



## SCENARIO FOR DESIGNATION OF MARINE PROTECTED AREAS NETWORK ACCORDING TO 2030 EU BIODIVERSITY STRATEGY

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## SYLLABUS

The following legal analysis has been commissioned by Public agency for promotion of entrepreneurship and developing projects of Municipality of Izola, within the framework of the EUSAIR Facility Point project, co-financed by the INTERREG V-B Adriatic-Ionian Cooperation Programme 2014-2020 European Regional Development Fund (ERDF) and Instrument for Pre-Accession Assistance (IPA II), as well as national funds.

The EUSAIR TSG3 Parallel session at the 7th EUSAIR Forum in Tirana, Albania in May 2022, a proposed the formation of an action plan at the TSG3 level with clear objectives to support the identification and designation of MPAs, capacity development, and networking in accordance with Council decision on “Blue corridors and EU sustainable blue economy” Brussels, 17.5.2021 COM (2021) 240 final, COMMUNICATION FROM THE COMMISSION on a new approach for a sustainable blue economy in the EU Transforming the EU's Blue Economy for a Sustainable Future.

According to the conclusions of the Parallel session at the forum, a Scenario for the achievement of nature conservation goals as defined in the European Commission Communication (COM (2020)380): EU Biodiversity Strategy for 2030, was commissioned.

The study is identified as part of the activities of WP T2 for pilot areas under the Flagship ICZM-MSP.

The study is composed by the following parts.



## **INTRODUCTION – THE ANALYSIS OF THE LEGAL FRAMEWORK FOR MARINE PROTECTED AREAS ESTABLISHMENT IN THE EUSAIR REGION**

The introductory – framework analysis is composed of three parts.

**1) In the first part** of the commissioned study includes the analysis of EU law (**NATURA 2000, MSFD, MSP Directive, European Common Fisheries Policy**) and policy and practice. The framework analysis presents the European court of justice (ECJ) case law and EU commission opinions and conclusions and its critics.

**2) The second part** presents the analysis of international legal framework (**Bern Convention, Barcelona Convention with protocols**) for national biodiversity, as well as documentation of international bodies under Bern and Barcelona Convention.

**3) The third part** defines the policy framework for establishment of MPA **network (corridors)** in the EUSAIR area.

All three parts introduce various “case studies”, and EU projects in the area of MPA expansion. Studies are presented and illustrated with graphic presentation from EUSAIR member states.

### **CHAPTER I – THE ANALYSIS OF THE MPA DESIGNATION IN INDIVIDUAL EUSAIR MEMBER STATES**

The analysis covers the overview of marine protection under national and supranational legislation within individual AI member state. Legal analysis evaluates the basis for expansion of MPA under law. Proposals for additional forms of protection is presented with an overview of tentative connectivity options. CHAPTER I is divided two parts.

**1) The first part** is focused on AI member states that are not EU member states. The overview presents the marine characteristic and history of development of MPA in individual country. The legal framework is presented by individual areas of law and summarised in form of tables. The existing forms of marine protection for individual country is presented in the text as well as in its graphic form.

Possible legal basis for expansions of protection is presented in graphic form as well. The case study of tentative network between existing and potential MPA is illustrated.

**2) The second part** is focused on AI member states that are members states of European Union. Member States should have submitted their pledges for targets of *EU Biodiversity Strategy* to be achieved by 2030 by the end of 2022. At the time of the drafting of this study no national pledges have been public yet.

The analysis follows from the legal obligation under EU Law, such as gaps in Natura 2000 designations. Furthermore, implementation of obligations under MSFD and MSP is presented and their application in practice where available is illustrated.

National legal framework for each member state is analysed and summarised in tables. Graphic presentation of MPS is supplied and examples of proposed national policy where available is presented with graphic examples from various EU projects and scientific studies.

### **CHAPTER II – TRANSBOUNDARY PROTECTION OF MARINE AREAS**

Chapter II of this document focuses on **transboundary marine areas, emphasizing the legal status of identified or potential (transboundary) marine areas where cross-border cooperation for protecting the marine environment can be established.**

**1) The first part provides general remarks regarding the jurisdictional status of the Adriatic and Ionian Seas as part of the wider Mediterranean Sea.** It highlights that once all Mediterranean States, including those bordering the Adriatic and Ionian Seas, proclaim their exclusive economic zones, the high seas and the high seas regime based on Part VII of the United Nations Convention on the Law of the Sea (UNCLOS) will cease to exist in the Mediterranean, including the Adriatic and Ionian Seas.

**2) The second part focuses on documenting and analysing the legal status of all identified areas where establishing cross-border marine protection is justified.** It refers to the available or potential (transboundary) legal basis for establishing marine protected areas, namely:

- Ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats (**EBSAs**) under the Convention on Biological Diversity (CBD).
- Specially Protected Areas of Mediterranean Importance (**SPAMIs**) under the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention).
- Marine Protected Areas for Cetaceans under the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea, and Contiguous Atlantic Area (**ACCOBAMS MPAs**).
- Fishery Restricted Areas (**FRAs**) under the Agreement for the establishment of the General Fisheries Commission for the Mediterranean (**GFCM**).
- Particularly Sensitive Sea Areas (**PSSAs**) within the framework of the International Maritime Organization (IMO).

**3) The third part provides a handbook-style guide for establishing legal protection based on individual (cross-border) legal frameworks** (SPAMI, ACCOBAMS, PSSA, etc.). The analysis in this part includes the identification of necessary steps in the form of a manual for designating legal protection based on the aforementioned (cross-border) legal grounds. It refers again to:

- Ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats (EBSAs) under the Convention on Biological Diversity (CBD).
- Specially Protected Areas of Mediterranean Importance (SPAMIs) under the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention).
- Marine Protected Areas for Cetaceans under the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea, and Contiguous Atlantic Area (ACCOBAMS MPAs).
- Fishery Restricted Areas (FRAs) under the Agreement for the establishment of the General Fisheries Commission for the Mediterranean (GFCM).
- Particularly Sensitive Sea Areas (PSSAs) within the framework of the International Maritime Organization (IMO).

**4) The fourth part focuses on identifying possible forms of management within previously designated cross-border cooperation structures, while control and enforcement are discussed in the fifth part.**

The analysis focused on the entire EUSAIR area, with specific attention given to four important transboundary areas: **Gulf of Trieste, Jabuka/Pomo pit, Bay of Klek/Neum, and Otranto Channel.**

### **SUMMARY AND CONCLUSIONS**

The final part provides a critical summary of the Scenario. Summary provides a list of various legal and policy basis in a tabular, graphic explanatory form.

As for the conclusion it offers a graphic proposal for extensions of MPA areas including strict protection parts for the whole EUSAIR area.

### **ANNEXESS**

There are 3 annexes with standardised forms relevant for transboundary marine protection. Annex I is the form for SPAMI list presentation, Annex II is the form for review of SPAMIs and Annex III it he forms for the proposal for GFMC fishery restricted area (FRAs).

# INTRODUCTION – THE ANALYSIS OF THE LEGAL FRAMEWORK FOR MARINE PROTECTED AREAS DESIGNATION IN THE EUSAIR REGION

## 1. EU LAW AND POLICY ON BIODIVERSITY PROTECTION

Following the European Green Deal the European Commission adopted, on 20 May 2020, a Communication on an “*EU Biodiversity Strategy for 2030 – Bringing nature back into our lives*” (strategy). The strategy<sup>1</sup> highlights the importance of a coherent network of protected areas. The strategy concludes that protected areas are important for the conservation of biodiversity and that the existing network of protected areas is not sufficiently large to safeguard biodiversity.

It stresses the evidence that the Aichi biodiversity targets, of 17% of land and inland waters and 10% of sea covered by protected areas, are insufficient. Further states that currently 18% of land and **8% of sea in the EU are integrated in Natura 2000, with an additional 8% of land and 3% of sea covered by national protection schemes. Only 3% of land and 1% of sea are strictly protected.**

The strategy sets the objective of establishing a truly coherent Trans-European Nature Network, to legally protect at least 30% of the land, including inland waters, and 30% of the sea in the EU, of which at least one third (10% of land and 10% of sea) to be under strict protection.

Policy and targets have been reaffirmed by the *EU Council of Ministers in its Conclusion on October 2020*.<sup>2</sup>

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<sup>1</sup> Section 2.1

<sup>2</sup> *Strategy, as an integral part of the European Green Deal, should be a central element of the EU’s recovery plan*

...  
*STRIVING to ensure that marine issues are an integral part of the post-2020 global biodiversity framework;*

...  
3. *STATES that the implementation of the Strategy requires a collective effort by the Commission, the Member States and society as a whole; and CALLS ON them to start the implementation measures rapidly and ambitiously; ACKNOWLEDGES the need for corresponding financial means*

4. *RECOGNISES that while legal frameworks, strategies and action plans at EU and national levels are in place to protect biodiversity and nature and to restore degraded habitats and species populations, we need to step up the protection and restoration of nature in order to put biodiversity on the path to recovery by 2030 and to address the direct and indirect drivers of biodiversity and nature loss effectively*

...  
6. *WELCOMES - taking into account paragraph 1 - particularly the EU-level targets listed at the end of sections 2.1 “A coherent network of protected areas” and 2.2 “An EU Nature Restoration Plan: restoring ecosystems across land and sea” of the Strategy, also as an essential basis for the necessary political and societal discussions between the Commission, Member States and stakeholders;*

...  
9. *WELCOMES the objective of creating a coherent network of well-managed protected areas and to protect a minimum of 30% of the EU’s land area and 30% of its sea area, one third of which strictly protected, representing 10% of EU land and 10% of EU sea; EMPHASISES that this is an objective to be reached by Member States collectively, with all Member States participating in this joint effort as well as taking into account national conditions; STRESSES that this network should be based on the Natura 2000 network and complemented by additional designations by Member States;*

10. *EMPHASISES that the further clarification and implementation of these targets require a participative process between the Commission and the Member States, including the development of a common understanding of the definitions and criteria for the designation of additional protected areas as well as a definition of strict protection; UNDERLINES that in this process, existing national categories of protected areas and certain other effective area based conservation measures (OECMs, as defined by the CBD) should be recognised; HIGHLIGHTS that the stricter level of protection may allow for certain human activities, which are in line with the conservation objectives of the protected area;*

...

## 1.1. EU Legal framework and policy measures

There are different measures at the EU level aimed at contributing to protection of the marine environment. The measures are specific environmental legislation dealing with pollution and waste issues as well as actions to integrate marine protection into sectoral policies which concern maritime areas.

The later are policy areas such as fisheries, transport, and regional development. Within the framework of the **Birds and Habitats Directives** member states are obliged to designate and manage areas to ensure the protection of the most threatened species and habitats across the EU. The NATURA 2000 network is the most substantive regional network of protected areas in the world.

Besides individual actions taken on marine protection there was a need for these actions to be coordinated and extended in a comprehensive framework. **Marine Strategy Framework Directive (MSFD)** adopted in 2008 established the basis for achieving this objective. The directive objective is to achieve a good environmental status for the full marine area of the EU by requiring the member states to adopt and implement strategies and programmes of action already by 2020.

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20. *RECOGNISES the need to urgently advance action on the protection and conservation of marine and coastal ecosystems and biodiversity, including by addressing major threats, such as the adverse effects of climate change, marine pollution in all its forms, including underwater noise, as well as over-exploitation of marine resources and the introduction of invasive alien species*

...

28. *AGREES that tackling biodiversity loss, maintaining ecosystems in good condition and restoring ecosystems will require significant public and private investment at national and European level; ACKNOWLEDGES the Commission's initial assessment that to meet the needs of this Strategy, including investment priorities for Natura 2000 and green infrastructure, at least EUR 20 billion per year should be unlocked for spending on nature; UNDERLINES that a significant proportion of the 30% of the EU budget and Next Generation EU expenditures dedicated to climate action should be invested in biodiversity and nature-based solutions fostering biodiversity; EMPHASISES the importance of effective biodiversity proofing as well as of an improved biodiversity tracking method*

...

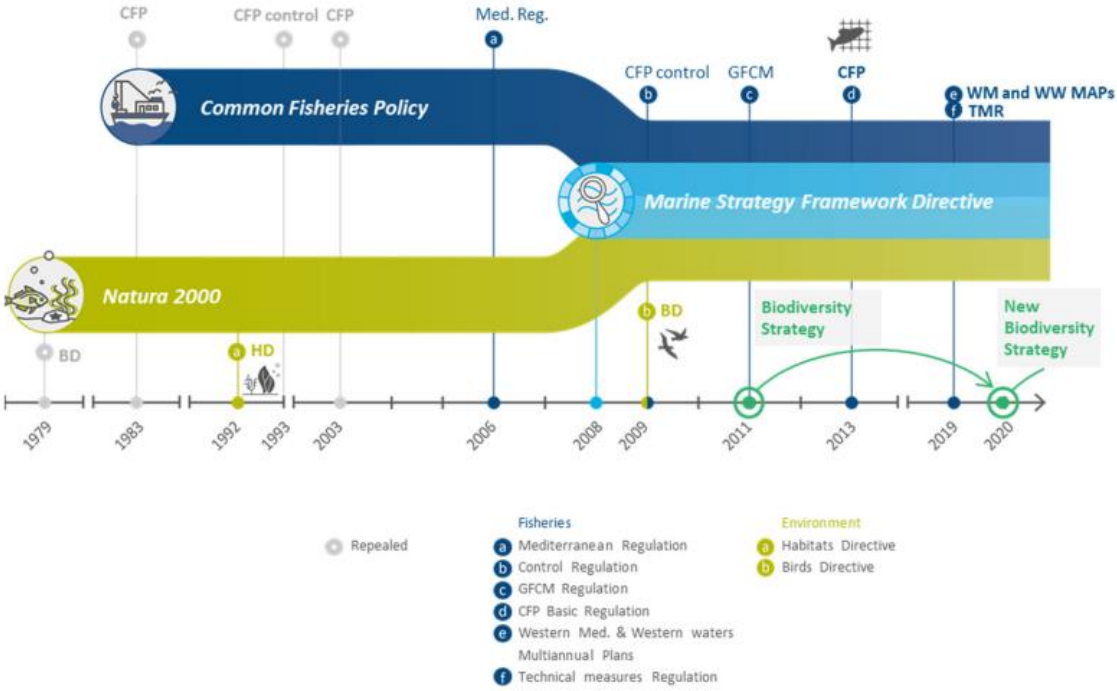
35. *HIGHLIGHTS that biodiversity is a core priority of the EU's external action and that it is necessary to ensure high ambition of the EU and Member States as well as to mobilise all efforts for the benefit of the world's biodiversity; STRESSES that international and regional engagement and cooperation will be crucial in responding to the biodiversity crisis and CALLS ON the Commission and the High Representative to scale up outreach on biodiversity as part of a coherent EU Green Deal diplomacy;*

...

45. *HIGHLIGHTS the importance of achieving a good environmental status of marine ecosystems; UNDERLINES that the EU supports and calls for the conclusion of an ambitious legally binding international agreement on marine biological diversity of areas beyond national jurisdiction (BBNJ) under the United Nations Convention on the Law of the Seas (UNCLOS) in 2021 and will continue to support the designation of two vast Marine Protected Areas in the Southern Ocean and of the South-Atlantic Whale Sanctuary under the International Convention for the Regulation of Whaling for which it will use all its diplomatic leverage and outreach capacities to help broker an agreement; REITERATES the unique and fragile nature of Arctic biodiversity; REAFFIRMS that the EU will continue to apply zero tolerance towards illegal, unreported and unregulated fishing, promote sustainable fisheries combatting overfishing and by-catch of threatened and other species, including through WTO negotiations on a global agreement to ban fisheries subsidies that are directly harmful to the sustainability of fish stocks...*

The requirements of this directive relate to a wide range of descriptors and criteria. MSFD recognise that spatial protection measures including MPA's should form part of the programmes of measures required for its implementation<sup>3</sup>.

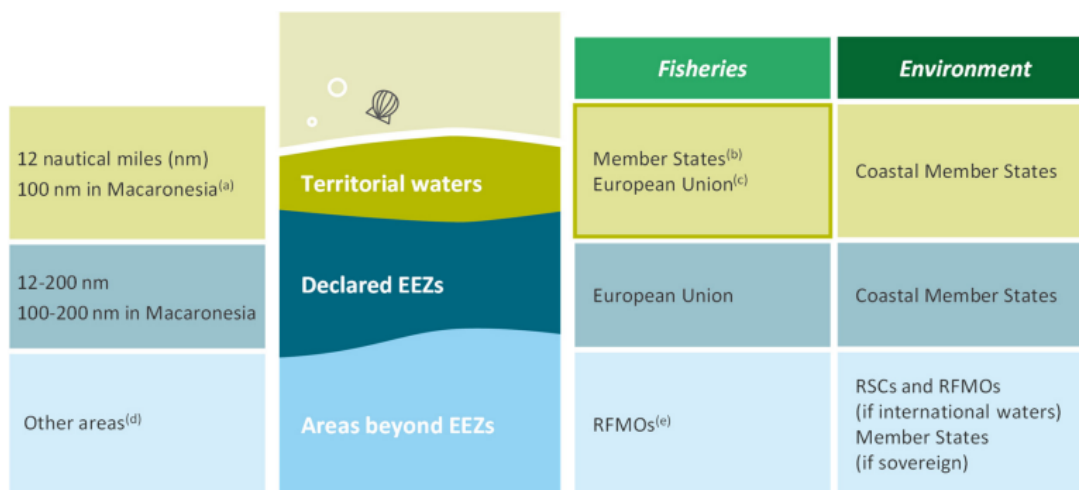
European Court of Auditors, Special report<sup>4</sup> “Marine environment: EU protection is wide but not deep”, defines comprehensively the framework of distribution responsibilities for action in the tables:



Source: ECA.

<sup>3</sup>Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS)

<sup>4</sup> Special report 26/2020: Marine environment: EU protection is ...



<sup>(a)</sup> This rule applies to all EU outermost regions.

<sup>(b)</sup> Member States regulate access of fishing vessels to these waters under a temporary exception

<sup>(c)</sup> The CFP gives competences to the EU all over EU waters

<sup>(d)</sup> CFP rules apply to EU vessels and EU nationals in international waters

<sup>(e)</sup> The GFCM is competent for territorial, EEZ and international waters in the Mediterranean and Black seas

Source: ECA.

## 1.2. EU – Legislation and its implementation

The Strategy requires that all protected areas should have clearly defined conservation objectives and measures, but also states that the designation of additional protected and strictly protected areas, either to complete the **Natura 2000 network** or under national protection schemes, including the spatial protection measures to comply with: **Marine Strategy Framework Directives**, will be a responsibility of the Member States.

Two Commission Guidance documents have been produced that provide further clarifications for each of the targets<sup>5</sup>. Commission document further defines **other effective area-based conservation measures** (OECMs), that could contribute to the strategy targets.

The member states have in line with the EU commission reasoning the responsibility to use the available EU legal framework in combination with the national protection scheme to achieve the form and the substance of the defined targets. The targets have to be achieved in each **EU biogeographical region and sea basin**.

The obligation of the member state is to contribute with protection measures to the targets is set at the **sea basin level**. As the **Commission guidance on the protected areas targets** stresses: *...It is important to note that there is a large variation among Member States for the terrestrial coverage of Natura 2000, ranging from 8% in Denmark to 38% in Slovenia. The situation is similar for the marine coverage of Natura 2000 and the coverage of different ecosystems also varies significantly...* The legal reasoning of shared responsibility for the coherent Natura 2000 network that was established by EU law is valid for the policy set by strategy as well.

The Strategy highlights the importance of setting up:

<sup>5</sup> Commission guidance on the protected areas targets: [https://ec.europa.eu/environment/publications/criteria-and-guidance-protected-areas-designations-staff-working-document\\_en](https://ec.europa.eu/environment/publications/criteria-and-guidance-protected-areas-designations-staff-working-document_en),  
Commission guidance on the status improvement targets: <https://circabc.europa.eu/ui/group/6f30d1d2-d6f2-4c6ea4dc-1>

- ecological corridors in order to have a truly coherent and resilient Trans-European Nature Network,
- investments in green and blue infrastructure,
- cross-border cooperation among Member States, including through the European Territorial Cooperation.

### 1.2.1 Natura 2000 network

Since 1992, the EU has called for the creation of a network of sites called Natura 2000. These integrate the previously designated sites under the Birds Directive, since 1979. Two types regularly overlap, not only with each other but also with other designations:

- Special Protection Areas (SPAs) under the EU Birds Directive (1979).
- Sites of Community Importance (SCI) under the Habitats Directive, which are eventually designated on a national level as Special Areas of Conservation (SACs).

There has been a significant increase of the total coverage of the EU seas in terms of marine protected in the last seven years, primarily due to the expansion of the Natura 2000 network it has more than doubled. Most of the Mediterranean MPAs are part of the NATURA 2000 network including the EUSAIR area.

The Nature directives sets the process of designation which requires intense coordination between Member States and the European Commission. The MS must ensure **that process of designation is based exclusively on scientific criteria.**

Primarily, the MS should identify a list of Sites of Community Importance (SCI) and assess at a national level the relative importance of the sites for each natural habitat type (Annex I – Habitat types), and each species contained in the Annex II (including priority habitats and priority species).

Each Member State indicates a list of SCI to the European Commission (EC), which consequently adopts the proposed list, in accordance with the Article 21 of the Habitats Directive. Once this procedure is over, the MS should designate these sites as Special Areas of Conservation (SAC), **establishing the priorities for the conservation.** The Special Protection Areas (SPA) are identified and designated in accordance to the Birds Directive<sup>6</sup>.

#### 1.2.1.1 Marine Natura

The **Habitats Directive lists nine marine habitat types and 16 species**, for which marine site designation is required, whilst the **Birds Directive lists a further 60 bird species, whose conservation requires marine site protection.** By the end of 2018, more than 3150 marine Natura 2000 sites have been designated, covering almost 10% of the total EU marine area (over 550 000 km<sup>2</sup>)<sup>7</sup>

<sup>6</sup> Criteria for selecting sites eligible for identification as Sites of Community Importance and designation as Special Areas of Conservation for Annex III: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

SPA criteria for species included in Annex I: Council of 30 November 2009 on the conservation of wild birds (Directive 79/409/EEC)

<sup>7</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS)

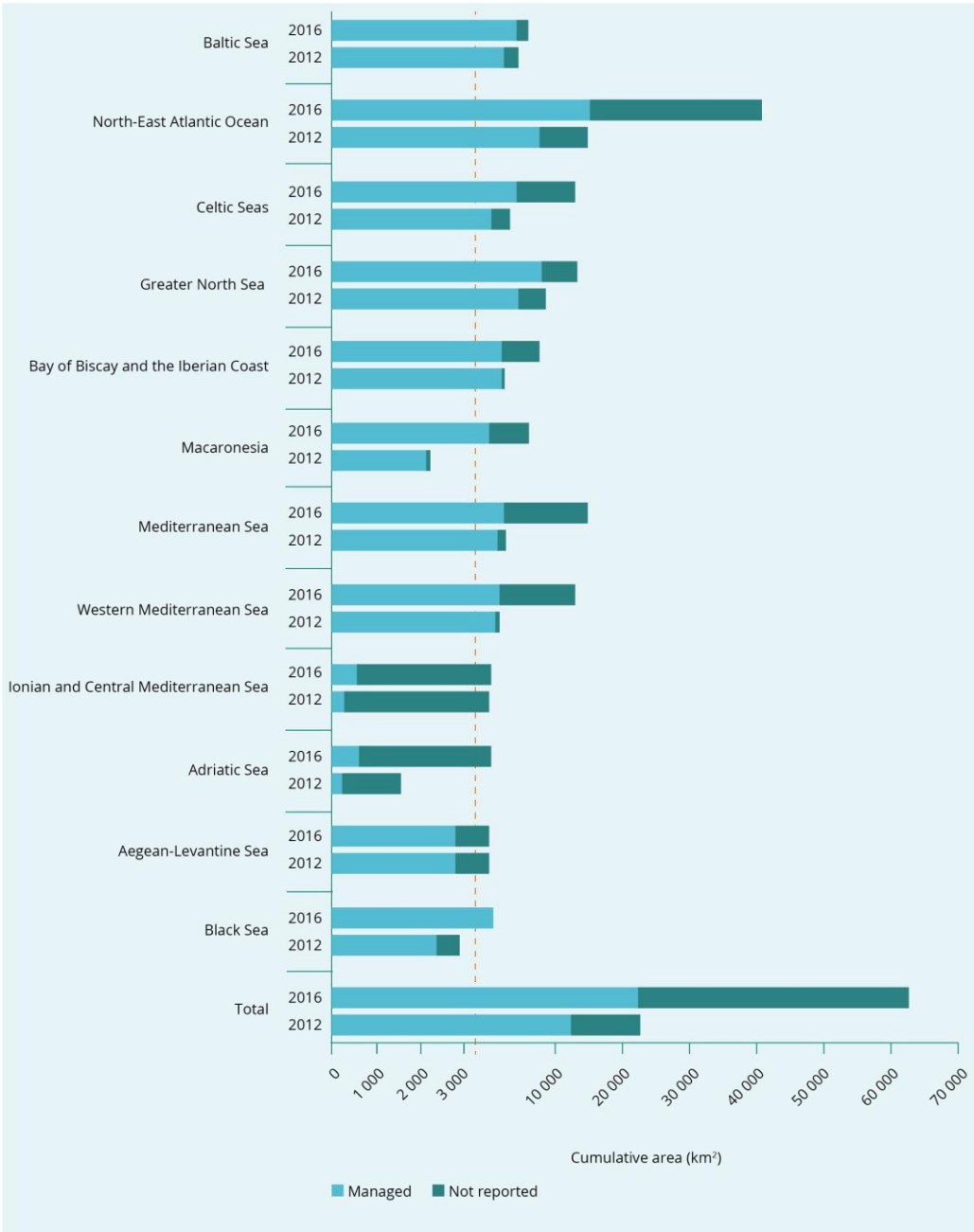


Analysis of marine Natura 2000 sites<sup>8</sup> shows that that the surface of the Natura 2000 network — which was established in 2012 — was covered by conservation regimes in most regional seas by 2016 (except for the Adriatic, Aegean and Ionian Seas). In 2015, the mid-term review of the strategy recognised that marine species and ecosystems were still declining in the EU’s seas and that the Natura 2000 marine network remained incomplete<sup>9</sup>.

Overall, in the last 4 years, **the number of marine Natura 2000 sites with conservation measures has increased<sup>10</sup>**.

*“Annexes of the Habitats Directive have limited focus on marine species and habitats more especially for the offshore waters.”*

<sup>8</sup> <https://www.eea.europa.eu/themes/water/europes-seas-and-coasts/assessments/marine-protected-areas#about>  
<sup>9</sup> COM (2015) 478 final of 2 October 2015: Report from the Commission to the European Parliament and the Council “The mid-term review on the EU Biodiversity Strategy to 2020”  
 Natura 2000 sites under management/conservation measures.



European Court of Auditors, Special report<sup>11</sup> “Marine environment: EU protection is wide but not deep” is critical regarding the limited reach of Natura 2000 in the marine environment.

The EU defined the annexes of Nature Directives more than 25 years ago and they do not incorporate recent scientific knowledge nor sufficiently cover marine habitats. EEA reported<sup>12</sup> that the nature directives “exclude significant aspects of the marine ecosystem from formal protection schemes”, referring in particular to marine fish (e.g. commercially exploited species), invertebrate species (e.g. mussels and sea stars) and marine offshore habitats (e.g. sandbanks below 20 m or soft-bottom habitats)<sup>13</sup> and their associated communities of fauna and flora. Special report compares situation to the United States of America that has, since 2006, defined Essential Fish Habitats for Atlantic Highly Migratory Species<sup>14</sup>, including sharks<sup>15</sup>.

According to the Special report: *“Adding species to the annexes to the directives would make it easier to bring them under the protection of Common Fishery policy (CFP) rules. For example, the Mediterranean Regulation (MedReg) prohibits the catch of species listed in the Habitats Directive. Under the MedReg, it remains legal to catch threatened species (e.g. sponges and corals) that are not listed in the Annex of this Directive. Likewise, the Technical Measures Regulation (TMR) frequently refers to the species listed in the Directive.”*

Report concludes, that, *directives contain procedures (Habitats Directive, Article 19, Birds Directive, Articles 15 and 16) for updating the lists of protected species and habitats but the Commission has not yet used them.*

EU Commission replied to the Report, by stressing: *»The EU Birds and Habitats Directives have been subject to a thorough REFIT<sup>16</sup> evaluation that concluded in 2016 that they are fit for purpose but their implementation needs to be improved, notably as far as the adoption of site specific conservation objectives and management plans is concerned.*

*This is why the new EU Biodiversity Strategy for 2030 aims inter alia at boosting the implementation of the directives and expanding the MPAs network. The protection of marine ecosystems by the BHDs is, however, to be read in interplay with the MSFD”*

**The Commission adopts a mora pragmatic and less legalistic approach by stating: *Even when a species is not listed in the annexes of the Directives, the Natura 2000 network, through its 'umbrella effect' covers a high proportion of species of conservation concern beyond those listed in the Annexes.***

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<sup>11</sup> [Special report 26/2020: Marine environment: EU protection is ...](#)

<sup>12</sup> EEA report 3/2015: “Marine protected areas in Europe's seas”.

<sup>13</sup> For example, the Maltese skate (*Leucoraja melitensis*) – a specie considered by the IUCN as critically endangered – and its nursery habitats (sandy and muddy flats below 60 metres) are not covered by the BHDs.

<sup>14</sup> [Essential Fish Habitat | NOAA Fisheries](#)

<sup>15</sup> Commission reacted to the trans-Atlantic comparison: *“In the Commission’s view, any comparison between different sea basins should be done with caution due to different geographical situation as well as different fisheries taking place therein. Closing a vast area of ocean with no economic activity has lesser socio-economic implications. It is a Member State responsibility to designate and manage MPAs and that MPAs are not the only tool for the protection of species or habitats - sometimes horizontal measures are more effective, especially for highly migratory species, like sharks”.*

<sup>16</sup> [https://commission.europa.eu/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof\\_en](https://commission.europa.eu/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof_en)

**Having the purpose orientated MSFD it is up to the member states to protect all marine species and habitats, without need to refer to each individual species (listed in the Nature Directives).**

➤ **Natura 2000 legal mechanism**

The objective of the Directive 92/43/EEC is to contribute to providing for biodiversity by preservation of natural habitats and wild plant and animal species, listed in Annex I and II (Article 2). Setting up of a harmonised European environmental network called “*Natura 2000*” makes a significant contribution to that objective. The network allows for preservation and rehabilitation of natural habitats and wild plant and animal species in the EU Member States.

The Natura 2000 regime is substantially different from many other international legal instruments concerned with nature protection. Obligations concerning protected areas in many conventions are often vague or deliberately leave a broad margin of discretion to the Contracting Parties.

Where protected areas are designated under alternative regimes, they are often supplemented by opportunities for interpretation, the balancing of interests, and political influences in the practical application of such mechanisms. The possibility for balancing of interests is in principle reasonable, in practice is often weighted to the benefit of short-term socio-economic interests.

The regime for Natura 2000 sites, in Article 6 of the Habitats Directive, is strict in principle and due to the interpretation of European court of Justice (ECJ) also in practice<sup>17</sup>.

Article 6(1) requires Member States to ‘establish the necessary conservation measures’ to achieve the conservation objectives that must be set for each site. Article 6(2) obliges Member States to avoid ‘the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.’

EU case law specifies that obstacles for reaching the conservation objectives<sup>18</sup> that should be addressed, regardless the cause of the disturbance, which include natural causes<sup>19</sup>. This may not only require the prevention of adverse impacts, but also ‘positive measures to preserve or improve the state of the area, such as, for example, the removal of alien species that constitute a threat to a bird species to which the site pertains<sup>20</sup>’.

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<sup>17</sup> The difference in strictness between Natura 2000 and most international nature conservation conventions is reflected in the ruling in case C-166/04. In the case the domestic protection regime for a Natura 2000 site was based *inter alia* upon international conventions; however, the ECJ ruled that the regime was ‘too general and concerns neither the SPA in question specifically, nor the species living there...’

<sup>18</sup> Case C-325/04, *Commission v. Spain*, 2007 [ECR], I-5415. In connection with doubts raised by the Commission with regard to the notion “a favourable conservation status” used in Article 4 of the Habitats Directive, the Tribunal is of the opinion that favourable conservation status is in place when: the number of populations that enables that species to stay in biocoenosis for a longer time, remains unchanged; natural range of the species is not reduced; and its appropriately large habitat is contained.

<sup>19</sup> *ECJ, C-6/04, (Com. v. United Kingdom), para. 34: ‘[...] it is clear that, in implementing Article 6(2) of the Habitats Directive, it may be necessary to adopt both measures intended to avoid external man-caused impairment and disturbance and measures to prevent natural developments that may cause the conservation status of species and habitats in SACs to deteriorate.’*

<sup>20</sup> *ECJ, C-418/04, (Com. v. Ireland)*, 13 December 2007, para. 154. 16 *Ibid.*, para. 87. This case related to Art. 4(4) Birds Directive, but Art. 6(2) Habitats Directive may also require positive measures. *C-535/07, (Com. v. Austria)*, 14 October 2010, paras 58-59

➤ **Protection of potential and cross-border Natura site**

Based on the intention of Article 4 in *conjunction with the sixth Whereas indent* of the Directive envisaging gradual setting up of the network and the *precautionary principle*, the obligation of a Member State concerning the area to prevent degradation and preserve the state of the nature giving such areas an objective possibility to be included in the Natura 2000 network is already established.

*Even in the case of as yet non-existent SCI (see also the Opinion of the Advocate-General Kokott of 27 October 2005 in the case C-209/04 Commission v. the Republic of Austria, RC 2006, p. I-2755, Item. 74), appropriate protection is needed<sup>21</sup>.*

The EU Court decided that ensuring an appropriate environmental impact assessment is an obligation of the Member State and not an individual/investor<sup>22</sup>. Both procedural and substantive requirements prescribed by the *Directive 85/337/EEC (EIA Directive)* have a direct effect as it is a “vertical relationship”.<sup>23</sup>

In the case of an impact assessment for areas which should be included in the national list of Natura 2000 it is also an obligation of public authorities to conduct a strict assessment. The interest

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<sup>21</sup> A judgment (*in the case C-244/05, Bund Naturschutz Bayern eV and Others v. Freistaat Bayern, RC 2006, p. I-08445*) undisputedly affirmed the principle in the case of areas a Member State proposed for a SCI.

*A fortiori*, it should apply to areas which meet the environmental expert criteria but the Member States has not yet submitted them or the existing lists have not yet been updated, due to a delay or omission and in spite of warnings from the European Commission. The reasoning is clearly and by programme presented in the *Opinion in the same case (Item 27. and 28): “[...] If that timetable had been followed, the sites concerned would have already benefited from the protection afforded by Article 6 of the Habitats Directive ... In this respect, it is irrelevant whether or not the sites are sites which have already been included in the national list provided to the Commission pursuant to Article 4(1) of the Habitats Directive or sites which, on account of their characteristics, should be included in the Community list but which have not yet been proposed by the Member State to the Commission as sites of Community importance [...]”*.

The level of protection in accordance with the national law must in line with the principle of *loyal interpretation (interpretatio europeae)* comply with the purpose of the Directive, namely: ensured at the earliest possible stage (*fifth Whereas indent of the Directive*) and based on the best available scientific knowledge (*see also the Opinion of the Advocate-General Kokott of 27 October 2005 in the case C-209/04 Commission v. the Republic of Austria, RC 2006, p. I-2755, Item. 42*), enable substantive assessment of alternatives (*see also the Opinion in the same case, Item 62*), must also effect procedures pending. The case C-209/04 was about annulling an already final decision on road construction (*see also the Opinion in the same case, Item 62*).

Any objection concerning violation of the principle of legal certainty, trust in the law and proportionality would not be justified if the procedures were already underway. It is a commitment of public authorities to make sure, before issuing a permit, that the development has no adverse impacts on areas with priority natural habitat types and priority species: “[...] *Until consent has been granted, there is no sufficient basis for expectations deserving of protection. Legal certainty is not affected either. As regards proportionality, there is no significant difference between a procedure still in progress at the end of the period for implementation and one commenced subsequently [.]* (see the *Opinion in the quoted case, Item 63*).

