

**16th meeting of the Thematic Steering Group for Pillar 3 – Environmental Quality
under the EU Strategy for the Adriatic and Ionian Region (EUSAIR)**

**LEGAL BASIS FOR THE ESTABLISHMENT AND FURTHER DEVELOPMENT OF
(TRANSBOUNDARY) MARINE PROTECTED AREAS IN EUSAIR**

22 March 2022

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Analysis of the legal basis for the establishment and further development of marine protected areas in the EUSAIR, with particular emphasis on transboundary marine protected areas

1. Adriatic and Ionian Seas as part of the wider Mediterranean Sea
2. Marine Protected Areas (MPAs) and the Mediterranean Sea (AI). Interrelation between global, EU, regional, sub-regional and national legal frameworks
3. Global legal basis for the establishment of (transboundary) marine protected areas
4. EU Law
5. Regional (Mediterranean) legal basis for the establishment of (transboundary) marine protected areas
6. Establishment of MPAs within areas of national sovereignty and jurisdiction
7. Transboundary and MPAs located beyond the territorial sea within the Mediterranean and AI: examples of good practice
8. The case for establishing (transboundary) Mediterranean SPAMIs within the AI
9. The case for establishing (transboundary) international marine parks (EGTCs) within the AI
10. The case for establishing a PSSA in the Adriatic and Ionian
11. Conclusions and ways forward

Issue paper prepared within the strategic project EUSAIR Facility Point:WP T1.2. – Administrative and operation support to TSG



GLOBAL LEGAL BASIS & POLICY INSTRUMENTS

UNCLOS

An important means to comply with the general obligation to protect the environment, set forth in **Art. 192 UNCLOS**, is the establishment of MPAs, which is implied in **Art. 194, para. 5, UNCLOS**:

“the measures taken to protect and preserve the marine environment shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.”

AGENDA 21

States commit themselves to the conservation and the sustainable use of marine living resources on the high seas. To this end, it is necessary to: (...)

e) Protect and restore marine species;

f) Preserve habitats and other ecologically sensitive areas” (para. 17.46).

“States should identify marine ecosystems exhibiting high levels of biodiversity and productivity and other critical habitat areas and provide necessary limitations on use in these areas, through, inter alia, designation of protected areas” (para. 17.86).



The Plan of Implementation of the World Summit on Sustainable Development (Johannesburg, 2002) invites States to “develop and facilitate the use of diverse approaches and tools, including (...) *the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods (...)*” (Johannesburg 2002, para. 32, c).

Transforming Our World: The 2030 Agenda for Sustainable Development” (UN, 2015). Within goal 14 (“Conserve and sustainably use the oceans, seas and marine resources for sustainable development”), goal 14.5 provides for **an invitation specifically directed at marine protected areas and other effective area-based conservation measures:**

“By 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information”



CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

Marine Protected Area (MPA)

“Protected area” means “a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives” (CBD, Art. 2)

Other Effective Area-Based Conservation Measures (OECM)

“Other effective area-based conservation measure” means “a geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the *in situ* conservation of biodiversity, with associated ecosystem functions and services and, where applicable, cultural, spiritual, socio-economic, and other locally relevant values (Decision XIV/8, CBD, 2018)

It can be inferred that “**OECM**” is a broad concept that includes also MPAs, but is not limited to them. *While MPAs are established exclusively for conservation purposes, OECMs, while indirectly contributing to conservation objectives, may be adopted also for other purposes.*

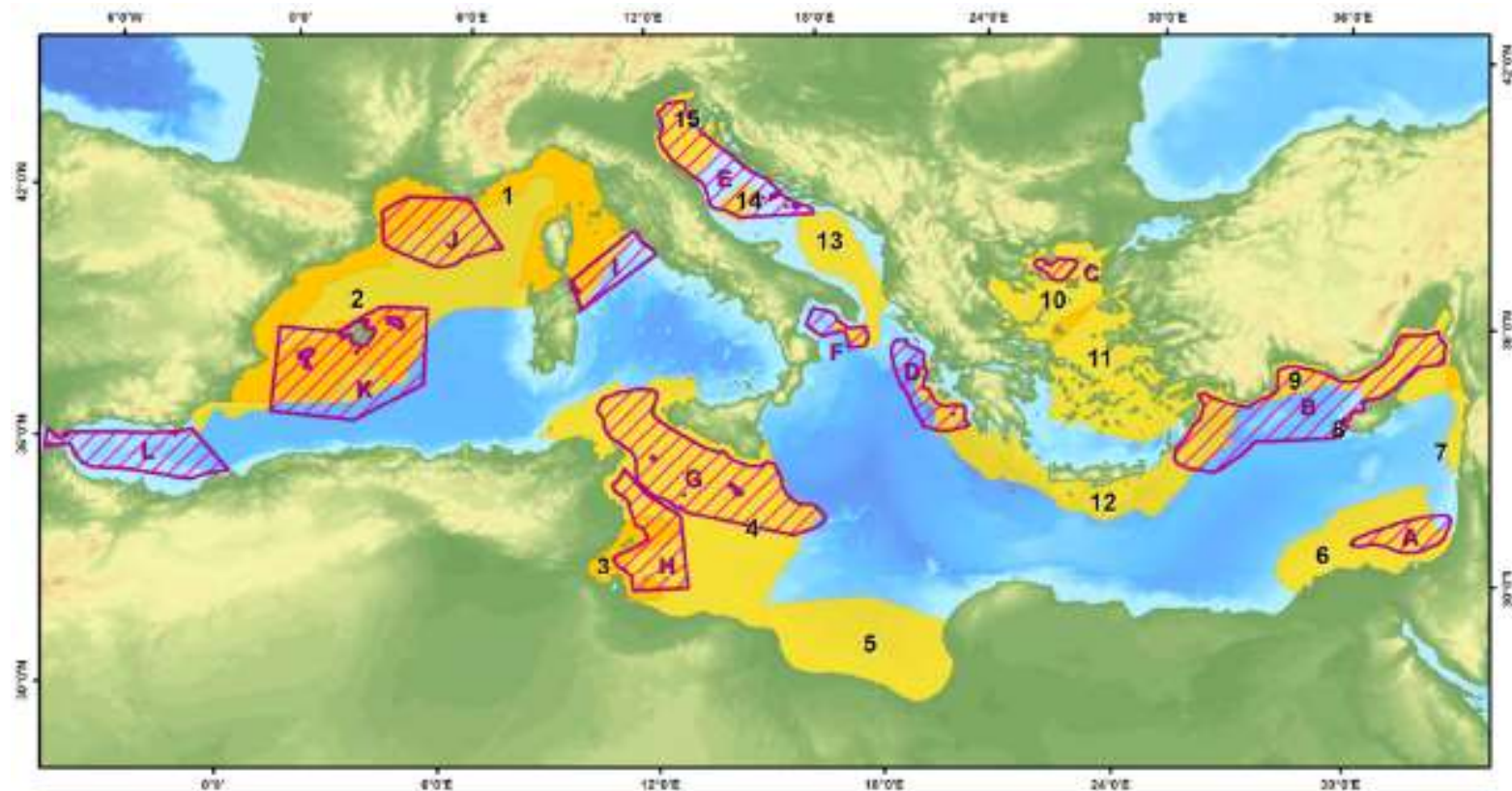


Ecologically or Biologically Significant Marine Areas (EBSAs)

