 81-90. Official Journal of the European Communities.
[4] Further details available online from: http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx

Figure 2: Some Participants in North Sea Pollution Prevention




Source: Amended from Carpenter (2005, p. 22).

In the area of maritime transport, Athanasios Pallis identifies 37 different Maritime Interest Groups, many of which actively lobby the EC daily and meet Members of the European Parliament on a monthly basis (2007, p. 7), and also lobby the European Parliament, the Council Secretariat, and other EU bodies (2007, p. 11). Interest groups may be directly involved in the policy-making process relating to maritime transport at the EU, participating in stakeholder consultation exercises, and are also often represented at other bodies including the International Maritime Organization (IMO), the UN body with responsibility for nearly 30 international conventions[5] covering all aspects of maritime safety, prevention of marine pollution, and liability and compensation particularly in relation to damage caused by pollution.

Subsequent to the publication of the IMP and Action Plan, the EC has gone on to publish a number of other associated documents. The EC sets out guidelines towards developing best practice in IMP and stakeholder consultation, recognising that "optimised policy-making [cannot be achieved] unless the integrated approach permeates every level of government, all players involved, research and policy advice, and stakeholder activities" (2008, p. 4). The EC noted that, if IMP is to succeed, it cannot be just a European policy, but rather it needs to "build up the international community's capacity to master both existing and future maritime challenges" (2009a, p. 4) in areas such as international governance based on the rule of law and by acting alongside key international partners such as China, Japan, Brazil, India and the US through the development of bilateral

[5] A full list of International Maritime Organization Conventions is available at: http://www.imo.org/About/Conventions/ListOfConventions/Documents/2011%20Convention%20titles.doc

agreements (2009a, p. 10). Most recently, the European Parliament and Council (2011) published a Regulation to establish a programme of support for further development of the IMP, with 40 million EUR of funding available until the end of December 2013. One outcome of that funding will, hopefully, be a much clearer picture of how successful the EU has been in meeting the aims of the IMP, and in particular the development of cross-sectoral tools.

*Marine Environmental Protection through regional and international conventions*

With the introduction of its Green Paper, the EU has moved away from its traditional approach to the marine environment, a reliance on international conventions and regimes rather than developing its own rules and standards (Frank, 2007, p. 105). In drawing this conclusion, Frank identified that protecting the marine environment "played a secondary role within EC law ... with no common policy and no comprehensive regulations on oceans and seas" (2007, p. 79). Measures taken to protect fisheries and maritime transport were not designed to protect the marine environment, while the focus of EU water policy had always been on fresh water and coastal regions, rather than the broader marine environment. This is, in part, the result of the fragmented and complex nature of responsibility for different policy actions discussed previously, resulting in a sectoral rather than holistic approach to marine environmental protection (Frank, 2007, pp. 81-82)

As well as this fragmented approach at the EU level, Frank (2007) also identifies that there has been opposition at MS level to the EU becoming involved in issues perceived to be related to national interest, other than in the area of fisheries, with MS using the principles of subsidiarity and proportionality as a way of limiting the potential for community wide action on marine environmental issues (pp. 82-83). In the case of subsidiarity, only where MS are unable to take the appropriate action to deal with a problem such as pollution can the EU become involved. In the case of proportionality, where existing international legislation (including regional agreements) are adequate and suitable to deal with a problem, then it should not be necessary for the EU to take action. However, if action is necessary, it should be as simple as possible and should allow decisions to be taken at national level, up to and including MS introducing more stringent standards than those set out in EU legislation.

It must also be noted that a regional approach, based on co-operation between states in a specific region, has been used to deal with environmental protection of the EU's regional seas since the 1960s, with examples of regional agreements outlined in Table 1. The EU is a signatory to a number of International Conventions and Agreements (discussed earlier in this paper) including the MARPOL 73/78 Convention. Together with its MS, the EU is represented at, and is an active participant in a wide range of international maritime organisations including the IMO, the UN Food and Agriculture Organization, the International Whaling Commission and HELCOM.