<sup>22</sup> Also, the EU Court (*in the case The Queen, at the proposal of Delena Wells v. Secretary of State for Transport, Local Government and the Regions, RC 2004, p. I-723*) rejected the objection that a right based on the directive, which had not been transposed appropriately and timely into domestic law, cannot infringe on the rights of private investors.

<sup>23</sup> The environmental impact assessment under the *Directive 85/337/EEC* and impact assessment under the *Directive 92/43/EEC* are analogue by legal nature, which was in the *case C-209/04 Commission v. the Republic of Austria (RC 2006, p. I-2755)* explicitly determined by the EU Court (*Item 56-58*): “[...] *In both cases, the assessment procedure takes place before the project is finally decided upon. The results of that assessment must be taken into consideration when the decision on the project is made, and the decision may be amended depending on the results. The various phases of examination of a project are so closely connected that they represent a complex operation. The fact that the content of some requirements differs does not affect this assessment [...]”*

of biodiversity cannot be protected otherwise than in a special procedure. Otherwise, Member States would be additionally “encouraged” to delay the preparation of complete SCI lists, which is a particular problem for marine areas as found by the European Commission (*European Commission: Guidelines on Natura 2000, 2007*)<sup>24</sup>.

EU Commission<sup>25</sup> is stressing the importance of transboundary cooperation<sup>26</sup>, but also the need for transnational coordination. It is a mutual obligation of Member States as the legal and conceptual nature of Natura 2000 is its coherence and alignment irrespective of internal national borders. The obligation of cross-border cooperation in protection of endangered habitat types and species is a part of the policy of the European Commission, expressly established for protection of large carnivores.<sup>27</sup>

#### ➤ **Strictness of designation process**<sup>28</sup>

With the aim of setting up a harmonised European environmental network of special conservation areas in a given schedule, the first paragraph of Article 4 of the *Directive 92/43/EEC* stipulated to Member States to use the criteria specified in Annex III to the *Directive* and appropriate scientific information to propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host.

The national list should include areas with priority natural habitat types and priority species, which the Member States selected on the basis of criteria from Annex III. “Priority” are those species and natural habitat types, which are in danger of extinction and for the preservation of which the

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<sup>24</sup> *The Directive 92/43/EEC* requires for plans and projects in the area of Natura 2000 a strict prohibition of adverse impacts which requires an assessment of all types of impacts. *The Court, in the case C-503/04 Commission of the European Communities v. the Federal Republic of Germany (RC 2006, p. I-53)*, extended the obligation to projects **affecting an area of Natura 2000 although carried out outside it**. In the same case, the EU Court took a position on protection of species and required prohibition of use of phytosanitary agents if that would endanger species from the list. *In the case C-236/05 Commission of the European Communities v. the United Kingdom of Great Britain and Northern Ireland (RC 2005, p. I-9017)*, the EU Court clearly demanded comprehensive and objective protection of all species in seawaters under the jurisdiction of Member States.

<sup>25</sup> [Circabc \(europa.eu\)](http://ec.europa.eu), “In addition, the establishment of good transboundary cooperation is important for the preparation of any actions that will require a transnational coordination. In this context, the Commission intends to use, as explained above, the Natura 2000 biogeographical process to support Member States in their efforts for identifying and assessing the feasibility of transnational priorities for improvements, in line with the overall target, and facilitate their implementation through follow-up initiatives. Member States are strongly encouraged to support this approach and make use of this opportunity in the coming years.”

<sup>26</sup> Areas cannot be divided by national borders as that would be in evident contradiction to the purpose of the Directive (see the fourth and eleventh indent of Whereas of the *Directive* and the *Opinion of the Advocate-General Colomer in the case C-205/08, Umweltanwalt von Kärnten v. Karntner Landesregierung, RC 2009*): “It would be absurd if national borders would pose no obstacle to fundamental economic freedoms but would be an impediment to environmental protection.” Setting up of the *Natura 2000* environmental network protects supranational (even global) interest for biodiversity, primarily by prevention, with a complete and scientifically based assessment of all developments which affect or could affect an area (potentially) a part of the *Natura 2000* network. The EU Court stated that a development shall not have an adverse impact on the integrity of the site and species with certainty provided by the latest scientific findings (*case C-293/04 Commission of the European Communities v. the Portuguese Republic, RC 2006, p. I-10183*).

The obligation can be met with reasonable implementation of an assessment substantively specified by the third and the fourth paragraph of Article 6 of the Directive (see the *Opinion of the Advocate-General Geelhoed of 27 October 2005 in the case C-244/05, Bund Naturschutz Bayern eV and Others v. Freistaat Bayern, RC 2006, p. I-08445, Item 34*).

<sup>27</sup> *Note to the Guidelines for population level management plans for large carnivores, signed by the department head Patrick MURPHY, available at [http://ec.europa.eu/environment/nature/conservation/species/carnivores/index\\_en.htm](http://ec.europa.eu/environment/nature/conservation/species/carnivores/index_en.htm)*.

<sup>28</sup> ECJ, C-418/04, (Com. v. Ireland), 7 December 2007, paras 83-89: Ireland had failed to comply with Art. 4 of the Birds Directive by not designating a site that had lost its relevant ornithological values (breeding sandwich terns) due to the lack of management measures.

EU bears special responsibility given the share of their prevalence in the European territory of Member States.

As stated, the obligation under the first paragraph of Article 4 of the *Directive 92/43/EEC* stipulated to Member States to use the criteria specified in Annex III to the *Directive* and appropriate scientific information **to propose a list of sites indicating which natural habitat types** in Annex I and which species in Annex II that are native to its territory the sites host.

The duty to prepare a full list which must be devised exclusively for the purpose of preservation of natural habitats and wild plant and animal species, listed in Annex I and II stems directly from the first paragraph of Article 4<sup>29</sup>. Based on the submitted list, the European Commission initiates the second stage.

As regards the second stage of the procedure, the second paragraph of Article 4 of the *Habitats Directive* specifies that the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance *based on criteria from Annex III (second stage)*. The assessment criteria for the second stage are – as the criteria for the first stage – specified exclusively in relation with the objective of preserving natural habitats or wild plant and animal species from Annex I and II.

The only exception envisaged by the Directive is that Member States with areas with one or more priority natural habitat types and priority species comprising more than 5% of the national territory may, in agreement with the Commission, request that the criteria from Annex III (second stage) be used more flexibly in selection of all SCI in their territory (the second subparagraph of the second paragraph of Article 4)<sup>30</sup>. The European Commission than in the procedure involving an ad hoc committee selects the list of selected areas as sites of Community importance.

Special Protected Areas (SPAs) under the Birds Directive Article 4(1) of the Birds Directive provides that ‘species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. To ensure this protection, ‘Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies. Protected sites must also be designated for ‘regularly occurring migratory species not listed in Annex I’, with ‘particular attention to the protection of wetlands and particularly to wetlands of international importance.

The essential basis for the designation of Natura 2000 areas should be the refuge of birds of international range as specified by BirdLife International<sup>31</sup>.

The selection and designation of SACs under the Habitats Directive must also be based solely on ecological criteria. The selection by the Member State must be based on the criteria in Annex III

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<sup>29</sup> *Judgment in the case C-317/98 First Corporate Shipping, Recueil, RC. 2000, p. 1-9325, Item 20)*

<sup>30</sup> see also the *Opinion of the Advocate-General Sharpstone of 9 July 2009 in the case C-226/08 Stadt Papenburg v. the Federal Republic of Germany, RC 2010).*

<sup>31</sup> Case C-202/01, *Commission v. France*, 2002 [ECR] I-11019; The EU Court of Justice sentenced that France does not obey its obligations as listed in Article 4 (1) and (2) of Birds Directive, because it did not take care of the designation as the areas of particular protection that fit more to protection of wild birds as specified in Annex I of the Birds Directive as well as to migrating species and particularly, it did not designate a sufficiently big area within the Plaine des Maures as the area of special protection

to the directive and relevant scientific information. Annex III contains criteria<sup>32</sup> to determine the ‘relative importance of sites’ for Annex I habitat types and Annex II species.

These criteria also constitute an important basis for providing information on the listed sites through so-called Standard Data Forms (SDFs), which must also be updated after the designation of the site. Member States must specify the sites that host priority habitat types and priority species. Based on the national lists and the criteria of Annex III of the Habitats Directive, the Commission will identify Sites of Community Importance (SCIs) - ‘Stage 2’) within 6 years of the directive’s notification.

A special part of the second-stage procedure is called by the European Commission the “Biographic process”<sup>33</sup>. In that case, the Austrian objections that they cannot follow the scientific bases of the European Commission were rejected with the claim that Austria has been “*undisputedly included in the bio-geographic process*” from which it evidently stems that Article 4 of the Directive requiring preparation and notification of a complete SCI proposal which fell due in 1995 has been violated.

In one or several bio-geographic seminars for individual bio-geographic regions, and on bilateral meetings, if necessary, the Commission prepares warnings and instructions on how to supplement the national proposals for lists of areas under the first paragraph of Article 4 of the *Directive*. It entails concrete so-called reservations on the national lists which are public and addressed to a Member State and define the areas and species with regard to which a Member State failed to meet its obligations under the stated Article.

The ‘Union list’ of SCIs consists of separate lists for the **nine biogeographical regions of the EU**. After the adoption of these lists, for each SCI ‘the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most – stage 3

*Most SACs have been designated, but it is ongoing process and the SCI-lists (and therefore the complex of SACs in the EU Member States) are regularly updated.*

The process of designating SACs is more complicated than the designation of SPAs and is based on the distribution of certain listed habitat types and species of wild plants and animals and the importance of natural areas for these specific ecological values.

Additionally, ECJ case law makes clear that the margin of discretion of the Member States in SAC designation is also limited. MS have some discretion in determining the most appropriate criteria. The margin of discretion is limited by the criteria set in ECJ case law.

The ECJ has emphasised that only scientific criteria may play a role in the selection and designation of SPAs: ‘It is the criteria laid down in paragraphs (1) and (2) of Article 4 which are to guide the Member States in designating and defining the boundaries of SPAs,’ and it is clear that ‘the criteria in question are **ornithological criteria**.’<sup>34</sup>

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<sup>32</sup> For habitat types these criteria relate to the representativity, relative surface, degree of conservation and the restoration possibilities of the habitat type, as well as a global assessment of the importance of the site for the habitat type. For species they relate to the size and density of the population, the degree of conservation and isolation of the population and, again, a global assessment ‘of the value of the site for conservation of the species.’

<sup>33</sup> *Lawsuit filed on 11 March 2008 in the case C-110/08 Commission of the European Communities v. the Republic of Austria*

<sup>34</sup> ECJ, Case C-44/95, (Regina v. United Kingdom), 11 July 1996, para. 26. See also ECJ, Case C-3/96, (Com. v. The Netherlands), 19 May 1998, para. 60, and ECJ, C-418/04, (Com. v. Ireland, 7 December 2007, para. 39.

The ECJ<sup>35</sup> has also clarified that **social and economic interests may not play a role in selecting Natura 2000 sites**: *‘a Member State is not authorized to take account of the economic requirements mentioned in Article 2 thereof when designating an SPA and defining its boundaries.*

In a case against the Netherlands already in May 1998, the ECJ stated that the margin of discretion is also limited as far as the number of SPAs are concerned. The obligation to designate SPAs cannot be avoided *‘by adopting other special conservation methods,<sup>36</sup> and ‘Member States are obliged to classify as SPAs all the sites which, applying ornithological criteria, appear to be the most suitable for conservation of the species in question.<sup>37</sup>*

Member States should also list all areas that qualify under the Annex III criteria as it is the task of the Commission to select the various SCIs<sup>38</sup>. ECJ explicitly acknowledged an ecosystem approach in setting the boundaries of SPAs, which is not only relevant for the size of the Natura 2000 sites but, to a certain extent, also for the quality of naturalness<sup>39</sup>

### ➤ **Strict impact assessment**

The provision of art. 6 (3) involves a two-stage assessment of the environmental impact. Concerning the plans and projects that would require such an assessment, the EU Court of Justice has adopted a wide interpretation.<sup>40</sup>

According to the EU Court of Justice, an obligation to provide the protection comes into being before any decline of the population of a given protected species or before deterioration of the protected settlement or the settlement of protected species, or whatever dangers in this matter take place.<sup>41</sup> Therefore, the assessment of the feasible level of interference and deterioration of the environment will be extremely difficult, inter alia because the situations or events that cause the obligation to take protective actions are interpreted by the Court of Justice of the EU in a broad way. According to the Tribunal, the obligation to take protective measures is not limited to protection against the activities of man, but it also contains the necessity of prevention against deterioration and interference being the result of predictable events or natural processes

According to the opinion of the EU Court of Justice, there are not only situations that happen after designation of the Natura 2000 areas that matter, but any activities resulting from the existing ways of using the environment, such as e.g. agriculture and fishery.

That protection is continued and covers also the situations when, after the environmental impact assessment for the Natura 2000 area was carried out (Article 6 (3) of the Habitats Directive), the Member State considered that a given project or plan will not affect the Natura 2000 area, nevertheless such influence has taken place. The general obligation of protection is waived if,

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<sup>35</sup> ECJ, Case C-44/95, *ibid.*, para. 27. See also ECJ, *ibid.*, para. 39.

<sup>36</sup> ECJ, Case C-3/96, (Com. v. The Netherlands), 19 May 1998, para. 55. See also ECJ, C-418/04, (Com. v. Ireland), 7 December 2007, para. 38

<sup>37</sup> ECJ, Case C-3/96, *ibid.*, para. 62.

<sup>38</sup> ECJ C-418/04, (Com. v. Ireland), 13 December 2007, para. 142. The ECJ went one step further in its judgment concerning case C-418/04 (Commission v. Ireland) by stating ‘that SPA classification cannot be the result of an isolated study of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the wetland ecosystem. On this basis, the ECJ concluded that an area, which was used as a feeding ground by bird species for which a nearby located SPA was designated, should have been part of the SPA: ‘it is an integral part of the entire wetland ecosystem and for that reason ought also to have been classified as an SPA.

<sup>39</sup> Natura 2000 and the protection of wilderness in Europe, April 2016 DOI:[10.1017/CBO9781107415287.008](https://doi.org/10.1017/CBO9781107415287.008)  
Wilderness Protection in Europe (pp.177-198), [Kees Bastmeijer, University of Groningen](#)

<sup>40</sup> For example, judgments in Cases: C-98/03; C- 209/02; 127/02; C-209/04; C- 418/04.

<sup>41</sup> Cases: C-355/90, Commission v. Spain, 1993 [ECR] I- 8445; C-117/00, Commission v. Ireland, 2002 [ECR] 05335.



despite the negative impact assessment of the plan or project, the prerequisites were identified as indicated in Article 6 (4) of the Habitats Directive.<sup>42</sup>

### ➤ **Monitoring the network**

The aim of the Natura 2000 network is to protect Europe's most important ecological sites. Protected and managed by Member States, Natura 2000 sites minimize biodiversity loss and environmental deterioration. All Member States must, according to the Habitats Directive, ensure that listed habitats and species of European interest achieve a "favorable conservation status", by undertaking certain measures to meet conservation objectives of habitats and species.

Since 2007, Member States have been required to set up a monitoring scheme, according to Art.11 of the Habitats Directive, to evaluate and report any changes in the conservation status of habitats and species, every six years<sup>43</sup>.

### **1.3. Integrated maritime policy<sup>44</sup> (MSFD and MSPD)<sup>45</sup> and Fishery policy (CFP)**

The Integrated Maritime Policy (IMP) promotes the protection of the marine environment and the sustainable use of marine and coastal resources, defining the boundaries of the sustainability of human activities that have an impact on the marine environment.

Nature Directives do not cover all marine species and habitats therefore the requirements of the Nature Directives are complemented by those of the **Marine Strategy Framework Directive (MSFD)**. Article 13(4), **sets the obligation to contribute** to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems, as part of the measures that Member States need to take to achieve good environmental status.

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<sup>42</sup> Case C-117/03, Dragaggi a.o., 2005 [ECR] I-167; Case C-244/05 Bund Naturschutz in Bayern a.o., 2006 [ECR] I-8445.

<sup>43</sup> The directive defines only legal and administrative requirements as to the monitoring of the status, and not the actual practical instructions for its implementation itself. Reporting within the Habitat Directive framework is composed of several parts. Article 11 stipulates that the member states are liable to monitor the conservation status of natural habitats and species from Article 2, where a special attention is to be dedicated to the priority natural habitat types and priority species. This stipulation concerns all habitats (from Annex II) and species (from Annexes II, IV and V) and is not limited only to the Natura 2000 areas, but imposes data to be gathered outside the network as well. Article 17 stipulates that the member states are liable to prepare, every sixth year, a report on the implementation of the Habitat Directive's measures. The report is to include above all information on the conservation measures from the first paragraph of Article 6, the evaluation of the impacts of these measures on the conservation status of natural habitat types from Annex I and species from Annex II, as well as the main results of status monitoring from Article 11.

<sup>44</sup> The Integrated Maritime Policy (IMP) of the European Union (EU) is a holistic approach to all sea-related EU policies. It is based on the idea that the Union can draw higher returns from its maritime space with less impact on the environment by coordinating its wide range of interlinked activities related to oceans, seas and coasts. Hence, the IMP aims at strengthening the so-called blue economy, encompassing all sea-based economic activities.

Articles 42, 43(2), 91(1), 100(2), 173(3), 175, 188, 192(1), 194(2), 195(2) of the Treaty on the Functioning of the European Union (TFEU). The EU Treaty makes no explicit provision for legislative competence on maritime policy. However, Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund, which is based on the above-mentioned Articles of the TFEU, provides the legal framework for its implementation.

More on: <https://www.europarl.europa.eu/factsheets/en/sheet/121/integrated-maritime-policy-of-the-european-union>

COM (2007) 575 final of 10 October 2007: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "An Integrated Maritime Policy for the European Union".

<sup>45</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, OJ L 164, 25.6.2008, Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, OJ L 257, 28.8.2014

### 1.3.1. Marine Strategy Framework Directive (Directive 2008/56/EC)

The Marine Strategy Framework Directive (MSFD) – Directive 2008/56/EC – establishes a framework for community action in the field of marine environmental policy<sup>46</sup>. The MSFD is one of the most ambitious, international, marine protection, legal frameworks, joining the efforts of 23 coastal and 5 landlocked States – in coordination with non-EU countries – to apply an ecosystem-based management and to achieve good environmental status. It covers geographically 5 720 000 km<sup>2</sup> of sea surface area across four sea regions, an area that is one fourth larger than the EU's land territory combined.

Implementing a holistic view and assessing sustainability requires that the ecosystem properties and the human pressures (including pressures from land-based sources of pollution, such as plastics, or atmospheric sources) are known and considered in the national and EU management decisions (Articles 4, 5 and 6 of the MSFD).

MSFD requires that integrated planning through the adoption of marine strategies needs to be developed, in a transparent manner, based on 11 descriptors and a number of criteria and parameters (15) to be assessed by each of the Member States.

Moreover, MSFD also provides the legal framework<sup>47</sup> to contribute to the commitments of the Convention on Biological Diversity (CBD) and to the EU biodiversity Strategy (May 2020). Marine strategies have been developed and are implemented in order to protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems in areas where these have been adversely affected.

These marine strategies have to include a Programme of Measures that are meeting the targets set in order to achieve Good Environmental Status (GES) in the marine environment by the year 2020. Towards this end, marine strategies strive to prevent and reduce inputs into the marine environment, aiming to phase out pollution (as defined in Art. 3(8) in the MSFD). The final is to

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<sup>46</sup> As Recital 11 of the directive states, the Water Framework Directive aims to achieve the objectives of EU policy concerning the environment as set out in Article 174 EC (now Article 191 TFEU) and is based on the precautionary principle, the principle of preventive action and the polluter pays principle.

To implement and achieve these over-arching objectives, Article 1 of the directive provides that its purpose is to establish a framework for the protection of various bodies of water which inter alia:

- *prevents further deterioration and protects and enhances the status of aquatic ecosystems; and aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing out of discharges, emissions and losses of the priority hazardous substances;*

with a view to contributing to inter alia

- (i) the protection of territorial and marine waters and
  - (ii) the achieving of the objectives of international agreements aiming to prevent and eliminate pollution in the marine environment.
- Pursuant to Article 2, the geographical scope of the directive extends to inland surface waters, groundwaters, transitional waters and coastal waters.
  - Surface waters are defined in the directive as inland waters, except groundwaters; and coastal waters, except in respect of chemical status for which they also include territorial waters. Coastal waters are defined in the directive as surface water on the landward side of a line which is drawn at 1 nautical mile on the seaward side of the baseline used to measure the breadth of territorial waters.

<sup>47</sup>Commission guidance on the protected areas targets: [https://ec.europa.eu/environment/publications/criteria-and-guidance-protected-areas-designations-staff-working-document\\_en](https://ec.europa.eu/environment/publications/criteria-and-guidance-protected-areas-designations-staff-working-document_en),

ensure that there is no significant impact on marine biodiversity, or any related risk for the marine ecosystems, the human health or to the legitimate use of the sea.

The MSFD supplies a coordination instrument to facilitate the coherence between the different EU policies, including the EU's maritime policy, Common Fisheries Policy (CFP) and the existing water and nature directives, which include the Water Framework Directive (WFD), Birds and Habitats Directive, Common Agricultural Policy (CAP), and the EU Biodiversity Strategy.

One of the key requirements of the MSFD is that the Member States must have a coordinated approach regarding the implementation, enhancing the cooperation with other states within the appropriate marine region or sub-region<sup>48</sup> and ensuring coherent and coordinated strategies.

#### ➤ **Setting the strategy of measures**

The MSFD requires that the European Union (EU) Member States take necessary cost-effective measures designed to achieve or maintain the Good Environmental Status (GES) by 2020, by applying an ecosystem-based approach to the management of human activity.

According to MSFD Article 10, environmental targets are set to guide progress towards achieving the good environmental status, i.e. to bridge the gap between baseline scenarios (i.e. the current environmental status described under the Art. 8 assessment) and the desired status of the marine environment (GES).

The first step for developing the Program of Measures (PoM) consists of identifying the measures already in place (existing measures) that contribute to addressing the predominant pressures identified in the Article 8 initial assessment and reaching the MSFD environmental targets under Article 10.

The next step consists of conducting a gap analysis: assessing how far the existing measures – not necessarily those specifically designed with the MSFD in mind – are sufficient to reach the MSFD's environmental targets. In order to ensure the solidity of this analysis, It is important to distinguish between measures that are adopted and already implemented, and measures adopted but not yet implemented. Both measures will be part of the baseline scenario and are not subject of further analysis.

PoM is subject to public consultation, which include a summary or list of the existing measures, including their relevance to the MSFD. When gaps are identified between the set of existing measures and the necessary ones to achieve the environmental targets, the next step would consist of identifying possible new measures to meet the MSFD environmental targets. For the new measures, which are technically feasible, the next step would consist of identifying how to develop and adopt them in the context of the specific policy concerned.

Good environmental status is defined in the Directive as: “the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations”.

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<sup>48</sup> The Mediterranean Sea region includes the Western Mediterranean Sea, the Adriatic Sea, the Ionian Sea and the Central Mediterranean Sea, and the Aegean-Levantine Sea, while for the Black Sea no sub-regions is specified

Member States have to determine a set of characteristics for the GES based on the 11 Descriptors of the GES<sup>49</sup> as outlined<sup>50</sup>. When defining the GES in article 3(5) the MSFD makes it explicit that “Good environmental status shall be determined at the level of the marine region or subregion as referred to in Article 4, based on the qualitative descriptors in Annex I.

Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status”. To facilitate the implementation of the MSFD, marine regions and subregions have been identified under the Article 4, taking into account hydrological, oceanographic and biogeographic features.

➤ **Reporting and updating**

Good environmental status represents the overall goal of the MSFD. The development and implementation of the PoM needs to be part of national overall Marine Strategy. The development and implementation of the Marine Strategy is a cyclical process, to be repeated every six years, commencing from 2012. The second period of reporting for MS started in 2018.

Following the first cycle of management, which ended in 2020, new programmes of measures will be set on a six-year basis. The Article 17. of the MSFD requires from the Member States to update the initial assessment of their marine waters; their determination of good environmental status and associated targets; their monitoring programmes; as well as their programmes of measures, to be further used during the second MSFD cycle.

The Directive requires Member States to define it at a regional and subregional level and the EU Commission 2017 Decision<sup>51</sup> provides specifications for this per criterion.

*Only 8% of the first definitions of good environmental status reported by Member States were evaluated as adequate<sup>52</sup>. The definitions tend to be qualitative, failing to set clear goals and*

<sup>49</sup> Commission Decision of 1 September 2010 on criteria and methodological standards on Good Environmental Status of marine waters (notified under document C (2010) 5956

<sup>50</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS), p. 26

1	Biological diversity is maintained.	The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climate conditions.
2	Non-indigenous species	Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystem.
3	Commercial fish and shellfish	Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock.
4	Food webs	All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.
5	Eutrophication	Human-induced eutrophication is minimised, especially adverse effects thereof, such as losses in biodiversity, ecosystem degradation, harmful algal blooms and oxygen deficiency in bottom waters.
6	Sea floor integrity	Sea-floor integrity is at a level that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected.
7	Hydrographical conditions	Permanent alteration of hydrographical conditions does not adversely affect marine ecosystems.
8	Contaminants	Concentrations of contaminants are at levels not giving rise to pollution effects.
9	Contaminants in Seafood	Contaminants in fish and other seafood for human consumption do not exceed levels established by Community legislation or other relevant standards.
10	Marine Litter	Properties and quantities of marine litter do not cause harm to the coastal and marine environment
11	Underwater Noise	Introduction of energy, including underwater noise, is at levels that do not adversely affect the marine environment.

<sup>51</sup> Commission Decision (EU) 2017/848 of 17 May 2017 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment.

<sup>52</sup> Report from the Commission to the European Parliament and the Council on the implementation of the Marine Strategy Framework Directive (Directive 2008/56/EC), 25.6.2020

*therefore, most of them lack quantitative detail that would enable progress to be clearly measured. Overall, a lack of coherence was also detected within the same marine region or subregion. The determinations of good environmental status have to be more measurable, regionally consistent and ambitious*<sup>53</sup>.

However, member States made significant efforts to develop their first MSFD programmes of measures by integrating different national, EU and international policies and covering the existing gaps with new cost-effective measures, reaching a total of 4653 measures. Overall, 79% of the reported measures were direct technical or regulatory measures, while the rest were more indirect support actions<sup>54</sup>.

**Key pressures put forward by the Member States in the common implementation strategy from a (sub)regional perspective in the Mediterranean Sea: overfishing, non-indigenous species, marine litter, cumulative impacts on highly mobile species.**

➤ **Setting common policy**

Report of the European Commission on the implementation of the Marine Strategy Framework Directive<sup>55</sup> highlights the importance of protecting the marine environment which is not only crucial for the conservation of biodiversity but also for the wellbeing of humans, the economy and the planet<sup>56</sup>.

**The Marine Directors called for strengthening the public dimension of the EU actions related to the MSFD, during the Meeting of 9 June 2016 (Amsterdam, NL), with a reference to the adoption of Sustainable Development Goal SDG for sustainable development, and the adoption of the Circular Economy package, which calls for reduction of marine litter, and implementing the 2030 Sustainable Development Goals (SDGs)**<sup>57</sup>

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<sup>53</sup> The EC Decision of 1 September 2010 establishes the criteria and methodological standards on Good Environmental Status of marine waters (notified under document C (2010) 5956)

<sup>54</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS),

<sup>55</sup> Report from the Commission to the European Parliament and the Council on the implementation of the Marine Strategy Framework Directive (Directive 2008/56/EC), 25.6.2020

<sup>56</sup> The EU's blue economy, based on sectors directly or indirectly depending on the health of the seas, oceans and coasts, generated a turnover of €658 billion in 2017/18. This is because, across the world, the oceans represent 71% of the Earth's surface and, 99% of the habitable space on Earth. They provide habitats for rich marine biodiversity, support essential services for people, such as food provision, climate regulation and recreation. The EU Blue Economy Report 2020, Published: 2020- 07-08; Directorate-General for Maritime Affairs and Fisheries (European Commission)

<sup>57</sup> **14: Conserve and sustainably use the oceans, seas and marine resources:**

1. *By 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution.*
2. *By 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans.*
3. *Minimize and address the impacts of ocean acidification, including through enhanced scientific cooperation at all levels.*
4. *By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics.*
5. *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.*
6. *By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation.*

➤ **Coherence (coordination) of marine policies**

According to the Article 20(3)(g), the Marine Strategy Framework Directive (MSFD) requires a summary of the contribution of other relevant EU policies attaining the objectives of this Directive. The MSFD Common Implementation Strategy recognises the need to coordinate with other closely related policies, notably mentioning **the Water Framework Directive (WFD)** in the MSFD Common Implementation Strategy.<sup>58</sup>

Additional interaction is required for other policy areas such as the **Birds Directive (92/43/EEC)**, **the Habitats Directive (2009/147/EC)** and the **Common Fisheries Policy**. MSFD implementation efforts can be also supported by tools like **Maritime Spatial Planning (MSP) and Integrated Coastal Zone Management (ICZM)**, especially by considering the land-sea interactions

**EU Biodiversity Strategy for 2030** (adopted in May 2020) aims to strengthen the protection and restoration of marine ecosystems in order to achieve “good environmental status”, **including the expansion of protected areas and the establishment of strictly protected areas for habitats and fish stocks recovery**, leading to an ecosystem-based approach of the management of human activities at the sea.

Common Implementation Strategy work programme includes the assessment of integrated economic analysis between the WFD and MSFD, contributions to the GES decision review process. There are several conceptual links between WFD and MSFD: MSFD applies to marine waters i.e. the waters, the seabed and subsoil on the seaward side of the baseline, from which the extent of territorial waters is measured. Therefore, MSFD applies to coastal waters, as defined by the WFD, and therefore there is an overlap, although the MSFD only applies on the practical aspects of the environmental status, which are not already addressed through the WFD.

The MSFD has a broader scope than the WFD, covering a wider range of biodiversity components and indicators, such as marine mammals and seabirds. In cases where both directives apply in coastal waters, the MSFD covers the aspects of good environmental status not covered by the WFD, such as marine litter, noise and marine mammals.

The MSFD shares the common overall goal of conserving biodiversity under the Natura Directives, i.e. the Habitats Directive (HD) and Birds Directive (BD). The BD and HD have similar conservation aims; protecting habitat and species (including plants, invertebrates, fish,

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7. *By 2030, increase the economic benefits to small island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture, and tourism.*

**14.a** *Increase scientific knowledge, develop research capacity and transfer marine technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing States and least developed countries.*

**14.b** *Provide access for small-scale artisanal fishers to marine resources and market.*

<sup>58</sup> The WFD requires measures that encourage the sustainable use of water, the protection and improvement of rivers, lakes, estuaries and coastal waters, aiming to achieve a good ecological and chemical status. The WFD calls for a management plan to be developed for each river basin district. Following several years of preparatory work, the first WFD river basin management plans were published in most Member States between end 2009 and mid-2010.

marine mammals and birds) and establishing a network of protected sites, called Natura 2000 sites<sup>59</sup>, for the conservation of biological elements listed under the Directives.

For each designated area the Directives require that a site – specific Conservation Objectives is to be set for the species and the habitats of interest **alongside a subsequent management able to ensure that these objectives are achieved.**

*The EC Report on the implementation of the Marine Strategy Framework Directive (25.6.2020) acknowledged that many of the European Marine Protected Areas are still not properly managed and cannot be assessed in terms of coherence and effectiveness due to the lack of appropriate instruments and data flows.*

**Spatial measures are unevenly distributed across regions and depth zones, the MSFD calls for a coherent and representative network of protected areas to halt biodiversity loss and to increase the resilience of the marine environment towards climate change.**

➤ **Recommendation for Community action**<sup>60</sup>

Article 15, defines when, to meet the MSFD objective of achieving GES in their marine areas, Member States identify measures that go beyond their powers (for example, related to fisheries policy), they can raise the issue at EU level under Article 15 of the MSFD (Recommendations for Community action).

➤ **The regional framework and regional seas Conventions**

To achieve a Good Environmental Status of the EU's marine waters by 2020, the MSFD establishes the **European marine regions and sub-regions** on the basis of geographical and environmental criteria. The Article 4 of the Directive lists four European marine regions:

- 1 (1) the Baltic Sea,
- 2 (2) the North-east Atlantic Ocean,
- 3 (3) the Mediterranean Sea and,
- 4 (4) the Black Sea, which are located mainly within the geographical boundaries of the existing Regional Sea Conventions enhancing the cooperation between the Member States of one marine region and among neighbouring countries that share the same marine waters.

The Directive does not specify the boundaries of the marine regions and subregions and, up to date, there is no formal definition of the marine regions and subregions. As a consequence, a procedure was initiated in 2010, in support of the DG Environment and the implementation of the MSFD on behalf of the EU Member States, in order to help define the individual marine boundaries under the MSFD Common Implementation Strategy.

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<sup>59</sup> Natura 2000 sites include the Special Areas of Conservation, designated due to their ecological importance for species and habitats protected under the HD, and the Special Protected Areas, designated for the protection of bird species under the BD.

<sup>60</sup>There has been only one example; Case of Portugal. In 2014, to meet its commitments under the Nature Directives and MSFD, Portugal banned bottom trawling by its vessels in a large part of its EEZ and continental shelf. In July 2015, Portugal asked the Commission to address the NEAFC to extend the ban to other EU and non-EU vessels, under Article 15 of the MSFD. In 2016, the Commission requested Portugal to provide further scientific studies, which the Portuguese authorities told us they did not consider necessary. As a result, Portuguese vessels are not authorised to bottom trawl in that area, while, at the time of our audit, other Member States' vessels continued to do so. (Special report 26/2020: Marine environment: EU protection is ...)

The map of the marine regions and subregions, approved by the MSFD Committee in 2016<sup>61</sup>, describes the geometric delineation of those identified within the MSFD, Art. 4. The delineation took into consideration all existing EU legislation with a reference on maritime and, more specifically, biogeographic regions of the **Habitats and Birds Directive, as well as the Maritime regions of Maritime Spatial Planning Directive**<sup>62</sup>.

The MSFD requests from the Member States to adopt a regional approach, which is also used within the framework of the Regional Seas Conventions (RSCs). It requires that the Member States “use existing regional institutional cooperation structures<sup>63</sup> including those under Regional Sea Conventions (RSCs), covering that marine region or subregion” in their implementation process, given that the objectives of these conventions and the MSFD ones are very similar.

The regional approach is reasonable since the EU is a Contracting Party of three Regional Seas Conventions, and highly committed for its implementation in order to meet the same marine environmental objective.

**For the Mediterranean Sea, the key forum is the Barcelona Convention, implemented through the United Nations Environment Programme (UNEP) Mediterranean Action Plan (MAP). The Contracting Parties of the Barcelona Convention developed a set of ecological and operational objectives and a set of indicators, which reflect the Mediterranean priorities and are coherent with the MSFD.**

### **1.3.2. Maritime Spatial Planning Directive (2014/89/EU)**

Maritime spatial planning (MSP) is defined as “a process by which the relevant authorities analyse and organise human activities in marine areas to achieve ecological, economic and social objectives” (Directive, 2014). It is enforced across the EU countries by the Directive 2014/89/EU defining a framework for MSP and obligations to EU countries to establish a maritime planning process. MSP results in a maritime spatial plan. Responsibilities for designing the formats and contents of such plans, including institutional arrangements and allocation of maritime activities, are left to European Member States.

In other Mediterranean Countries, non-EU States, the UNEP/MAP Conceptual framework for marine spatial planning is a tool/instrument for the implementation of MSP, **is considered as a tool of the ICZM Protocol.**

The main MSP objective is to promote sustainable development and growth in the maritime sector considering economic, social, and environmental aspects as well as long-term changes due to climate change. Today, main economic sectors at sea include energy, maritime transport, fisheries,

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<sup>61</sup> SWD (2016) 178 final - European Commission - europa.eu

<sup>62</sup> The individual boundaries and the whole procedure are present in the “*Technical document “Delineation of the MSFD Article 4 marine regions and subregions”*”.