“Geographically or oceanographically discrete area that provide important services to one or more species/populations of an ecosystem or to the ecosystem as a whole, compared to other surrounding area or areas of similar ecological characteristics, or otherwise meet the EBSA criteria” (CBD Decision, 2008)

The EBSAs criteria can provide to the interested States **useful information on where MPAs could be established** according to scientific evidence. They do not enter into the legal and political questions that are linked to creation of MPAs. As recalled by Decision X/29, adopted by the Conference of the Parties held in 2012, *“(...) the application of the ecologically or biologically significant areas (EBSAs) criteria is a scientific and technical exercise, that areas found to meet the criteria and may require enhanced conservation and management measures, and that this can be achieved through a variety of means, including marine protected areas and impact assessments, and (...)”*





Ecologically or Biologically Significant Areas (EBSAs)*

1 EBSAs

Overlapping area
between EBSAs

- | | |
|---|----------------------------------|
| 1. North-western Mediterranean Pelagic Ecosystems | 9. North-East Levantine Sea |
| 2. North-western Mediterranean Benthic Ecosystems | 10. North Aegean Sea |
| 3. Gulf of Gabès | 11. Central Aegean Sea |
| 4. Sicilian Channel | 12. Hellenic Trench |
| 5. Gulf of Sirte | 13. South Adriatic Ionian Strait |
| 6. Nile Delta Fan | 14. Jabuka / Pomo Pit |
| 7. East Levantine Canyons (ELCA) | 15. Northern Adriatic |
| 8. Akamas and Chrysochou Bay | |

* CBD's COP 14 (Pyeongchang, Rep. Korea)

Specially Protected Areas of Mediterranean Importance (SPAMIs)*

SPAMI potential areas

- | | |
|----------------------------------|----------------------------------|
| A. Nile Delta Region | G. Northern Strait of Sicily |
| B. Northeastern Levantine Sea | H. Southern Strait of Sicily |
| C. Thracian Sea | I. Central Tyrrhenian |
| D. Northeastern Ionian | J. Gulf of Lions Shelf and Slope |
| E. Northern and Central Adriatic | K. Southern Balearic |
| F. Santa Maria di Leuca | L. Alborán Seamounts |

* Extr. Meet. of the E.P. for SPAs (Istanbul, Turkey, 2010)

LAEA-STRS-1969
GIS: RAC/SFA-S. Requena, Vers. April 2015.



EU LAW

2008 MARINE STRATEGY FRAMEWORK DIRECTIVE

Art. 13(4) of the MSFD provides “ Programmes of measures established pursuant to this Article shall include spatial protection measures, **contributing to coherent and representative networks of marine protected areas**, adequately covering the diversity of the constituent ecosystems, *such as*

- *special areas of conservation pursuant to the Habitats Directive,*
- *special protection areas pursuant to the Birds Directive (NATURA 2000),*
- *and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties (i.e., Barcelona Convention).*



REGIONAL (MEDITERRANEAN) LEGAL BASIS FOR THE ESTABLISHMENT OF TRANSBOUNDARY MARINE PROTECTED AREAS (& OECM)

1. The Relevant Protocols to the Barcelona Convention:

- The Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (10 June 1995; in force from 12 December 1999; **Areas Protocol**),
- The Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (14 October 1994; in force from 24 March 2011; **Offshore Protocol**);
- Protocol on Integrated Coastal Zone Management in the Mediterranean (21 January 2008; in force from 24 March 2011; **ICZM Protocol**);

2. The Relevant Regulations of the GFCM (i.e., Fisheries Restricted Areas)

3. The Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS)



THE CASE FOR ESTABLISHING A TRANSBOUNDARY SPAMI (THE AREAS PROTOCOL TO THE BARCELONA CONVENTION)

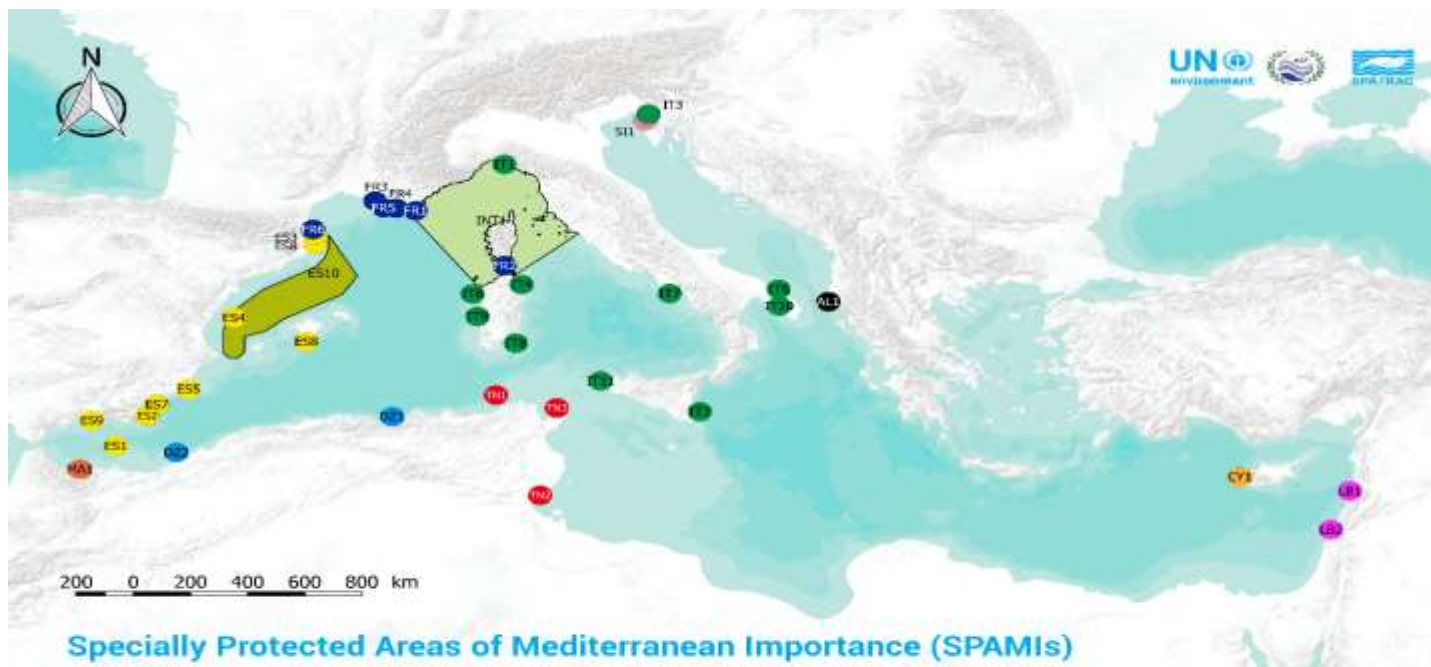
Under the Areas Protocol, Parties are called to protect areas of particular natural or cultural value, through the establishment of **Specially Protected Areas (SPAs)** or **Specially Protected Areas of Mediterranean Importance (SPAMIs)**.