Table 1: Examples of Conventions for cooperation in protecting the EU's regional seas

| Convention | Main elements, geographical coverage and signatories |
|---|---|
| **BARCOM -** Convention for the protection of the marine environment and coastal regions of the Mediterranean 1995 (previously 1976) | Aims to reduce pollution from ships, aircraft and land-based sources, to protect the environment of the Mediterranean and contribute towards its sustainable development. All EU states in the region are signatories, together with a number of North African countries. |
| **Bonn Agreement -** Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances, 1983 (previously 1969) | Enables contracting parties to assist each other in combat pollution from maritime disasters, from ships and from offshore installations. Requires regular aerial and satellite surveillance to detect pollution at sea. Covers the North Sea, all surrounding states being signatories, together with the European Community. |
| **Helsinki Convention -** Convention for the Protection of the Baltic Sea Area 1992 (previously 1974) | Seeks to improve the biological health and biodiversity of the marine ecosystem of the Baltic Sea and to protect it from all sources of pollution. All Baltic Sea states are signatories, as is the European Community. |
| **OSPAR Convention -** Convention for the protection of the marine environment of the North East Atlantic, 1992 | Aims to prevent or eliminate pollution from land and sea, and the prevention of any human activity which could adversely affect the marine environment. It requires regular assessment of the quality of the marine environment and measures to protect and conserve ecosystems and biodiversity. It covers the North East Atlantic and the North Sea and all North East Atlantic states, the European Community, Switzerland and Luxembourg are signatories. |

*The IMP and other EU Policy Sectors*

While it is clear that the IMP has sought to bring all aspects of management and protection of the EU's marine and coastal policy under one umbrella, a number of questions have been raised about how successful the IMP can be, and how it can be integrated with other EU policies. For example, Queffelec et al., while recognising the IMP as a critical milestone towards successful management of the EU's coastal and marine environments, also highlight a critical challenge for the EU, that of integrating the requirements of the IMP with those of the EU's Recommendation on ICZM (2009, p. 876).

Similarly, for the Common Fisheries Policy (CFP), Luc van Hoof and Jan van Tatenhove (2009) question whether/how that policy can relate to both the IMP and to the EU's

Marine Strategy Directive (2005)[6]. Examining co-existence between the three policies, they note that the CFP is "facing a general shift in locus from the national ... to the EU and regional level" (van Hoof and van Tatenhove, 2009, p. 731). They also question the need for a specific policy to manage fisheries, in light of conventions such as OSPAR, UNCLOS and HELCOM, alongside measures related to shipping at the IMO level and also Climate Change conventions. They do, however, reach a positive conclusion, suggesting that the IMP may achieve its aim of ending individual sectoral marine policies in favour of a single over-arching policy. This view of the CFP is supported by Maria Hadjimichael et al. who note that the EU was seeking to simplify its fisheries policy (under a reformed CFP), but emphasised how "significantly different models for fisheries management [had] developed in the northern and southern waters" of the EU due to geographical, physical, political, economic and social differences and also the size and type of vessels in the fishing fleet in those regions (2010, p. 796). As a result, they conclude that "a simplified regulatory framework with different methods of governance and [greater stakeholder involvement] ... are essential in a rapidly evolving sector such as fisheries" (Hadjimichael et al., 2010, p. 801).

The IMP, with its requirement for cross-sectoral consideration of policy, the use of a systematic approach which considers different regional scales, the integration of scientific evidence, and the involvement of stakeholders in the policy making process, would appear to offer the necessary elements for developing the CFP in the future. However, the debate on whether the IMP can successfully integrate many different policy areas to achieve a balance between environmental, economic and social dimensions of its seas and oceans is ongoing. At the moment, the success or otherwise of the IMP remains unclear according to Markus Salomon who welcomes the IMP in principle but questions how greater integration between policy areas can be achieved (2009, p. 364).

## Going beyond International Obligations - Examples of EU Actions

Frank notes that, while the EU has implemented its obligations at an international level, has acceded to international and regional agreements, and has participated as an individual or through its MS in decision making bodies, it has taken only marginal regulatory action to implement those international obligations relating to the marine environment (2007, p. 88).