<sup>63</sup> “*There are different international designations such as the Ramsar sites and the two UNESCO designations: Man, and Biosphere (MAB) Reserves and World Heritage Sites*<sup>63</sup>. *There are 46 different names for the MPAs and the OECMs in the Mediterranean, with a wide range of protection levels, such as the:*

- *EBSAs (Ecologically and Biologically significant Areas) described by the CBD,*
- *CCH (Critical Cetacean Habitats) described by ACCOBAMS,*
- *IBAs (Important Bird Areas) described by Bird Life International,*

*IMMAs (Important Marine Mammals Areas) identified by the IUCN Task Force on Marine Mammal protected areas Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS), p.32*



aquaculture, and tourism sectors. MSP should manage spatial uses and conflicts in marine areas and encourage multipurpose uses<sup>64</sup>.

The minimum requirements for MSP are to:

- 1) take into account land-sea interactions;
- 2) take into account environmental, economic and social aspects, as well as safety aspects;
- 3) promote coherence between maritime spatial planning and the resulting plan and other processes, such as integrated coastal management or equivalent formal or informal practices;
- 4) ensure the involvement of stakeholders;
- 5) organize the use of the best available data;
- 6) ensure trans-boundary cooperation between Member States; and
- 7) promote cooperation with third countries in accordance.

The Directive in fact, stresses the application of the ecosystem-based approach aiming at the sustainable development of the maritime and coastal activities but also ensuring the sustainable use of marine and coastal resources.

The EU Commission established a special MSP platform<sup>65</sup> to facilitate the exchange of knowledge and information.

➤ **Possible interactions between marine protection and marine spatial planning**

There have been some possible approaches to the relationship between MSP and MPA analysed in recent literature<sup>66</sup> that stresses some possibilities:

- 1) MSP is comprehensive, MPAs may considered to be a “sectoral use” on the one hand, or would allow good integration of management objectives on the other hand, especially if its scale approaches that of the MSP perimeter;

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<sup>64</sup> 1. When establishing and implementing maritime spatial planning, Member States shall set up maritime spatial plans which identify the spatial and temporal distribution of relevant existing and future activities and uses in their marine waters, in order to contribute to the objectives, set out in Article 5.

2. In doing so and in accordance with Article 2(3), Member States shall take into consideration relevant interactions of activities and uses. Without prejudice to Member States’ competences, possible activities and uses and interests may include:

- aquaculture areas,
- fishing areas,
- installations and infrastructures for the exploration, exploitation and extraction of oil, of gas and other energy resources, of minerals and aggregates, and for the production of energy from renewable sources,
- maritime transport routes and traffic flows,
- military training areas,
- **nature and species conservation sites and protected areas**,
- raw material extraction areas,
- scientific research,
- submarine cable and pipeline routes,
- tourism,
- underwater cultural heritage.

<sup>65</sup> [The European Maritime Spatial Planning Platform | \(europa.eu\)](http://europa.eu)

<sup>66</sup> The complex relationships between Marine Protected Areas and Marine Spatial Planning: towards an analytical framework, Brice Trouilleta, Stephen Jay Université de Nantes, CNRS, UMR LETG, Chemin de la Censive du Tertre, Department of Geography & Planning, University of Liverpool, Roxby Building, Liverpool L69 7ZQ, United Kingdom

- 2) MSP is partial, MPAs could provide an effective extension of MSP outside MSP areas, possibly with more environmental requirements than MSP;
- 3) In the context of land-sea integration, Protected Areas straddling the land and the sea could provide a continuum that may help to strengthen the links between land and sea for certain conservation planning matters or for some broader concerns
- 4) In the context of areas beyond national jurisdictions (ABNJ), MPAs could provide an extension. This could be seen as contributing to a creeping jurisdiction process, which also raises the question of applicability beyond national jurisdictions.

➤ **The MSP process**<sup>67</sup>

The most recognized and applied methodology to implement MSP is the UNESCO-IOC (2009)<sup>68</sup> guide “Marine Spatial Planning: a step-by-step approach toward ecosystem-based management”.

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<sup>67</sup> MSP can be defined as a “public process of analysing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that usually have been specified through a political process” (Ehler and Douvère, 2009). According to Ehler and Douvère (2009) the main characteristics of an MSP process are: Ecosystem-based, balancing ecological, economic, and social goals and objectives toward sustainable development; Integrated, across sectors and agencies, and among levels of government; Place-based or area-based; Adaptive, capable of learning from experience; Strategic and anticipatory, focused on the long-term; Participatory, stakeholders actively involved in the process.

<sup>68</sup>The concept was also elaborated by UN Environment/MAP,

<http://paprac.org/storage/app/media/Meetings/MSP%20Conceptual%20Framework%20EN.pdf>:

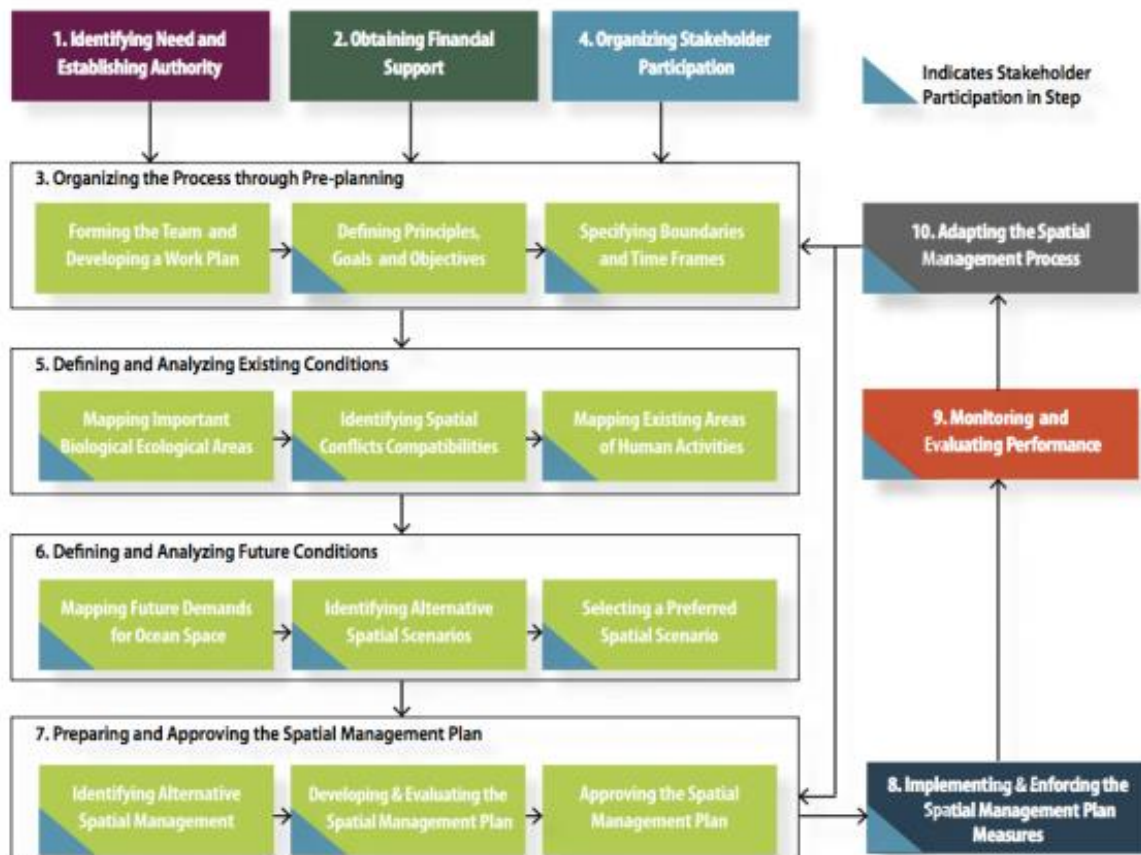
Conceptual framework for MSP in the Mediterranean”. The document elaborates common principles to be used in the maritime spatial planning process:

- (a) Adaptive approach: MSP is a continuing iterative process that adapts over time: plans are developed and implemented, conditions monitored, results evaluated, and plans improved, and so on in the planning cycles.
- (b) Multi-scale approach: MSP includes Mediterranean, regional, national, and local scales, combining top-down and bottom-up perspectives.
- (c) Integration: Integration among themes, sectors, vertical-horizontal cooperation, marine and land-based planning.
- (d) Land-sea interactions: Land-sea interaction could be related to land-sea natural processes, among land-sea uses and activities and among land-sea planning and management processes.
- (e) Four dimensions: of MSP Maritime space comprises sea surface, water columns and seabed, thus tridimensionality space. Activities could share the same space but in different time, thus the fourth dimension is necessary to enable temporal zoning.
- (f) Knowledge based project: MSP must be based on high-quality data and best available knowledge.
- (g) Suitability and spatial efficiency: Key guiding concepts to achieve sustainability of marine resources, minimize conflicts, maximize synergies
- (h) Connectivity: Connections between elements should be considered such as shipping lines, areas of similar uses, between protected habitats forming a network, among MSP participants in terms of knowledge sharing and cooperation.
- (i) Cross-border cooperation: An essential principle to ensure coherent and coordinated MSP plans across the seas, implying cooperation at the methodological, strategic and implementation levels.

It proposes to follow steps<sup>69</sup> that have to be tailored to the specifics of the marine area and the specific objectives of the maritime plan to be developed:

1. Starting the process and getting organized;
2. Assessing the context and defining a vision;
3. Analysing existing conditions;
4. Analysing future conditions;
5. Identifying key issues;
6. Design phase:
  - Elaboration of MSP plans;
  - Strategic Environmental Assessment;
7. Adopting the plan and organizing the implementation;
8. Implementing, monitoring and evaluating the plan; and
9. Cross-step activity: stakeholder consultation.

<sup>69</sup> UNESCO-IOC (2009)



Main MSP output is a comprehensive spatial management plan for a marine area including zoning, priorities in time and space and covering a 10 to 20 years' time horizon.<sup>70</sup> The plan could include a zoning map and a permit system, to be used as management measures (e.g. permits for fisheries or tourism are issued based on the plan and zoning map).

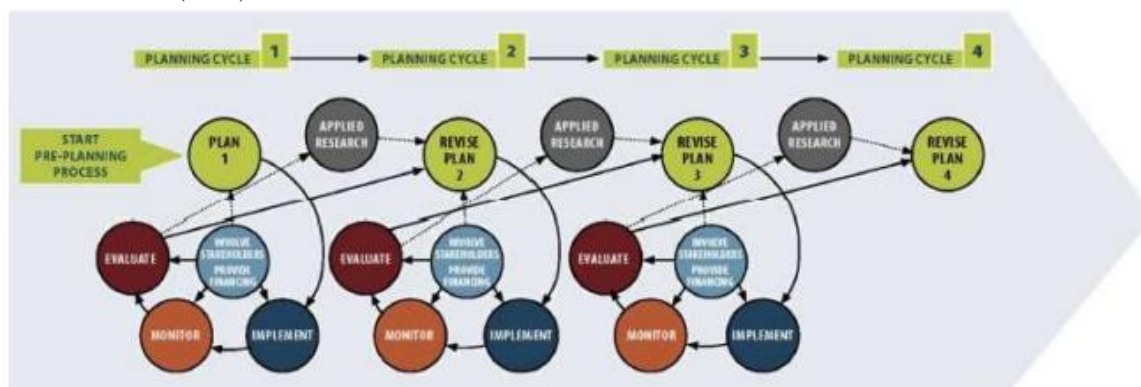
Article 15(3) of the MSP Directive requires that Member States establish maritime spatial plans as soon as possible, and at the latest by 31 March 2021. Article 14(1) of the Directive also required Member States to inform the Commission and other Member States concerned within three months of the establishment of those plans.

➤ **Procedural nature of the MSPD<sup>71</sup>.**

Article 8.2 of MSPD indicates "nature and species conservation sites and protected areas" as one of the activities and uses of the marine space that have to be taken into consideration by Member States when establishing their national maritime spatial plans. MSPD is a specific legal instrument, granted by EU law to identify these areas and the rationale for integration in their maritime spatial plans.

MSPD is a “procedural” directive which does not introduce substantive obligations<sup>72</sup>, that do not already exist in national EU in international law The importance of this tool for the achievement of strategy targets depends on the obligation under the Article 13(4) of the MSFD.

<sup>70</sup> UNESCO-IOC (2009)



<sup>71</sup> MSP and MPA processes are relatively recent and still in progress, marine environmental awareness has been established for some time. As far as the development of MSP is concerned, in the EU for instance, IMP emerged in the form of a “green book” in 2006 then, after public consultation, with a “blue book” in 2007 and formally in 2012 with the Limassol Declaration. This policy led to a reorganisation of the Commission services, with the enlargement of DG Mare’s responsibilities and the establishment of a steering structure, the “Common Implementation Strategy” (Chaigneau and Guineberteau, 2015).

<sup>72</sup>Directive 2014/89/EU

(9) Maritime spatial planning will contribute to the effective management of marine activities and the sustainable use of marine and coastal resources, by creating a framework for consistent, transparent, sustainable and evidence-based decision-making. In order to achieve its objectives, this Directive should lay down obligations to establish a maritime planning process, resulting in a maritime spatial plan or plans; such a planning process should take into account land-sea interactions and promote cooperation among Member States. Without prejudice to the existing Union acquis in the areas of energy, transport, fisheries and the environment, this **Directive should not impose any other new obligations, notably in relation to the concrete choices of the Member States about how to pursue the sectoral policies in those areas** but should rather aim to contribute to those policies through the planning process.

Member states have a wide discretion in setting the system of marine spatial planning<sup>73</sup>. Marine protected areas could be an essential part of it or not at all<sup>74</sup>. The system depends on the political priorities and the level either/or sector of government that is in charge<sup>75</sup> of the process itself.

➤ **Legal and substantive limitations of the process**

The discretion is limited by the setting of the process. Article 5(1) of the MSP Directive states: ‘Member States shall consider economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an ecosystem-based approach, and to promote the coexistence of relevant activities and uses’.

The Directive also stresses the MSFD and its goal of ensuring a good environmental status of EU seas. Article 6(2)(b) of the MSP Directive requires explicitly that Member States take into account environmental, economic, social and safety aspects.

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<sup>73</sup>COM(2022) 185 final, 3. 5. 2022;

“All 22 coastal Member States have now transposed the Directive into national law and designated competent authorities. In November 2016, the Commission opened infringement proceedings against eight Member States (Bulgaria, Greece, Spain, France, Croatia, Cyprus, Lithuania and Finland). These proceedings were closed by July 2018 after all Member States involved had notified and communicated full transposition measures to the Commission.

Member States took various approaches to the transposition of the MSP Directive. Some Member States already had MSP legislation or legislation on spatial planning also covering the maritime domain in place (e.g., Belgium, Germany and the Netherlands). Several Member States amended legislation on spatial planning or environmental protection (e.g., France and Croatia). Other Member States adopted new specific MSP legislation (e.g., Denmark, Greece, Ireland, Italy, Portugal, Romania and Spain). Another group of Member States combined amendments to legislation with new specific MSP legislation (e.g., Finland, Malta and Sweden).

The legislation adopted by some Member States (e.g., France, Latvia and Spain) refers to legislation transposing other Directives, and more specifically to Directive 2008/56/EC (the Marine Strategy Framework Directive or “MSFD”).

A number of Member States with a federal or devolved structure adopted legislation at national and subnational level to transpose the Directive. In some cases, subnational entities adopted subnational legislation using a separate procedure (e.g., the Åland Islands (Finland)).

Having started in 2016, by the second quarter of 2020, the Commission had concluded its conformity check of transposing measures. The Commission analyzed the Member States’ transposition of the Directive into national law and found that it was complete. As for the correctness of transposition, analysis showed that the transposition into national law mostly complies with the requirements of the Directive”.

<sup>74</sup> COM (2022) 185 final, 3. 5. 2022: “Future maritime spatial plans will have to cater for cumulative impacts of anthropogenic pressures by applying an ecosystem-based approach, and complying with all relevant environmental legislation”: Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19); Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7); Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7); Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30) and other relevant legislation.

<sup>75</sup> COM (2022) 185 final:

Article 13 of the MSP Directive requires Member States to designate competent authorities. Member States have chosen to designate either ministries or government agencies.

In cases where a ministry was designated, it was responsible for either a mix of policy areas (e.g., environment, planning or regional development) or a sectoral policy (e.g., transport and infrastructure, or maritime economy). In some instances, the ministries covered policy areas such as home affairs or finance, and two Member States designated their Ministry of the Sea as the competent authority.

In cases where a government agency was designated, the remit of these bodies ranged from planning to the regulation of maritime activities, or specialized activities in environmental management (e.g., water and sea).

The main functions of these competent authorities are to implement the Directive and ensure effective cross-border cooperation between Member States and with neighboring non-EU countries. In the context of cross-border cooperation activities, a number of competent authorities organized cross-border and transnational consultations or participated as coordinating entities in EU-funded projects to foster cross-border cooperation on MSP. Staff from these competent authorities represent Member States in the Member States expert group on maritime spatial planning.

Given the MSFD's central role in improving the environmental status of marine ecosystems, should have been assessed in the strategic impact assessment procedure, carried out in line with the SEA Directive. Proper assessment would result in the integration of the MSFD within the MSP.

Furthermore Article 6(2) (c) of the MSP Directive requires Member States "to aim to promote coherence between maritime spatial planning and the resulting plan or plans and other processes, such as integrated coastal management or equivalent formal or informal practices". Along those lines also Article 4(2), Article 6(2)(a) and Article 7 of the MSP Directive require Member States to take land-sea interactions into account in their plans.

Article 8 of the Directive requires that maritime spatial plans 'identify the spatial and temporal distribution of relevant existing and future activities and uses in ... marine waters'. Setting the time element also limits the discretion.

**The Directive is included in the framework of Integrated Maritime Policy of the EU (IMP)** it shares with the MSFD the ecosystem approach, regardless its "substance neutrality". It states<sup>76</sup> in the whereas: "*(13) In marine waters, ecosystems and marine resources are subject to significant pressures. Human activities, but also climate change effects, natural hazards and shoreline dynamics such as erosion and accretion, can have severe impacts on coastal economic development and growth, as well as on marine ecosystems, leading to deterioration of environmental status, loss of biodiversity and degradation of ecosystem services. Due regard should be had to these various pressures in the establishment of maritime spatial plans. Moreover, healthy marine ecosystems and their multiple services, if integrated in planning decisions, can deliver substantial benefits in terms of food production, recreation and tourism, climate change mitigation and adaptation, shoreline dynamics control and disaster prevention.*"

Establishing representative networks of the MPAs at eco-regional and sub-regional scales therefore should be part of the **Maritime Spatial Planning** and Ecosystem Management approach, promoting the sustainable development and conservation of marine biodiversity environment<sup>77</sup>.

The objectives of the CBD, according to EU law are implemented throughout the NATURA 2000 network, to ensure the long-term survival of Europe's most valuable and threatened species and habitats<sup>78</sup>. Hence Natura 2000 network has the rightful place in the MSP.

It should be pointed out, that the said obligations are applicable in all marine waters of coastal States, including the seabed and subsoil, over which such States exercises sovereign rights or jurisdiction, including therefore the continental shelf and the exclusive economic zone<sup>79</sup>.

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<sup>76</sup>Article 5. Objectives of maritime spatial planning:

1. *When establishing and implementing maritime spatial planning, Member States shall consider economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an **ecosystem-based approach**, and to promote the coexistence of relevant activities and uses.*

<sup>77</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS), p. 43.

<sup>78</sup> Regarding the Habitats Directive, the network aims to protect sites that are important for the conservation of the natural habitat types, listed in Annex I of the Directive, and the habitats for the species listed in Annex II of the Directive, in order to ensure that these features can be maintained on a Favourable Conservation Status (FCS).

<sup>79</sup> According to Art. 3, para. 4 of Directive 2014/89/EU, "*marine waters*" means the waters, the seabed and subsoil as defined in Art. 3, para. 1, *a*, of Directive 2008/56/EC and coastal waters as defined in Art. 2, para. 7, of Directive 2000/60/EC and their seabed and their subsoil.

➤ **Cross – border and transnational cooperation**

It is crucial to emphasize that Directive 2014/89/EU emphasizes the need for enhanced cross-border collaboration, extending beyond the European Union member States. This cooperation encompasses various areas such as shipping, the installation of submarine cables and pipelines, safeguarding the marine environment, and, particularly pertinent to this work, the conservation of nature, species, and protected areas.

Article 11 of the aforementioned Directive, titled 'Cooperation among member States,' stipulates the following:

1. Member States sharing marine waters must cooperate to ensure that maritime spatial plans are coherent and well-coordinated within the relevant marine region as part of the planning and management process. This collaboration should specifically address issues of a transnational nature.
2. The cooperation mentioned in paragraph 1 can be pursued through:
  - a) existing regional institutional cooperation structures, such as Regional Seas Conventions;
  - b) networks or structures comprised of competent authorities from member States; or
  - c) any other suitable method that fulfills the requirements outlined in paragraph 1, including within the context of sea-basin strategies.

Moreover, according to the provisions outlined in Article 12 of the Directive (Cooperation with third countries):

Member States shall endeavor, whenever feasible, to collaborate with third countries on their actions concerning maritime spatial planning in the relevant marine regions, in compliance with international law and conventions. This collaboration can be achieved by utilizing existing international forums or regional institutional cooperation.

In light of Article 6(2)(f) and Article 11 of the MSP Directive, Member States that border marine waters are obligated to engage in a planning and management process that promotes coherence and coordination in maritime spatial plans. The Directive explicitly acknowledges the significance of cooperation within existing regional institutional cooperation structures, networks or structures of competent authorities from member States, or any other appropriate method.

Cross-border and transnational cooperation is essential in identifying potential issues at an early stage, and in identifying opportunities for cooperation and long-term sustainable management of the maritime space.

Cross-border consultation is required for the establishment of maritime spatial plans that identify appropriate locations for specific activities or projects. However, consultation in the context of the MSP Directive cannot replace cross-border consultation on the impacts of specific projects.

Articles 6(2)(g) and 12 of the Directive invite Member States to promote cooperation with third countries on their actions with regard to maritime spatial planning in the relevant marine regions.

Cooperation with non-EU countries mostly concerned informal bilateral cooperation, cooperation in the context of regional sea conventions, EU Macro-Regional Strategies (EUSAIR) and cooperation via EU-funded projects<sup>80</sup>. There are formal procedures in the context of the SEA Directive, the Espoo Convention.

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<sup>80</sup> <https://portodimare.adrioninterreg.eu/>



➤ **MSP the main instrument for biodiversity protection**

The Commission is even more explicit in Report COM (2022)185 final on the progress in implementation of MSP Directive:

*“MSP is a key tool to achieve the MSFD’s good environmental status objectives for EU waters and to help preserve biodiversity<sup>81</sup>. To support Member States in this endeavour, in 2021, the Commission issued guidelines for implementing an ecosystem-based approach in MSP<sup>82</sup>, which pay a lot of attention to the integration of MSFD objectives in MSP. Discussions on the definition of ecosystem-based approaches are still ongoing as part of international fora on MSP, but it is clear that the link between concerned legislative acts is crucial at EU level. European Maritime, Fisheries and Aquaculture Fund (EMFAF) shared management programmes also offer the opportunity for Member States to use their allocation to support the implementation of the MSP Directive, notably integrating MSFD objectives in MSP.*

*Strategic planning, including spatial planning, is essential to scale up marine protected areas from the current 12% area coverage to 30% by 2030, with at least one third of protected areas under strict protection as envisaged in the EU Biodiversity Strategy for 2030<sup>83</sup>.*

*All maritime spatial plans submitted to the Commission underwent an environmental assessment, which consider the envisaged measures’ effect on environmental protection and how they prevent, reduce and offset any significant adverse effects on the environment of implementing the plans. However, the integration of the biodiversity strategy objectives might only become fully apparent during the review of the national plans, as the necessary guidance and framework were delivered when the environmental assessment of most plans had already been completed.*

*The Commission will aim to strengthen further synergies between fisheries and environmental policies with the action plan to conserve fisheries resources and protect marine ecosystems, to be adopted later this year. The Commission will also report on the functioning of the common fisheries policy by the end of 2022.”*

**Restrictions related to human uses, can be established via the EU Maritime Spatial Planning Directive, which requires MSs to establish and implement maritime spatial planning (MSP) following the ecosystem-based approach. These objectives represent potential synergies for marine protection and MPAs networks. Establishing ecologically coherent networks of MPAs at eco-regional and sub-regional scales is the cornerstone of Maritime Spatial Planning.**

➤ **Cases of northern Adriatic Italian regions**

In the process of drafting the Italian national MSP, the Italian regions and autonomous provinces, have been responsible for planning their part of the “national sea area”. The example of the involvement for the Friuli Venezia Giulia true out the process from the scoping phase to consultation:

- 1) the presentation of the Preliminary Report of SEA to the local SCA;
- 2) to give support to local SCAs for the purpose of a clearer and faster understanding of the documents under analysis.

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<sup>81</sup> In 2021, the Commission launched the review of the MSFD, in which consistency with other policies is a central aspect

<sup>82</sup> *Guidelines for implementing an ecosystem-based approach in maritime spatial planning*, <https://op.europa.eu/en/publication-detail/-/publication/a8ee2988-4693-11ec-89db-01aa75ed71a1>.

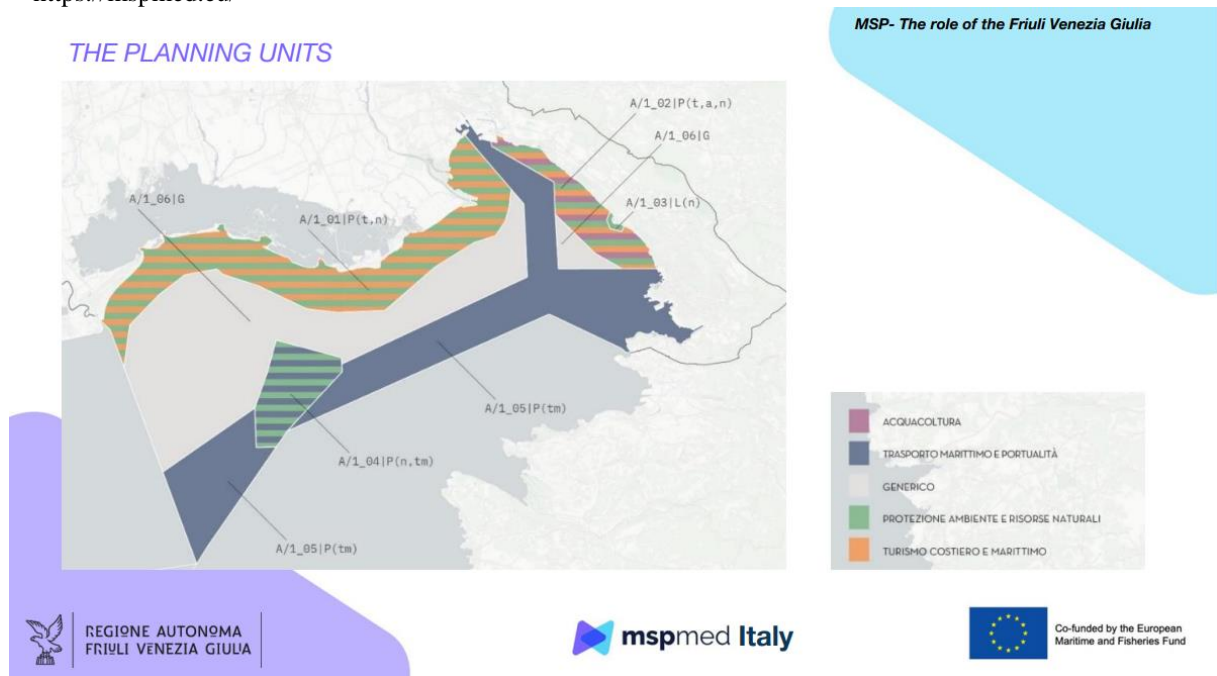
<sup>83</sup> COM(2020) 380 final.



- 3) to the presentation of their observations by acknowledging the local observations collected.
- 4) is taking steps to facilitate the dissemination of plan documents for a more effective dissemination of information.
- 5) is evaluating further observations to make the plan more resilient and suitable for the current and future needs of the FVG and the upper Adriatic.
- 6) it is proposing the scope of planning units.<sup>84</sup>

For the Italian Adriatic Region Veneto project for MSP for the territorial waters of the region was developed to coordinate<sup>85</sup> the maritime activities. Additional marine protected area

<sup>84</sup> <https://mspmed.eu/>

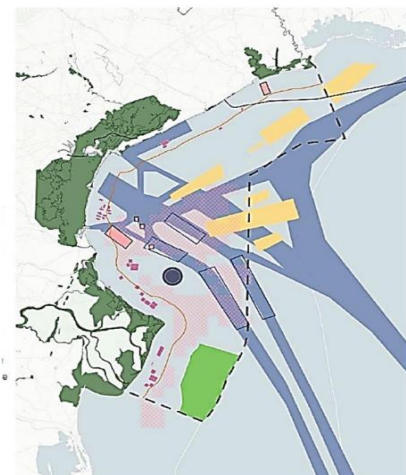


<sup>85</sup> <https://mspmed.eu/>

## Main uses of the sea and coastline

### A2 sub-area

- Borders sub-area A/2
- Maritime traffic separation schemes - TSS
- Simplified maritime traffic
- 3NM line from the coast
- ZTB areas
- Acquaculture concessions
- Simplified fishing effort [Log10(fishing h)]
- Nature 2000 areas
- pSIC area - being established
- Relict sand deposit (engines)
- LNG regasification unit and security area
- Power lines



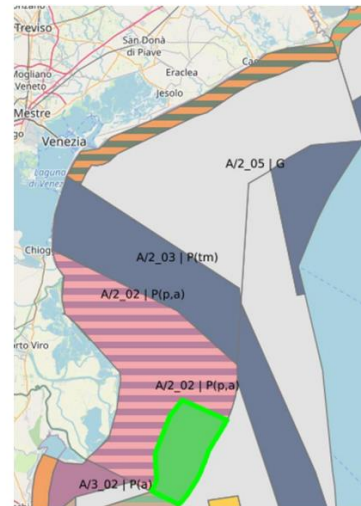
starting from Natura 2000 was proposed<sup>86</sup> to protect submerge archaeological heritage and area for fishing stock. MPA is connected to the neighbouring Region of Emilia Romagna, for the protection of Carreta Carreta and Bottlenose dolphin<sup>87</sup>.

### 1.3.3. Common Fisheries Policy (Regulation 1380/2013)

Commission working paper<sup>88</sup> recalls the rules and procedures relating to the submission of a joint recommendation by the Member States, in order for the Commission to adopt conservation measures by means of a delegated act pursuant to Articles 11(2) and 11(nnb3) of the CFP.

According to Article 3 of the TFEU, the Union (EU) shall have **exclusive competence (inter alia) with regard the conservation of marine biological resources under the common fisheries policy.** <sup>89</sup> The main legislation act in this field is currently represented by **Regulation 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common**

- A2 sub-area** Priority uses are for this area are:
- **Protection of the environment and natural resources**
- Other foreseen uses are
- Professional fishing and amateur fishing, consistent with site protection regulations
  - **Maritime transportation**
  - **Nautical tourism**
  - Other uses compatible with priority uses
- The area is interested by:
- Dredging to maintain the navigability of inland waterways and access to the river ports of Venice and Chioggia
  - Ban on new hydrocarbon exploration and production
- Relevant elements to natural, cultural, landscape value:
- Marine SCI established under the Habitats Directive
  - Breeding and nursery areas for fish of commercial interest
  - underwater archaeological heritage (RAPTOR project)



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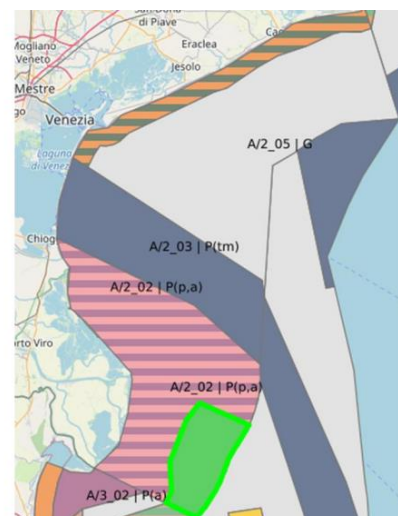
#### A2 sub-area



Natura2000 area being established as part of a cross-border site shared with the Emilia Romagna territorial waters



Target species  
*Caretta Caretta*  
*Tursiops truncatus*



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<sup>88</sup>[https://ec.europa.eu/oceans-and-fisheries/system/files/2018-06/swd\\_2018\\_288\\_en.pdf](https://ec.europa.eu/oceans-and-fisheries/system/files/2018-06/swd_2018_288_en.pdf)

<sup>89</sup> Article 3. (d) TFEU.

## **Fisheries Policy, amending Council Regulations 1954/2003 and 1224/2009 and repealing Council Regulations 2371/2002 and 639/2004 and Council Decision 2004/585/EC.**

The scope of the Common Fisheries policy (CFP) is provided by Article 1 of the said Regulation, which provides both for the substantive and geographical scope of application. Based on Paragraph 1, the CFP shall cover: (a) *the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources*; (b) *in relation to measures on markets and financial measures in support of the implementation of the CFP: fresh water biological resources, aquaculture, and the processing and marketing of fisheries and aquaculture products*. With regard the geographical scope, Paragraph 2 of the same article provides that the CFP shall cover the activities referred to in paragraph 1 where they are carried out:

- a) *on the territory of Member States to which the Treaty applies (i.e. internal waters and territorial sea)* ;
- (b) in Union waters, including by fishing vessels flying the flag of, and registered in, third countries (**i.e. EEZ, Fisheries zone**);
- (c) by Union fishing vessels outside Union waters; or
- (d) by nationals of Member States, without prejudice to the primary responsibility of the flag State.
- e) in relation to measures on markets and financial measures in support of the implementation of the CFP: fresh water biological resources, aquaculture, and the processing and marketing of fisheries and aquaculture products.

Noteworthy is the fact that »Union waters« are according to Article 4 1 (1) of Regulation 1380/2013 defined as *»the waters under the sovereignty or jurisdiction of the Member States, with the exception of the waters adjacent to the territories listed in Annex II to the Treaty«*. The EEZs or fisheries zones of member States (i.e. Croatian EEZ) form therefore integral part of the so-called »Union waters«.

The general rule on access of EU fishing vessels (from all EU member States) to waters is stated in Article 5(1). Based on that article, *»Union fishing vessels shall have equal access to waters and resources in all Union waters other than those referred to in paragraphs 2 and 3, subject to the measures adopted under Part III.»*.

### ➤ **The exception**

An extremely important exception in this regard is provided by Paragraph 2 of Article 5 of Regulation 2380/2013, which is applicable to the **territorial seas of member States** (or 12 NM from the baseline). According to the said Paragraph

*“ In the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorized, until 31 December 2022 (to be extended till 31 December 2032)<sup>90</sup>, to restrict fishing to **fishing vessels that traditionally fish in those waters from ports on the adjacent coast**, without prejudice to the arrangements for Union fishing vessels flying the flag of other Member States under existing neighborhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species*

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<sup>90</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013, as regards restrictions to the access to Union waters; COM/2021/356 final

*concerned. Member States shall inform the Commission of the restrictions put in place under this paragraph.*

Annex I of the Regulation 1380/2013 provides in this regard a (closed) list of rights for certain member States of Access to Coastal Waters within the meaning of Article 5(2).<sup>91</sup>

➤ **Joint conservation measures**

Common Fisheries Policy contributes to the conservation of marine biodiversity in Europe through the establishment of fish stock recovery areas where the fishing activities may be restricted or prohibited, in order to conserve living aquatic resources and marine ecosystems.