The SPAMI list may include sites which *«are of importance for conserving the components of biological diversity in the Mediterranean; contain ecosystems specific to the Mediterranean area or the habitats of endangered species; are of special interest at the scientific, aesthetic, cultural or educational levels»*.

As regards an area located partly or wholly on the high seas, the proposal must be made *«by two or more neighbouring parties concerned»* and the decision to include the area in the SPAMI List is taken by consensus by the Parties during their periodical meetings.

SPAMI Criteria: Uniqueness, Natural Representativeness; Diversity; Naturalness; Presence of habitats that are critical to endangered, threatened or endemic species.





Albania

- AL1 - Karaburun Sazan National Marine Park (2016)

Algeria

- DZ1 - Banc des Kabyles Marine Reserve (2005)
- DZ2 - Habibas Islands (2005)

Cyprus

- CY1 - Lara-Toxeftra Turtle Reserve (2013)

France

- FR1 - Fort-Cros National Park (2001)
- FR2 - Bouches de Bonifacio Natural Reserve (2009)
- FR3 - The Blue Coast Marine Park (2012)
- FR4 - The Embiez Archipelago - Six Fours (2012)
- FR5 - Calanques National Park (2017)
- FR6 - Cerbère-Banyuls Marine Nature Reserve (2019)

France, Italy, Monaco

- INT1 - Pelagos Sanctuary for the Conservation of Marine Mammals (2001)

Italy

- IT1 - Portofino Marine Protected Area (2005)
- IT2 - Miramare Marine Protected Area (2008)
- IT3 - Plemmirio Marine Protected Area (2008)
- IT4 - Tavolara-Punta Coda Cavallo Marine Protected Area (2008)
- IT5 - Torre Guaceto Marine Protected Area and Natural Reserve (2008)
- IT6 - Capo Caccia-Isola Piana Marine Protected Area (2009)
- IT7 - Punta Campanella Marine Protected Area (2009)
- IT8 - Capo Carbonara Marine Protected Area (2012)
- IT9 - Penisola del Sinis - Isola di Mal di Ventre Marine Protected Area (2012)
- IT10 - Porto Cereso Marine Protected Area (2012)
- IT11 - Egadi Islands Marine Protected Area (2019)

Lebanon

- LB1 - Palm Islands Nature Reserve (2012)
- LB2 - Tyre Coast Nature Reserve (2012)

Morocco

- MA1 - Al-Hoceima National Park (2009)

Slovenia

- SI1 - Landscape Park Strunjan (2019)

Spain

- ES1 - Alboran Island (2001)
- ES2 - Cabo de Gata-Níjar Natural Park (2001)
- ES3 - Cap de Creus Natural Park (2001)
- ES4 - Columbretes Islands (2001)
- ES5 - Mar Menor and Oriental Mediterranean zone of the Region of Murcia coast (2001)
- ES6 - Medes Islands (2001)
- ES7 - Sea Bottom of the Levante of Almería (2001)
- ES8 - Archipelago of Cabrera National Park (2003)
- ES9 - Maro-Cerro Gordo Cliffs (2003)
- ES10 - Cetaceans Migration Corridor in the Mediterranean (2019)

Tunisia

- TN1 - La Galite Archipelago (2001)
- TN2 - Kneiss Islands (2001)
- TN3 - Zembra and Zembretta National Park (2001)



Other Effective Area-Based Conservation Measures (OECM)

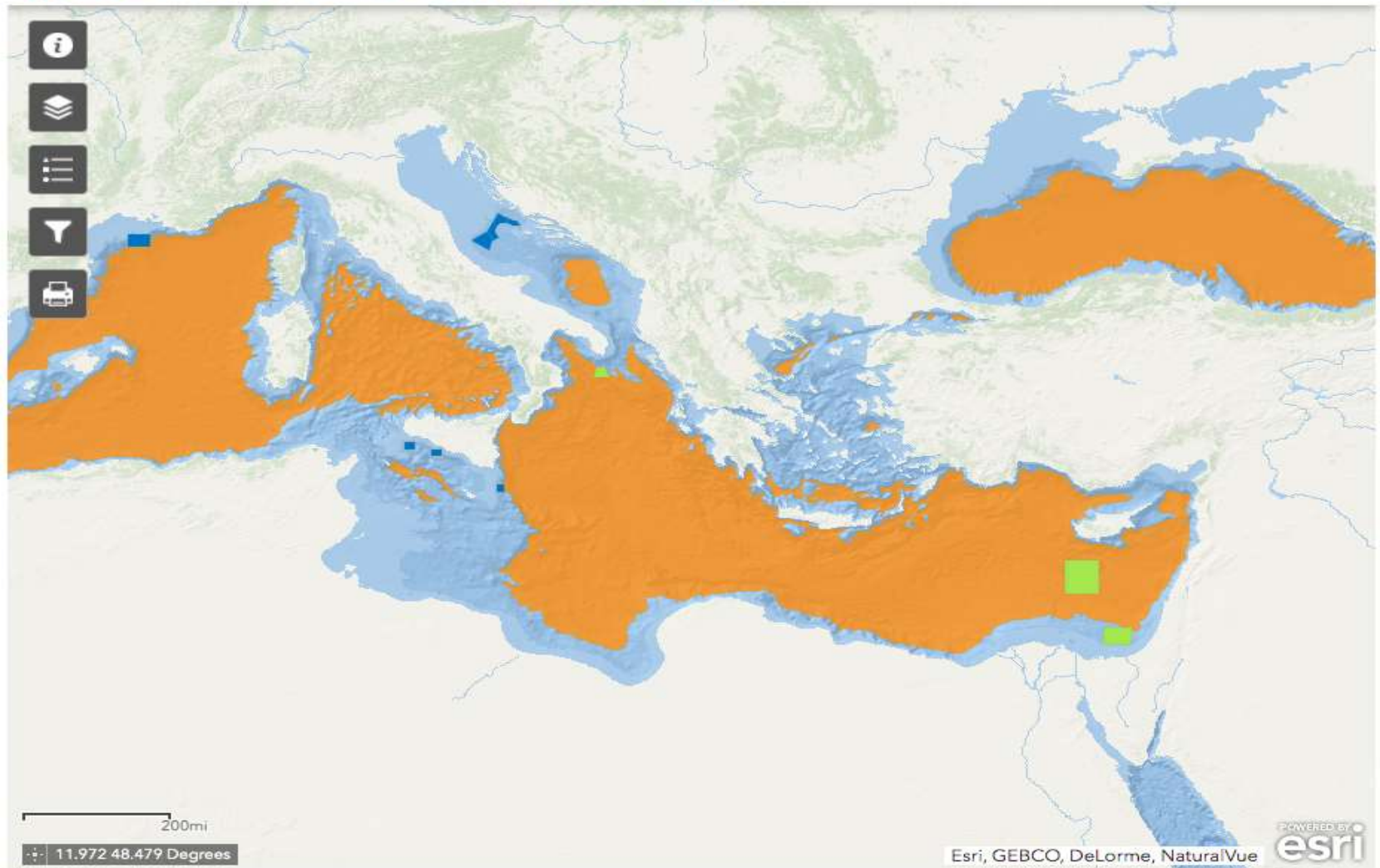
A.) Regulations of the General Fisheries Commission for the Mediterranean (GFCM)