However, this paper argues that the EU can change 'external' international regulatory measures through the implementation of 'internal' measures such as Regulations and Directives. For example, in respect of the MARPOL Convention, Carpenter (2011) indicates that the EU introduced measures to strengthen and support that convention in EU waters through the introduction of a Directive on port reception facilities in 2000 (Directive 2000/59/EC) which required ports to provide adequate reception facilities for vessels to discharge different types of waste while in port, removing any excuse for discharging wastes at sea (p. 74). As an example of the EU taking a more holistic approach to protection of the marine environment, the EC (2010) invited tenders to review the Directive while taking into account EU transport policy, maritime safety policy and protection of the marine environment from maritime transport (Section A. Context,

[6] Proposal for a Directive of the European Parliament and of the Council establishing a Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Directive). COM (2005) 505 final, Brussels, 24 October 2005.

problem definition (ii)). That review aimed to further strengthen the protection of the marine environment from vessel-source pollution, to achieve "zero-waste, zero-emissions" in maritime transport, one of the long-term objectives of a policy adopted in a communication on strategic goals and recommended actions for the EU's maritime transport policy until 2018 (EC, 2009b).

A further example of action taken by the EU to strengthen or expand on the requirements of International Conventions to which it is a party is examined below. It looks specifically at the EU response to the sinking of an oil tanker, at EU legislation developed as a result of that accident, and at the impact of that legislation on at the international level.

*EU measures to protect the marine environment from accidental oil pollution from tankers*

On 12th December 1999 the MV Erika, a single hulled tanker carrying nearly 31,000 tonnes of heavy fuel oil, suffered a structural failure and broke in two whilst travelling through the Bay of Biscay and sank some approximately 30 nautical miles south of Penmarc'h, Southern Brittany (CPEM, undated, p. 7). Around 20,000 tonnes of oil were spilled immediately (ITOPF, undated), and approximately 400km (240 miles) of the French coastline were affected by the oil slick which eventually came ashore, resulting in 52,000 known seabird deaths (estimated suggest that as many as 100-150,000 birds died since many more die at sea than are washed ashore (Bird Life International, 2000).

The Erika was almost 25 years old when it sank and was considered to be pre-MARPOL (built before the introduction of MARPOL amendments of 1978) (CPEM, undated, pp. 12-13) and so it faced less stringent standards than vessels built post-the 1978 amendments. The Erika was designed with a single hull and CPEM concluded that corrosion resulted in its sinking (undated, p. 146), i.e. the failure of its single hull. Phasing out single hull tankers was, already "high on the agenda both internationally and regionally" (Wene, 2005, p 62), the benefits of double-hull tankers which offer better protection in the event of an accident having become apparent, particularly after the sinking of the Erika. At the time of the Erika, the IMO had already decided that only double hull tankers should be built after 1996, with a timetable to replace single hull tankers worldwide planned to end in 2026 under IMO rules (see EC DG for Energy and Transport, 2003, p. 2). Europe had also accelerated the phasing out of single-hull tankers in line with the US Oil Pollution Act (OPA) 1990 to prevent tankers banned by the US from being allowed to continue to operate in European waters (Wene, 2005, p. 62). Significantly here, the US ban was already in force, but no action had been taken at the IMO level as a response to the US OPA.

Following the sinking of the Erika, which resulted in an unprecedented level of public outcry in response to very poor public relations efforts by all parties to the accident (Ringbom, 2008, p. 43), the EU put forward two packages of action (Erika I, II) which are summarised in Table 2. Those packages were proposed in March 2000 and December 2000 respectively, just months after the sinking of the Erika. Ringbom also notes that following the Erika, there was "for the first time, an acceptance and even an expectation, that the principle political response to the accident would be made at an EU level", with

very strong demands being made for stricter rules to be introduced by the EU (2008, p. 44).