**Fish stock recovery areas are qualified as “Other Effective Area-Based Conservation Measures” (OECMs), since the conservation of the marine ecosystems is an outcome of specific management measures. In the OECMs the human interventions are limited and consequently can be considered areas of low pressure due to the specific restrictions, which may help marine biodiversity thrive.**

➤ **Fish stock recovery measures**

Reference should be made to the fact, that for the purpose of achieving the objectives of the CFP in respect of the conservation and sustainable exploitation of marine biological resources as set out in Article 2, the **Union shall adopt conservation measures as set out in Article 7 of Regulation**. Those includes:

- (a) multiannual plans under Articles 9 and 10;
- (b) targets for the conservation and sustainable exploitation of stocks and related measures to minimize the impact of fishing on the marine environment;
- (c) measures to adapt the fishing capacity of fishing vessels to available fishing opportunities;
- (d) incentives, including those of an economic nature, such as fishing opportunities, to promote fishing methods that contribute to more selective fishing, to the avoidance and reduction, as far as possible, of unwanted catches, and to fishing with low impact on the marine ecosystem and fishery resources;
- (e) measures on the fixing and allocation of fishing opportunities;
- (f) measures to achieve the objectives of Article 15;
- (g) minimum conservation reference sizes;
- (h) pilot projects on alternative types of fishing management techniques and on gears that increase selectivity or that minimize the negative impact of fishing activities on the marine environment;
- (i) measures necessary for compliance with obligations under Union environmental legislation adopted pursuant to Article 11;
- (j) technical measures as referred to in paragraph 2.

It is important to note that Article 8 of **Regulation 1380/2013** deals with the establishment of **fish stock recovery areas**. The said Article, Paragraph 1, provides as follows:

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<sup>91</sup> The said Annex provides i.e. for the right of access of Slovenia to the coastal waters of Croatia within the geographical area 12 miles limited to the sea area under the sovereignty of Croatia situated to the north of the 45 degrees and 10 minutes parallel north latitude along the west Istrian coast, from the outer limit of the territorial sea of Croatia, where this parallel touches the land of the west Istrian coast (the cape Grgatov rt Funtana) for defined quantities and fishing vessels fishing for demersal and small pelagic species. On the other hand, it provides also for the right of Croatia to access to the coastal area of Slovenia within the same geographical area under the sovereignty of the Republic of Slovenia. However, the above-mentioned regime shall apply from the full implementation of the arbitration award resulting from the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia, signed in Stockholm on 4 November 2009.

*»The Union shall, while taking due account of existing conservation areas, endeavor to establish protected areas due to their biological sensitivity, including areas where there is clear evidence of heavy concentrations of fish below minimum conservation reference size and of spawning grounds. In such areas fishing activities may be restricted or prohibited in order to contribute to the conservation of living aquatic resources and marine ecosystems. The Union shall continue to give additional protection to existing biologically sensitive areas.*

In that regard, based on Paragraph 2, **Member States shall identify, where possible, suitable areas which may form part of a coherent network and shall prepare, where appropriate, joint recommendations in accordance with Article 18(7) with a view to the Commission submitting a proposal in accordance with the Treaty.**

➤ **Marine protection measures**

Furthermore, **Art. 11 of Regulation 1380/13**, allows for the adoption of conservation measures in order to achieve the objectives of the MSFD and the Birds and Habitats Directives and the consequent establishment of **protected areas of biological sensitivity**. Based on the provisions of the said article dealing with **Conservation measures necessary for compliance with obligations under Union environmental legislation**«:

*»Member States are empowered to adopt conservation measures not affecting fishing vessels of other Member States that are applicable to waters under their sovereignty or jurisdiction and that are necessary for the purpose of complying with their obligations under Article 13(4) of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC or Article 6 of Directive 92/43/EEC, provided that those measures are compatible with the objectives set out in Article 2 of this Regulation, meet the objectives of the relevant Union legislation that they intend to implement, and are at least as stringent as measures under Union law.«*

When preparing joint recommendations for the adoption of conservation measures under the **Common Fisheries Policy (CFP)**<sup>92</sup> member states have to comply with their obligations pertaining to Article 6 of the Habitats Directive, Article 4 of the Birds Directive and Article 13(4) of the Marine Strategy Framework Directive (MSFD).

Based on the provisions of Paragraph 2 of the same article, where a Member State ("the initiating Member State") considers that measures need to be adopted for the purpose of complying with the obligations referred to in paragraph 1 and other Member States have a direct management interest (i.e., right of access to the fishery to be affected by such measures, the Commission shall be empowered to adopt such measures, upon request, by means of delegated acts in accordance with Article 46.

➤ **Member states measures**

Of particular importance seems also the provisions of Article 20, which regulates **the right of Member States to adopt measures within the 12 nautical zone (territorial Sea) of its coast**.

Paragraph 1 of Article 20 provides in that Member State may take non-discriminatory measures for the conservation and management of fish stocks and the maintenance or improvement of the conservation status of marine ecosystems within 12 nautical miles of its baselines provided that the Union has not adopted measures addressing conservation and management specifically for

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<sup>92</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy (OJ L 354, 28.12.2013, p. 34).

that area or specifically addressing the problem identified by the Member State concerned. The Member State measures shall be compatible with the objectives set out in Article 2 and shall be at least as stringent as measures under Union law.

However, where conservation and management measures to be adopted by a Member State are liable to affect fishing vessels of other Member States, such measures shall be adopted only after consulting the Commission, the relevant Member States and the relevant Advisory Councils on a draft of the measures, which shall be accompanied by an explanatory memorandum that demonstrates, inter alia, that those measures are non-discriminatory. (Par.2).

Finally, based on the provisions of Para. 4, where the Commission considers that a measure adopted under this Article does not comply with the conditions set out in paragraph 1, it may, subject to providing relevant reasons, **request that the Member State concerned amends or repeals the relevant measure.**

It may be therefore concluded, that Regulation 1380/13 does not require Member States to develop MPAs, **but nonetheless puts in place a legal framework through which they could be established**, particularly within internal waters and territorial seas of Member States.<sup>93</sup>

#### **1.3.4. The EU Trans European green infrastructure network**

The EU Trans European green infrastructure network (EU TEN-G) initiative is currently developed by the Commission. The Commission is assessing the costs and the economic, social and environmental benefits of such an instrument.

*»In the EU, green infrastructure (GI) includes the Natura 2000 network as its backbone, as well as natural and semi-natural spaces outside Natura 2000, such as parks, private gardens, hedges, vegetated buffer strips along rivers or structure-rich agricultural landscapes with certain features and practices, and artificial features such as green roofs, green walls, or eco-bridges and fish ladders«*

*»The GI strategy stressed the need to ensure that GI becomes a standard part of spatial planning and territorial development and that it is fully integrated into the implementation of the policies whose objectives can be achieved as a whole or in part through nature-based solutions«.*

The Commission recognizes that: *“GI though is not sufficiently used in maritime spatial plans, whereas it could contribute to healthy marine ecosystems and deliver substantial benefits in terms of **food production, recreation and tourism, climate change mitigation and adaptation, shoreline dynamics control and disaster prevention.**”*

The Natura 2000 is the longstanding tool for nature protection on the EU level, but *“the fitness check of the Nature Directives concluded that...they could not deliver alone on the EU 2020 goal of halting the loss of biodiversity...”* There is commonly recognized need to deploy the GI, for conservation of existing *“biodiversity-rich ecosystems in good condition and the **restoration of degraded ecosystems, both inside and outside of the Natura 2000 network.**”*

*“Biodiversity Strategy called upon Member States already by 2014, with the assistance of the Commission, to develop a **strategic framework to set priorities for ecosystem restoration at sub-national, national and EU level.**”<sup>94</sup>*

## **2. INTERNATIONAL LEGAL FRAMEWORK FOR (NATIONAL) BIODIVERSITY PROTECTION IN EUSAIR REGION**

### **2.1. Convention on the conservation of European wildlife and natural habitats (Council of Europe Bern Convention).**

EU targets are coherent with the global targets proposed to the 15th Conference of the Parties (COP15) of the **UN Convention on Biological Diversity** and with the objectives of the **Convention on the conservation of European wildlife and natural habitats**.

As regards habitat protection within the EUSAIR, reference should be made to the fact that the Habitats Directive has strongly influenced the institutional functioning of the Bern Convention. As a result, the Emerald Network is expressly based on the provisions of the Habitats Directive relating to the NATURA 2000 Network. This resulted from the fact that, when the Standing Committee of the Bern Convention adopted the Emerald Network in 1996, it based itself on the NATURA 2000 Network requirements according to the Habitats Directive. Thus, NATURA 2000 sites within European Union member States are deemed to form part also of the Emerald Network of protected areas<sup>95</sup>. In turn, the Emerald Network of protected areas gives to non-European Union countries within a specific region or sub-region (including within the EUSAIR) the possibility to align their conservation policy with that of the European Union’s NATURA 2000 Network of protected areas.

Reference should be made to the fact that the Habitats Directive and the Bern Convention are the primary legal instruments for species protection in Europe. When it comes to the protection of habitats and habitats species in the EUSAIR (through the NATURA 2000 Network), reference should be made both to the Bern Convention and the Habitats Directive, particularly in the light of their links and interdependency<sup>96</sup>. The Habitats Directive should be assessed also from the standpoint that all EUSAIR States, including non-European Union countries (Albania, Montenegro, North Macedonia, and Serbia), are parties to the Bern Convention

Again, reference should be pointed out to the fact that all EUSAIR members States are parties to the Bern Convention. This gives a possibility also to non-European Union countries in the Adriatic and Ionian Seas to establish (marine) protected areas actually equivalent to those established by European Union member States within the NATURA 2000 Network, as well as, in this regard, the possibility to coordinate their policies and undertake joint (transboundary) projects of

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<sup>94</sup> The EU Trans European green infrastructure network (EU TEN-G) initiative is currently developed by the Commission. The Commission is assessing the costs and the economic, social and environmental benefits of such an instrument.

*“EU TEN-G initiative should help identify projects of common European interest to be prioritized with appropriate funding ... at a scale that transcends administrative boundaries. They will contribute to achieving the objectives of other key EU policies in areas such as economic growth and jobs, climate mitigation and adaptation, disaster risk reduction, cohesion and sustainable agriculture and forestry, and in a broader perspective the Sustainable Development Goals.”* in line with Green deal goals.

<sup>95</sup> See EPSTEIN (*op. cit.* in footnote 273), p. 153.

<sup>96</sup> See *infra* on the links between the NATURA 2000 Network and the Emerald Network of protected areas established on the basis of the Bern Convention.



cooperation with the European Union and its member States, including within the framework of the EUSAIR.

Standing Committee<sup>97</sup>, when adopted the Evaluation of the 2011-2020 Emerald Network workplan and the Proposal of a post-2020 workplan recognized:

#### 3.4. Cluster 4: West Balkan countries

*“West Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia and Serbia), started the bio-geographical process back in 2011 with the first Emerald Network seminar in Montenegro. Unfortunately, no progress was recorded since as none of the countries have submitted an updated database. In 2017 the Secretariat did a great effort to revitalize the process and, although some countries showed an interest (Serbia and Montenegro), no concrete steps followed. It is also a pity that a number of EU-funded projects in relation to the preparations for the Natura 2000 process in the West Balkan region, did not stimulate progress in building the Emerald Network.*

*It is important to mention that one country (Croatia) during the evaluation period became a member of the European Union and already had a Natura 2000 seminar in 2015 with very good results. There is a good reason to believe that this was largely thanks to the Emerald Network evaluation seminar in 2011.”*

#### ➤ **The legal concept**

The Convention on the Conservation of European Wildlife and Natural Habitats, or the Bern Convention, was signed in Bern in 1979. It was the first general legal instrument for pan-European nature conservation and remains the crucial treaty for protection of biodiversity within the Council of Europe framework.<sup>98</sup>

The Report<sup>99</sup> of the Council of Europe committee for environment stresses the difficulties in the global biodiversity protection; *It took more than twelve years for a global treaty of even more comprehensive coverage to emerge – when the Convention on Biological Diversity (the Biodiversity Convention) was signed at the Earth Summit in Rio in 1992. However, the Biodiversity Convention lacks annexes listing the protected species – which, given its global scope, would indeed be a formidable task – and some of the other mechanisms present in the Bern Convention.*

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<sup>97</sup> At the 40th meeting Strasbourg, 30 November - 4 December 2020

<sup>98</sup> **The need to assess progress in the implementation of the Bern Convention**, Report of the Committee on the Environment, Agriculture and Local and Regional Affairs, January 2011: *“An understanding of the need for international co-operation in the field of nature conservation started to emerge early in the 20th century. The two world wars, however, made effective co-operation virtually impossible until the latter part of the 1940s when finally, the International Union for the Conservation of Nature (IUCN) (formerly IUPN) was founded in 1948. The same applies for pan-European political co-operation in general, where historic roots are even deeper, but the first real breakthrough came in 1949 with the creation of the Council of Europe. The two bodies signed an agreement in 1962 thus recognising the need for pan European activities in nature conservation. This agreement was recently replaced by the memorandum of understanding signed in January 2010. The Council of Europe’s activities in the field of environment and nature conservation have of course not been limited to co-operation with the IUCN – several resolutions and recommendations have been adopted by the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities over the years. The joint declaration by the Assembly, the Congress and the Conference of the International NGOs “Working together for biodiversity, protection of natural areas and the fight against climate change” signed on Biodiversity Day, 28 April 2010, is one of the most recent developments in the field.”*

<sup>99</sup> **The need to assess progress in the implementation of the Bern Convention**, Report of the Committee on the Environment, Agriculture and Local and Regional Affairs, January 2011



The Council of Europe Bern Convention is the intellectual precursor to the Habitat Directive<sup>100</sup> and has been developed in concert since 1996<sup>101</sup>. It can be stated<sup>102</sup> that the Bern Convention, was the conceptual and political “parent” of the Nature directives of the EU. It is, however, the implementation or the enforcement procedure that differs significantly, due to the different legal nature of the Council of Europe and the European Union.

➤ **Implementation of the convention**

Implementation of the convention by the contracting parties is co-ordinated by the Standing Committee, the highest body and the focal point of communication of the convention<sup>103</sup>. The Standing Committee is assisted by the secretariat and groups of experts. It adopts resolutions and recommendations and can open case files in cases of suspected non-compliance with the convention by a contracting party. The Greek case under the convention and Natura 2000, is an example of the legal strength of the two enforcement mechanisms.

➤ **Enforcement mechanisms in the case of Caretta Caretta**

Bay of Laganas on Zakynthos in Greece is a vital breeding region, perhaps even the most important in the Mediterranean, for the sea turtle *Caretta caretta*. Over 40 % of Greece loggerhead and over 25% of Mediterranean loggerhead depend of the 5 km long stretch of beach to hatch their young during the summer months of June and July. Construction and other touristic activities including illumination in the period threatens the nesting ability of the beach.

Bay of Laganas on Zakynthos is a vital breeding region, perhaps even the most important in the Mediterranean, for the sea turtle *Caretta caretta*. Greek authorities have proposed that the region be classified as one of the sites of Community importance for the Natura 2000 network.

**1) Bern Convention mechanism**

*Caretta Caretta* is strictly protected under the Bern Convention art. 6.<sup>104</sup>. Greece accordingly adopted protecting laws and regulations in 1980. **Laws were not enforced against local**

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<sup>100</sup> ...Directive 79/409/EEC on the conservation of wild birds (the Birds Directive) was adopted the same year as the Bern Convention, 1979, and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) was adopted in 1992. Since the European Union is also a party to the Bern Convention – and indeed these two directives are regarded as the way of implementation of the convention by the European Union.,

<sup>101</sup> Council of Europe Convention on conservation of European wildlife and natural habitats **Explanatory document and compilation of relevant texts T-PVS/PA (2016)**

Strasbourg, 10. June 2016:

“In January 1996, a sufficient number of States of Central and Eastern Europe had become Parties to the Convention and were requesting the development of the network of ASCIs. The Standing Committee, realising this wish and noting that the Habitats Directive was already sufficiently advanced in its work to build Natura 2000, decided to adopt its Resolution No. 3 (1996), in which it resolved to “set up a network (Emerald Network) which would include the Areas of Special Conservation Interest designated following its Recommendation No. 16”; it furthermore “encouraged Contracting Parties and observer states to designate Areas of Special Conservation Interest and to notify them to the Secretariat”. Resolution No. 3 (1996) was, in a sense, a second act of birth of the network, after its first creation in 1989. More precisely it was an act of baptism as the network had not been given a name in 1989 and it had proved rather awkward to promote a network under the name of “network to develop Recommendation No. 16 (1989) of the Standing Committee of the Convention on areas of special conservation interest”.

<sup>102</sup> The Habitat Directive and the Bern Convention: Sinergy and Disfunction in public international and EU Law, Yaffa Epstein, 2014

<sup>103</sup> Articles 13, 14 and 15

<sup>104</sup> Article 6.

*Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species:*

- a) all forms of deliberate capture and keeping and deliberate killing;
- b) the deliberate damage to or destruction of breeding or resting sites;

**industry.** NGO (MEDASSET) brought the insufficient enforcement to the attention of the Standing Committee which brought several actions:

- 1) Special expert group was set to follow and advise and report
- 2) Recommendation No. 9 (1987) on the specific situation on the Bay of Laganas
- 3) Declaration on the conservation of Laganas Bay Zakynthos (Greece) (1993) directed to the Council of ministers of the Council of Europe
- 4) Decision of the Standing committee concerning conservation of Laganas Bay Zakynthos (1995) gave the deadline until 1998 to set up the appropriate legal measures including national marine park.
- 5) Greece did not comply, but no action for breach of the convention under art. 8. was taken by the council of ministers – case was closed

## 2) EU Commission action (Case C-103/00, Commission v. Greece (2002))

The deterioration in the conservation conditions for the sea turtle *Caretta Caretta* on the Island of Zakynthos was criticised by non-governmental organisations. In addition, by a letter of 3 July 1998, the Commission<sup>105</sup> requested information from the Greek authorities on measures for the protection of that species on the island. The Commission took legal action before the European Court of Justice (ECJ).

The ECJ agreed with the EU Commission that the Hellenic Republic has infringed its obligations under the Treaty and Article 12(1)(b) and (d) of the Directive, first, **by failing to adopt a legislative framework** which would ensure the strict protection of the sea turtle *Caretta Caretta* against any deliberate disturbance during its breeding period and against any deterioration or destruction of its breeding sites and, second, **by failing to take specific measures** to prevent the deliberate disturbance of the sea turtle *Caretta Caretta* during its breeding period and the deterioration or destruction of its breeding sites. The court dismissed the Greek objection, that no reduction of breeding sites have been proven in 15 years, by stressing the strict obligation under the directive:

*“The fact that during the last 15 years no reduction in the number of nests on the island of Zakynthos has been proven is therefore insufficient to exempt the Hellenic Republic from the obligations incumbent on it under Article 12 of the Directive. In order to comply with the obligations of the Directive, the Hellenic Republic must adopt a set of precise, concrete measures to avoid a reduction in the population of the species, by ensuring in particular that the turtles’ breeding area is maintained in a favourable state.”*

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- c) *the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of this Convention;*
  - d) *the deliberate destruction or taking of eggs from the wild or keeping these eggs even if empty;*
  - e) *the possession of and internal trade in these animals, alive or dead, including stuffed animals and any readily recognisable part or derivative thereof, where this would contribute to the effectiveness of the provisions of this article.*

<sup>105</sup> The commission officials went on the mission, and They found that the protective measures at all of the places visited were inadequate, in particular:

- there was no supervision and there were no notices on the beaches; — there were pedalos and boats in the sea area where their use is prohibited.
- there were a significant number of beach umbrellas and deck-chairs on various beaches (Kałamāki, Gerakas, Dafni);
- there were illegal buildings and recent works on the beach at Dafni.

### 2.1.1. Areas of Special Conservation Interest (ASCI) – Emerald network

The rules laid down in Article 4 of the convention relating to the establishment of protected areas are general<sup>106</sup> in nature. The Standing Committee provided additional guidance with binding Resolutions<sup>107</sup>.

The resolutions are supplemented by numerous recommendations regarding protection of habitats and sites. The most important of these is **Recommendation No. 16 (1989)** which ask Parties to:

*"1. Identify in the areas within their jurisdiction:*

- a. Species requiring specific habitat conservation measures;*
- b. Endangered natural habitats requiring specific conservation measures;*
- c. Migratory species requiring specific habitat conservation measures;*
- d. Species of which the breeding and/or resting sites require protection and their breeding and for each of these categories to indicate, as far as possible, their sites" ..*

The conditions for establishing Areas of Special Conservation Interest point clearly towards areas of a great ecological value for both the threatened and endemic species listed in the Appendices of the Bern Convention and for the endangered habitat types which have been identified by the Standing Committee as "requiring specific conservation measures".

The Emerald Network would not accept any type of protected area, or a mere collection of areas designated under other schemes. Its coherence – much like that of Natura 2000 – comes from the limited criteria for choice: they must be important and contribute substantially to the objectives of the Convention<sup>108</sup>.

In 2010, the Standing Committee adopted the “Criteria for assessing the National Lists of **proposed ASCIs at biogeographical** level and procedure for examining and approving Emerald candidate sites”. The document provides the basis for the identification and scientific evaluation of the sufficiency of the sites proposed by the Contracting Parties for joining the Emerald Network.

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<sup>106</sup>Articles 1, 2, 3, 4, 6 and 9 of the Convention deal with the protection of natural habitats, in particular:

- Habitats of the wild flora and fauna species (especially those in Appendices I and II);
- Endangered natural habitats;
- Areas of importance for migratory species.

<sup>107</sup> – Resolution No. 3 (1996) concerning the setting up of a pan-European Ecological Network, establishes the Emerald Network of Areas of Special Conservation Interest. It clarifies a general reference to protected sites in the convention. It also establishes the relevant expert group and invites observer states to the convention to participate in the network.

– Resolution No. 4 (1996) lists in Annex I<sup>107</sup> the habitat types to be protected (since the convention itself does not have an appendix listing such habitat types).

– Resolution No. 5 (1998) concerning the rules for the Network of Areas of Special Conservation Interest<sup>107</sup> (Emerald Network) states, that for European Union member states the Natura 2000 sites form the Emerald Network. It also establishes the procedure for depositing data regarding the sites with the convention secretariat and the standard data form for site information.

– Resolution No. 6 (1998) listing the species requiring specific habitat conservation measures provides clarification of the difference of species lists between the relevant appendices to the convention and annexes to the directives, as species listed in all of these documents are listed in the Appendix 1 to Resolution No. 6 (1998).

<sup>108</sup>Council of Europe Convention on conservation of European wildlife and natural habitats **Explanatory document and compilation of relevant texts T-PVS/PA (2016)**

➤ **The Emerald Network constitution process**<sup>109</sup>

The constitution of the Network, although divided in three Phases, is rather an iterative process, starting from the identification of suitable areas at national level under Phase I, through the scientific evaluation of the sites proposals under Phase II to a possible return to Phase I in case the proposed sites are considered insufficient for given species and habitats to be protected.

Phase I: Participating countries assess and identify species and habitats to be protected according to the relevant resolutions of the Bern Convention listing them. They subsequently select potential sites which are suitable for ensuring the long-term survival of the “Emerald” species and habitats and they send a database containing scientific information on the proposed sites to the Bern Convention’s Secretariat. The proposed sites can be officially nominated candidate Emerald sites by the Standing Committee<sup>110</sup>

Phase II: An evaluation of the efficiency of the proposed sites is done on a species by species and habitat by habitat base for each biogeographical region. Ideally the evaluation would only start if a complete inventory of proposed sites exists for a certain area. Furthermore, the Standing Committee has the right<sup>111</sup> to advise the government concerned to designate one or more areas of particular interest to the Network.

The need for additional designation is further clarified in the document on the *Revised Criteria for assessing the National Lists of proposed ASCIs at biogeographical level and procedure for examining and approving Emerald candidate sites*. Through the biogeographic process of assessment of the sites’ proposals, the need for further identification of potential sites at national level might be concluded, for ensuring a sufficient protection of given species and habitats<sup>112</sup>.

Once the scientific value of the proposed sites is assessed, the candidate Emerald sites are submitted to the Standing Committee and will eventually be formally adopted as part of the Emerald Network.

Phase III: Consists of the national designation of the adopted ASCI’s and the implementation of management, reporting and monitoring measures, under the responsibility of national authorities, in line with the requirements<sup>113</sup>. To designate its ASCIs, any government should deposit a Standard Data Form for each individual site proposed with the Secretariat of the Council of Europe, through the Common Data Repository of the European Environment Agency<sup>114</sup>. It is adapted from the Natura 2000 Standard Data Form and covers a larger geographical area and **the more numerous species of the Bern Convention**.

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<sup>109</sup> Idem

<sup>110</sup> Recommendation No. 157 (2011) on the status of candidate Emerald sites and guidelines on the criteria for their nomination.

<sup>111</sup> Resolution No.5 (1998) -the Rules for the Emerald Network

<sup>112</sup> Revised Criteria for assessing the National Lists of proposed ASCIs at biogeographical level and procedure for examining and approving Emerald candidate sites, adopted in December 2013 by the Standing Committee to the Bern Convention.

<sup>113</sup> Resolution No. 8 (2012) of the Standing Committee to the Bern Convention on the national designation of ASCIs

<sup>114</sup> <https://reportnet.europa.eu/>

### ➤ **Natura 2000 and Emerald networks**

Natura 2000 and Emerald data forms and software<sup>115</sup> were developed in a co-ordinated manner and thus have a similar structure. There is a degree of compatibility between the networks<sup>116</sup>. The Standing Committee's Resolution No. 5 (1998) leaves implementation of the site protection objectives by the European Union member states to Natura 2000.

The rules of site designation specified in Article 4 of the Habitats Directive are stronger than the ones in Article 4 of the Bern Convention. The European Union also has stronger mechanisms of reporting and implementation: the European Commission monitors the creation of the Natura 2000 Network and can react to non-compliance with the infringement procedure<sup>117</sup>.

The building of the Emerald Network has been promoted by the work carried out in the European Union on Natura 2000 as in the last decade the Emerald constitution process and methodology followed the Natura 2000 examples and best practices<sup>118</sup>.

*Setting-up of the Emerald Network supported the former EU-candidate states to join the European Union, by doing part of the preparatory work necessary to comply in advance with the Habitats Directive. It seems evident that if a state designates a coherent network of ASCIs within the Emerald Network, it will be in a more favourable position to designate its own SACs when it joins the Union. Such a possibility has led to close co-operation between the Council of Europe and the European Commission, in terms of technical and financial matters derived from the building of both networks....*

*In a sense, the Emerald Network extends the EU nature conservation standards outside its borders and its success will be that of nature conservation in the Pan-Europe<sup>119</sup>*

### ➤ **Cases in the EUSAIR region**

Creation of the Emerald Network, outside EU is at initial stage. Pilot projects have been carried out in the relevant countries at different times. Most of the non-European Union contracting parties have received some assistance in setting up the pilot projects.

A joint European Union-Council of Europe project for the setting up of the Emerald network in seven central and eastern European and Caucasus countries has been under way<sup>120</sup>. These projects

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<sup>115</sup> <https://emerald.eea.europa.eu/>

<sup>116</sup> Different habitat and species lists may create problems in the coherence of the pan-European network. Co-operation between the European Commission, the European Environmental Agency and the Standing Committee of the Bern Convention is supposed to solve this problem.

<sup>117</sup>**The need to assess progress in the implementation of the Bern Convention**, Report of the Committee on the Environment, Agriculture and Local and Regional Affairs, January 2011

<sup>118</sup>Council of Europe Convention on conservation of European wildlife and natural habitats **Explanatory document and compilation of relevant texts T-PVS/PA (2016)**: “Coherence between the Emerald and Natura 2000 is essential for ensuring the whole of Europe holds a homogeneous network of areas and is additionally helping to break down in this sector the barriers that history, politics and economic reality have imposed on the European continent. This is in line with the missions, the challenges and the ambitions of the Council of Europe. ”

<sup>119</sup>Council of Europe Convention on conservation of European wildlife and natural habitats **Explanatory document and compilation of relevant texts T-PVS/PA (2016)**

<sup>120</sup> Albania: 25 sites, covering 18.2% of the country's territory, are proposed in the framework of a project finalised in 2008; Bosnia and Herzegovina: 29 sites covering 4.9% of the country's territory were proposed in the framework of a project finalised in 2008, but for some sites the geographical information systems boundaries were not available by the end of the project; Montenegro: 32 sites covering 17.1% of its territory were proposed in the framework of a project finalised in 2008; In January 2011, the evaluation of all candidate Emerald sites (Phase II) in the West Balkan area will start in collaboration with the European Topic Centre on Biodiversity of the European Environment Agency (Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia and “the former Yugoslav Republic of Macedonia”)

have contributed to the development of nature conservation networks in the countries involved but have produced preliminary site list proposals.

## **2.2. The Convention for the Protection of the Marine Environment and Coastal Region of the Mediterranean (Barcelona convention and Protocols)**

While there are a wide range of frameworks for different forms of marine protection in the Mediterranean, the Barcelona Convention the Convention for the Protection of the Marine Environment and Coastal Region of the Mediterranean has particular importance with most Mediterranean states being signatories. Acting within the umbrella of the United Nations Environment Programme (UNEP), the convention supports the CBD targets on marine protection.

The general obligations of the Barcelona Convention are set out in the Article 4(1) and include *taking all appropriate measures to prevent, abate, combat and – to the fullest possible extent – eliminate pollution from the Mediterranean Sea Area, as well as to protect and enhance the marine environment in that Area, so as to contribute towards its own sustainable development.*

These obligations are furtherly elaborated in the Article 10, which reads: *“The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleted, threatened or endangered and their habitats, in the area to which this Convention applies”.*

Three Protocols to the Barcelona Convention are of particular relevance for this study, as they envisage explicit provisions for the establishment or management of marine or coastal areas to which a special protection regime applies. Such areas may be extended beyond national jurisdictions and given a transboundary character, if the parties to the relevant Protocols wish to do so. This is done by including in the relevant spatial measures marine waters that encompass portions of maritime zones (i.e., internal waters, territorial sea, exclusive economic zone, continental shelf) pertaining to different States or even portions of the high seas.

Due to a number of factors, the northern Adriatic is deemed a particularly sensitive sea area, which is why proceedings have been initiated some time ago before the International Maritime Organisation (IMO) to be officially granted such status. The parties to the Barcelona Convention at their 16<sup>th</sup> meeting in November 2009 adopted the Marrakesh Declaration calling all parties to the Convention to expand the system of protected areas, including to high seas, by 2012. At an extraordinary meeting in Istanbul in June 2010, representatives of the parties set out 12 priority Specially Protected Areas of Mediterranean Importance – SPAMI, including the northern and central Adriatic.

### **2.2.1. Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (1995) – areas protocol<sup>121</sup>**

The *Barcelona Convention* protects biodiversity and habitats and endangered species based on the *Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean*. The legal instruments for the protection are similar to those envisaged in the *Convention on Biological Diversity* from 1992 and the *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)*, namely

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<sup>121</sup> Ibid.

establishing a special protective regime in areas of common significance and special protection for endangered and threatened plant and animal species.

Based on the Protocol which entered into force on 12 December 1999, the Parties must do all necessary to (1) protect, preserve and manage in a sustainable and environmentally sound way areas of particular natural or cultural value, notably by the establishment of specially protected areas; and (2) protect, preserve and manage threatened or endangered species of flora and fauna (first paragraph of Article 3).

When preparing protective measures, the parties account for traditional activities characteristic of the culture and livelihood of the local population. *Exemptions* are approved if necessary to meet such needs where no exemption may endanger conservation of protected ecosystems or biological processes contributing to conservation of those ecosystems or result in extinction or significant reduction in the number of individuals comprising plant and animal populations or species, in particular threatened, endangered, migratory or endemic species (Article 18).

Under the 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 Areas Protocol provides for the establishment of a List of SPAMIs (so-called SPAMI List).

This 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*”. The procedures for the establishment and listing of SPAMIs are specified in detail in the Protocol. For instance, as regards an area located partly or wholly on the high seas, the proposal must be made “*by two or more neighboring parties concerned*” and the decision to include the area in the SPAMI List is taken by consensus by the parties during their periodical meetings.

Once the areas are included in the SPAMI List, all the parties agree “*to recognize the particular importance of these areas for the Mediterranean*”, “*to comply with the measures applicable to the SPAMIs and not to authorize nor undertake any activities that might be contrary to the objectives for which the SPAMIs were established*». This gives to the SPAMIs and to the measures adopted for their protection an *erga omnes partes* effect. As regards the relationship with third countries, the parties are called to “*invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation*” of the Protocol. They also “*undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles and purposes*” of the Protocol. This provision aims at facing the problems arising from the fact that any treaty, including the Areas Protocol, can create rights and obligations only for the parties.

In 2016 it published an important report analysing progress with and the status of marine protected areas in the Mediterranean. This report while recognising that progress had been made highlighted the need for further designations and equally importantly to improvements in the legal status and management of designated areas. The Adriatic Sea was specifically identified as an area with inadequate coverage of MPA’s requiring further action.<sup>122</sup>

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<sup>122</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS)

➤ **Areas Protocol and Natura 2000**

**As the Directive 92/43/EEC is a part of a wider system for protection of biodiversity, of which the EU is a part (Decision No. 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.september 2002, p. 1) with a commitment to preserve biodiversity, including by using instruments supplementing protection under the Natura 2000 network (Communication from the Commission Halting the Loss of Biodiversity by 2010 - and beyond), protection of species should also be assessed on the basis of other international legal instruments.**

Such an instrument in the Mediterranean *is the Barcelona Convention and its Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean* (the *Protocol*). The protocol is a legal instrument of protection similar to that envisaged by the *Directive 92/43/EEC* as it specifies special protection regimes in areas of common interest and provides for special protection of endangered and threatened plant and animal species.

General obligations are specified in the list of measures in Article 3 which the Parties must adopt and one of them is: ... *protect, preserve and manage in a sustainable and environmentally sound way areas of particular natural ... value, notably by the establishment of specially protected areas*. In the case of establishing specially protected areas, the so-called *SPAMI*, the *Protocol* does not establish an explicit obligation or duty to establish protected areas. However, once a country is announced an area of Mediterranean importance, omitting the protection is a violation of the *Protocol*.

Article 10 states that: “*Changes in the delimitation or legal status of a SPAMI or the suppression of all or part of such an area shall not be decided on unless there are important reasons for doing so, taking into account ... a procedure similar to that followed for the creation of the ...*” This means that Parties must agree with suppression as Article 9 in Item (c) requires an agreement of the Parties for establishing a *SPAMI*.

Under the SPA/BD Protocol, Contracting Parties are to take the necessary measures to “*protect, preserve and manage in a sustainable and environmentally sound way areas of particular natural or cultural value, notably by the establishment of specially protected areas*” (Article 3.1(a)); and “*protect, preserve and manage threatened or endangered species of flora and fauna*” (Article 3.1(b)).

These obligations are furtherly developed in the Article 8 (1), which reads: “*In order to promote cooperation in the management and conservation of natural areas, as well as in the protection of threatened species and their habitats, the Parties shall draw up a List of Specially Protected Areas of Mediterranean Importance, hereinafter referred to as the SPAMI List*”.

The *SPAMI List* may include sites which:

- (1) are of importance for conserving the components of biological diversity in the Mediterranean;
- (2) contain ecosystems specific to the Mediterranean area or the habitats of endangered species;
- (3) are of special interest on a scientific, aesthetic, cultural or educational level (Article 8(2)).

The Protocol makes a clear distinction between the Specially Protected Areas and the Specially Protected Areas of Mediterranean Importance (*SPAMI*). Only *SPAMIs* can be established partly or as a whole on the high seas.



➤ **SPAMI protection on the high seas**

In its Article 9, the SPA/BD Protocol provides the procedure for the establishment and listing of the SPAMIs. Article 9.1(b) explicitly states that the SPAMIs may be established in “zones partly or wholly on the high seas”. If so, according to the Article 9.2(b), proposals for inclusion in the List may be submitted “*by two or more neighbouring Parties concerned if the area is situated, partly or wholly, on the high sea*”.