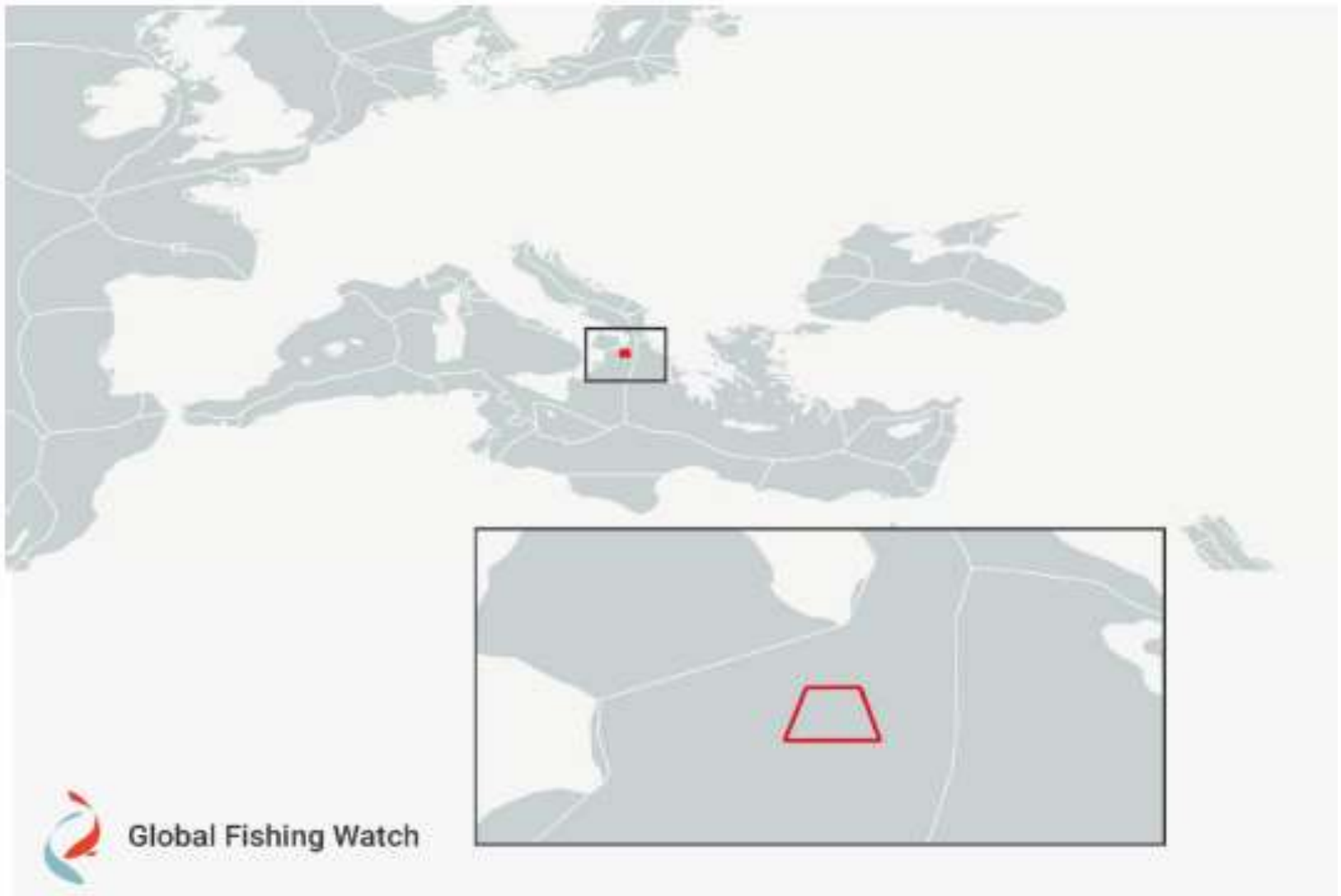
GFCM Recommendations relate to a **broad range of measures** including closed seasons, restrictions on mesh size and types of fishing gears, management of demersal fisheries, plans of actions, port State controls, identification of authorized landing points, listing of vessels authorized to fish and vessels engaged in illegal, unreported and unregulated (IUU) fishing, vessel monitoring systems (VMS) and automated identification systems (AIS)

Fisheries Restricted Area (FRA) means a “geographically defined area in which some specific fishing activities are **temporarily** or **permanently** banned or restricted in order to improve the exploitation patterns and conservation of specific stocks as well as of habitats and deep-sea ecosystems”

Since 2005, GFCM has prohibited the use of towed dredges and trawl nets at depths beyond 1000 m in the Mediterranean and Black Seas: such OECM measure **includes portions of the Southern Adriatic and Ionian Seas.**



