



Workshop: What can EUSAIR do to enable the blue and green sustainable growth in EUSAIR: MSP in EUSAIR state of the art

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

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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 to be prepared within the strategic project EUSAIR Facility Point: WP T1.2. – Administrative and operational support to TSG



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 (...)*”



GLOBAL LEGAL BASIS & POLICY INSTRUMENTS

UNCLOS

An important means to comply with the general obligation to protect the marine 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“

...



EU LAW

2008 MARINE STRATEGY FRAMEWORK DIRECTIVE

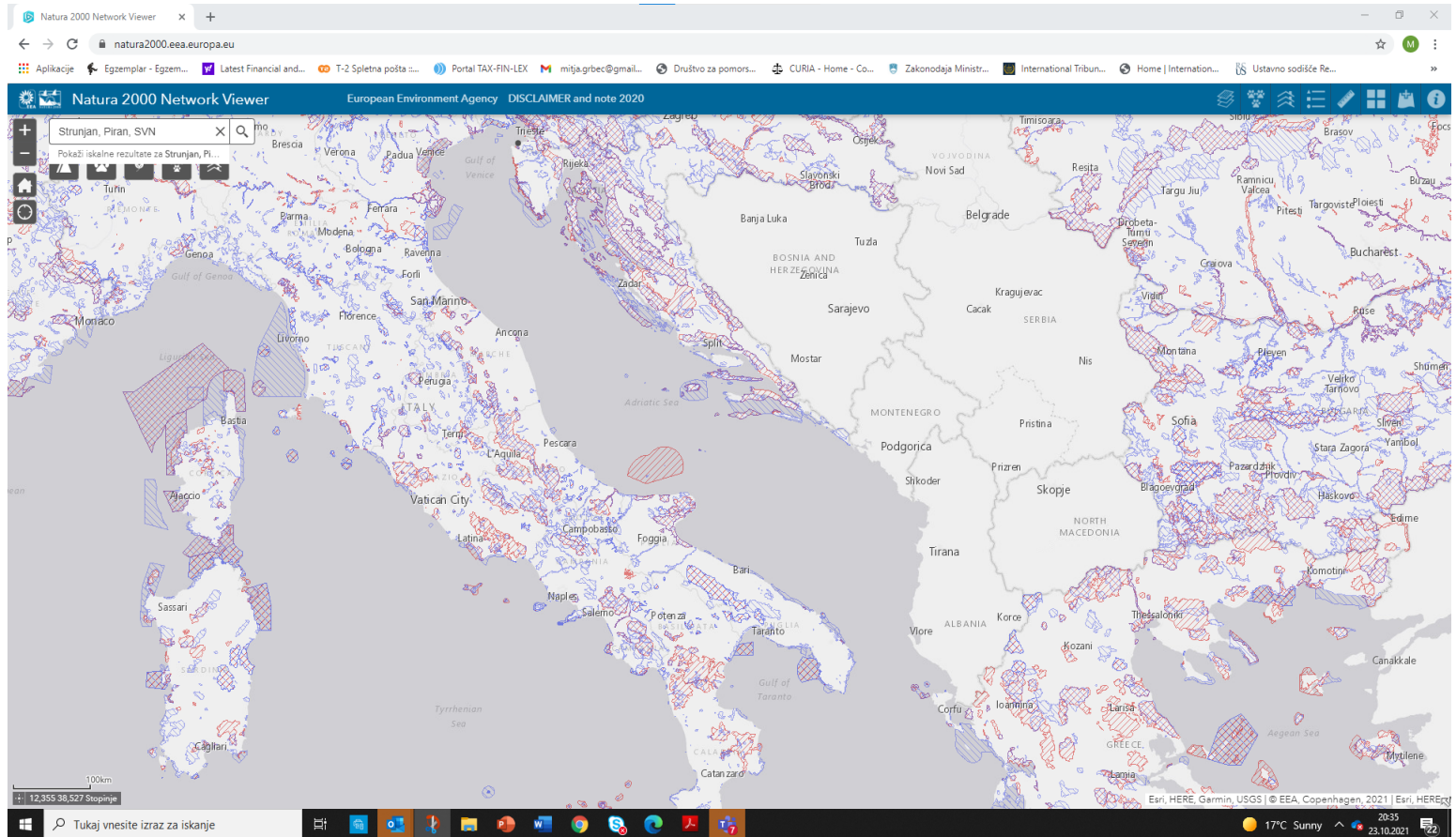
Art. 13(4) of the MSFD provides “ Programmes of measures established pursuant to this Article shall include spatial protection measures, **contributing to coherent and representative networks of marine protected areas**, adequately covering the diversity of the constituent ecosystems, *such as special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