The procedure for establishing and listing of SPAMIs is explained in detail in Articles 9 (3) and (4) and involves the consultation between the concerned, neighbouring Parties and the submission of an introductory report containing information on the area’s geographical location, its physical and ecological characteristics, its legal status, its management plans and the means for their implementation, as well as a statement justifying its Mediterranean importance.

**2.2.2. The Protocol for the Protection of the Mediterranean Sea against Pollution (Offshore protocol)<sup>123</sup>**

The Offshore protocol resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (Madrid, 14 October 1994; in force from 24 March 2011; hereinafter: Offshore Protocol) sets forth obligations incumbent on the parties with respect to activities carried out by operators, who can also be private persons, either natural or juridical. This kind of obligations are to be understood in the sense that each party is bound to exercise the appropriate legislative, executive or judicial activities in order to ensure that the operators comply with the provisions of the Offshore Protocol. The parties are bound to take measures to ensure that liability for damage – caused by activities to which the Offshore Protocol applies – is imposed on operators, who are required to pay prompt and adequate compensation. The parties shall also take all measures necessary to ensure that operators have and maintain insurance cover or other financial security in order to pay compensation for damages caused by the activities covered by the instrument.

As anticipated, with specific reference to area-based management, in the context of the Offshore Protocol, ‘precautions’ are envisaged in particular for specially protected areas that have been identified under the Areas Protocol or established by a party. Measures of protection may be taken by the parties either individually or through multilateral or bilateral cooperation, with a view to preventing, abating, combating and controlling pollution arising from activities in these areas. In addition to those measures referred to in the Areas Protocol, for the granting of authorization the measures of the Offshore Protocol may encompass, *inter alia*: special restrictions or conditions when granting authorizations for such areas, including the preparation and evaluation of environmental impact assessments and the elaboration of special provisions concerning monitoring, removal of installations and prohibition of any discharge, as well as an intensified exchange of information among operators, the competent authorities, parties and UNEP regarding matters which may affect such areas (Art. 21).

**2.2.3. Protocol on Integrated Coastal Zone Management in the Mediterranean (2008)**

As an international legal document, the ICZM Protocol drives the Mediterranean Countries to better manage and protect their coastal zones. It complements the existing set of Protocols of the Convention for the Protection of the Marine Environment and the Coastal Region of the

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<sup>123</sup> Ibid.

Mediterranean. ‘Integrated coastal zone management’<sup>124</sup> means a sustainable management and use of coastal zones. Coastal zone is defined as the geomorphologic area either side of the seashore on which the interaction between the marine and land parts occurs. For the management purposes, the coastal zone is defined as the external limit of the territorial waters and with the land limit of the administrative coastal units.

The objectives<sup>125</sup> of the ICZM are to:

- Facilitate, through the rational planning of activities, the sustainable development of coastal zones by ensuring that the environment and landscapes are taken into account in harmony with economic, social and cultural development;
- Preserve coastal zones for the benefit of current and future generations;
- Ensure the sustainable use of natural resources, particularly with regard to water use;
- Ensure preservation of the integrity of coastal ecosystems, landscapes and geomorphology;
- Prevent and/or reduce the effects of natural hazards and in particular of climate change, which can be induced by natural or human activities; and
- Achieve coherence between public and private initiatives and between all decisions by the public authorities, at the national, regional and local levels, which affect the use of the coastal zone<sup>126</sup>.

In the process of implementing, the several principles<sup>127</sup> should be considered:

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<sup>124</sup> *Integrated coastal zone management* is defined in the Barcelona Protocol as a dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts (Article 2).

<sup>125</sup> The *objectives* of integrated coastal zone management are to (Article 5):

- (a) facilitate, through the rational planning of activities, the sustainable development of coastal zones by ensuring that the environment and landscapes are taken into account in harmony with economic, social and cultural development;
- (b) preserve coastal zones for the benefit of current and future generations;
- (c) ensure the sustainable use of natural resources, particularly with regard to water use;
- (d) ensure preservation of the integrity of coastal ecosystems, landscapes and geomorphology;
- (e) prevent and/or reduce the effects of natural hazards and in particular of climate change, which can be induced by natural or human activities;
- (f) achieve coherence between public and private initiatives and between all decisions by the public authorities, at the national, regional and local levels, which affect the use of the coastal zone.

<sup>126</sup> The Parties shall endeavour, directly or with the assistance of the Organization or the competent international organizations, bilaterally or multilaterally, to coordinate, where appropriate, their national coastal strategies, plans and programmes related to contiguous coastal zones. Relevant domestic administrative bodies shall be associated with such coordination (Article 28).

<sup>127</sup> In implementing the Protocol, the Parties shall be guided by the following *principles of integrated coastal zone management* (Article 6):

- (a) The biological wealth and the natural dynamics and functioning of the intertidal area and the complementary and interdependent nature of the marine part and the land part forming a single entity shall be taken particularly into account.
- (b) All elements relating to hydrological, geomorphological, climatic, ecological, socio-economic and cultural systems shall be taken into account in an integrated manner, so as not to exceed the carrying capacity of the coastal zone and to prevent the negative effects of natural disasters and of development.
- (c) The ecosystems approach to coastal planning and management shall be applied so as to ensure the sustainable development of coastal zones.
- (d) Appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones shall be ensured.
- (e) Cross-sectorally organized institutional coordination of the various administrative services and regional and local authorities competent in coastal zones shall be required.
- (f) The formulation of land use strategies, plans and programmes covering urban development and socio-economic activities, as well as other relevant sectoral policies, shall be required.
- (g) The multiplicity and diversity of activities in coastal zones shall be taken into account, and priority shall be given, where necessary, to public services and activities requiring, in terms of use and location, the immediate proximity of the sea.

- The terrestrial and maritime part of the coastal zone should be considered as a single entity;
- All the coastal elements (hydrological, geomorphological, climatic, ecological, socio-economic, cultural systems) shall be taken into account in an integrated manner;
- The ecosystem-based approach shall be applied (taking into account all the coastal elements but also their continuous interactions);
- Appropriate governance allowing participation of stakeholders shall be ensured;
- Cross-sector institutional coordination shall be required;
- Development of land use strategies, plans and programmes shall be required;
- The multiplicity and diversity of activities in coastal zones shall be taken into account, and priority shall be given, where necessary, to public services and activities requiring, in terms of use and location, the immediate proximity of the sea;
- The allocation of uses/activities in coastal zones should be balanced and unnecessary concentration and urban sprawl should be avoided;
- Preliminary assessments shall be made of the risks posted on coastal zones; and
- Damage to the coastal environment shall be prevented, and where it occurs, appropriately restored.

ICZM Protocol highlights<sup>128</sup> some economic activities in the coastal zones that: agriculture and industry; fishing; aquaculture; tourism, sporting and recreational activities; utilization of natural resources; infrastructure, energy, ports and maritime works and structures; and maritime activities.

The specific coastal systems to be protected are wetlands and estuaries and marine habitats. Also, special consideration to protection shall be given to coastal landscapes, islands and cultural heritage<sup>129</sup>. As coastal zones are contiguous and stretches across national boundaries, national strategies shall be coordinated with the neighbouring ones<sup>130</sup>.

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- (h) The allocation of uses throughout the entire coastal zone should be balanced, and unnecessary concentration and urban sprawl should be avoided.
  - (i) Preliminary assessments shall be made of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones.
  - (j) Damage to the coastal environment shall be prevented and, where it occurs, appropriate restoration shall be affected.

<sup>128</sup> As regards *economic activities that require immediate proximity to the sea*, the states must minimize the use of natural resources and take into account the needs of future generations. The states must ensure respect for integrated water resources management and environmentally sound waste management; ensure that the coastal and maritime economy is adapted to the fragile nature of coastal zones and that resources of the sea are protected from pollution; define indicators of the development of economic activities to ensure sustainable use of coastal zones and reduce pressures that exceed their carrying capacity; and promote codes of good practice among public authorities, economic actors and non-governmental organizations (first paragraph of Article 9). In addition, the Parties agree to guarantee a high level of protection of the environment in the *location and operation of industrial activities* so as to preserve coastal ecosystems and landscapes and prevent pollution of the sea, water, air and soil. Infrastructure, energy facilities, ports and maritime works and structures, to subject such infrastructure, facilities, works and structures to authorization so that their negative impact on coastal ecosystems, landscapes and geomorphology is minimized or, where appropriate, compensated by non-financial measures. To conduct maritime activities in such a manner as to ensure the preservation of coastal ecosystems in conformity with the rules, standards and procedures of the relevant international conventions (second paragraph of Article 9).

<sup>129</sup> The Parties shall also endeavour to ensure that their national legal instruments include criteria for sustainable use of the coastal zone. Such criteria, taking into account specific local conditions, shall include, *inter alia*, limiting the linear extension of urban development and the creation of new transport infrastructure along the coast; restricting or, where necessary, prohibiting the movement and parking of land vehicles, as well as the movement and anchoring of marine vessels, in fragile natural areas on land or at sea, including beaches and dunes (third paragraph of Article 8).

<sup>130</sup> The Protocol's provision on *transboundary environmental assessment* (Article 29) is particularly important and sets out that the Parties shall, before authorizing or approving plans, programmes and projects that are likely to have a significant adverse effect on the coastal zones of other Parties, cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans, programmes and projects,

Finally, as ICZM instruments, the ICZM Protocol envisage monitoring and observation activities, national and regional strategies and actions plans<sup>131</sup> for ICZM, environmental assessments<sup>132</sup>, as well as definition of indicators to evaluate the effectiveness of ICZM strategies and plans.

A Common Regional Framework (CRF) for ICZM was also adopted in 2019<sup>133</sup>. Tools to implement the CRF include monitoring activities; environmental assessments; coordination of planning processes and governance mechanisms; marine spatial planning; land policy; economic, financial and fiscal instruments; training, communication and information; and international cooperation.

In the context of this study, the tool of transboundary strategic environmental impact assessments (SEAs) is also worth mentioning. The CFR stresses that transboundary SEA processes, including transboundary consultation, should be activated when a policy, strategy, plan or program is expected to have significant transboundary environmental effects.

### ➤ **The ICZM Process**

To implement the ICZM Protocol, the ICZM Process is designed and is intended to guide the implementation of the ICZM Protocol. According to PAP/RAC organisation<sup>134</sup>, 2012 publication<sup>135</sup> there are 5 key stages further structured into key tasks for each stage as follows:

- 1. Establishment:** Establishing Coordination Mechanisms Defining Territorial Scope Defining Governance Context Scoping, Engaging Stakeholders Proposing a Vision, Deciding on Strategic Environmental Assessment;
- 2. Analysis and futures:** Building the Evidence Identifying Futures;
- 3. Setting the vision:** Building Consensus Setting the Direction Measuring Success;
- 4. Designing the future:** Formulating ICZM Strategies Plans or Programmes Establishing Management Structure, Embedding;
- 5. Realising the vision:** Implementing Acting Monitoring and Reviewing.

### ➤ **ICZM Plan**<sup>136</sup>

The working outputs of the ICZM Process are: Inception Report, The Work Plan, Scoping Report, Communication Strategy, Diagnostic Report, Alternative Scenarios and Vision Statement. The final and main output is an ICZM Integrated Plan accompanied with an Implementation Programme/Roadmap.

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<sup>131</sup> For the purposes of integrated coastal zone management, the Parties shall *inter alia* ensure close cooperation between the national, regional and local levels in preparation of strategies, plans and programmes for coastal areas and with regard to permits for different activities, which can be achieved by joint consultation bodies or joint decision-making procedures (Article 7).

<sup>132</sup> The Parties undertake to cooperate for the promotion of sustainable development and integrated management of coastal zones, taking into account the *Mediterranean Strategy for Sustainable Development* and complementing it where necessary (Article 17). Taking into account the fragility of coastal zones, the Parties shall ensure that the process and related *studies of environmental impact assessment* for public and private projects likely to have significant environmental effects on the coastal zones, and in particular on their ecosystems, take into consideration the specific sensitivity of the environment and the inter-relationships between the marine and terrestrial parts of the coastal zone (first paragraph of Article 19).

<sup>133</sup> Decision IG.24/5 (Annex), UNEP/MED IG.24/22.

<sup>134</sup> Priority Actions Programme/Regional Activity Centre (PAP/RAC), established in 1977, is one of the six Regional Activity Centres of the [Mediterranean Action Plan](#) (MAP), itself part of the [United Nations Environment Programme](#) (UN Environment); <https://paprac.org/>

<sup>135</sup> [THE ICZM PROCESS Source: PAP/RAC, 2012 - ResearchGate](#)

<sup>136</sup> Idem.

While ICZM Integrated Plan sets the objectives that shall be achieved together with long-term governance and implementation structures, the Programme/Roadmap aims at securing the materialisation of the Plan of actions, responsibilities, costs, timeframes etc.

The ICZM plans and programmes are either self-standing documents or integrated in other plans and programmes. They could provide support to the spatial planning process by giving recommendations for policies and the instruments for monitoring and evaluation.

➤ **Case of Šibenik – Knin County**

Coastal Plan for the Šibenik-Knin County (PAP/RAC, 2015)<sup>137</sup>, includes the coastal marine part. The nature protection areas under national and EU law are identified and included in the plan.

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<sup>137</sup> <http://iczmplatform.org//storage/documents/pEoju2FqfXjzPoYBLsKZiD3o6ONBXxJ44RTWFt7P.pdf>

## 2.3. The fisheries restricted areas GFCM<sup>138</sup>

The GFCM has implemented a wide range of recommendations covering various topics such as driftnets, closed seasons, fisheries restricted areas, mesh size, demersal fisheries management, action plans, red coral protection, incidental by-catch of seabirds or turtles, monk seal conservation, vessel records, port State control, lists of vessels engaged in illegal fishing, logbooks, and vessel monitoring systems.

Of particular significance to this study are the measures concerning the establishment of Fisheries Restricted Areas (FRAs) aimed at safeguarding sensitive deep-sea habitats. As defined by the GFCM, FRAs are defined geographic areas where specific fishing activities are temporarily

### 3.5 Natural systems

#### 3.5.1 Marine biodiversity

The County's coastal zone features significant biodiversity, and for this reason some areas within it have been recognized as national parks (Kornati, Krka) and significant landscapes (the Žut-Sit island group, the Krka Landscape – lower course, and the Channel – Šibenik Harbour). Besides, nearly 20 smaller areas and micro-locations have been recognized as habitats of endangered species and included in the ecological network of the Republic of Croatia, developed in line with the protection standards for ecological networks under the EU's Natura 2020. An overview of protected areas and sites foreseen for tourist scuba-diving activities because of their significant biodiversity is given in Figure 3.5.

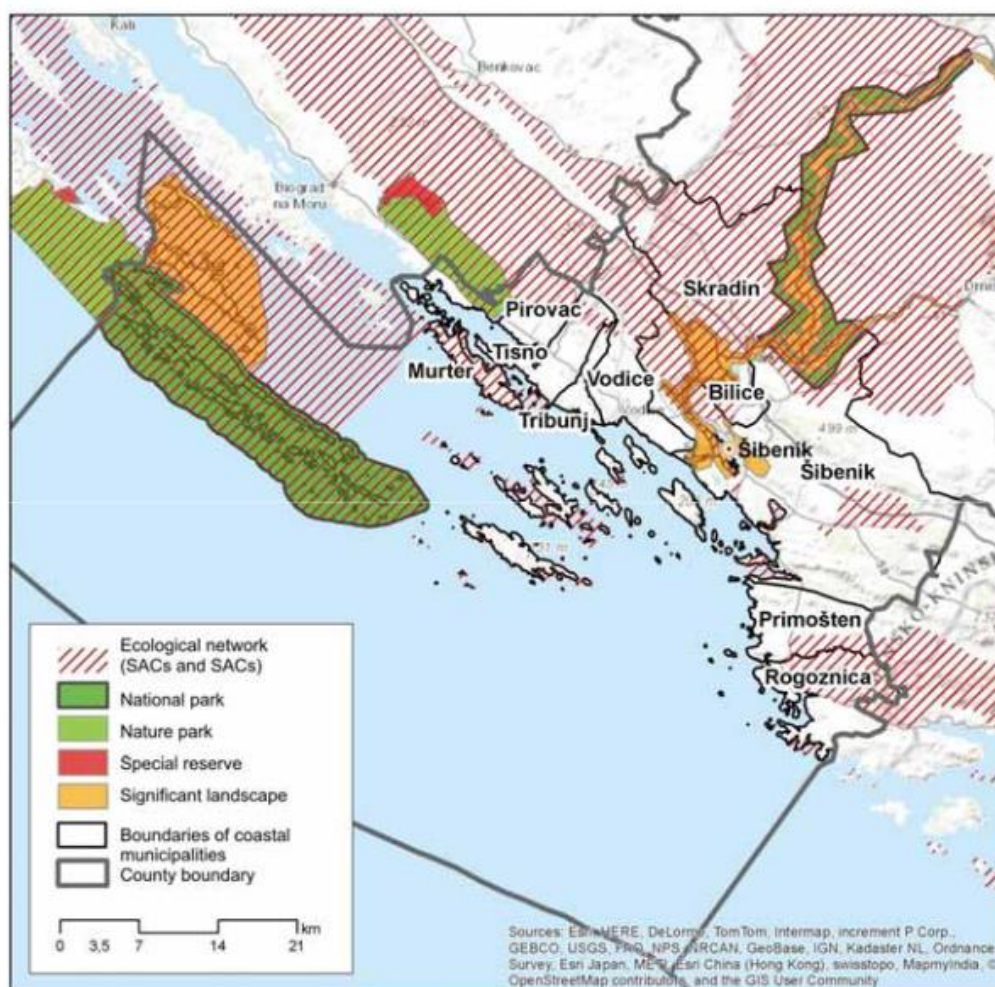


Figure 3.5: Ecological network, national parks, nature parks, special reserves and significant landscapes in the Šibenik-Knin County

<sup>138</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 127.



prohibited or restricted in order to enhance the exploitation and conservation of demersal stocks. Therefore, FRAs can serve as an illustrative example of effective conservation measures based on area protection within the context of this study.

FRAs have been created through various recommendations, including Recommendation 30/2006/3, which bans the use of towed dredges and bottom trawl nets in the Lophelia reef off Capo Santa Maria di Leuca, the Nile Delta Area Cold Hydrocarbon Seeps, and the Eratosthenes Seamount. Additionally, Recommendation 33/2009/1 establishes an FRA in the Gulf of Lions, Recommendation 41/2017/3 establishes an FRA in the Jabuka/Pomo Pit area of the Adriatic Sea, and a recent recommendation establishes an FRA in the Bari Canyon (Southern Adriatic). Furthermore, plans are underway to establish another FRA in the Southern Adriatic, with a roadmap being developed for this purpose. Another noteworthy measure within the GFCM framework is Recommendation 2005/1, which pertains to the management of certain fisheries exploiting demersal and deep-water species and prohibits the use of towed dredges and trawl nets in depths exceeding 1000 meters.

#### **2.4. The Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS)<sup>139</sup>**

The Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) is one of the agreements concluded within the framework of the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979; hereafter: CMS).

In the preamble of the CMS, the parties recognize “*that wild animals in their innumerable forms are an irreplaceable part of the earth’s natural system which must be conserved for the good of mankind*” and declare themselves aware “*that each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely*”. Migratory animals face several threats, especially during their movements, such as pollution of habitats, deterioration of natural stop-over places, direct hazards from hunting or fishing. The parties to the CMS acknowledge “*the need to take action to avoid any migratory species becoming endangered*” (Art. II, paras. 1 and 2)<sup>140</sup>. Fifteen cetacean species are listed in Appendix I (*Endangered migratory species*) and many others in Appendix II (*Migratory species having an unfavourable conservation status*).

ACCOBAMS, which is one of the agreements concluded under Art. IV, para. 4, CMS, was opened for signature in Monaco on 24 November 1996 and entered into force on 1st June 2001. It is now binding on 24 out of the 29 States that border the marine waters to which it applies. **The only State in the region of concern for this study that is not a party to ACCOBAMS is Bosnia and Herzegovina.** It should be noted that the European Union has not yet ratified the instrument, even though it has the right to do so.

ACCOBAMS binds the parties to achieve and maintain a favourable conservation status for cetaceans<sup>141</sup>. The main obligations of the parties are to prohibit any deliberate taking of cetaceans, to

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<sup>139</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 127.

<sup>140</sup> ‘Migratory species’ means the entire population or any geographical separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more jurisdictional boundaries (Art. I, para. 1, a). ‘Habitat’ means any area in the range of a migratory species which contains suitable living conditions for that species (Art. I, para. 1, g).

<sup>141</sup> Under Art. I, para. 3, ACCOBAMS, the expression favourable conservation status has to be defined as it is in Art. I, para. 1, c, CMS: ‘Conservation status’ will be taken as “*favorable*” when: (1) population dynamics data indicate

**create and maintain a network of specially protected areas to conserve cetaceans (Art. II, para. 1)** and to take the measures specified in the conservation plan (Annex 2).

In this regard, para. 3 of Annex 2 to ACCOBAMS makes a specific reference to the Barcelona Convention and its Areas Protocol, as the appropriate framework within which specially protected areas can be established that serve as habitats for cetacean or provide important food resources for them. In addition to this explicit reference, para. 3 of Annex 2 to ACCOBAMS leaves open the possibility to use for this purpose “*other appropriate instruments*”.

Resolution 3.22, adopted in 2007 and entitled Jetuka ‘Marine Protected Areas for Cetaceans’, includes the first list of marine protected areas recommended by the Scientific Committee of ACCOBAMS. At the time of its adoption, the list comprised 18 sites. The instrument contains a number of criteria for the selection of protected areas, together with a format for the related proposal (Annex 1), as well as a set of guidelines for the establishment and management of marine protected areas for cetaceans (Annex 2).

Resolution 4.15, adopted in 2010 and entitled ‘Marine Protected Areas of Importance for Cetaceans Conservation’, added new sites to the previous list (which reached 22 sites) and encouraged the States concerned to promote the institution of the areas of special importance for cetaceans to ensure their effective management. It is worth mentioning that the ACCOBAMS parties noted with satisfaction, *inter alia*, the progress towards the inclusion in the Natura 2000 network of the Cres-Lošinj marine protected area in Croatia for the protection of some small cetacean species.

Resolution 6.24, adopted in 2016 and entitled ‘New Areas of Conservation of Cetaceans Habitats’, took note, *inter alia*, of the revised guidelines for the establishment and management of marine protected areas for cetaceans; encouraged MPA managers of areas within CCHs to implement relevant management actions; encouraged the parties to update regularly the list of areas containing CCHs in collaboration with the Scientific Committee; and requested the Task Manager on CCH, the regional representatives and the coordinators of conservation plans to revise the existing CCHs taking into account the proposed IMMAs and the threat-based management approach, evaluate the effectiveness of management within CCHs and revise and update the relevant tools.

## **2.5. Particularly sensitive sea areas (PSSA)<sup>142</sup>**

A Particularly Sensitive Sea Area (PSSA) is an area of ecological, socio-economic, or scientific significance that requires special protection from the International Maritime Organization (IMO) due to its vulnerability to damage caused by international shipping activities. The PSSA serves as an international management tool for reviewing and addressing vulnerabilities associated with international shipping in a comprehensive manner.

It is important to note that protective measures within a PSSA are limited to actions approved or adopted by the IMO. These measures include: 1) designating an area as a Special Area under

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that the migratory species is maintaining itself on a long-term basis as a viable component of its ecosystems; (2) the range of the migratory species is neither currently being reduced, nor is likely to be reduced, on a long-term basis; (3) there is, and will be in the foreseeable future sufficient habitat to maintain the population of the migratory species on a long-term basis; and (4) the distribution and abundance of the migratory species approach historic coverage and levels to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management.

<sup>142</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 127.



MARPOL Annexes I, IV, or V, or as a sulfur oxide (SO<sub>x</sub>) or nitrogen oxide (NO<sub>x</sub>) emission control area under MARPOL Annex VI, or applying special discharge restrictions to vessels operating in a PSSA; 2) adopting ships' routing and reporting systems near or within the area, in accordance with the International Convention for the Safety of Life at Sea (SOLAS), the General provisions on Ships' Routing, and the Guidelines and Criteria for Ship Reporting Systems; and 3) developing and adopting other measures to protect specific sea areas from environmental damage caused by ships, provided there is a recognized legal basis.

To identify and designate a PSSA and implement associated protective measures, three integral components must be considered: the specific attributes of the proposed area, its vulnerability to damage from international shipping activities, and the availability of associated protective measures within the IMO's competences to prevent, reduce, or eliminate risks from these shipping activities. These requirements are elaborated in the 2005 PSSA Guidelines.

The PSSA status enables coastal states, subject to IMO approval, to enforce specific associated measures within the IMO's competences. These measures include compulsory reporting systems, compulsory pilotage, routing measures, 'Special Area' status under MARPOL, and application of discharge restrictions. While some protective measures are already in place in the Adriatic Sea, such as 'Special Area' status based on Annexes I and V of MARPOL, the SOLAS-based reporting system (ADRIREP), and compulsory routing measures in certain areas, proclaiming an Adriatic PSSA may provide added value by incorporating proposed associated measures that have an identified legal basis, including IMO Conventions or Codes that are not yet in force or proposed amendments to such Conventions or Codes.

The PSSA concept offers opportunities to introduce additional associated protective measures for a specific area, provided they are based on an adopted IMO instrument, regardless of its enforceability. Designating a PSSA grants validity to the associated protective measures, even if the relevant IMO document has not entered into force. Furthermore, designing a PSSA allows for tailored protective measures within the area. Even if a designated PSSA includes existing measures, its designation alone raises international awareness about the vulnerability of the area to damage caused by international shipping, promoting community and mariners' awareness of navigation risks in the area. When a PSSA is designated, all associated protective measures, both pre-existing and new, should be identified on charts using symbols and methods prescribed by the International Hydrographic Organization (IHO).

### **3. POLICY FRAMEWORK FOR MARINE PROTECTED AREAS NETWORK—SETTING “BLUE CORRIDORS”**

#### **3.1. Assessment criteria for MPA designation**

Several international, EU and regional initiatives and agreements, have developed guidelines for the establishment of the MPAs. Under the Convention of Biological Diversity (CBD) during the Nagoya conference in 2010, the “Aichi targets”.

“Aichi Target 11” states that *“by 2020, at least 17 percent of terrestrial and inland water areas and 10 percent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures and integrated into the wider landscape and seascape”* (CBD, 2010).

### 3.1.1. The Ecosystem Approach

The CBD supports the Ecosystem Approach (EcAp), a strategy for an integrated management of land, water and living resources that promote conservation and sustainable use in an equitable way. The Ecosystem Approach<sup>143</sup> is considered as a conceptual framework to protect and manage the environment using appropriate scientific methodologies focused on levels of biological organization, which encompass the ecosystem processes, functions and interactions among organisms and their environment.

Designing the criteria for the establishment of the MPAs, has been addressed by many organisations, marine park agencies and experts.

Commission staff working document - Criteria and guidance for protected areas designations stresses<sup>144</sup>: *“The biodiversity strategy does not include specific criteria for the identification of additional protected areas. However, significant work has been done in the past to identify areas based on their importance for conservation of biodiversity, setting up criteria that can be used for further designating protected areas. In particular, Annex III of the Habitats Directive sets out criteria for the identification of special areas of conservation<sup>145</sup>. They include:*

- a. *the significance of the presence of specific species and habitat types on a site; • their degree of conservation;*
- b. *the degree of isolation of the species’ population; and*
- c. *a global assessment of the value of a site for the conservation of those species and habitat types”*

It has to be noted that most of the Mediterranean MPAs are part of the NATURA 2000 network. Annexes of the Habitats Directive have limited focus on marine species and habitats and even more limitations for the offshore waters. Barcelona Convention, more precisely SPAMI Protocol offers additional possibilities on both issues.

#### ➤ **Barcelona Convention criteria**

Specifically in the Mediterranean we find, the **Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean** (Barcelona Convention), including the **Specially Protected Area Protocol** (SPA Protocol, 1995) and the development of Specially Protected Areas of Mediterranean Importance (SPAMIs), with specific procedures for the listing of these areas (Appendix I of the SPA Protocol).

The SPAMI list includes ecosystems, which are of great importance for the conservation of biological diversity in the Mediterranean and of special interest on a scientific, aesthetic, and cultural level. The criteria<sup>146</sup> identified for the selection of the areas that could be included in the SPAMI List, can be used for the assessment.

#### ***Uniqueness or rarity:***

- *Area contains either (i) unique (“the only one of its kind”), rare (occurs only in few locations) or endemic species, populations or communities, and/or (ii) unique, rare or*

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<sup>143</sup> EcAp considers that humans, with their cultural diversity, are an integral component of ecosystems (CBD, 2018)

<sup>144</sup> SWD (2022) 23 final

<sup>145</sup> Although the Habitats Directive concerns the designation of sites for the protection of habitat types and species included in its Annexes I and II, similar criteria can be applied to other species and habitats or ecosystems which are not covered by the directive but fall within the general scope of the strategy.

<sup>146</sup> Criteria according to the **Specially Protected Area Protocol** (SPA Protocol, 1995), of the Barcelona Convention, also SPA criteria for species included in Annex I: Council of 30 November 2009 on the conservation of wild birds (Directive 79/409/EEC)

*distinct, habitats or ecosystems; and/or (iii) unique or unusual geomorphological or oceanographic features*

**Special importance for life-history stages of species:**

- *Areas that are required for a population to survive and thrive.*

**Importance for threatened, endangered or declining species and/ or habitats:**

- *Area containing habitat for the survival and recovery of endangered, threatened, declining species or area with significant assemblages of such species.*

**Vulnerability, fragility, sensitivity, or slow recovery:**

- *Areas that contain a relatively high proportion of sensitive habitats, biotopes or species that are functionally fragile (highly susceptible to degradation or depletion by human activity or by natural events) or with slow recovery.*

**Biological productivity:**

- *Area containing species, populations or communities with comparatively higher natural biological productivity.*

**Biological diversity:**

- *Area contains comparatively higher diversity of ecosystems, habitats, communities, or species, or has higher genetic diversity.*

**Naturalness:**

- *Area with a comparatively higher degree of naturalness as a result of the lack of or low level of human-induced disturbance or degradation.*

### **3.2. Ecological coherence of the network<sup>147</sup>**

The concept of ecological coherence is used in the context of establishing protected area networks. While it has already been referred to, in the EC Habitats Directive (1992) and the Convention on Biological Diversity (1992) amongst others, it has been adopted by HELCOM and OSPAR in 2003 as an overarching concept for their respective efforts in establishing networks of MPAs<sup>148</sup>.

Based on Art. 10 of the Habitats Directive, member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the NATURA 2000 Network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.

The latter provision is important, as it seemingly tries to avoid the conservation technique which may lead to the establishment of ‘islands’ of protected areas creating thus genetically isolated populations, which may eventually undermine the viability of species<sup>149</sup>.

However, no specific definition for the term ‘ecological coherence’ has yet been formally agreed upon on an international level and only a few theoretical concepts and practical approaches have been developed for the assessment of the ecological coherence of a network of the MPAs.

#### **➤ Convention on Biological Diversity criteria**

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<sup>147</sup> [Circabc \(europa.eu\)](http://circabc.europa.eu); The EU Commission recognizes complexity of the issue in the process of designation new protected areas: »Considering the type of information that will be available and the short time between the deadline for submitting pledges, additional relevant aspects, such as questions of coherence, connectivity, robustness and representativity of the network can probably only be covered superficially in the background document or might need to be assessed in parallel with the actual seminars.»

<sup>148</sup> By adopting the Joint OSPAR/HELCOM Work Programme on MPAs, in 2003, OSPAR and HELCOM agreed to develop the common theoretical and practical aspects of what would constitute an ecologically coherent network of marine protected areas.

<sup>149</sup> See AMOS (*op.cit.* in footnote 263), p. 369.

Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Ninth Meeting<sup>150</sup> defined, criteria **for selection of representative MPAs network:**

- a. **Ecologically and biologically significant areas (EBSA areas):** *Ecologically and biologically significant areas are geographically or oceanographically discrete areas that provide important services to one or more species/populations of an ecosystem or to the ecosystem as a whole, compared to other surrounding areas or areas of similar ecological characteristics:*
- b. **Representativity:** *Representativity is captured in a network when it consists of areas representing the different biogeographical subdivisions of the global oceans and regional seas that reasonably reflect the full range of ecosystems, including the biotic and habitat diversity of those marine ecosystems.*
- c. **Connectivity:** *Connectivity in the design of a network allows for linkages whereby protected sites benefit from larval and/or species exchanges, and functional linkages from other network sites. In a connected network, individual sites benefit one another.*
- d. **Replicated ecological features:** *Replication of ecological features means that more than one site shall contain examples of a given feature in the given biogeographic area. The term features means “species, habitats and ecological processes” that naturally occur in the given biogeographic area.*
- e. **Adequate & Viable sites:** *Adequate & viable sites indicate that all sites within a network should have size and protection sufficient to ensure the ecological viability and integrity of the feature(s) for which they were selected.*

➤ **Ecosystem-Based Marine Spatial Management approach**<sup>151</sup>

OSPAR and HELCOM and several European countries are implementing the concept **Ecosystem-Based Marine Spatial Management (EB-MSM)**, to design networks of MPAs as part of larger frameworks of ecosystem-based management and integrated coastal management. A MPA network is represented by a networked system of individual MPAs, operating cooperatively and synergistically, at various spatial scales, and with a range of protection levels and benefits<sup>152</sup>.

Well-designed networks benefit over single site systems since they can support the interconnectivity of the ecosystems, provide steppingstone sanctuaries for migratory species and larval landing sites, to promote robust, larger-scale conservation of an area. Networks reduce the degradation of coastal and marine habitats, delay the loss of endangered marine species, and restore the depleted fish stocks.

The location of Marine Protected Areas in such a network would allow them to support each other by taking advantage of migration routes and other natural ecological territory contacts. Through MPA networks, much larger scale of ecological sites can be jointly managed by neighbouring countries, comparing with single sites located in individual countries. The MPA networks can also avoid the duplication of efforts and can be cost effective for large transboundary areas.

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<sup>150</sup> (UNEP/CBD/COP/DEC/IX/20), Decision IX/20 Annexes I-III: Scientific Guidance for Selecting Areas to Establish a Representative Network of Marine Protected Areas, Including in Open-Ocean Waters and Deep-Sea Habitats (CBD, 2008). UNEP (2008)

<sup>151</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS)

<sup>152</sup> There are additional benefits where national networks are linked into larger international networks, such as: - Protection of an ecosystem or species that cannot be adequately protected in one country, such as migratory species; - Better management of transboundary protected area; - Facilitate transboundary cooperation to address common challenges issues, and - Strengthening capacity by sharing experiences and lessons learned.

Reporting on the assessment of the ecological coherence across various marine regions is a complex process designed to (i) track progress, (ii) review possible failures regarding the targets set for the MPAs designations, used in the context of establishing protected area networks.

### **3.2.1. Marine Strategy Framework Directive spatial protection measures**

The challenge of establishing networks of MPAs and protecting biodiversity and ecosystem performance is recognised as a crucial step in all EU policies. The European Commission called for a shift from single-MPA to networks of MPAs, using previous information to build a holistic vision of marine protection and management, following the ecosystem approach.

Both, the Water Framework Directive and the Marine Strategy Framework Directive set targets for good ecological or environmental status in a holistic framework of ecosystem management.

According to the Art. 13(4) of the MSFD, the Member States need to include into their programmes of measures: *“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 Habitat Directive, special protection areas pursuant to the Birds Directive, and marine protected area as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties”*.

#### **➤ Case study - The Adriatic**

The Adriatic Sea is a semi-closed basin extending from the northern continental shelf with an average depth of 35m for the southern Adriatic Pit (about 1300 m depth) and connected to the Ionian Sea through the Otranto Strait. The Adriatic Sea plays an important role also for the large-scale dynamics of the Eastern Mediterranean, facilitating the formation of the dense water, which is the dominant component of the Eastern Mediterranean deep water. The Adriatic Sea is characterised by a low coverage of MPAs (about 5%) and an inadequate representativity of the MPAs, mostly due to the low coverage in the Middle and South Adriatic sub-regions, whereas the North Adriatic has a MPA coverage of approximately 10%. Overall, there is a decreasing trend in protection initiatives, from the shelf to offshore waters, indicating that the efforts of all the countries are towards shallow waters. Indeed, the MPAs coverage is higher in the infralittoral zone (about 13%), whereas low protection has been recorded in the circalittoral (about 6 %) and no protection at all for the marine space in the bathyal zone (0.01%)<sup>153</sup>.