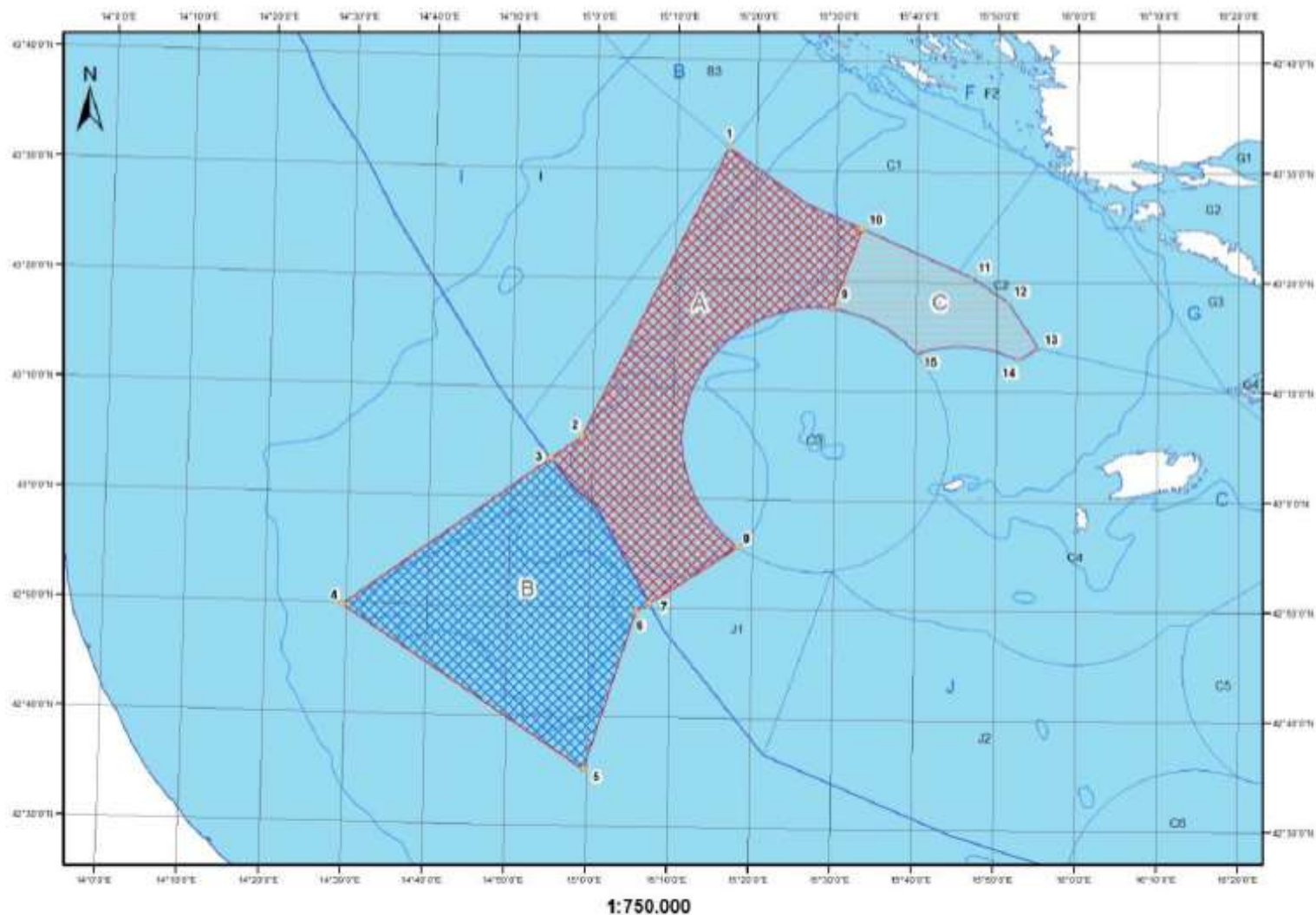




The FRA Lophelia reef off Capo Santa Maria di Leuca (in red).
Source: Global Fishing Watch (2021).



Geographical coordinates of the Jabuka/Pomo Pit FRA (Adriatic Sea)



The FRA Jabuka/Pomo Pit and its zoning (A, B, C).

Source: Recommendation GFCM/41/2017/3.



B.) Particularly Sensitive Sea Area (PSSA)

A marine area that needs special protection through action by the IMO **because of its significance for recognized *ecological or socio-economic or scientific reasons***, and because it may be **vulnerable to damage by international shipping activities**.

The three general requirements are further elaborated in the *Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas* (2005 PSSA Guidelines. IMO Assembly Resolution A. 982(24), 1 December 2005, para. 4. They are not cumulative, as one criteria must be fulfilled.

The identification and designation of a PSSA and the adoption of associate protective measures require consideration of three integral components: **(1) *the particular attributes of the proposed area***; **(2) *the vulnerability of such an area to damage by international shipping activities***, and; **(3) *the availability of associated protective measures within the competences of IMO***.



Associated Protective Measures (APM)

The main opportunities provided by the PSSA concept *is the possibility to introduce for the particular area additional associated protective measures, although limited to those having its legal base in an adopted IMO instrument* (i.e. routing measures, reporting system, Special Area Status under MARPOL..). The later may be or may not be in force.

PSSA proposal shall include at least one associated protective measure (APM), unless some pre-existing associated protective measures (i.e. routing measures), as is the case with the Adriatic, are already in place.

The practical result of designing an PSSA is that the included associated protective measure are granted validity *erga omnes*, even if a certain IMO document has not entered into force

The PSSA as a sectoral measure (OECM) may supplement other measures as for example SPAMI, FRA, Natura 2000 and Emerald Sites..



KEY EU COMMITMENTS IN THE FIELD OF NATURE PROTECTION

2030 EU BIODIVERSITY STRATEGY (COM 2020/380/final)

- 1. Legally protect a minimum of 30% of the EU's land and 30% of the EU's sea area and integrate ecological corridors**, as part of the true Trans-European Nature Network.
- 2. Strictly protect at least a third of the EU's protected areas**, including all remaining EU primary and old growth forest.
- 3. Effectively manage all protected areas, defining clear conservation objectives and measures, and monitoring them appropriately.**