2030 BIODIVERSITY STRATEGY

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.



NATURA 2000 NETWORK (BIRDS AND HABITATS DIRECTIVES)



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

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)

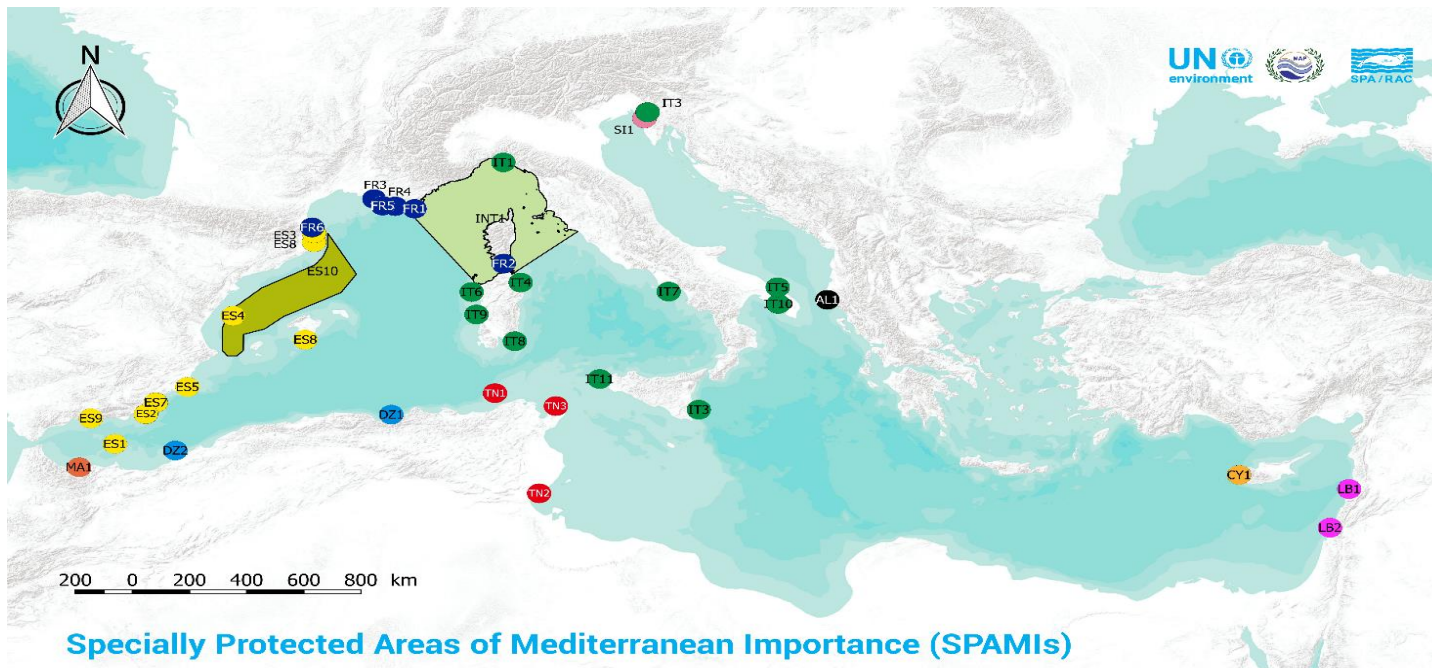
Under the Areas Protocol, Parties are called to protect areas of particular natural or cultural value, through the establishment of **Specially Protected Areas (SPAs)** or **Specially Protected Areas of Mediterranean Importance (SPAMIs)**.