#### **1) EU Project COHENET – Achieving coherent networks of marine protected areas: analysis of the situation in the Mediterranean Sea**

“Cohenet” project (2020) *made a preliminary assessment of coherence of the current MPAs as possible nodes of a network focused on the Adriatic Sea*. How to evaluate the candidate areas within an integrated planning and taking in account the priorities for advancing the Adriatic MPA network is the central issue. An effort to produce the spatial analysis of the existing data on key habitats and species in the Adriatic was performed in the COHENET EU Project

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<sup>153</sup> EU project COHENET “Achieving coherent networks of marine protected areas: analysis of the situation in the Mediterranean

“Cohenet project” produced ecological coherence assessment based on the oceanographic circulation patterns, selection of key habitats and species<sup>154</sup> and criteria for MPAs network selection. With the “Marxan” analysis<sup>155</sup> methodology and the impact assessment of the current

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Key habitats & species	
Coastal lagoons	<i>Merluccius merluccius</i> Nursery
Partially or fully submerged caves	<i>Merluccius merluccius</i> Spawning grounds
Biostalactites	<i>Mullus barbatus</i> Nursery
Canyons	<i>Mullus barbatus</i> Spawning grounds
Seagrass beds ( <i>Posidonia oceanica</i> ; <i>Cymodocea nodosa</i> )	<i>Nephrops norvegicus</i> Nursery
<i>Cystoseira</i> spp.	<i>Nephrops norvegicus</i> Spawning grounds
<i>Lithophyllum byssoides</i> concretions/trottoirs	<i>Sardina pilchardus</i> Eggs
Vermetid reefs	<i>Sardina pilchardus</i> Juveniles
Sabellariid reefs	<i>Trachurus trachurus</i> Juveniles
<i>Cladocora caespitosa</i> formations/reefs	<i>Parapenaeus longirostris</i> Nursery
Rhodolith beds	<i>Parapenaeus longirostris</i> Spawning grounds
Coralligenous formations	Marine mammals
Corals of the circalittoral and bathyal zone	Turtles

Source: COHENET EU Project

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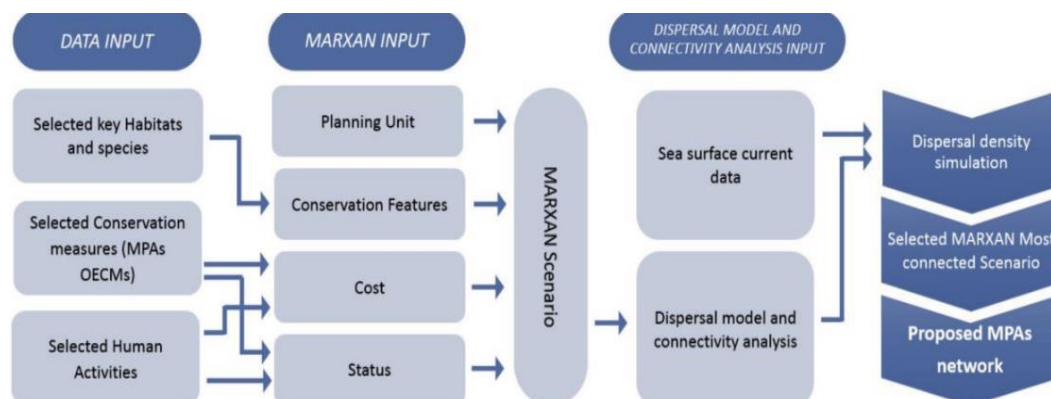


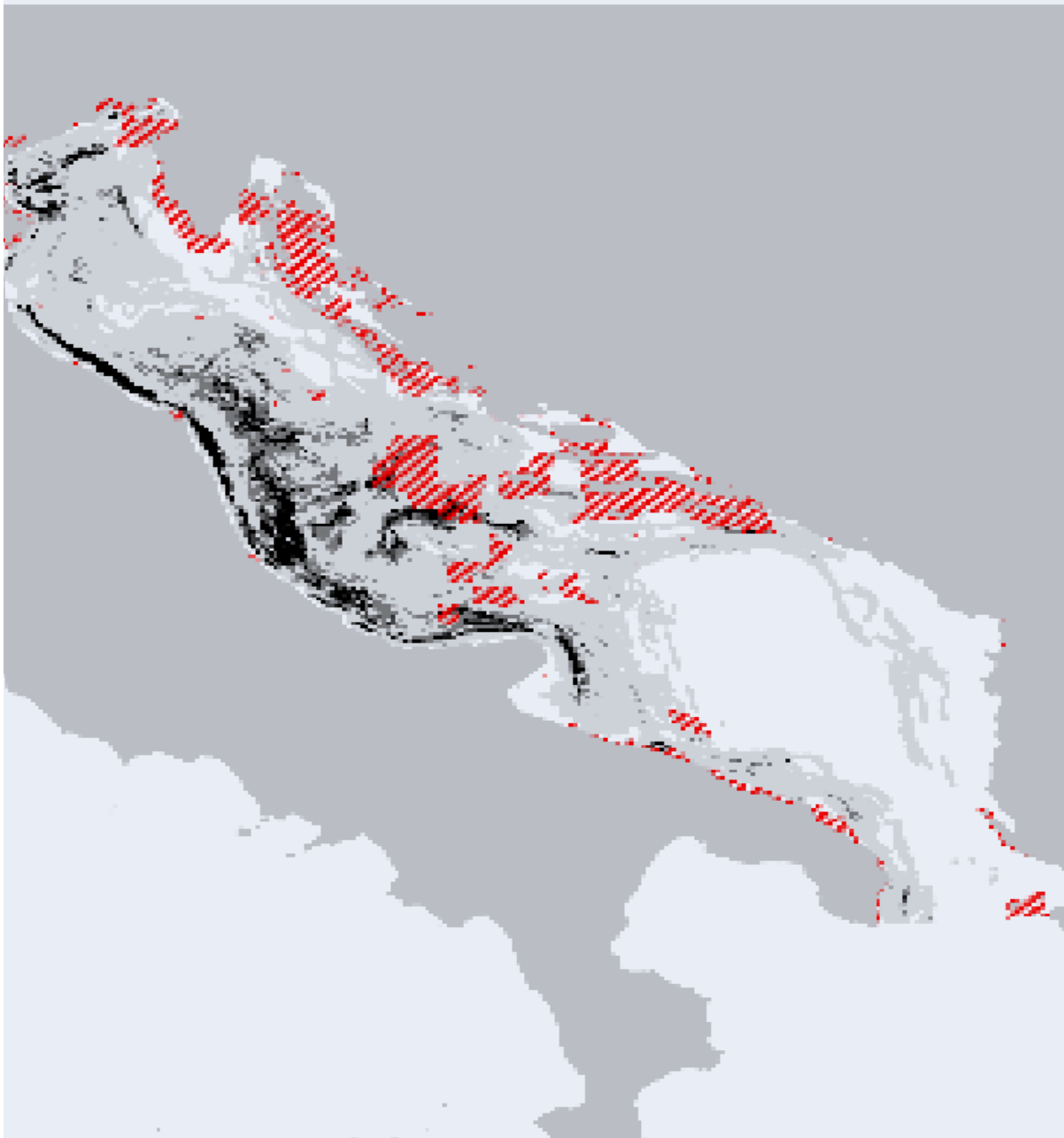
Figure 9. Schematic overview of a Marxan analysis to select and propose a new network of MPAs for which the selected ecological coherence indicators perform better.

pressures in the Adriatic selected new MPAs in order to produce a network of MPAs<sup>156</sup> in the Adriatic. The assessment analysis on the cumulative human impacts in the Adriatic Sea, performed in COHENET EU project, highlighted that the Adriatic is subject to intense human stressors and is one of the most impacted regions within the Mediterranean Sea, both near-shore and off-shore<sup>157</sup>. The key pressures of wide spatial extent and distribution in the Adriatic Sea are the physical loss (due to coastal construction/coastal defence), the physical damage (due to fishing pressure from bottom trawling, hydrocarbons extraction, discharge and dredging areas), the introduction of NIS (e.g., ports), and the underwater noise (due to maritime traffic and military activities). The high-pressured areas are mainly located in the Northern Adriatic, in Italy and in Croatia, and some of these areas are overlapping with the MPAs.

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**FIGURE 39**

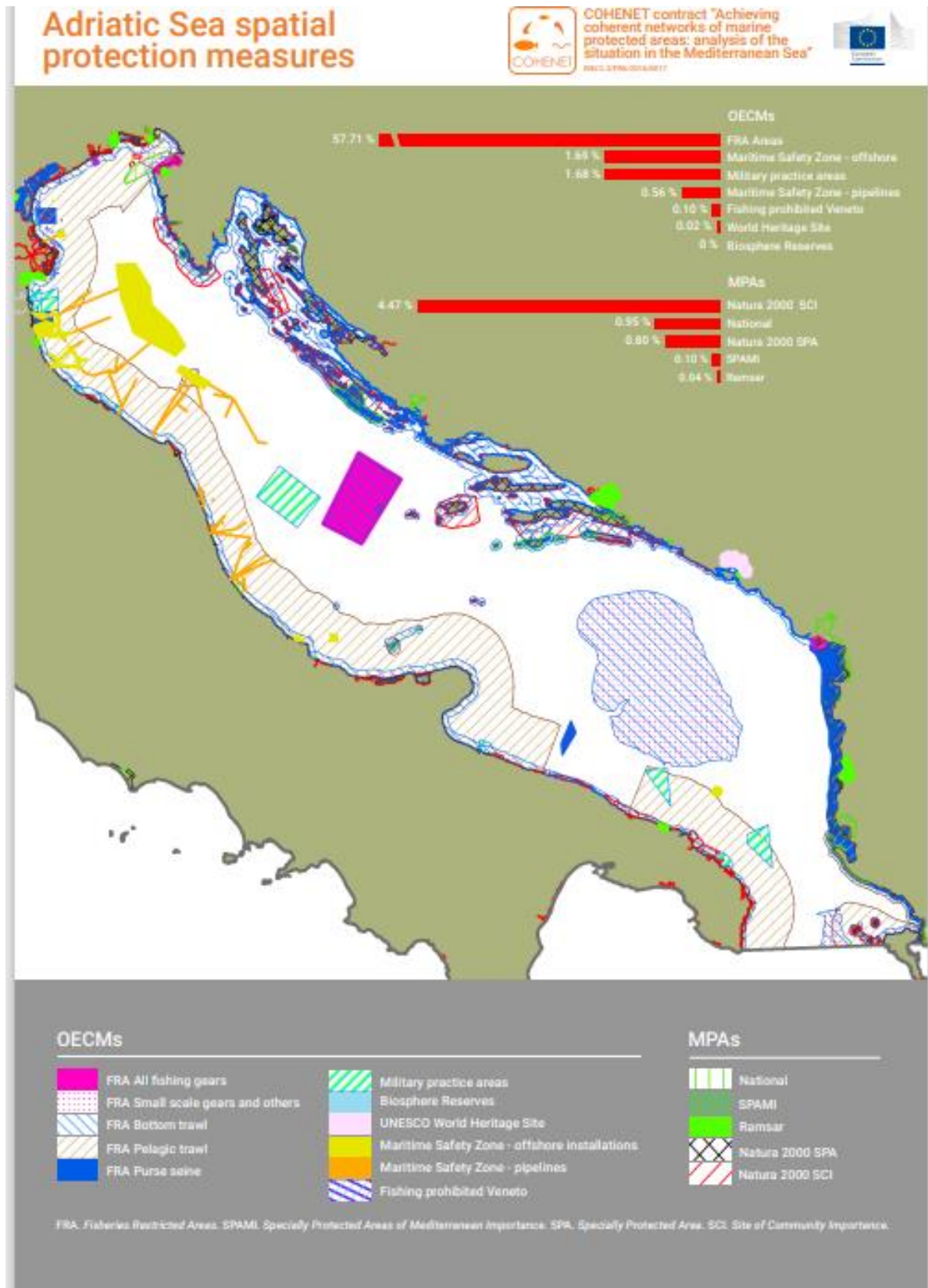
**Proposed MPA network in the Adriatic**



<sup>157</sup> Coll et al., 2012, Micheli et al., 2013

The new proposed MPAs in the COHENET project covered more than 10% of the Adriatic surface, but it does not reach the 30 % according to the Strategy. Project includes the analysis of possible other effective spatial measures (OECMs)<sup>158</sup> and pressures.<sup>159</sup>

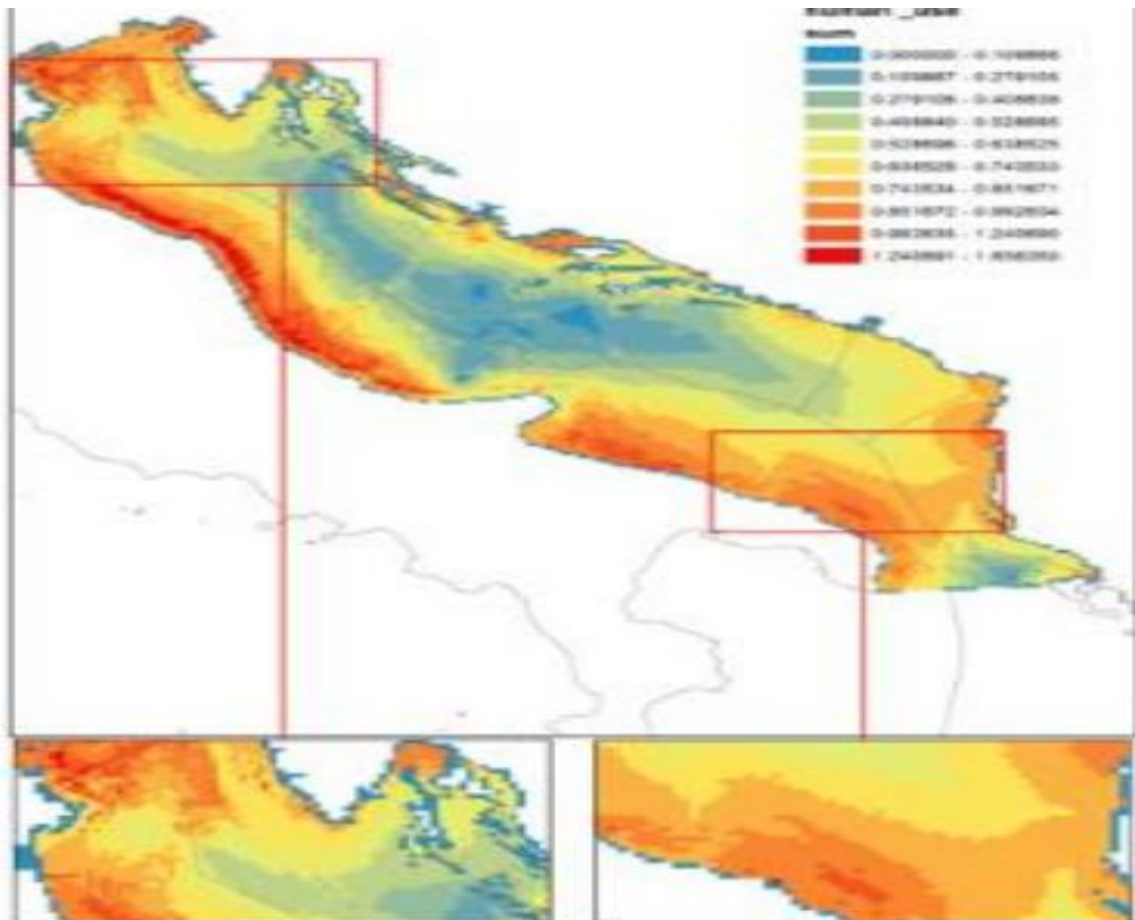
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The protection heavily relies on the Croatian waters. There are no proposals for new MPAs in Montenegro, whereas the new proposals for Albania and Bosnia are relatively low in coverage. The *Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Herzegovina and Montenegro, September 2021, (NIRAS)*, states that lack of data due to highly limited monitoring in Southern part of the Adriatic distorts the importance of the area. “The Study” therefor proposes the inclusion of the proposed new<sup>160</sup> designations and network forming in the light of the larger ecological context of the region.

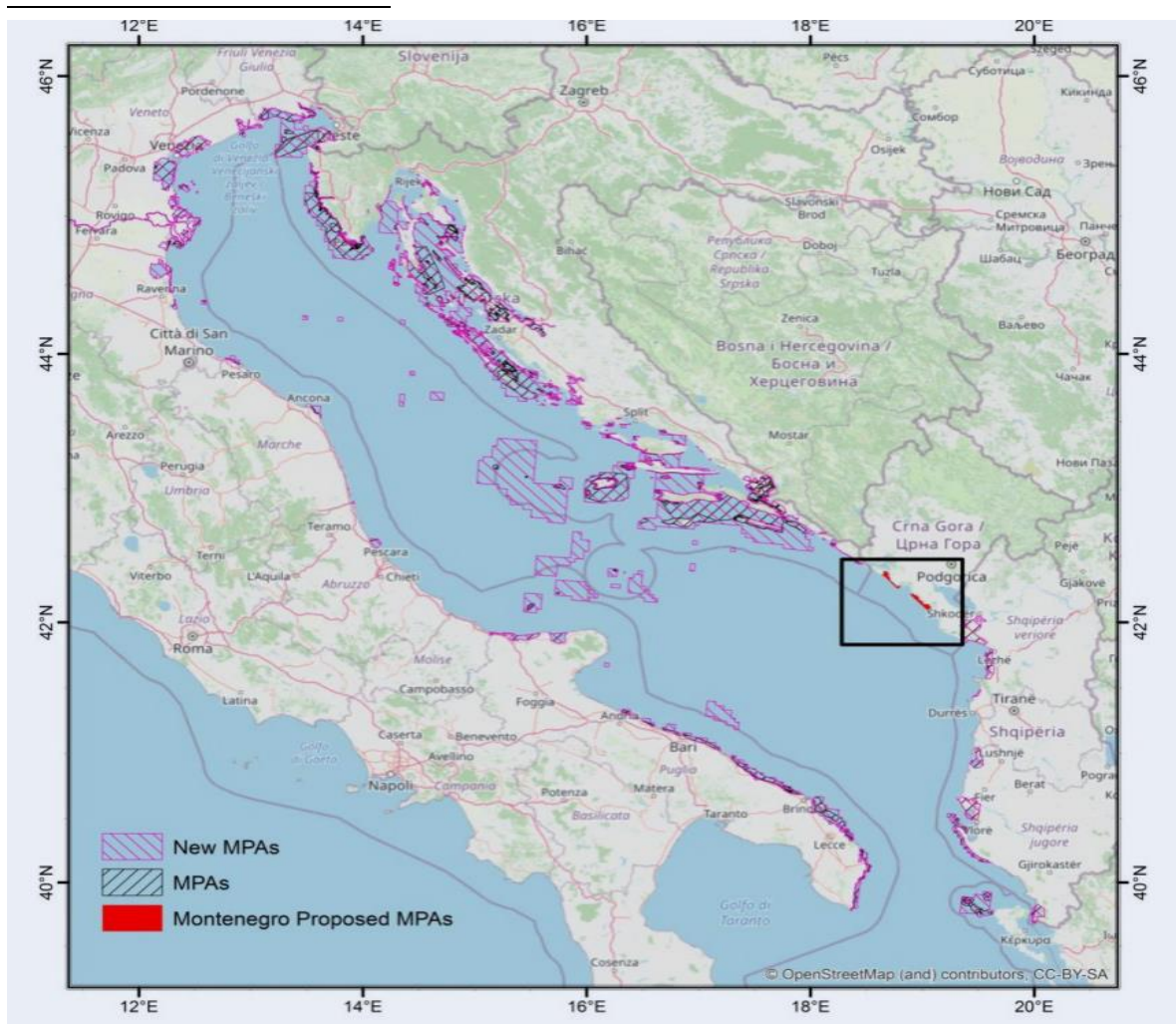
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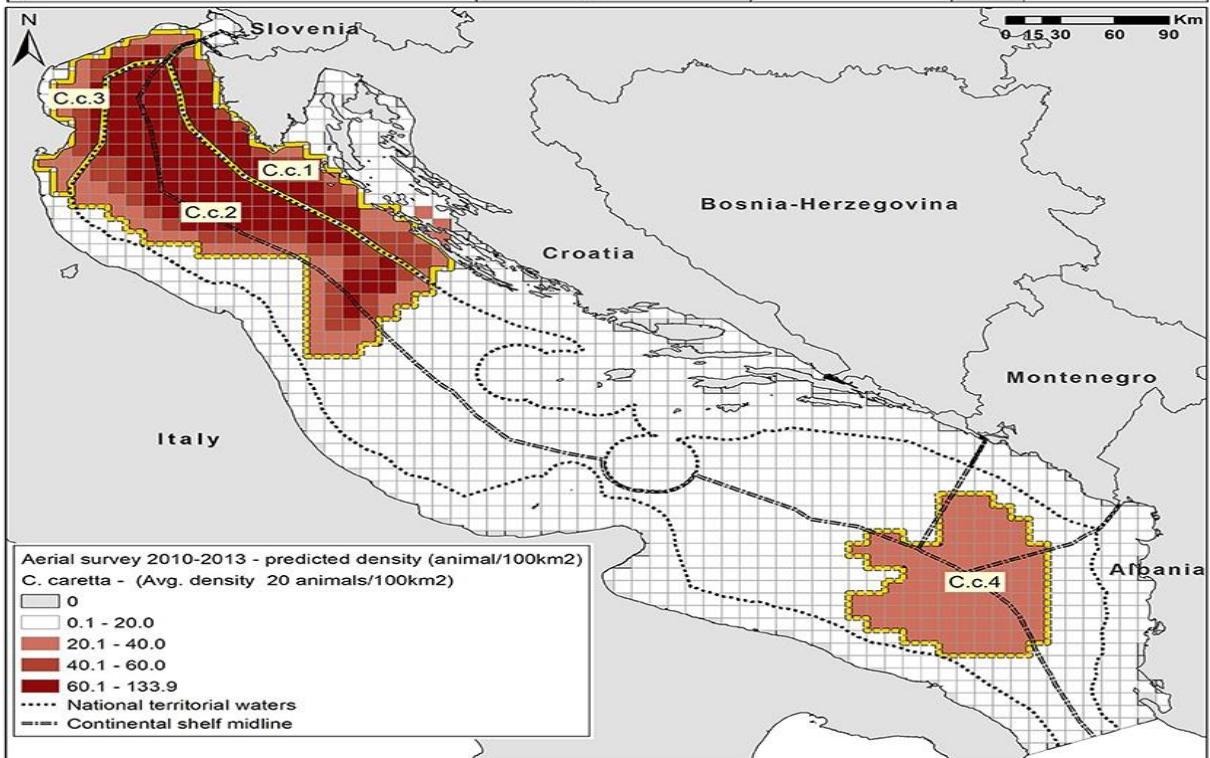
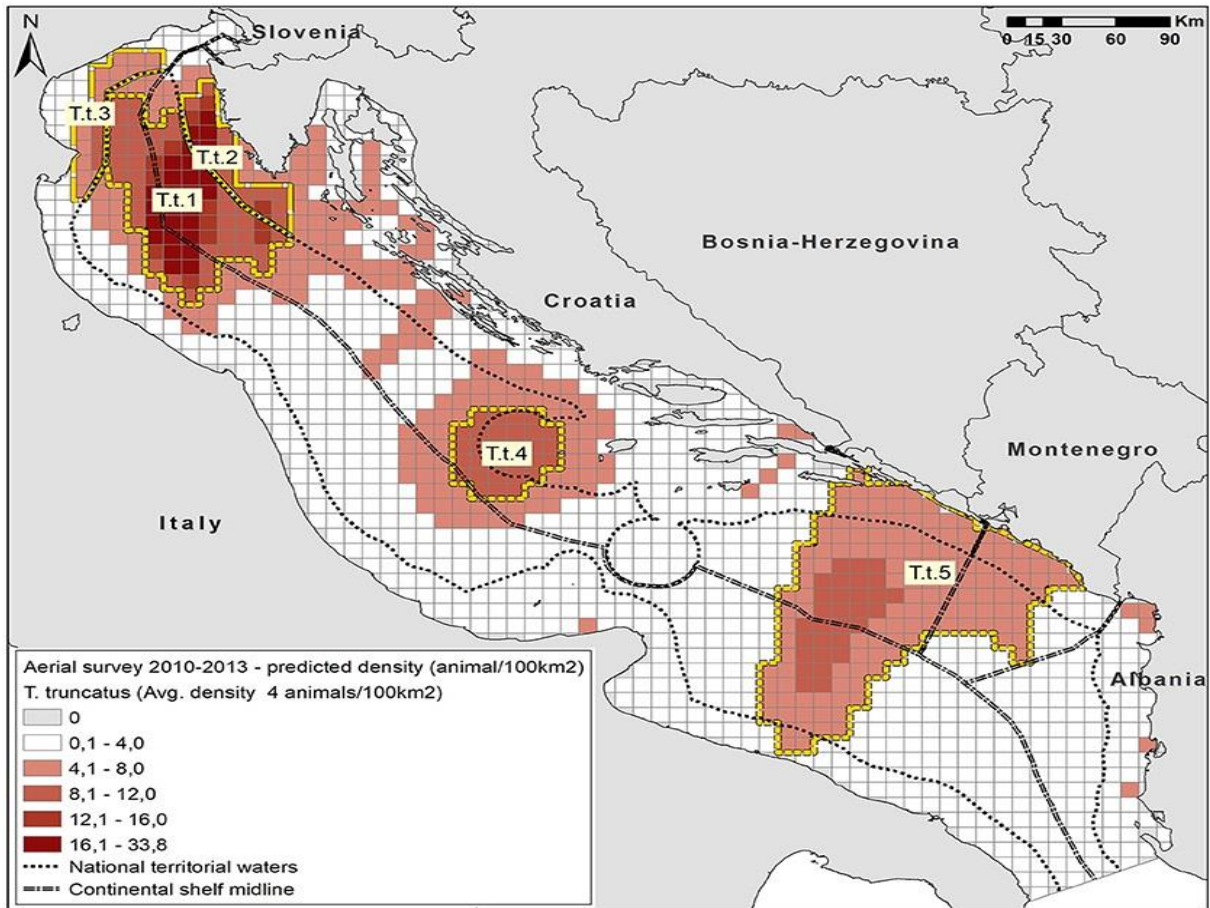
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➤ **Case Study: The Coherence of the European Union Natura 2000 Network for Wide – Ranging Charismatic Species<sup>161</sup>**

The case study evaluates the ability of the Habitat Directive to protect the species of Bottlenose dolphins and Loggerhead turtles in the Adriatic. Based on an aerial system of monitoring the study discovers necessary areas for the protection of these migratory species, which are significantly larger than the Natura sites.



<sup>161</sup> <https://www.frontiersin.org/articles/10.3389/fmars.2018.00356/full>





## CHAPTER I – THE ANALYSIS OF THE MPA DESIGNATION IN INDIVIDUAL EUSAIR MEMBER STATES

### 1. NON-EU MEMBER STATES<sup>162</sup>

The designation of the MPAs requires special attention in drafting, implementing, reviewing or amending the protected areas' laws, relating to Marine Protected Areas and marine conservation.

Each country needs to designate MPAs using their existing legislation relative to management of the key activities to be achieved, which can be fisheries, tourism, navigation and other development. The designation has to be in line with national legal traditions and administration practices. Such an approach does not exclude exchange of good practices.

Applicant countries, such as Albania, Bosnia-Herzegovina and Montenegro are transposing the Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC into their national legislation and when this is done and operative this should be a key framework for the MPAs designations. Pending this transposition, the national legislation can be used and international instruments such as the Bern Convention, can offer useful legal and institutional framework.

Marine protected areas designation according to the national legislation in Albania, *are National Park, protected landscape, Managed Nature Reserve*. Bosnia-Herzegovina legislation has no special laws on marine protection but uses the framework for nature protection in general. Montenegro legislation defines *Special nature reserve* and *Protected area by municipalities decision (decree)*.

#### 1.1. ALBANIA

Albanian coastal area, in the South-East of the Adriatic Sea and the North-East of the Ionian Sea has a total length of about 470 km with territorial waters at 12 nautical miles. The Adriatic Sea shows large seasonal variations in temperature and productivity, with levels of nutrients and salinity largely controlled by freshwater inputs, while the Ionian Sea has a more stable physical and chemical oceanographic characteristics throughout the year<sup>163</sup>. The coastal landscape is highly heterogeneous, including lagoons, wetlands, sand dunes and river deltas.

In Albania, about 50% of the population lives in the coastal area. Also, about 80% of industry and 70% of agricultural farms are concentrated in the lowlands along the Adriatic coast. But the region's marine resources and ecosystems are at risk and are facing increasing ecological threats and increased pressures from all sectors of the blue economy, including unsustainable

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<sup>162</sup>Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Herzegovina and Montenegro, September 2021, (NIRAS): “*The report for Albania proposes two new MPA's as required by the terms of reference the Porto Palermo zone and the Lalzi bay Rodoni/Cap Paton area. For Bosnia-Herzegovina a single cross border site is proposed in the Neum-Klerk bay and Mali Ston bay linking with an adjacent area in Croatia already declared as a protected site within Natura 2000. The report for Montenegro also proposes two sites Platamuni and the Katič-Ratac zone*<sup>162</sup>. Additionally, on a regional scale, the area located in the southern Adriatic basin and the northern Ionian Sea, considered to be an Ecologically and Biologically Significant Marine Area (EBSA), was also proposed to become a regional MPA in the south Adriatic. This includes areas within the jurisdiction of Albania, Montenegro, Bosnia-Herzegovina, Croatia and Italy”

<sup>163</sup> Simeoni U., Pano N., Ciavola P., 1997. The coastline of Albania: morphology, evolution and coastal management issues. Bulletin-Institut Oceanographique Monaco, no special 18: 151– 168, cite from Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Herzegovina and Montenegro, September 2021, (NIRAS)

management of fish stocks, untreated sewage, agricultural runoff and marine litter, unsustainable tourism and climate change.

### ➤ **Process for marine protected areas development**

The “Strategic Plan for Marine and Coastal Protected Areas in Albania” (SPMCPA)<sup>164</sup>, prepared by the INCA (Institute for nature conservation Albania) for the MoEFWA and the UNDP (2013), highlighted the substantial lack of information on the biodiversity and conservation status of the key habitats and species, as much as the increased human pressure on the coastal areas.

The SPMCPA assessed 11 candidate areas, under national and international ecological criteria and a set of practical considerations, in order to establish a national network of protected areas in Albania:

- a) *The coastal area from Buna river mouth to Viluni lagoon*
- b) *The coastal area in front of Kune-Vain Lagoon*
- c) *The area from Cape Rodoni to Patoku lagoon*
- d) *The Bay of Drini and Mati (this area includes all three previous areas)*
- e) *The area north of Durres (currila) to Bishtpalla*
- f) *The area from Kalaja e Turres to Spille*

The SPMCPA assessment indicated as priority areas for protection the following zones: • The Bay of Porto-Palermo, between the peninsula of Panorma and the peninsula of Kavadon, on the Ionian Sea.

The area from Vjosa river mouth to Sazan and Karaburuni<sup>165</sup>, including the Vlora Bay area from the western part of the Vjosa river mouth. The area from Cape Rodoni to Patoku lagoon, a site with several important habitats according to the Habitat Directive, as well as several species of conservation interest. The coastal area from Buna river mouth to Viluni Lagoon, including the coastal and marine part in the area of Buna river.

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<sup>164</sup> There were other studies produced for Albania:

- The study “Protected Areas Gap assessment marine biodiversity and legislation on marine protected areas (MEFWA/UNDP, 2010)” analysed the existing biodiversity information in the Karaburun – Sazani area, as well as the following candidate MPAs, characterized by the presence of sensitive habitats, such as *Posidonia oceanica*, and the presence of species of international concern: Rodoni, Lalzi area, Lagji Cape area, Gjipe area, Kakomea area, Porto Palermo, Ksamil, Stillo Cape.
- In the framework of MedMPAnet Project the “Ecological study in the Porto Palermo Bay and surrounding areas” (Kashta et al., 2013), a more detailed study was carried out in the wider area of Porto Palermo. The spatial distribution of marine, coastal and terrestrial habitats and species was examined, paying special attention to the habitats and the species listed in the SPA/ BD Protocol.

<sup>165</sup> Karaburuni is ecologically important on a national and regional level, with the presence of at least 36 marine species of international concern, such as *Posidonia oceanica*, *Corallium rubrum*, *Lithophaga mitophagy*, as well as the extended facies of *Cystoseira*, “trottoirs” of *Lithophyllum byssoides* and biocenosis of mediolittoral caves. Coralligenous biocenosis is also present in calcareous red seaweeds, gorgonians and bryozoans. The presence of the loggerhead turtle *Caretta medio littoral*, the common dolphin *Delphinus delphis*, the bottlenose dolphin *Tursiops truncatus* and the Mediterranean monk seal *Monachus Delphi*’s are also found in the area. Karaburun-Sazani is the most explored area in terms of biodiversity in Albania, whereas relevant studies strongly suggest that the entire Vlora Bay area is also an ecologically important zone that should be part of a larger marine park of the MPA Karaburun – Sazani area (INCA, MoEFWA and UNDP Albania, 2013). The management plan for the National Marine Park of the Karaburun-Sazani was drafted in collaboration with the GEF-UNDP project for Marine and Coastal Protected areas, and was adopted on November 2015.

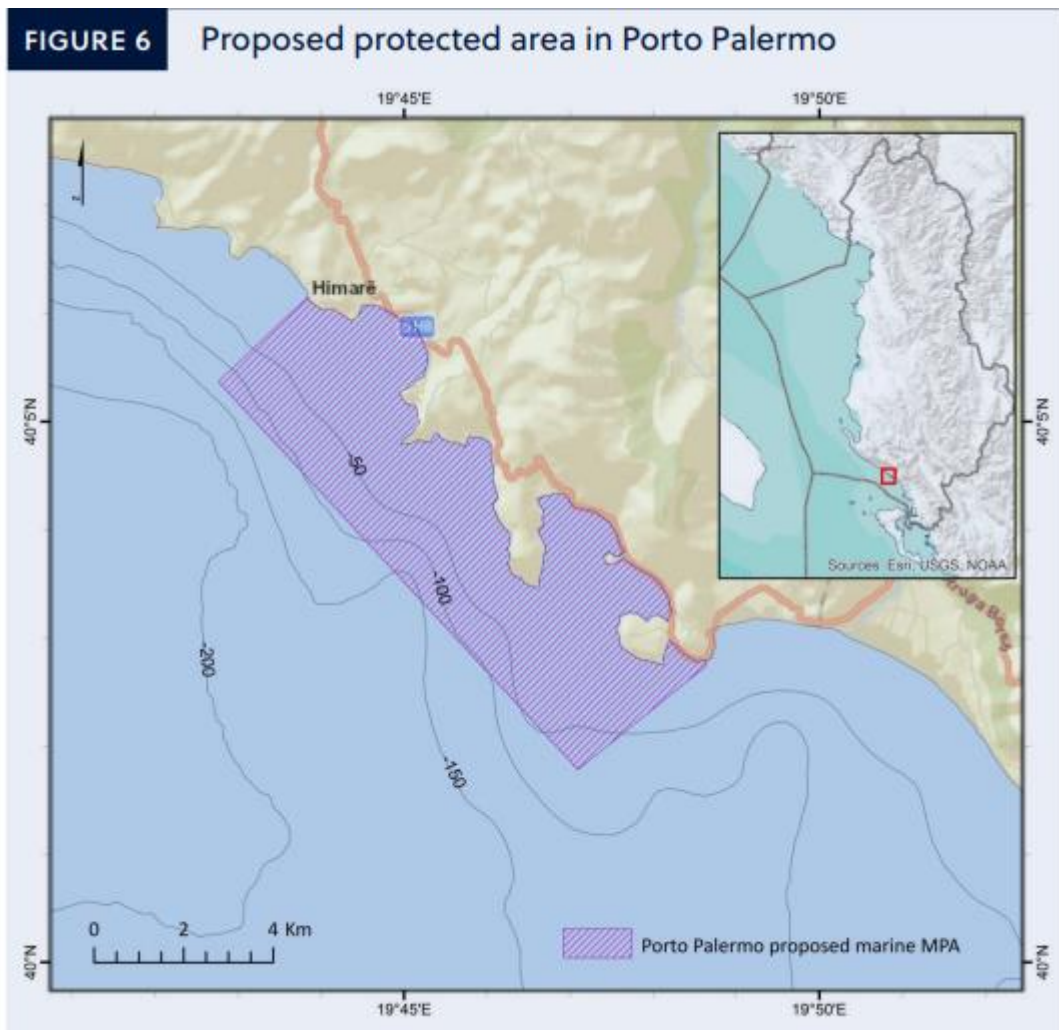
The total area proposed by the SPMCPA for protection is 1 244 km<sup>2</sup>, covering 18.36% of the protected marine and coastal area, emphasising a good connectivity potential among the proposed sites, also covering the representativity criterion.