Table 2: Maritime Safety: Erika Packages I and II

| Erika Package | Main Proposals and related act |
|---|---|
| **Erika I** Measures on the Safety of Seaborne Oil Trade (COM(2000) 142 final) | • Port State Control – proposal to ban from all EU ports any vessel older than 15 years which has been detailed more than twice in the last two years on the basis of a "black list" – required amendment of Directive 95/21/EC (most recently covered under Directive 2009/16/EC)<br>• Classification Societies – stricter monitoring of these societies, giving the EU the right to suspend or withdraw recognition from societies that fail to comply with criteria laid down in Directive 2001/105/EC<br>• Double-hulled oil tankers – Directive proposing to speed up the replacement of single-hulled oil tankers by double-hulled oil tankers following a timetable similar to that adopted in the United States (2005, 2010, 2015 depending on tonnage) – Regulation (EC) No. 417/2002[7] |
| **Erika II** Second set of measures on maritime safety (COM(2000) 802 final | • Introduction of a Community monitoring, control and information system for maritime traffic – Directive 2002/59/EC<br>• Setting up of a Compensation Fund for Oil Pollution in European waters – Proposal for a Regulation COM (2000) 802 final<br>• Setting up of a European Maritime Safety Agency – Regulation (EC) No. 1406/2002 |

In its communication on the Erika I package, the EC (2000) highlighted the significance of the transportation of oil to the EU: almost 90 per cent of oil trade (around 800 million tonnes of oil) depending on sea transport at that time; some tankers carried as many as 200,000 tonnes of oil (more than six times the capacity of the Erika); and the average age of tankers was 18 years (40 per cent were more than 20 years old). The significance of the age of vessel was illustrated by the fact that 60 out of 77 vessels lost at sea between 1992 and 1999 were over 20 years of age, and that vessels of this age faced structural problems as a result of corrosion – the very same reason attributed to the sinking of the Erika.

As noted previously, the United States had already put forward a timetable to accelerate the phasing out of single-hull tankers. However, it was the Erika I package of measures

[7] Regulation (EC) No. 417/2002 of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No. 2978/94. Official Journal L 64 of 7 March 2002.

(which entered into force in July 2003, and then had to be adopted into national law by all MS) which resulted in an international response to the EU Directive on phasing out of single-hull tankers. At a meeting of the IMO's Marine Environment Protection Committee (MEPC) in December 2003, a new timetable was adopted for the phasing out of single-hull tankers globally (see Table 3).

Table 3: Timetable for the phasing out of single-hull tankers under MARPOL 73/78[8]

| Category of oil tanker | Date or year |
|---|---|
| **Category 1** pre-MARPOL tankers of 20,000 tonnes deadweight carrying oil as cargo; and bulk carriers over 30,000 tonnes deadweight, and which had no SBTs | • 5 April 2005 for ships delivered on 5 April 1982 or earlier<br>• 2005 for ships delivered after 5 April 1982 |
| **Category 2** MARPOL tankers, similar to those under Category 1 in size etc. but with SBTs<br><br>and<br><br>**Category 3** smaller tankers, 5,000 tonnes deadweight | • 5 April 2005 for ships delivered on 5 April 1977 or earlier<br>• 2005 for ships delivered after 5 April 1977 but before 1 January 1978<br>• 2006 for ships delivered in 1978 and 1979<br>• 2007 for ships delivered in 1980 and 1981<br>• 2008 for ships delivered in 1982<br>• 2009 for ships delivered in 1983<br>• 2010 for ships delivered in 1984 or later |

Source: International Maritime Organization

The amendment to MARPOL 73/78 entered into force in April 2005 and was significant because there was already a timetable for action under MARPOL but the EU reached political agreement to implement its own more stringent legislation, irrespective of whether the IMO took any action or not (Ringbom, 2008, p. 45). The result was that the final phase-out date for Category 1 tankers was brought forward to 2005 (previously 2007), or when they reached 23 years of age. Category 2 and Category 3 tankers were to be phased out by 2010 (previously 2015), or when they reached 28 years of age.