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.





Specially Protected Areas of Mediterranean Importance (SPAMIs)

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 - Port-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 Cesareo 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

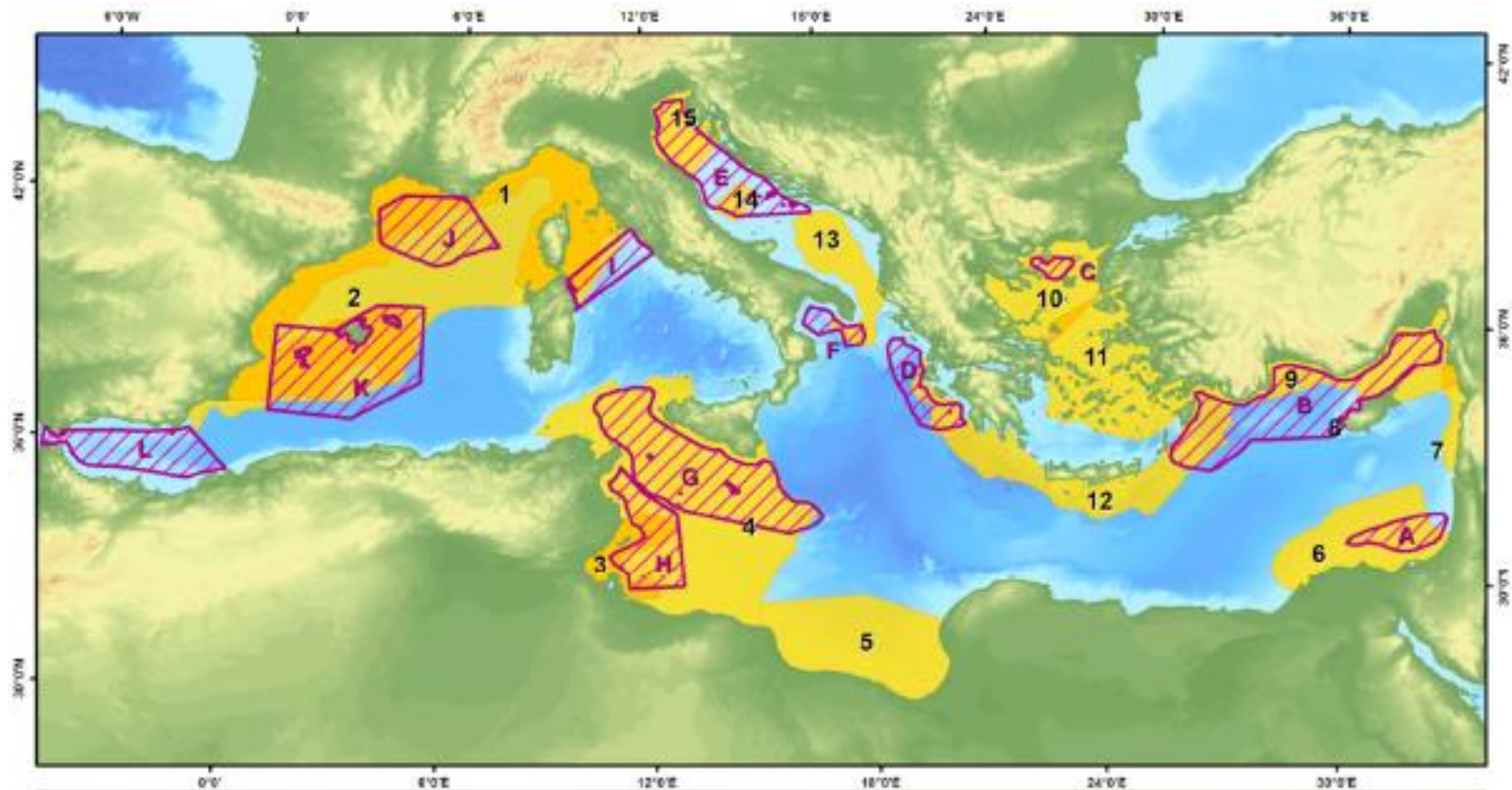
- ES1 - Alboran Island (2001)
- ES2 - Cabo de Gata-Níjar Natural Park (2001)
- ES3 - Cap de Creus Natural Park (2001)
- ES4 - Columbretes Islands (2001)
- ES5 - Mar Menor and Oriental Mediterranean zone of the Region of Murcia coast (2001)
- ES6 - Medes Islands (2001)
- ES7 - Sea Bottom of the Levante of Almeria (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)