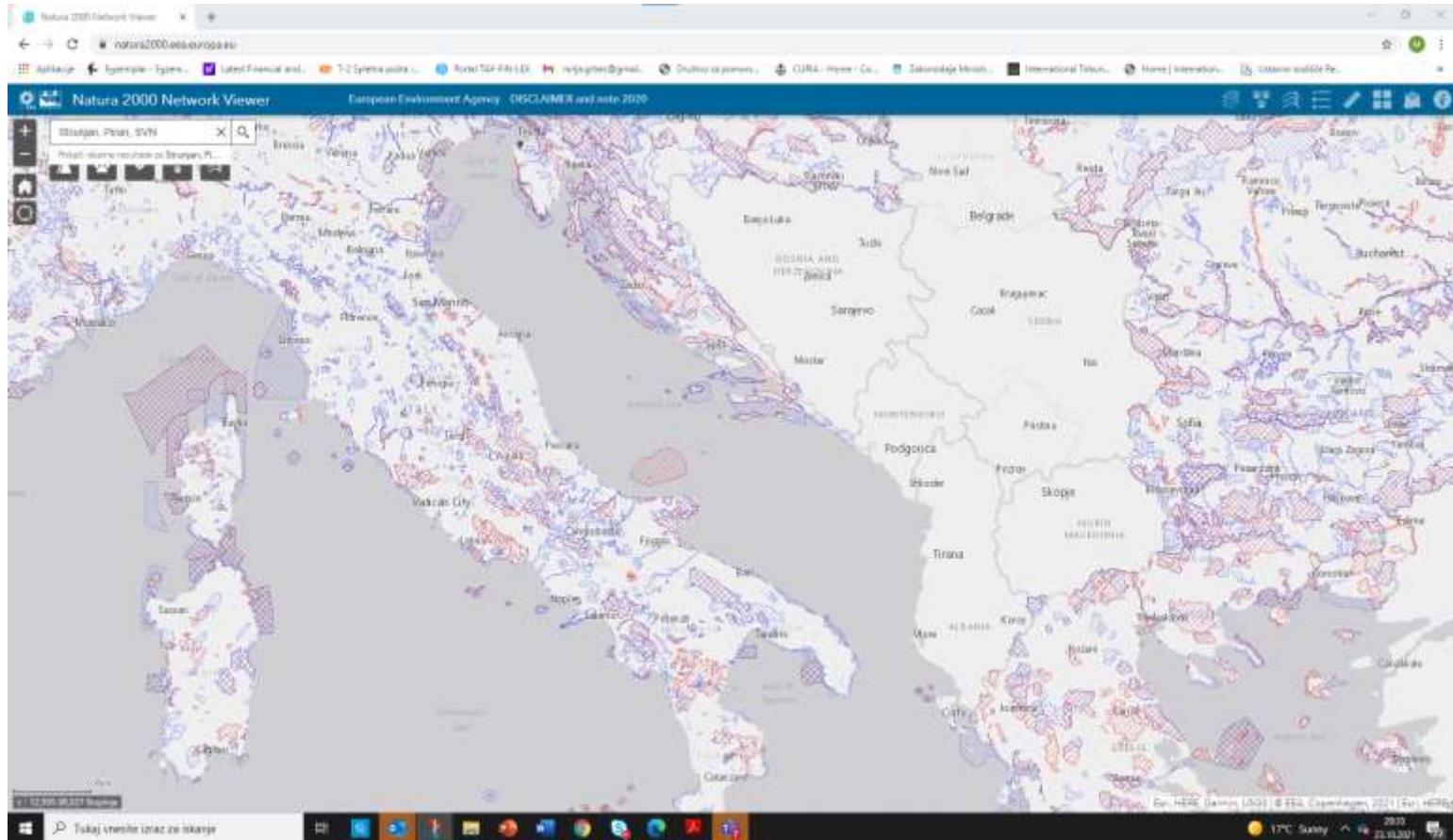


I. Expanding and completing the NATURA 2000 - Emerald Network or through the establishment of marine protected areas under national protection schemes.

- **The NATURA 2000 Network could be, for example, expanded not only in the Northern and Central Adriatic, but also in the Southern Adriatic (Channel of Otranto area), as well as within the Ionian Sea.** EUSAIR coastal States that are not members of the European Union (Albania, Bosnia and Herzegovina, Montenegro) may contribute to this goal through the **enlargement of the Emerald network (Bern Convention)**, by establishing additional marine protected areas or through the designation of new marine protected areas under their national legislation.
- Taking into account that the Croatian waters surrounding the Bosnian waters in the Klek/Neum Bay have been already protected as NATURA 2000 sites, the plans within Bosnia and Herzegovina to protect also its waters in the Klek/Neum Bay, in close cooperation and coordination with neighbouring Croatia, seems to be of particular importance.
- **The NATURA 2000 - Emerald Network of marine protected areas could be strengthened also in the Southern Adriatic,** particularly in the Channel of Otranto area and surrounding Ionian Sea, through prompt action and coordination by Albania, Italy and Greece.



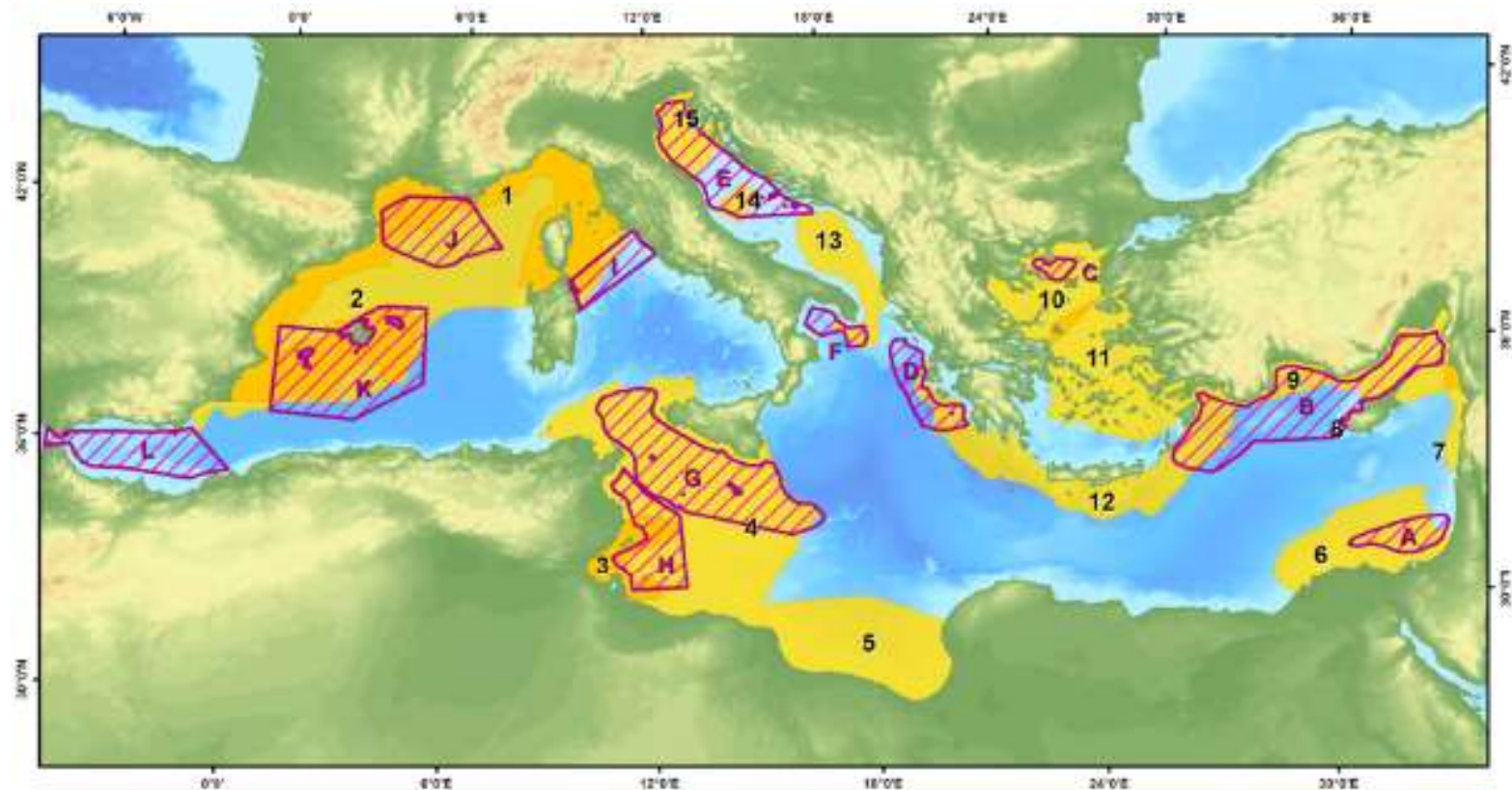
NATURA 2000 NETWORK (BIRDS AND HABITATS DIRECTIVES)