The potential areas considered as future MPAs, according to the Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro<sup>166</sup>, were based on the work already performed se several analysis and the available scientific information, the criteria identified in analysis of the candidate sites were: *presence of sensitive habitats, presence of species of conservation concern, including the presence of marine turtles and mammals, important areas for critical life stages;*

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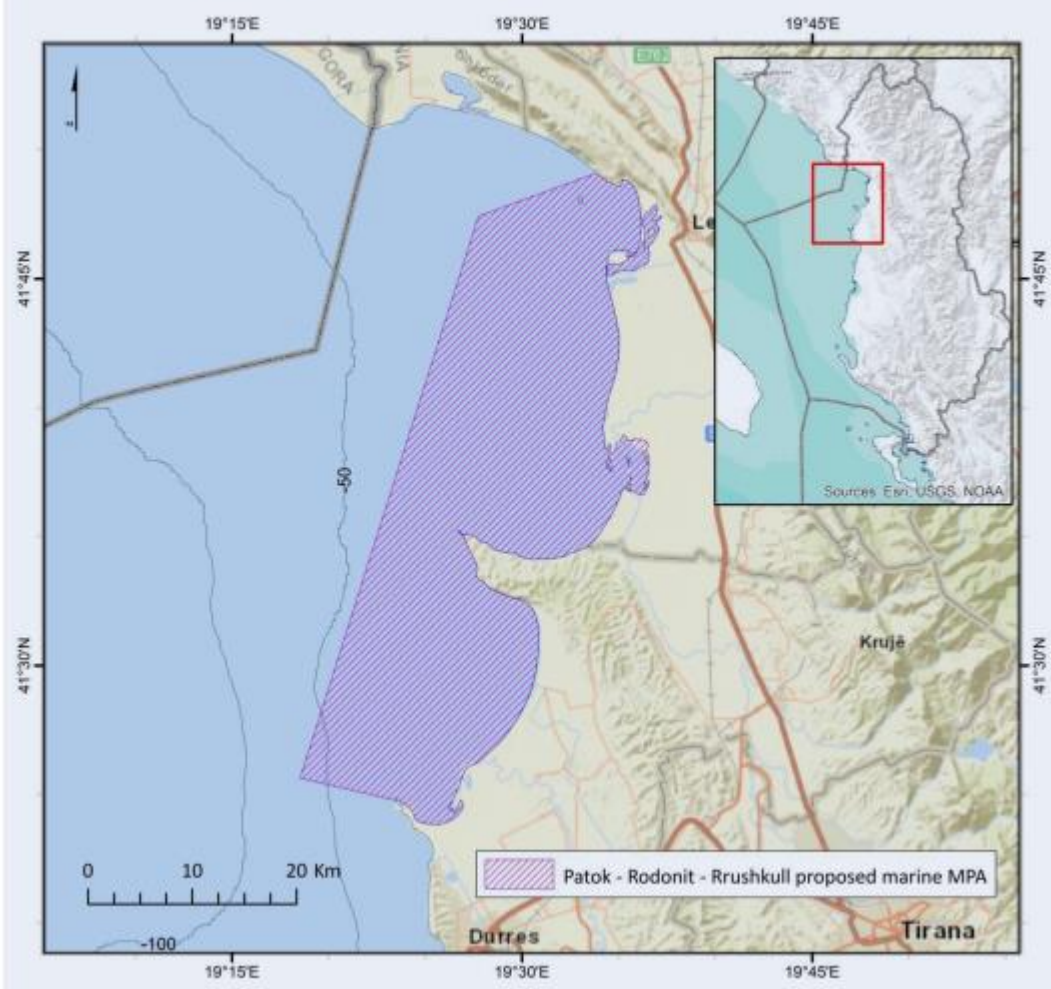
<sup>166</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS)

“The Study” proposes two larger areas in the south part “Porto Palermo<sup>167</sup>” about 40 km<sup>2</sup> and northern part of the country “Rodoni Cape-Lalzi bay<sup>168</sup> and Patok area<sup>169</sup>” measuring a total of 1577.349 km<sup>2</sup>.<sup>170</sup>



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**FIGURE 7** Proposed marine protected area in Rodoni Cape-Lalzi bay and Patok area



<sup>169</sup> The proposed area includes several sensitive habitats according to the Habitat Directive and a seasonal occurrence of large numbers of loggerhead turtles.

<sup>170</sup> Covering about 25% of the Albanian marine area.



### 1.1.1. Legislation

#### 1) The Protected Areas Act No. 81 of 2017<sup>171</sup>

The Law aims at the designation, preservation, administration, management and sustainable use of protected areas and biological and natural resources based on the principle of sustainable development, in order to guarantee their environmental, economic, social and cultural benefits to the entire society (Art. 1). The law lays down the institutional framework, including both public and private entities and their tasks and responsibilities, for the conservation and sustainable management of protected areas. The latter are divided into different categories (Arts. 14-21), based on those elaborated by the IUCN. Albanian law specifies that protected areas may pursue a “*national interest*” or an “*international interest*” (Art. 6). In the second case, they may belong to different networks, namely as Ramsar sites; Special Areas of Conservation; **areas of the Emerald network**; Biosphere reserves; and natural heritage areas. Art. 22 specifically concerns the establishment of marine protected areas, described as any protected portions of marine waters, including coastal areas and the seabed, together with their flora and fauna, as well as their historical, cultural and archeological features. Art 22, para. 3, contains a list of activities that are prohibited within a marine protected area. These include, *inter alia*, the taking of marine samples and dumping. The different IUCN categories of protected areas and their respective regime or protection also apply to marine protected areas (Art. 22, para. 2). It is also envisaged that zoning measures shall be set forth in a management plan for each marine protected area, which shall specify those activities that are prohibited and those that can be undertaken only after having received the relevant authorization by the competent national authority (Art. 22, para. 4). Art. 34 regulates fishing activities in marine and coastal areas. Remarkable, among the objectives of a marine protected area, is the reference made by the recent Albanian law to the goal of restoring ecosystems that have resulted negatively impacted by climate change (Art. 22, para. 1, let. dh).<sup>172</sup>

#### 2) Decision of the Council of Ministers (DCM) No. 701 of 12.10.2016 “on the Approval of the National Fishery Strategy 2016-2021”

The National Fishery Strategy contains several Specific Development Objectives. Noteworthy is SDO (6)- Well-managed marine environment supporting sustainable artisanal fisheries with measures to be adopted: (i) Develop Coastal Management Plans for fisheries and environmental protection; (ii) Establish Coastal management groups & representative network to develop and implement Coastal Management Plans; and (iii) Identify critical fisheries areas and natural habitats requiring additional protection.<sup>173</sup>

#### 3) Law on Fisheries No. 64/2012<sup>174</sup>

The mentioned law governs all fishery activities and their management, with the goal of protecting marine life and internal waters while promoting sustainable development in these areas. It consists of 23 chapters and 137 articles, covering various aspects such as general provisions, fish

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<sup>171</sup> Text available at <http://extwprlegs1.fao.org/docs/pdf/alb176095.pdf>.

<sup>172</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 127.

<sup>173</sup> Source: Kapedani R.; Developing a national baseline analyse for the integration of policy paper on Mediterranean MPA's management effectiveness, 2022,

<sup>174</sup> Official Gazette No. 73/2012 page 3387. Text available at <https://faolex.fao.org/docs/pdf/alb144456.pdf>. Amended by Law No. 129/2012, Law No. 29/2013, Law No. 80/2017 and Law No. 4/2019

protection, structural policies, decision-making authorities, fishery policies and strategies, fishing activities, fishing organizations, fisheries infrastructure management, access to water resources, fisheries control, monitoring, information management, multi-year control plans, fishing capacity, control in limited fishing areas, fishing gear usage, fish product marketing control, illegal fishing prevention, close seasons, inspection, sanctions, appeals, and transitional provisions.

The purpose of this law is to achieve a rational and responsible use of the biological resources in Albania's internal and marine waters. It establishes rules for managing and co-managing the fisheries sector by involving relevant communities in decision-making processes. Conservation measures are identified to ensure the protection of marine resources and internal waters. The law prohibits the catch of certain aquatic species such as sharks, rays, cetaceans, and red coral to safeguard their populations. Additionally, it encourages and supports scientific and technological research as well as data collection related to fishing activities.

Amending Law No. 4 of 2019 introduces provisions specifically focused on supporting small-scale coastal fisheries. These provisions aim to address economic, environmental, and social aspects, and promote the establishment of artisanal coastal fishing organizations.<sup>175</sup>

#### **4) Regulation No. 1 of 7.3.2014 of the Ministry of Agriculture, Rural Development and Water Administration “on the Implementation of Law No. 64 of 31.5.2012 On Fisheries**

This regulation enforces several fishing restrictions in specific areas. Firstly, fishing activities are prohibited within 1 nautical mile from the coastal line of the Island of Sazan or at a depth of 50 meters when it is reached at a shorter distance (Chapter II, Article 4.14). Secondly, fishing is not allowed on the outer part of the Karaburun peninsula, from Kepi i Gjuhëzës to Rugët e Bardha (Palasa), within 1 nautical mile from the coastal line or at a depth of 50 meters when it is reached at a shorter distance. Furthermore, the use of trawls (bottom or pelagic) is prohibited in the Bay of Vlora, which is bordered to the North by the base line from Karaburun Cape to Treport (Chapter II, Article 4.17).

In addition, the following species cannot be caught using bottom and pelagic setnets: albacore (*Thunnus alalunga*), bluefin (*Thunnus thynnus*), swordfish (*Xiphias gladius*), and various types of sharks (*Hexanchus griseu*, *Cetorhinus maximus* Alopiidae, Carcharhinidae, Sphyrnidae, Isuridae, Lamnidae) (Chapter II, Article 7.3). Moreover, fishing with trawls and dredges is prohibited at depths exceeding 1000 meters (Chapter II, Article 7.4). Finally, the use of pelagic driftnets for capturing large pelagic species is also prohibited (Chapter II, Article 7.6).<sup>176</sup>

#### **5) DCM No. 402 of 8.5.2013 “concerning Management Measures for the Sustainable Exploitation of Marine Fishery Resources”.**

The aforementioned DCM (Designated Conservation Measure) is a crucial legislative document that safeguards the marine environment from the impacts of fishing activities. It encompasses a comprehensive set of regulations, including:

1. Prohibition of fishing methods such as trawl nets, dredges, shore seines, or similar nets in coralligenous habitats and mäerl beds.

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<sup>175</sup> Source: FAOLEX Database, at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC144456>

<sup>176</sup> Source: Kapedani R.; Developing a national baseline analyse for the integration of policy paper on Mediterranean MPA's management effectiveness, 2022.

2. Restriction on the use of bottom-set nets for capturing specific species.
3. Imposition of minimum dimensions for longlines with hooks (length  $\geq$  3.95 cm, width  $\geq$  1.65 cm) on fishing vessels. Additionally, if the quantity of red sea-bream (*Pagellus bogaraveo*) on board exceeds 20% of the total catch in live weight after sorting, it is considered in violation of the regulation.
4. Prohibition of towed gears within 3 nautical miles from the coast or within the 50 m isobath, provided that the specified depth is reached at a shorter distance from the coast.
5. Purse seines are not permitted within 300 meters of the coast or within the 50 meters isobath, considering that the specified depth is reached at a shorter distance from the coast. Furthermore, the deployment of purse seines at depths less than 70% of the overall drop of the purse seine itself is prohibited.
6. Leisure fisheries are prohibited from using towed nets, surrounding nets, purse seines, boat dredges, mechanized dredges, gillnets, trammel nets, and combined bottom-set nets<sup>177</sup>

**6) Regulation no. 486 date 31.7.2018 proclaiming Ulza and Shkopet lakes as a co-managed fishing area.**<sup>178</sup>

The 2018 Regulation established the lakes of Ulza and Shkopeti as a co-managed fishery zone. Within twelve months of this decision taking effect, ministerial approval was required for the co-management arrangement. In Ulza lake, all permitted activities must adhere to the legislation governing protected areas and align with the objectives outlined in the management plan for the Ulza regional park, specifically categorized as category IV. Both the Ministry of Agriculture and Rural Development, as well as the Ministry of Tourism and Environment, hold joint responsibility for enforcing and implementing the regulations.<sup>179</sup>

**7) Agreement on the Protection and Sustainable Development of the Prespa Park Area**<sup>180</sup>.

By entering into this agreement, the Parties (comprising the three riparian States and the EU) are committed to safeguarding the ecosystem and promoting sustainable development in the Prespa Park Area. The cooperative efforts encompass various aspects, including responsible management of water quality and quantity in the Prespa Lakes, prevention and control of pollution, conservation of biodiversity, protection of soil from erosion, depletion, infections, and pollution, and the prevention of the introduction of non-indigenous animal and plant species. The agreement further outlines the adoption of plans, programs, environmental standards, and criteria as necessary measures to accomplish these objectives.<sup>181</sup>

<sup>177</sup> *Ibids*

<sup>178</sup> Official Gazette No. 118/2018, , page 8316. text available at <https://faolex.fao.org/docs/pdf/ALB182320.pdf>

<sup>179</sup> Source: FAOLEX Database, at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC182320>

<sup>180</sup> OJEU L 258/2, 4.10.2011.

<sup>181</sup> For a full list of national legislation on fisheries see [https://www.fao.org/faolex/country-profiles/general-profile/see-](https://www.fao.org/faolex/country-profiles/general-profile/see-more/en/?iso3=ALB&countryname=Albania&area=Fisheries&link=aHR0cDovL2Zhb2xleC5mYW8ub3JnL2NnaS1iaW4veG1sLmV4ZT9kYXRhYmFzZT1mYW9sZXgmYW1wO3NIYXJjaF90eXBIPXF1ZXJ5JmFtcDt0YWJsZT1hbGwmYW1wO3F1ZXJ5PUFSRUE6RkkqQU5EIEITTzpbTEIgQU5EIFQ6QUxMIEFORCBSRVBFQUxFRDpOIEFORCBTVVBFUIM6TiBOT1QgUk86WSBBTkQgWjooTCBSIE0pIE5PVCBaOIAmYW1wO3NvcnRfbmFtZT1Ac3ByZkZJJmFtcDtsYW5nPXhtbGYmYW1wO2ZvcmlhdF9uYW11PUBYU0hPUIQmYW1wO3BhZ2VfaGVhZGVyPUVYTUxIJmFtcDtwYWdlX2Zvb3Rlcj1FWE1MRg==)

[more/en/?iso3=ALB&countryname=Albania&area=Fisheries&link=aHR0cDovL2Zhb2xleC5mYW8ub3JnL2NnaS1iaW4veG1sLmV4ZT9kYXRhYmFzZT1mYW9sZXgmYW1wO3NIYXJjaF90eXBIPXF1ZXJ5JmFtcDt0YWJsZT1hbGwmYW1wO3F1ZXJ5PUFSRUE6RkkqQU5EIEITTzpbTEIgQU5EIFQ6QUxMIEFORCBSRVBFQUxFRDpOIEFORCBTVVBFUIM6TiBOT1QgUk86WSBBTkQgWjooTCBSIE0pIE5PVCBaOIAmYW1wO3NvcnRfbmFtZT1Ac3ByZkZJJmFtcDtsYW5nPXhtbGYmYW1wO2ZvcmlhdF9uYW11PUBYU0hPUIQmYW1wO3BhZ2VfaGVhZGVyPUVYTUxIJmFtcDtwYWdlX2Zvb3Rlcj1FWE1MRg==](https://www.fao.org/faolex/country-profiles/general-profile/see-more/en/?iso3=ALB&countryname=Albania&area=Fisheries&link=aHR0cDovL2Zhb2xleC5mYW8ub3JnL2NnaS1iaW4veG1sLmV4ZT9kYXRhYmFzZT1mYW9sZXgmYW1wO3NIYXJjaF90eXBIPXF1ZXJ5JmFtcDt0YWJsZT1hbGwmYW1wO3F1ZXJ5PUFSRUE6RkkqQU5EIEITTzpbTEIgQU5EIFQ6QUxMIEFORCBSRVBFQUxFRDpOIEFORCBTVVBFUIM6TiBOT1QgUk86WSBBTkQgWjooTCBSIE0pIE5PVCBaOIAmYW1wO3NvcnRfbmFtZT1Ac3ByZkZJJmFtcDtsYW5nPXhtbGYmYW1wO2ZvcmlhdF9uYW11PUBYU0hPUIQmYW1wO3BhZ2VfaGVhZGVyPUVYTUxIJmFtcDtwYWdlX2Zvb3Rlcj1FWE1MRg==)

➤ **Maritime spatial planning**

Albania is a State Party to the ICZM Protocol to the Barcelona Convention since 2010 but seems to have not adopted any specific legislation with regard to ICZM. Directive 2014/89/EU has not been translated yet into national legislation.<sup>182</sup>

**1.1.2. Implementation<sup>183</sup>**

In January 2022<sup>184</sup>, following a process initiated in 2019<sup>185</sup>, the network of protected areas in Albania was revised, resulting with considerable changes in status and surface of the National and Natural Parks of the country, as well as their respective zoning.

At the moment, the National Parks in Albania make up for an area of 301,196.12<sup>186</sup> ha from which 22,894.93 ha marine area, including Karaburun-Sazan National Marine Park and partly surfaces of Butrinti NP, Divjake – Karavasta NP and other Marine and Coastal Protected Areas<sup>187</sup>.

<sup>182</sup> See [https://www.rac-spa.org/sites/default/files/doc\\_msp/msp\\_study/msp\\_study\\_vlora\\_final.pdf](https://www.rac-spa.org/sites/default/files/doc_msp/msp_study/msp_study_vlora_final.pdf), p. 32.

<sup>183</sup> Interreg Mediterranean MPA networks, 2022: Report: Developing a National Baseline Analyze for the integration of Policy Paper on Mediterranean MPA’s management effectiveness, sub-sections on: sustainable financing, into Albanian Policies, Tatjana Mehillaj

<sup>184</sup> DCM no.59, date 26.01.2022 “For the approval of the changes in the status and the surface of ecosystems of national parks (Second Category) of environmental protected areas”, and DCM no.60, date 26.01.2022 “For the approval of the changes in the status and the surface of ecosystems of natural parks of environmental protected areas”

<sup>185</sup>In 2019, the Albanian Network of Protected Areas was composed by 2 Strict Nature Reserve, 14 National Parks, 721 Natural Monuments, 23 Natural Managed Reserve/Natural Parks, 6 Protected Landscape and 4 Protected Area of Sustainable use of Natural Resources. In total a surface of 502124.8 ha, over 17.56% of the country’s surface. 119,224.7 ha or 23.6% of the total surface of protected areas were marine and costal protected areas, from which 13,261.2 ha were only marine area Kromidha G., Dragoti N., Dedej Z., 2019 Study - Assessment of the system of environmental protected areas in Albania - National Parks Association of Albania, Tirana. 304 pp + Annexes

<sup>186</sup> *The system of Protected Areas in Albania, April 2022*

	National Protected areas Categories	Number		Area (ha)	
		2019	2022	2019	2022
1	Strict Nature Reserve	2	-	4800	-
2	National Park	14	11	230,707.2	301,196.12
3	Nature Monument	721	736	3470	1970
4	Natural Managed Reserve/ Natural Park	23	24 <sup>186</sup>	147,564	223,819.2
5	Protected Landscape	6	5	97,333.6	72 067 <sup>186</sup>
6	Sustainable use of Resources	4	4	18250	18250
	<b>Total Surface</b>			<b>502124.8</b>	<b>617302.32</b>

<sup>187</sup> *Coverage of marine areas in the Albanian PA network*

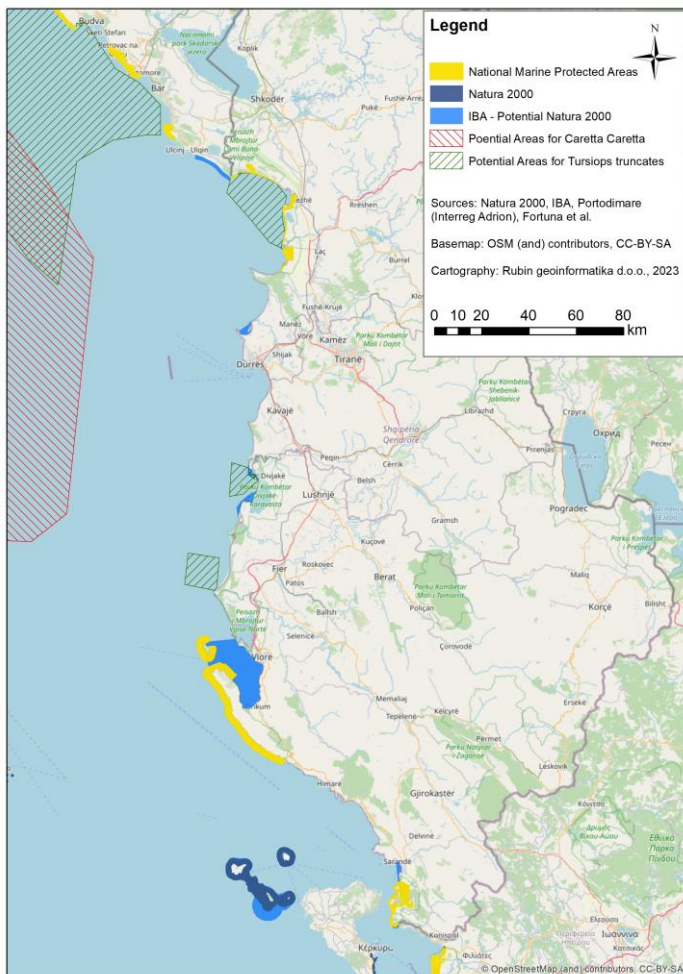
No.	Name of Protected Area	Surface in ha	% of total surface of PA
1.	Karaburun-Sazan National Marine Park	12,437.7	100%
2.	Butrint National Park	2,688.5	31.18%
3.	Divjaka-Karavasta National Park	7768.73	34.70%
4.	Vjosa River Natural Park	88.1	1.10%
5.	Kune-Vain-Patok-Fushekuqe-Ishem Natural Managed Reserve	2875.3	35.53%
	<b>Total Surface</b>	<b>25,858.33</b>	

In addition, based on the DCM No. 60, date 26.01.2022 “For the proclamation of natural ecosystems, natural managed reserve/natural park, and for the approval of the status change of existing surfaces of protected areas of these categories” the surface of protected areas, other than national parks, makes up for 222,319.2 ha, resulting in a total of 617302.32 ha of protected areas in Albania, from which 25,858.33 ha are only marine area.

➤ **WDPA<sup>188</sup> list of MPAs**



**1.1.3. Existing and potential MPAs**



<sup>188</sup> UN Environment World Conservation Monitoring Centre (UNEP-WCMC) / Protected Planet

## 1.2. BOSNIA AND HERCEGOVINA

Bosnia and Herzegovina have a coast length of about 24 km with an average depth of 18 m. Its territorial sea includes<sup>189</sup> the Neum-Klek bay and half of the Channel of Mali Ston. Bosnian Herzegovinian coastline city is Neum. The Neum Riviera is 9 km long and due to the fact that the coast is indented, this total length is about 24 km. Currently there are no protected coastal and marine habitats.

### ➤ Developing a proposal of MPA

Biodiversity research activities were carried out through the project “*Achieving Biodiversity Conservation through Creation and Effective Management of Protected Areas and Capacity Building for Nature Protection BiH*”.<sup>190</sup>

The project envisaged the establishment of several protected areas<sup>191</sup>, including a candidate marine area for conservation, the *Botanical and floristic reserve Mediteranetum*, measuring 1 256 ha of surface. The area on the seashore of the peninsula of Klek was legally protected as a Mediterranean arboretum for a long time.

SharkLab Adria (NGO), is working on the implementation of the project “Establishing the first MPAs in Bosnia: Protecting the highly endangered habitats and spawning sites of skates and rays in the Neum bay”<sup>192</sup>.

The wider system, including the bay of Neum-Klek, the Neretva Delta, which is an important ecosystem containing a large complex of wetlands, and the bay of Mali Ston constitute a sensitive and high value area from an ecological perspective. The wider ecosystem has a representative range of key habitats and species, since it is part of the NATURA 2000 in Croatia as a Site of Community Importance.<sup>193</sup> A cross border approach<sup>194</sup> is proposed for the candidate MPA located between Bosnia and Herzegovina and Croatia, integrating the sensitive habitats and species in the area from an ecological perspective in line with the Barcelona Convention.

Bosnia and Herzegovina is planning to establish two coastal and marine protected areas: Botanic and Floristic Reserve Mediteraneum (12,56 km<sup>2</sup>) and potential Natura 2000 area Kek Peninsula (19,33 km<sup>2</sup>); the latter also comprises marine area<sup>195</sup>.

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<sup>189</sup> Bosnia and Herzegovina reported to the EC, Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Herzegovina and Montenegro, September 2021

<sup>190</sup> Funded by the Global Environment Facility (GEF) and implemented by the United Nations Environment Programme

<sup>191</sup> The island of Mali Školj, a small rocky island in the Malostonski bay, also hosts important spawning zones and is highly valuable for conservation (<https://chm.cbd.int/database/record?documentID=246893>). The island of Veliki Školj, the second island in the Bosnian part, presents rocky marine habitats and appears to be highly endangered due to illegal date shell fishing. The seabed in Neum – Klek Bay and Mali Ston Bay is generally muddy with critical habitats, where 176 fish species and several invertebrate species have been reported. Due to their naturalness and their potential for hosting critical life stages, these areas are suggested as candidate areas, meeting the EBSA criteria (UNEP/MAPRAC/SPA, 2015)

<sup>192</sup> Four species of skates and rays are reported in the marine waters of the peninsula of Klek, which are endangered due to overfishing and lack of protection. In the same area there are several spawning grounds of skates and rays, where illegal fishing activities are a major threat, (<https://chm.cbd.int/database/record?documentID=246893>)

<sup>193</sup> In the description of the NATURA 2000 sites in Croatia, the habitats list includes the “Large shallow inlets and bays” (1160) and the “Reefs” (1170)

<sup>194</sup> Article 9.1(b) explicitly states that the SPAMIs may be established in “zones partly or wholly on the high seas”. If so, according to the Article 9.2(b), proposals for inclusion in the List may be submitted “by two or more neighbouring Parties concerned if the area is situated, partly or wholly, on the high

<sup>195</sup>

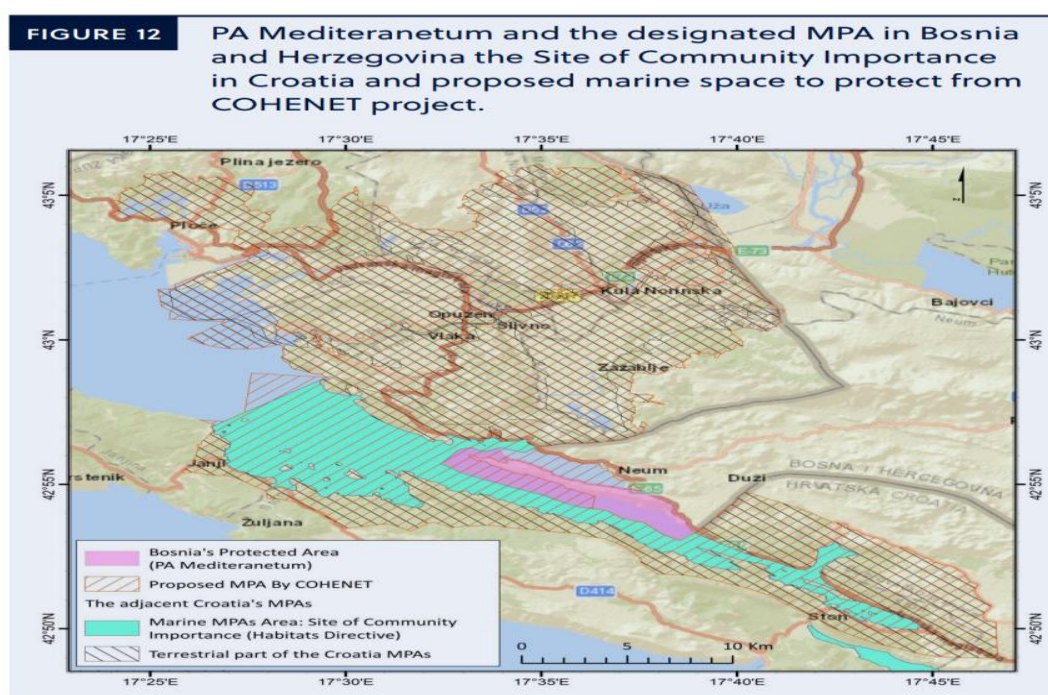


### 1.2.1. Legislation

#### 1) The Nature Protection Act of 2013<sup>196</sup> of the federal entity Federation of Bosnia and Herzegovina

The law regulates the competencies of bodies that deal, *inter alia*, with the identification of habitat types and ecologically significant areas, species and subspecies, and the protection and conservation of biodiversity, the protection of marine and coastal natural values, and the establishment of a European ecological network of specially protected areas (NATURA 2000) (Art. 1). The same law describes a ‘protected area’ as “*a clearly defined geographical area, recognized and intended to reach long-term conservation of nature, public benefit functions of nature, and cultural values, and which it is governed by legal and other effective mechanisms*” (Art. 8). The same provision defines ‘*in situ* conservation (in nature)’ as the “*conservation of ecological systems in natural habitats and maintenance and restoration of species capable of survival in their natural environment, (...); preservation parts of geological heritage at the place of their origin, i.e., mineral / rock deposits and fossils*”. Moreover, an ‘**ecological network**’ is envisaged as “*a system of interconnected or spatially close ecologically significant areas that balance biogeographical distribution significantly contributing to the preservation of natural balance and biodiversity*” (Art. 8). The mentioned Bosnian law of 2013 operates a distinction among different categories of protected areas: strict nature reserve (Art. 135), wilderness area (Art. 136), national park (Art. 137), nature park (Art. 138), habitat/species management area (Art. 139), protected landscape (Art. 140), protected area with sustainable use of natural resources (Art. 141).

According to Art. 144, the establishment of protected areas, at the federal or cantonal level, can be carried out with the consent of the municipal councils in whose areas the area is protected according to the spatial plan. The relevant instrument shall contain: name and category of protected natural value; precise description of the boundaries of the spatial scope of the protected area; name of the category; name of the scale of the cartographic representation; cartographic presentation with precisely described boundaries of spatial coverage, which is an integral part of



<sup>196</sup> Text available at <http://extwprlegs1.fao.org/docs/pdf/bih143206.pdf>.

the act on the proclamation. The adoption of a new Nature Protection Act is ongoing in the Federation of Bosnia and Herzegovina and not yet finalized<sup>197</sup>.

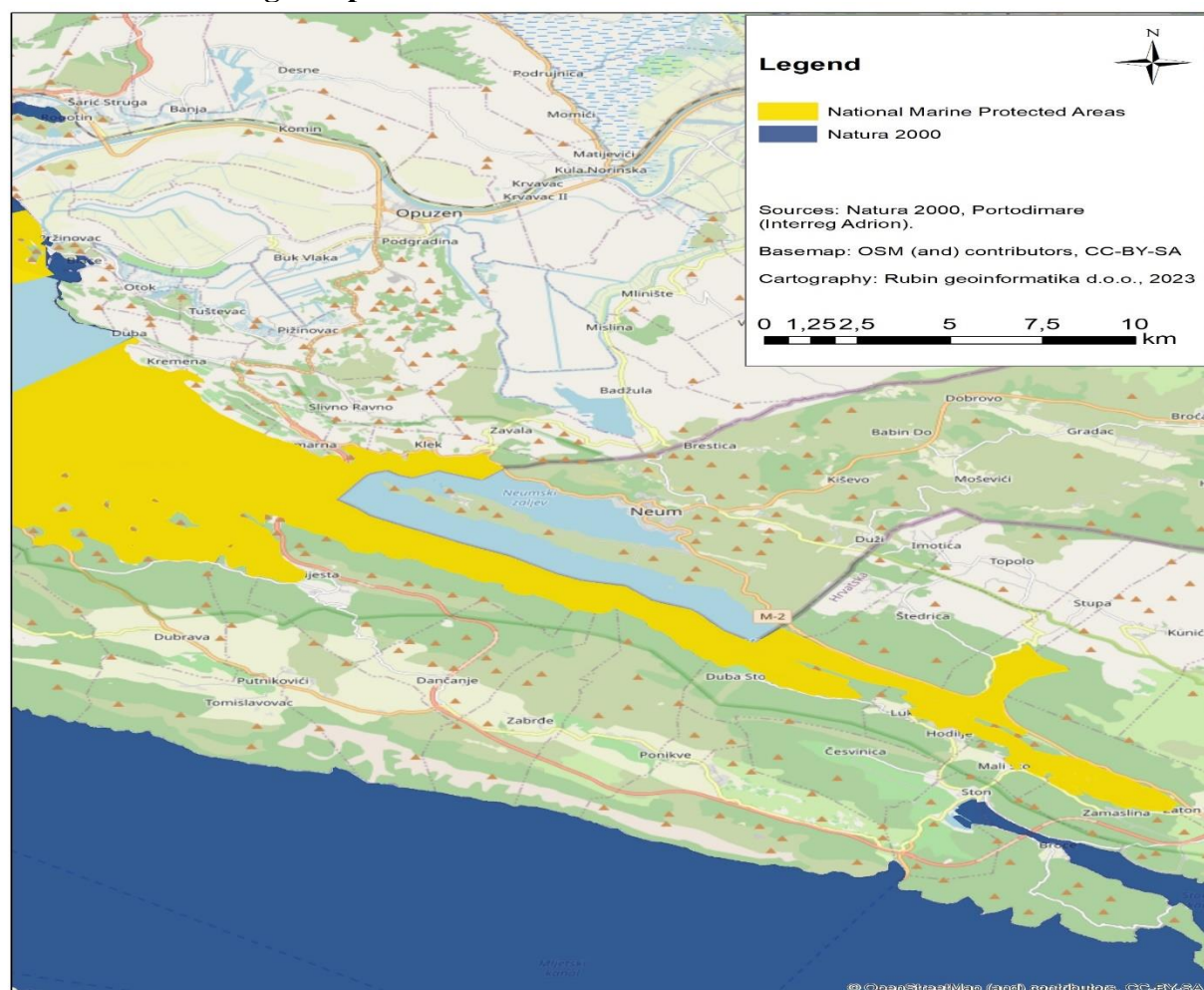
## 2) Law on Fisheries of the Hercegovačko- Neretvanska županija-canton<sup>198</sup>.

Based on Article 2, the said law, aims at ensuring the proper and responsible management and protection of fish and other marine organisms, as renewable resources of the sea, and the development activity of catching, preserving, growing, processing and trading of fish and other marine organisms.