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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 2014 (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 F.P. for SPAs (Istanbul, Turkey, 2010)

LABA-ETRS-1989
GIS: RAC/SPA-S. Requena. Vers. April 2015.



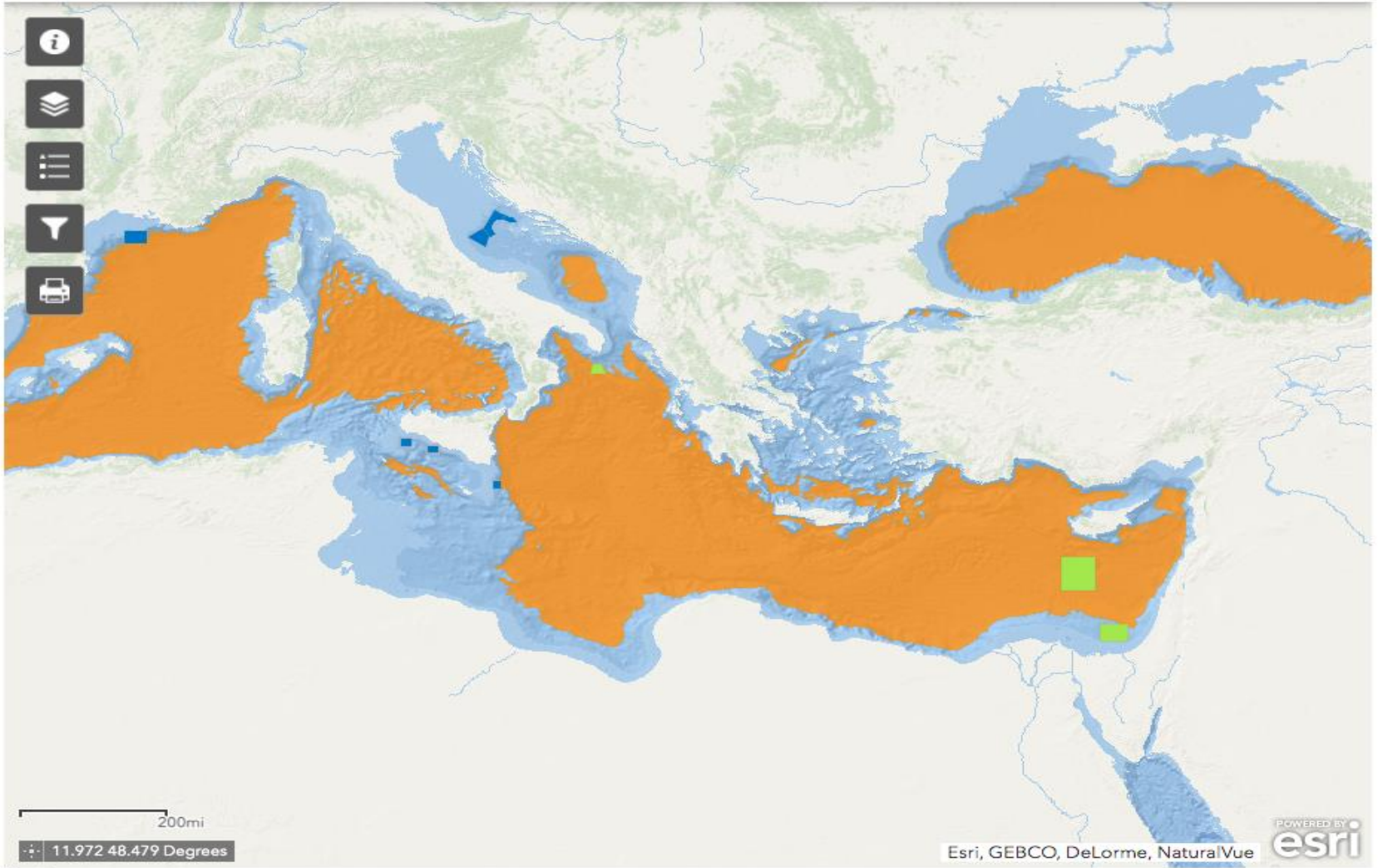
Regulations of the General Fisheries Commission for the Mediterranean (GFCM)