II. Establishing marine protected areas, including transboundary, in accordance with the provisions of the Barcelona Convention and its Protocols.

- ***Reference should be made in this regard to the possibility of establishing transboundary SPAMIs or one bigger SPAMI in the Northern and Central Adriatic*** (including the Jabuka/Pomo Pit area) based upon a joint proposal by Croatia, Italy and Slovenia.
- Following the eventual ratification of the Areas protocol by Greece, a similar move could be envisaged in the Southern Adriatic (Channel of Otranto area) and the Ionian Sea.
- The **scientific basis for such proposals** may be found, among other, in the decisions of the Conference of the Parties to the CBD, which in 2014 ***identified the Northern, Central (including Jabuka/Pomo pit) and Southern Adriatic, including the Strait of Otranto area and nearby Ionian Sea, as EBSAs***, and also in the report presented in 2010 to the extraordinary meeting of the focal points for the Areas Protocol, which listed the ***Northern and Central Adriatic as “priority conservation areas” and, together with Santa Maria di Leuca and Northeastern Ionian, as potential SPAMIs.***





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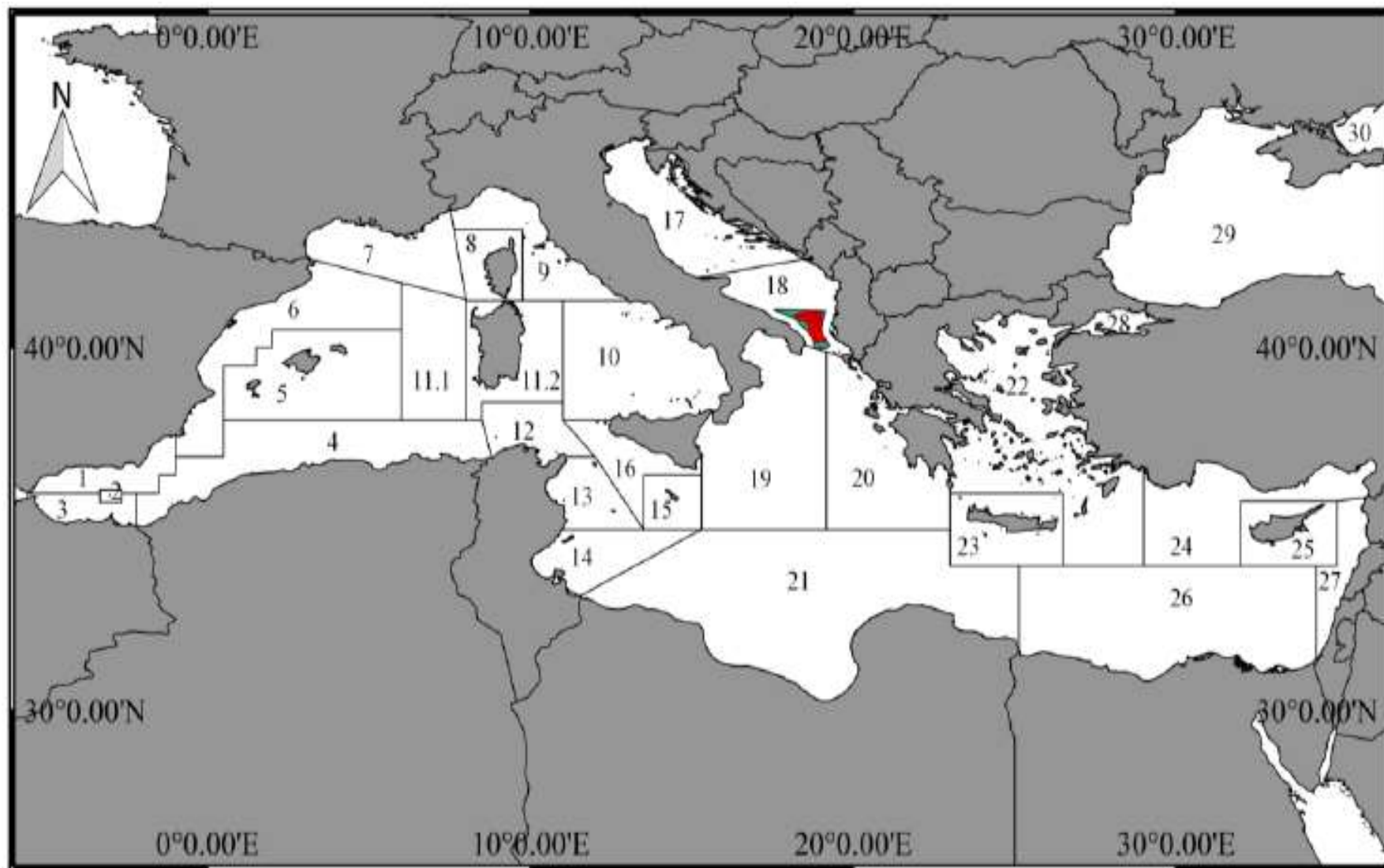
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III. Establishing other sectoral other effective area-based conservation measures applicable to parts of Adriatic and Ionian Seas (FRAs, marine protected areas for cetaceans, underwater cultural heritage sites, etc.).