Action continued to be proposed at an EU level in response to the sinking of both the Erika and, subsequently, the MV Prestige, a 26 year old single-hull oil tanker carrying 77,000 tonnes of heavy fuel oil which sank off the coast of Galicia on 13 November 2002. That sinking resulted in oil slicks washing up on 200 miles of Atlantic coastline between the Spanish border and L'Ile d'Yeu. The EC DG for Energy and Transport indicates that the last single hull tanker will be banned from EU waters in 2015 and that if the timetable originally set by the EC had been adopted the Prestige would have

[8] For further information see: http://www.imo.org/blast/mainframe.asp?topic_id=758&doc_id=3341.

ceased operating on 1 September 2002 once it reached the age of 23, and two months before its sinking (2003, p. 2). However, under the Regulation finally adopted by the European Parliament and the Council, the Prestige could have continued to operate until 15 March 2005.

In the case of the Erika, the EU took steps to try and protect its marine environment from severe oil pollution from shipping accidents, by introducing more stringent standards than those set at an international level (most recently in 2005 with a third Erika package – Erika III)[9]. By bringing forward the timetable to phase out single hull tankers, it sought to raise standards in shipping and, in part, to prevent vessels not allowed to operate in US waters under the US OPA 1990 from continuing to operate in EU waters. That measure alone means that there are far fewer single hull vessels transporting oil globally at the current time than there would have been if the timetable under the MARPOL 73/78 Convention had remained unchanged. With fewer such vessels, it also means that there have been fewer major pollution incidents from single hull vessels being involved in accidents.

This example of the introduction of an EU Directive can be seen as a success in protecting the marine environment at a global, as well as a regional level. It can also be seen as an example of the EU 'diffusing' its internal policy measures to become an international policy, in line with Ian Manners' six factors (2007, pp. 244-245). The EU set standards which must be met by any vessel seeking to operate in its waters, and by any shipping company owning those vessels, and this is an example of the intentional diffusion of EU standards by Transference (Manners, 2007, p. 245), i.e. that there are financial incentives for accepting the EU standard through continued access to the EU as a market, with economic sanctions through of loss of business if those standards are not met. The EU's action on phasing out of single-hull tankers also led to an accelerated international timetable for phasing out single hulls at the IMO MEPC meeting in 2003, and this again may be viewed as an example of intentional diffusion of EU standards through overt diffusion – where the physical presence of the EU and its' MS involvement in that Committee led to acceleration of the international timetable (Manners, 2007, p. 245).

## Conclusion

This paper identifies the EU have taken a number of steps to improve its protection of the marine environment, both through the development of its Integrated Maritime Policy and through specific Directives, when it has perceived that international regulatory measures are insufficient. It has also taken action to integrate sustainable development into its policy actions - particularly its maritime policy. The EU can, therefore, be seen to have met the challenge of taking a leadership role in actively promoting SD policies globally (see Lightfoot and Burchell, 2007; Vogler and Stephan, 2007; Saloman, 2009), and to "present and legitimate itself [as a normative power that is] more than the sum of its parts" (see Manners, 2002, p. 244). All this has occurred despite the EUs inadequate status at the UN (Vogler and Stephan, 2007, p. 396).

[9] For further information on legislative measures adopted from the Third Maritime Safety Package, see: http://ec.europa.eu/transport/maritime/safety/third_maritime_safety_package_en.htm (Last accessed 4 December 2012).

One area where the EU has strong influence and the ability to change policy externally is through its links with non-EU actors in areas such as trade. With the significance of the EU as a maritime region, and the importance as a market for goods from countries such as China, India and the US, measures taken by the EU in areas such as shipping policy can have a global impact. By setting a more stringent timetable for phasing out single hull vessels, and improving the standard of vessels allowed to operate in its territorial waters following the sinking of the Erika, the EU directly influenced the timetable for bringing in those same standards internationally. Perhaps significantly, a similar measure by the US in 1990 on the phasing out of that type of vessel did not result in that international timetable being accelerated.

This paper argues that the EU is a global leader in the protection of the marine environment and that it can make a positive impact in this area, whether through the sheer geographical coverage of its maritime territories, through its influence as one of the most important regions for maritime trade and as a trading partner with non-EU states, or by continuing to introduce measures which have a direct and positive influence on international conventions. As such, the EU can be seen as a champion for sustainable development, its integrated maritime policy taking account the economic, social and environmental implications of its actions, and the impact of those actions for current and future generations.

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