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”

FRAs can therefore be considered as an example of OECM



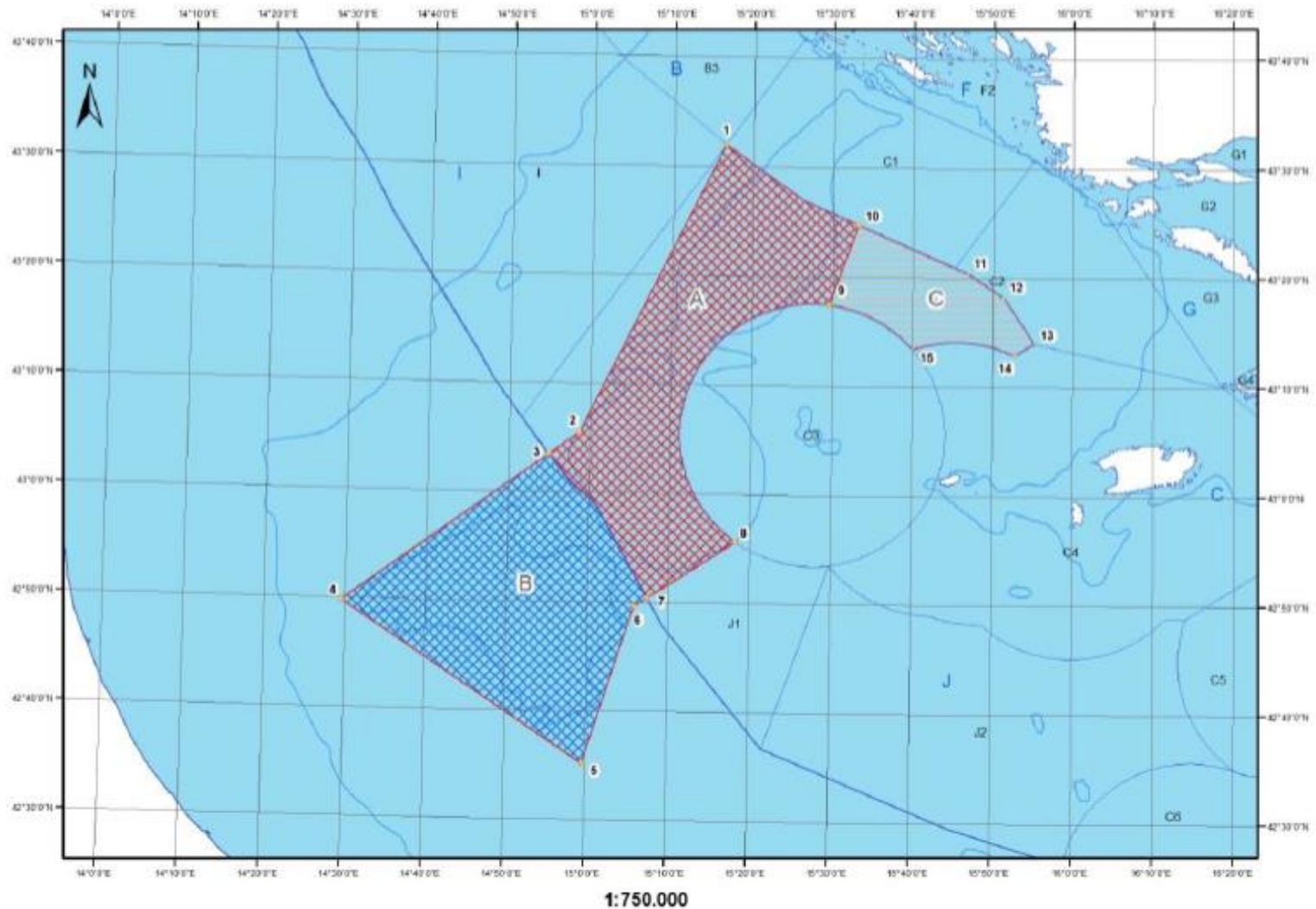




The FRA Lophelia reef off Capo Santa Maria di Leuca (in red).
Source: Global Fishing Watch (2021).