- Other effective area-based conservation measures of transboundary character may include ***FRAs established within the framework of the GFCM***, two of which lie in the Adriatic and Ionian Seas, namely the ***Lophelia reef off Capo Santa Maria di Leuca*** and the ***Jabuka/Pomo Pit***.
- Worth of mention is the ***Bari Canyon***, which does not present a transboundary character, although it is located in the South Adriatic Sea off the territorial waters of Italy.
- It is of particular importance that the Jabuka/Pomo Pit has been recently confirmed as a 'permanent' FRA, together with all the associated management measures (44th session of the GFCM, held between the 2 and 6 November 2021) and that a proposed transboundary FRA within the region of concern (Albania, Italy) relating to ***Deepwater essential fish habitats and sensitive habitats in the South Adriatic*** seems close to its establishment under the GFCM.





FRA proposal: Deep water essential fish habitats and sensitive habitats in the South Adriatic. Source: Proposal transmitted to the GFCM in March 2018.



- Additionally, as of today, 22 proposals for **marine protected areas for cetaceans have been identified within the framework of the ACCOBAMS**, four of which would be located in the Adriatic and Ionian Seas, namely: the *Waters along east coast of the Cres-Lošinj archipelago*; the *Sazani Island – Karaburun Peninsula (Adriatic and Ionian Sea, Albania)*; the *Eastern Ionian Sea and the Gulf of Corinth (Greece)*; and the *Southwest Crete and the Hellenic Trench (Greece)*.
- Some States have established **marine protected areas also around underwater cultural properties** (for example, Italy by decrees of 7 August 2002 established the two underwater parks of *Gaiola*, in the Gulf of Naples, and of *Baia*, in the Gulf of Pozzuoli), based on the relevant provisions of the UNESCO Convention on the Protection of Underwater Cultural heritage.
- The same approach could be used also in other areas located within the ‘heritage rich’ Adriatic and Ionian Seas, which are important for the *in situ* preservation of underwater cultural heritage.



IV. Establishing a PSSA applicable to the entire Adriatic Sea, including the whole Otranto Channel area.

- An extremely important tool which may help in the achievement of the goals put forward by the 2030 Biodiversity Strategy and other global policy instrument **is represented by the potential designation of the entire Adriatic Sea, including the wider Otranto Channel area, as a PSSA.**
- Noteworthy is the fact that a PSSA can be used **as a supplementary measure** within an already established marine protected area or other effective area-based conservation measure (e.g., FRA).
- Alternatively, it can be proposed **as a separate sectoral measure in relation to threats posed by international shipping**, in parallel with the process of establishment of a (transboundary) marine protected area, including a SPAMI.
- **The example of the Strait of Bonifacio**, where all previously mentioned instruments – i.e., national marine protected areas both on the French and Italian side, NATURA 2000 sites, international marine park co-managed by an EGTC, a SPAMI and a PSSA – coexist over roughly the same area, is a clear example in this regard



- One of the most important challenges **in the process of designing a PSSA is represented by the endorsement, preparation and joint submission of a PSSA proposal to the IMO by all affected States.** The chances of success of a proposal are far greater if all States bordering an enclosed or semi-enclosed sea (i.e., all coastal States bordering the Adriatic and Ionian Seas) are united and submit a **joint proposal** with regard to the designation of a certain area (e.g., the Adriatic Sea) as a PSSA, together with the relevant “associate protective measures”.
- The chances of success are further enhanced if such proposal **is supported within the IMO bodies by the European Union and its member States as a united block,** as for example the case has been during the process of adoption of the “Western European Waters” PSSA in 2004.
- Independently of the fact that the draft PSSA proposal prepared in the period 2006-2011 related to the Designation of the entire Adriatic Sea as a PSSA was not finalized and submitted to the IMO, **the said draft may represent a sound basis either for its update and finalisation, or as a starting point for the preparation of a new PSSA proposal.**





V. Effectively managing all protected areas, defining clear conservation objectives and measures, and monitor them appropriately.

- This goal could be achieved in the Adriatic and Ionian Seas also with the help of an innovative legal entity, the EGTC, in accordance with the relevant European Union legislation. **As an autonomous legal entity, an EGTC set up by the Adriatic and Ionian coastal States could be responsible for the management of a protected transboundary area, or network of areas, in the Adriatic and Ionian Seas and the identification of the relevant protection measures.**
- **Each EGTC is governed by a convention concluded by its members.** These may be European Union **member States**, regional and local authorities of European Union member States, public undertakings and public bodies under certain conditions, also belonging to States that are not members of the European Union.
- Its legal personality based on public law, with tasks specified in the constitutive instruments, would ensure that such management authority participates through its legal and institutional representations in the most appropriate fora where marine environment protection tools are discussed and approved.



- What is necessary is that the **EGTC is made up of members that are located on the territory of at least two European Union member States**. In addition, the EGTC may include one or more States that are neighboring at least of one European Union member State that is a member of the same EGTC.
- A State that is not a member of the European Union is considered as a “neighboring State” under the EGTC Regulation when *“it shares a common land border or where both the third State and the EU Member State are eligible under a joint maritime cross-border programme under the European territorial cooperation goal, or are eligible under another cross-border, sea-crossing or sea-basin cooperation programme, including where they are separated by international waters”* (Art. 3a, para. 1). **Accordingly, Albania, Bosnia and Herzegovina and Montenegro – or public bodies of these States – could become members of an EGTC in the Adriatic and Ionian Seas.**
- The possibility to resort to the **EGTC instrument with a view to protecting the marine environment in a transboundary context**, as a possible form of territorial cooperation, has been already affirmed through the establishment of the EGTC for the *International Marine Park of the Mouths of Bonifacio*, in the Tyrrhenian Sea.



Another example of good practice which may be taken into account both with regard the management of marine protected areas in particular, and the holistic governance of the Adriatic eco-region in general, is represented by the work of the **International Sava River Basin Commission**.

The latter was established with the aim to **implement the Framework Agreement on the Sava River Basin (FASRB)**, concluded in 2004 by the riparian States, Slovenia, Croatia, Bosnia and Herzegovina and Serbia. The key objective of the Framework Agreement (and of the Commission) is to **achieve sustainable development of the region through transboundary cooperation**.

Four protocols to the Framework Convention have been concluded in the fields of Regime of Navigation (2004), Flood Protection (2015), Prevention of Water Pollution Caused by Navigation and Sediment Management (both in 2017).

It may be suggested that a similar function to that of the Sava River Basin Commission could be undertaken in the Adriatic and Ionian context by the (expanded) Quadrilateral Commission.



CONCLUSIONS & RECOMMENDATIONS

- Extension of existing networks (*national MPAs, NATURA 2000 & EMERALD networks*) & transboundary management (i.e., EGTC)
- Establishment of one or more (transboundary) SPAMIs
- Proposals for sectoral OECMs (including PSSA and FRAs)
- Possible combination of different legal basis and *instruments* (i.e., Strait of Bonifacio case / MPAs&EGTCs, SPAMI, PSSA)