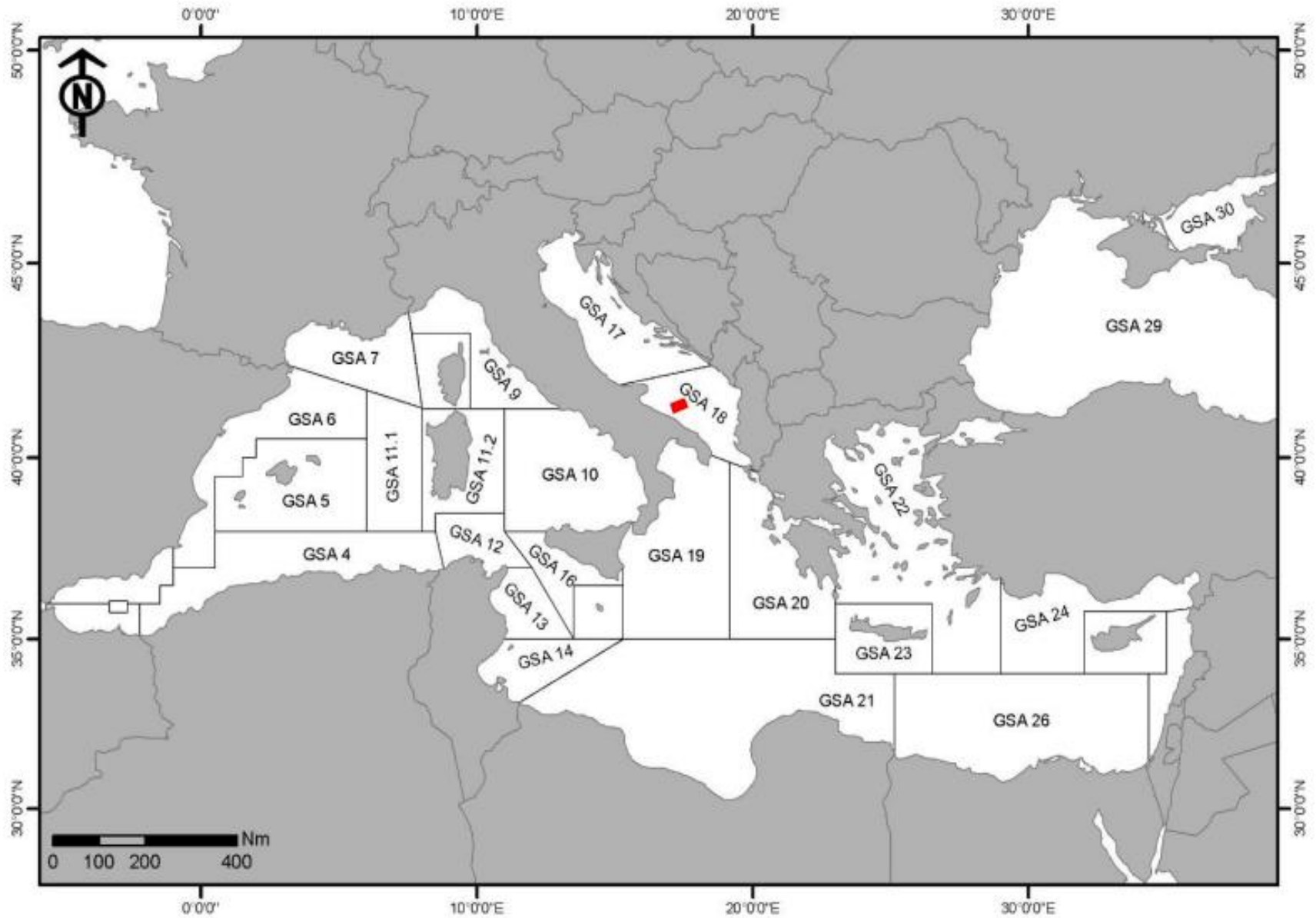


Geographical coordinates of the Jabuka/Pomo Pit FRA (Adriatic Sea)



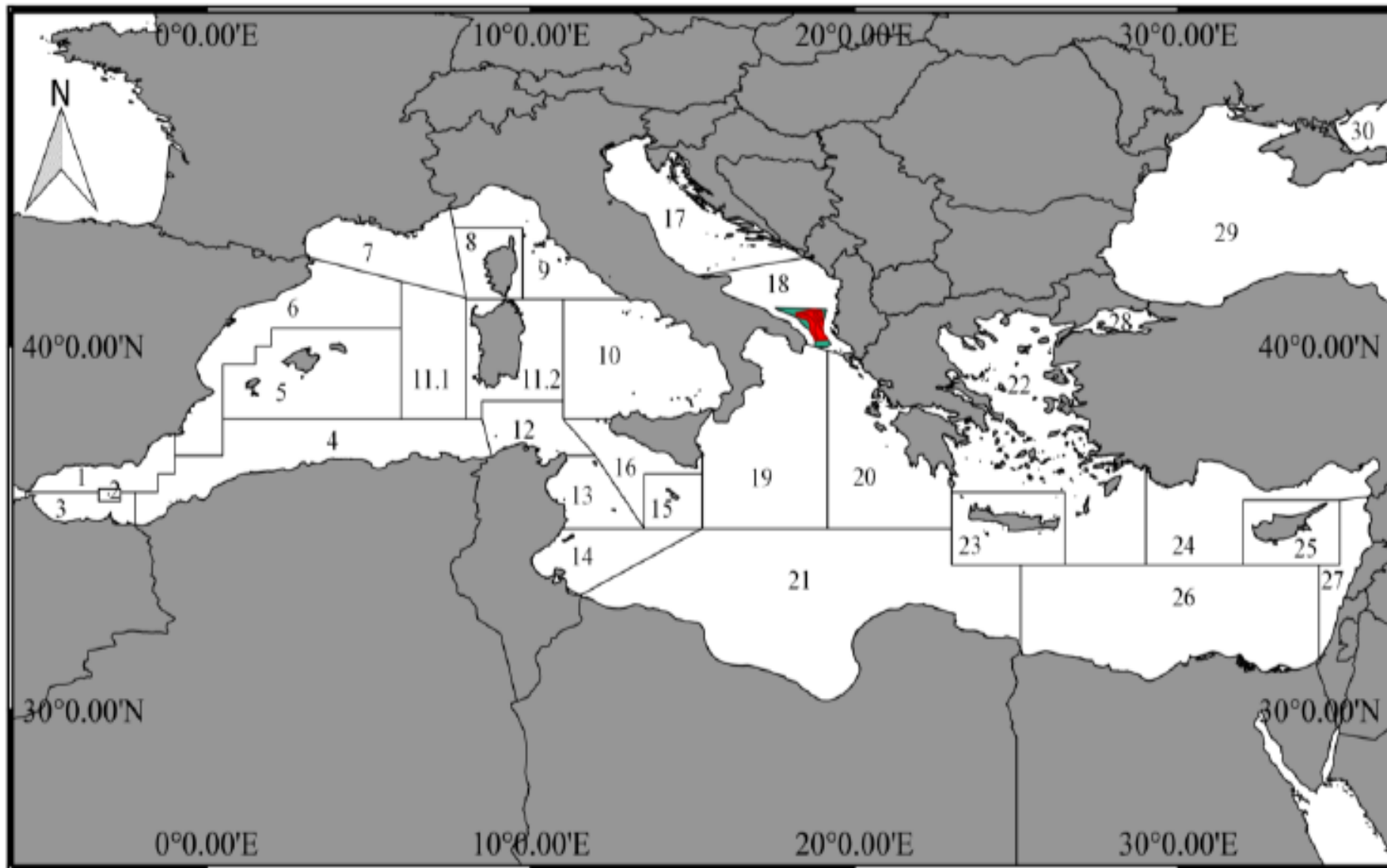
The FRA Jabuka/Pomo Pit and its zoning (A, B, C).
Source: Recommendation GFCM/41/2017/3.





The FRA in the Bari Canyon (Southern Adriatic).
 Source: Proposal submitted to the GFCM in April 2018.





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



European Grouping of Territorial Cooperation (EGTC)

The European Grouping of Territorial Cooperation (EGTC) is a tool consisting of an entity with **legal personality** under European Union law. It is provided by Regulation (EC) 1082/2006 of 5 July 2006 (EGTC Regulation), as amended in 2013.

Art. 1 of the EGTC Regulation sets forth the overall objective “*to facilitate and promote, in particular, territorial cooperation, including one or more of the cross-border, transnational and interregional strands of cooperation, between its members...*”.

The objectives of the EGTC may definitely include transboundary cooperation between members in the field of marine environment protection, through the extension, beyond national borders, of national MPAs and OECMs.

Once it has been set up and registered at the European Union level, the legal entity may autonomously undertake all the actions necessary to the implementation of its tasks, including the identification of the most appropriate **protective measures** for the areas of concern, and even act as the **management authority**.



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.**

The most important challenge is the endorsement, preparation and joint submission of a PSSA proposal to the IMO by all affected States. An additional challenge relates to the need to pass a proposal through the relevant IMO bodies (MEPC) and in this regard to convince other States, of the environmental importance of the area and of its vulnerability to international shipping



Associated Protective Measures (APM)

The main opportunity provided by the PSSA concept is the *possibility to introduce for 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 (IMO Instrument) 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 currently the case in the Adriatic Sea, 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 (*i.e. Ballast Water Convention*)

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



.....Regarding new APMs in an AI PSSA, the first possibility would be that the potential (Adriatic) PSSA **mirrors (only) already existing measures** (*routeing measures, mandatory ship reporting- ADRIAREP and MARPOL Special Area Status under Annexes I and V.*

The second option could be the **strengthening and upgrade of existing associated protective measures**, coupled with eventual proposals for new associated protective measures:

- Existing routeing measures could be for example strengthen through the upgrade of the existing recommended traffic flows in the Central and Southern Adriatic to compulsory traffic separation schemes;
- The ADRIAREP reporting system could be upgraded i.e. with regard to the types of ships which needs to report and with regard to information which needs to be reported;
- Special Area Status on the basis of Annex IV. and VI. of MARPOL (SECA&NECA).

Based on a draft proposal prepared in the period 2006-2009, an Adriatic PSSA area should have embraced the entire Adriatic Sea, including the entire Channel of Otranto area, north from the latitude 40°25'00 N. Such geographical extent corresponded and still correspond to the area of application of the existing associated protective measures in the Adriatic Sea (i.e. ADRIAREP).





CONCLUSIONS & PRELIMINARY 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/NATURA 2000 & EGTCs, SPAMI, PSSA)