## 3) Maritime spatial planning

Bosnia and Herzegovina has not ratified the ICZM Protocol and has not adopted yet specific legislation related to MSP, neither at the national, federal or cantonal level. See, however, in that regard [https://www.adriatic-ionian.eu/wp-content/uploads/2023/02/CAMP-and-its-importance-for-BIH\\_Josip-NJAVRO.pdf](https://www.adriatic-ionian.eu/wp-content/uploads/2023/02/CAMP-and-its-importance-for-BIH_Josip-NJAVRO.pdf)

### 1.2.2. Existing and potential MPAs



<sup>197</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 128, and

presentation by Mr Josip Njavro, representative of Bosnia and Herzegovina at the Workshop organized by TSG 3 EUSAIR, *what can EUSAIR do to enable the blue and green sustainable growth in EUSAIR: MSP in EUSAIR state of the art*, held online on 9 November 2021. Source:

<sup>198</sup> Official Gazzete of the Hercegovačko- neretvanska županija, No. 7/2014.



### 1.3. MONTENEGRO

Montenegro has 293 km of coastline along the Adriatic Sea<sup>199</sup> and its maritime zone extends up to 12 nautical miles offshore, covering an area of about 2 500 km<sup>2</sup>, with a maximum depth of 1 233 m. The width of the continental shelf, up to 200 m deep, varies along the coast of Montenegro, ranging from 9.5 nautical miles at the entrance of the Bay of Kotor to 34 nautical miles at the River Bojana estuary. The coast of Montenegro are diverse and typical of the infralittoral of the Mediterranean's hard and soft substrates, with a notable exception for those in the Bay of Kotor, which represent a unicum. Along the rocky shore, the lower part of the infralittoral is often covered by *Posidonia oceanica* meadows. Located in the northern part, the semi-enclosed Bay of Boka Kotorska is a distinct system with unique environmental characteristics and with a coastline of about 100 km. This system is divided into three subsystems (the Bay of Herceg-Novi, the Bay of Tivat and the Bay of Kotor).

Major pressures comprise the illegal and unsustainable fish-harvesting practices and other activities along the coast such as the touristic activities.<sup>200</sup>

Over the last years, there have been several areas considered for the development of MPAs in Montenegro, such as Platamuni and Seka Albaneze, Katič, Ratac, Old Ulcinj, areas which were also included in the list of **Emerald sites of Bern Convention**<sup>201</sup>.

#### ➤ Process of MPAs development

Many initiatives<sup>202</sup> are relevant to the nature/biodiversity protection on the coastal zone of Montenegro.<sup>203</sup> The rapid assessment survey of coastal habitats to help prioritize the suitable new areas in need of a protection status and of the development of a network of Marine and Coastal protected areas in Montenegro<sup>204</sup>, included the main outcomes on the monitored data on benthic and fish communities.

This study recommends three areas to be protected and these are the zones around Katič, Platamuni and Stari Ulcinj. Data collected on *Pinna nobilis* indicated that the Bay of Trašte could be a good candidate site for the protection of the species<sup>205</sup>.

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<sup>199</sup> The diversity of geological formations, landscapes, as well as the position of Montenegro on the Balkan peninsula and the Adriatic Sea, created the conditions for the formation of high biological diversity, therefore the country is considered among the biological "hot-spots" of the European biodiversity

<sup>200</sup> RAC/SPA UNEP/MAP, 2011

<sup>201</sup> Old Ulcinj – as the area from Mendra (lighthouse) Cape to Old Ulcinj and Tivat Salina (Tivat Salt pans were included in the list of Emerald sites in 2006, in 2007 it received the status of IBA, and in 2008 it was declared a special nature reserve – category of management V according to IUCN In 2013, a RAMSAR site was established on an area of 150 hectares

<sup>202</sup> RAC/SPA signed a Memorandum of Understanding with the Centre for Mediterranean Cooperation of the International Union for the Conservation of Nature (IUCN-Med), for the conservation of coastal and marine biodiversity and the establishment of protected areas in the Adriatic region, in 2012 (RAC/SPA and IUCN-Med, 2014)

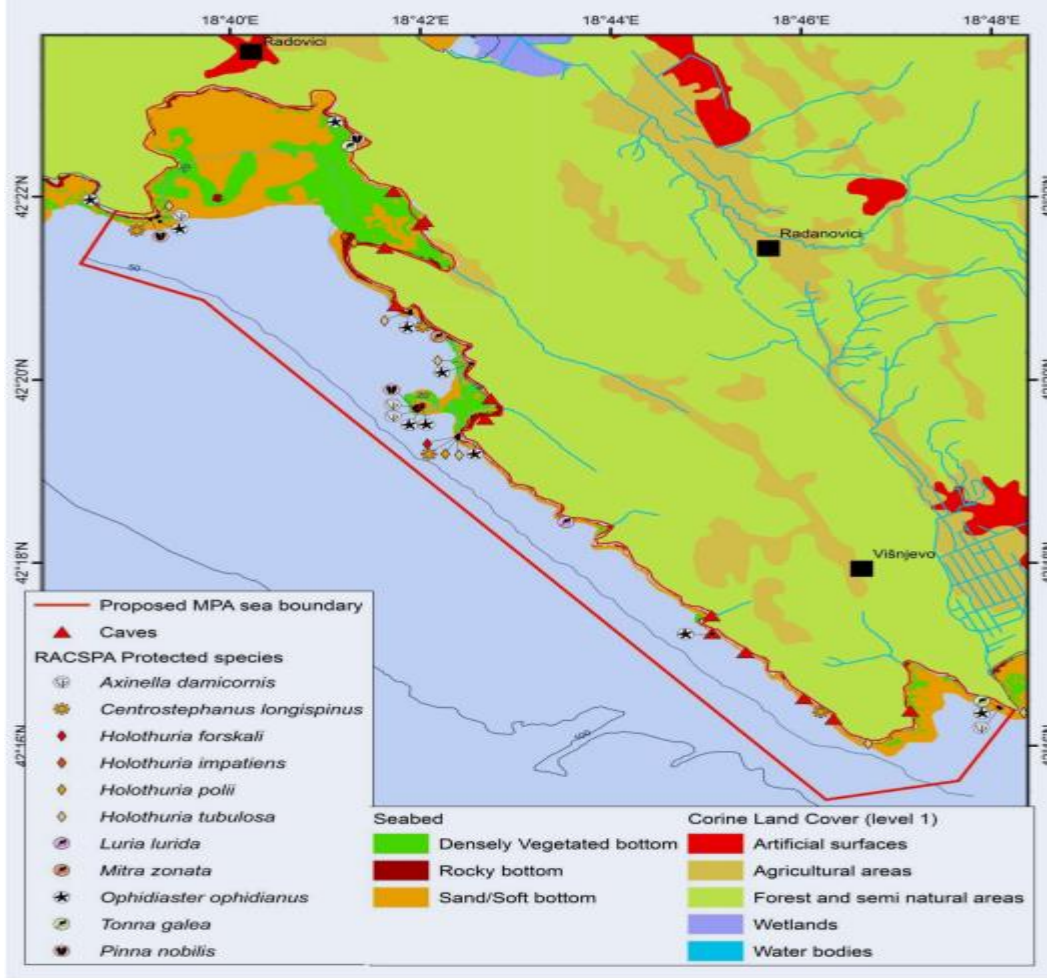
<sup>203</sup> Particular attention was given to species and habitats of conservation interest under the EU Habitat Directive and/or included in the SPAMI list, such as *Posidonia oceanica*, *Cystoseira spinosa*, *Cystoseira amentacea*, coralligenous formations, *Lithophaga lithophaga*, *Pinna nobilis*, *Epinephelus marginatus*, *Hippocampus ramulosus*, *Tursiops truncatus*, submerged or partially submerged caves etc. The results indicated the presence of some important habitats such as *Posidonia oceanica* meadows, *Cymodocea nodosa* beds, coralligenous and marine caves, while a habitat map of the Katič area was also provided. At the same time, an assessment of the coastal fish assemblages was performed.

<sup>204</sup> UNEP/MAP-RAC/SPA, 2016

<sup>205</sup> RAC/SPA UNEP/MAP, 2011

“The Study” proposes two larger areas: “Platamuni<sup>206</sup>” extended on the area of protection including also the Traste Bay (in the north) in order to safeguard the *Pinna nobilis* populations, the large seagrass meadows recorded in the area and part of the marine caves that were not included in the previous designation. The total proposed area for the wider MPA in Platamuni is approximately 64 km<sup>2</sup>.

**FIGURE 26** Proposed extension of Platamuni MPA and conservation features in the wider area



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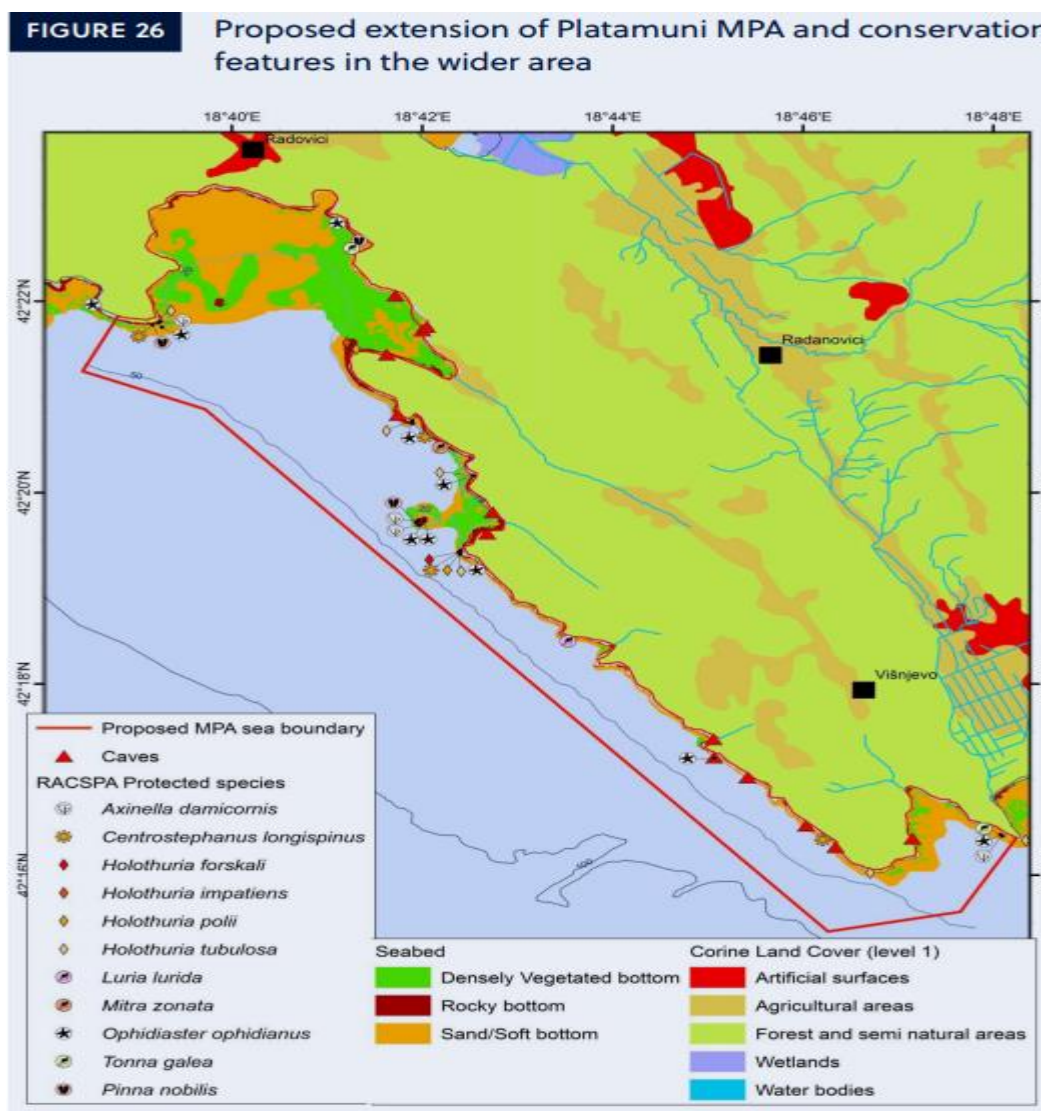
Similarly to fulfilling the criteria of MPA networks is to merge the areas of Katič and Ratac<sup>207</sup> into one larger MPA. Merging these two areas will help to ease this pressure and it is thought that the large *Posidonia oceanica* meadows and other key habitats could provide a suitable habitat for a high number of marine organisms, as well as for the protected and endangered species like *Pinna nobilis* and *Epinephelus marginatus*. The new MPA proposed in this study is about 80 km<sup>2</sup>.

**The Study is an example of the approach toward the designation of MPAs and network formation on the scientific basis, but also taking into consideration practical and political realities and legal considerations.**

### 1.3.1. Legislation

#### 1) The Nature Protection Act of 2016<sup>208</sup>

The act represents the most important piece of Montenegrin legislation prescribing general measures for nature protection, which include the establishment of protected areas. As a general instrument, it includes further provisions on the protection of endangered species, pollution



<sup>207</sup>

<sup>208</sup> Text available at <http://extwprlegs1.fao.org/docs/pdf/mne178833.pdf>.

control, environmental planning, data collection and reporting, access to information and financing.<sup>209</sup>

## **2) Law on marine fisheries and mariculture.<sup>210</sup>**

This Law regulates the complete marine fisheries sector, including mariculture and regards the management of the living marine resources, fishing, collecting and protecting fish and other marine organisms. All prescribed provisions are based on the principles of sustainable development and eco system preservation. Fish and other marine organisms in the fishery sea of Montenegro, being a resource of common interest, enjoys special protection and are used in the way and under the terms laid down by this Law and other Regulations. The fishery sea of Montenegro includes marine and submarine area of internal seawaters, territorial sea and continental shelf of Montenegro (and future EEZ), as defined by the Law governing the sea.<sup>211</sup>

## **3) Law amending the Law on marine fisheries and mariculture.<sup>212</sup>**

This Law changes various articles and adds certain new provisions to the Law on marine fisheries and mariculture (Official Gazette of Montenegro 56/2009). Major changes are related to the general terms, definitions and denominations; specific technical issues (such as sea life conservation methods, bycatch, fishing gear and fishing methods); fishing season provisions; fish size provisions and necessary fishing permit issues; vessel registration rules; offences and related penalties; and other minor administrative amendments.<sup>213</sup>

## **4) Law on spatial planning and construction of facilities,<sup>214</sup>**

The goals of planning and construction are:

- 1) balanced and regionally balanced spatial development harmonized with the needs of society, economy and space capacities;
- 2) rational and efficient use and preservation of spatial potentials and resources on land, sea and underwater, and protection of natural resources;
- 3) development of regional spatial features and preservation of identity and recognizability of landscapes;
- 4) mutually harmonized distribution of different human activities and activities in space, with the protection of integral space values;
- 5) protection and promotion of cultural goods and protected environment while preserving the integrity and authenticity of cultural values, creating conditions for sustainable use of cultural goods and high-value built space with respecting and developing the specific characteristics, integrity and values of natural and urban landscapes and ambience;
- 6) arrangement of construction land and quality and humane development of urban and rural settlements, as well as safe and healthy living and working conditions;
- 7) encouraging the investment environment aimed at developing and increasing the quality of space while at the same time economic development;
- 8) application of best practices in the development of urban units and quality improvement in the field of urban planning and architectural design, as well as improving the quality of buildings;

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<sup>209</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 131-132.

<sup>210</sup> OG MN, No. 56/09 as amm.) Text available at <https://faolex.fao.org/docs/pdf/mne123048.pdf>. Full list of secondary legislation available at:

<sup>211</sup> Source: FAOLEX,

<sup>212</sup> 10.8.2015. Text available at: <https://faolex.fao.org/docs/pdf/mne151757.pdf>

<sup>213</sup> Source FAOLEX,

<sup>214</sup> 30.9.2017. Text available at: <https://faolex.fao.org/docs/pdf/mne204435.pdf>.



- 9) protection against earthquakes, landslides and other natural disasters;
- 10) stability and durability of facilities;
- 11) protection against technical-technological and other accidents;
- 12) rational use of natural resources, energy and increase of energy efficiency;
- 13) creating conditions for access, movement and stay of persons with reduced mobility and persons with disabilities.<sup>215</sup>

### 1.3.2 Implementation

#### a) Decision on declaring the protected area of the nature park "Platamuni".<sup>216</sup>

This Decree/Decision, as in accordance with the provisions of the national Law on nature protection, establishes that the sea aquatorium and the coast in the part of Donji Grblja in the municipality of Kotor are declared protected an area of national importance called the Platamuni Nature Park. Platamuni Nature Park is an integrated coastal and marine protected area classifies in the IV category of protected areas, which includes areas in which wild flora and fauna and their habitats are protected are managed for their protection.<sup>217</sup>

#### b) Decision declaring the protected area of Nature Park "Stari Ulcinj".<sup>218</sup>

This Decision, based on the provisions of the Montenegrin Law on nature protection, declares the status of protected area of Nature Park "Stari Ulcinj"<sup>219</sup>. Sea aquatorium and coast in the part of the municipality of Bar (cadastral municipality of Kunje) and the municipality of Ulcinj (cadastral municipalities of Kručë, Krute ulcinjske and Ulcinj) is declared as a protected area of national importance (denominated as Nature Park "Old Ulcinj"). Nature Park "Stari Ulcinj" is an integrated coastal and marine protected area that is classified in the IV category of protected areas, which includes areas in which wildlife is protected and where species of plants and animals and their habitats are managed for the purpose of their protection.<sup>220</sup>

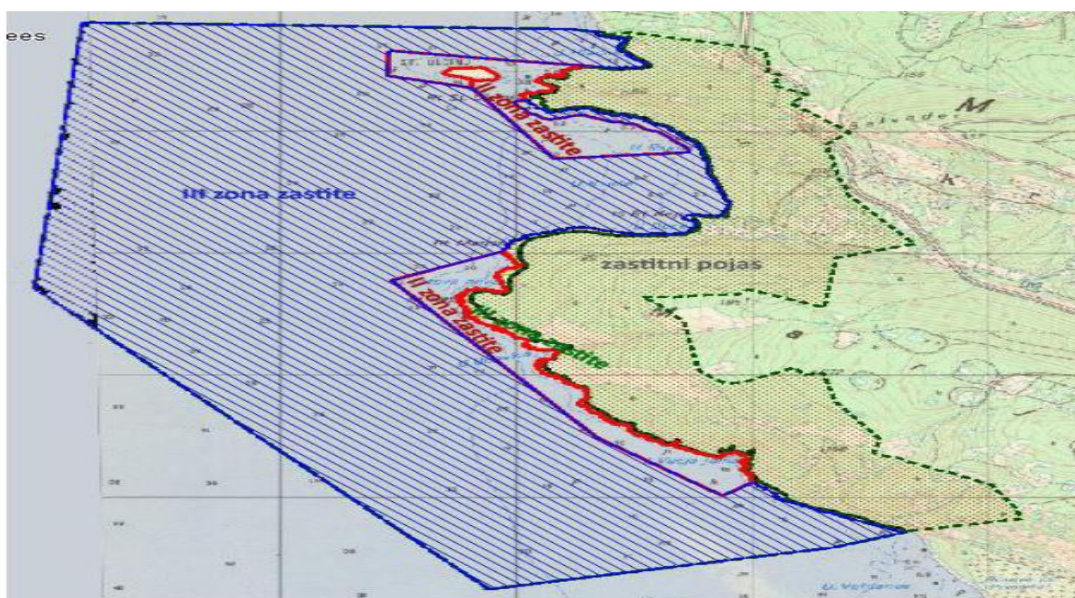
<sup>215</sup> Source: FAOLEX at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC204435/>

<sup>216</sup> 22.4.2021. Text available at: <https://faolex.fao.org/docs/pdf/mne203496.pdf>

<sup>217</sup> Source: FAOLEX at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC203496/>

<sup>218</sup> 29.12.2021. Text available at: <https://faolex.fao.org/docs/pdf/mne207986.pdf>

b) *Pojednostavljeni kartografski prikaz granica i zona zaštite integrisanog obalnog i morskog zaštićenog područja "Stari Ulcinj" na topografskoj podlozi (TK 1: 25000, VGI)*



<sup>219</sup>

<sup>220</sup> Source: FAOLEX Database, at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC207986/>

**c) Regulation on the closed season for age classes of fish and other marine organisms.**<sup>221</sup>

This Regulation defines which type of fish (in accordance to its age/size and age, and classes of fish and marine organisms) , is forbidden to catch on the territory of the Republic of Montenegro. Fish and marine organisms here classified, which are accidentally caught in fishing nets and other fishing gear, must be returned alive and uninjured, and in the case of catch of dead fish and marine organisms, they need to be landed, in order to examine the cause of death.

**d) Regulation on the ban of fishing and marketing of juvenile fish and other marine organisms.**<sup>222</sup>

This Regulation sets the concrete ban (time and fishing gear/method limitations) on fishing/catching and marketing/trade of/with juvenile/young, inadequate fish and other undersized marine organisms (as listed in this publication, see full list of species) as regards the territory of the Republic of Montenegro).

**e) Regulation on terms, restrictions, and order in fishing operations in specific fishing areas.**<sup>223</sup>

This Regulation provides for necessary terms and standards, restrictions, and order in fishing operations in specific fishing areas on the Montenegro sea territory. This Regulation prescribes term to be observed by all natural or legal persons and holders of licenses for commercial and sport-recreational fishing.

**f) Decision on the development of the Spatial Plan of Montenegro.**<sup>224</sup>

This Decision, based on the provisions of the Law on spatial planning and construction of facilities, approaches the development of the Spatial Plan of Montenegro. The plan is made for the entire territory of Montenegro and represents the general basis of the organization and spatial planning of the national territory, including urban land, sea area and coastal zone.<sup>225</sup>

**WDPA<sup>226</sup> list of MPAs**

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<sup>221</sup> Text available at: <https://faolex.fao.org/docs/pdf/mne151759.pdf>

<sup>222</sup> 9.1.2015, Text available at: <https://faolex.fao.org/docs/pdf/mne170698.pdf>

<sup>223</sup> 18.11.2011. Text available at: <https://faolex.fao.org/docs/pdf/mne123049.pdf>

<sup>224</sup> 20.12.2018. Text available at: <https://faolex.fao.org/docs/pdf/mne204518.pdf>

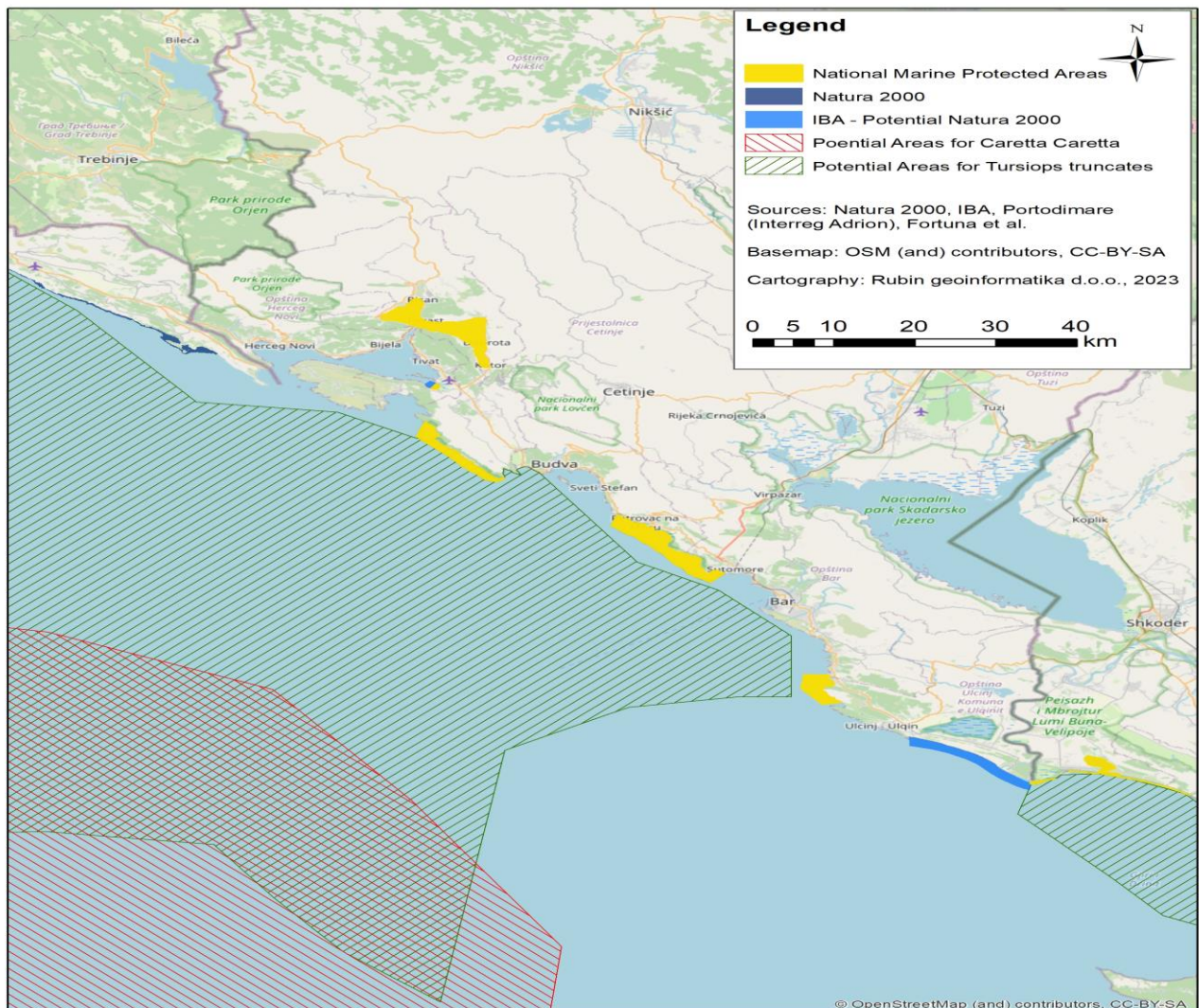
<sup>225</sup> Source: FAOLEX at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC204518/>

<sup>226</sup> [UN Environment World Conservation Monitoring Centre \(UNEP-WCMC\) / Protected Planet](#)





### 1.3.3. Existing and potential MPAs



## 2. EU MEMBER STATES

EU Biodiversity Strategy target for achieving, by 2030 is “*establishing a truly coherent Trans-European Nature Network, to legally protect at least 30% of the land, including inland waters, and 30% of the sea in the EU, of which at least one third (10% of land and 10% of sea) to be under strict protection.*”

### ➤ Member states pledges for targets 30%/10%

Member States should have submitted their pledges for targets<sup>227</sup> by the end of 2022<sup>228</sup>. All pledges were expected to follow the format and contents agreed with the Commission and the European Environment Agency (EEA).<sup>229</sup> Commission recognizes that time factor is crucial and further clarification for targets on protected areas are necessary.

The structure of questions defines the framework for evaluation:

- a. Are the national pledges in line with the ambition for achieving a coverage of 30% of protected areas and 10% strictly protected areas in each of the Biogeographical regions?
- b. Are pledges for additional nationally protected areas (including OECMs and urban green areas) covering the known key biodiversity areas, particularly for red-listed species and habitats **not covered by the Annexes of EU nature legislation**?
- c. Are the pledges ensuring that the EU-wide network of protected area in its entirety will be sufficiently robust, coherent and connected, and is the need for transboundary coherence **and ecological corridors sufficiently considered**?
- d. For the 10% target for strict protection: are all known areas with remaining primary and old-growth forests covered by pledges for strictly protected areas, and are significant areas of **other carbon-rich ecosystems (also including marine ecosystems) considered for strict protection**?

### ➤ Biogeographical process

For the evaluation of the submitted pledges biogeographical seminars are planned in 2023. For the **marine biogeographical regions**, as was the case so far, the Commission is proposing<sup>230</sup> three

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<sup>227</sup> [Circabc \(europa.eu\)](https://circabc.europa.eu): EU Biodiversity Strategy target for achieving, by 2030 at the latest, non-deterioration in the conservation status and trends of all protected habitats and species and ensuring that at least 30% of habitats and species not currently in favorable status are in that category or show a strong positive trend. Is assessed by Sub-target 1: no further deterioration in conservation trends and status by 2030 and Sub-target 2: improving (“strongly positive”) trends for 30% of species and habitats in unfavourable/non-secure status by 2030.

<sup>228</sup> “...It would be extremely difficult to consider pledges (for both targets) submitted after the end of February 2023 for discussions in biogeographical seminars in 2023”.

<sup>229</sup> Using the Excel file template developed by the EEA and the European Topic Centre for Biodiversity (ETC-BD) for pledge submission to the EEA’s Reportnet platform.

- *The baseline for the status improvement target is already known for each Member State as it is based on publicly available reporting information.*
- *The information that Member States are expected to submit in their pledges in relation to any new areas to become protected **does not require an obligatory submission of shapefiles or spatially explicit data**, which makes more complex analyses combining different datasets difficult.*

<sup>230</sup> “While our current proposal is thus based on the idea of having 8 biogeographical seminars in 2023, this arrangement remains provisional. For example, it might be more practical to have a single combined marine and terrestrial seminar for the Macaronesian biogeographical region.

The actual dates and the order of the seminars will be determined early 2023, based on the pledges submitted by Member States.”



separate seminars covering (a) the Baltic, (b) the Atlantic and Macaronesia and (c) the Mediterranean and Black seas.

*“As a minimum, the background document to be prepared prior to each Biogeographical seminar will look at the information provided by Member States with regards to the quantitative and qualitative aspects of their baseline and the information that can be summarized from their pledges for additional areas that Member State declare as counting for the target.”*

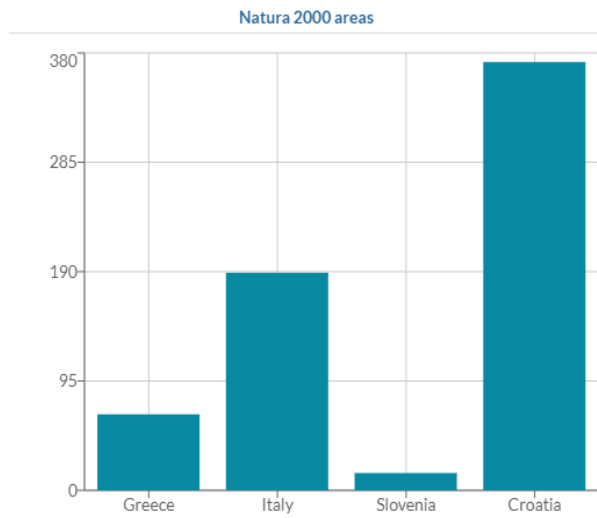
*“Furthermore, we expect that the background documents and the seminars themselves will provide an opportunity for a comparative assessment of the protection regime of different types of protected area in different Member States and regions. This is deemed necessary to help achieving a common understanding, as different Member States often use the same nomenclature for very different levels of site protection”.*

### 2.1. Natura 2000 Marine and coastal sites in Adriatic Ionian region<sup>231</sup>



<sup>231</sup> EU Site of Community Importance (Habitat Directive), Special Protected Area (Bird Directive), Special area of Conservation (Habitat Directive), SPA (Bird Directive) + SCI (Habitat Directive), SPA (Bird Directive) + SCIp (Habitat Directive), SPA (Bird Directive) + SAC (Habitat Directive), Proposed Site of Community Importance (Habitat Directive)

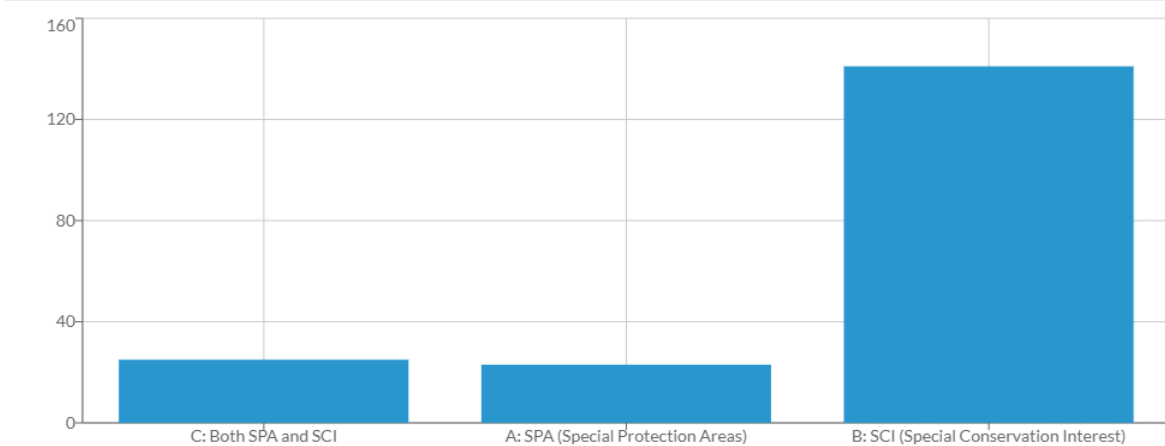
## NUMBER OF SITES / COUNTRY



COUNTRY	Site types
Greece	66
Italy	189
Slovenia	15
Croatia	372

## NUMBER OF SITES / DESIGNATION

SITEDESC	Count(SITEDESC)
C: Both SPA and SCI	25
A: SPA (Special Protection Areas)	23
B: SCI (Special Conservation Interest)	141



	<b>Number of habitat types in need for further research/additional proposals of SCIs (SR/IN MOD/IN MAJ)</b>	<b>Habitat type</b>	<b>Comments</b>
Croatia	2	*Posidonia beds ( <i>Posidonion oceanicae</i> )	SR
		Reefs	SUF/SR
Italy	4	Sandbanks which are slightly covered by sea water all the time	IN MOD/MIN
		Reefs	IN MOD
		Submarine structures made by leaking gases	IN MAJ/IN MIN
		Submerged or partially submerged sea caves	IN MOD
Greece	3	*Posidonia beds ( <i>Posidonion oceanicae</i> )	IN MOD/CD
		Reefs	IN MOD
		Submarine structures made by leaking gases	IN MAJ
Slovenia	0		

	<b>Number of species in need for further research/additional proposals of SCIs (SR/IN MOD/IN MAJ)</b>	<b>Species</b>	<b>Comments</b>
Croatia	2	<i>Caretta caretta</i> *	SR
		<i>Tursiops truncates</i>	SUF/SR
Italy	5	<i>Petromyzon marinus</i>	SR/CD
		<i>Lampetra fluviatilis</i>	SR
		<i>Caretta caretta</i> *	IN MOD/SR
		<i>Tursiops truncates</i>	IN MOD/SR
		<i>Monachus monarchs</i>	IN MOD/CD
Greece	5	<i>Caretta caretta</i> *	IN MOD
		<i>Chelonia mydas</i> *	IN MAJ
		<i>Tursiops truncates</i>	IN MOD
		<i>Phocoena phocenin</i>	SR
		<i>Monachus phocenin</i>	IN MOD
Slovenia	2	<i>Caretta caretta</i> *	SR
		<i>Tursiops truncates</i>	IN MAJ

SR (Scientific reserve): further research is required to identify the most appropriate SCIs for this species / habitat type (research on identifying the most appropriate sites, on clarifying the correspondence of a habitat present to the definition of Annex I habitats, etc.)

IN MOD (Insufficient moderate): one or several additional SCIs (or extensions of SCIs) must be proposed to achieve a sufficient coverage of the Natura 2000 network for this species/ habitat type (IN MOD GEO means additional site(s) are only required in a specifically named region).

IN MAJ (Insufficient major): none of the sites where this species/ habitat type occurs have been proposed as SCIs so far; in order to achieve a sufficient coverage of the Natura 2000 network for the species /habitat type, one or several of these new SCIs must therefore be proposed.

CD (Correction of data): the information about this species /habitat type in the Standard Data Form needs to be corrected / completed / deleted.

Codes can be combined, for example 'IN MOD/ CD' would indicate that additional sites are required and that the existing proposals need correcting or completing. existing proposals need correcting or completing species / habitat type (research on identifying the most appropriate sites, on clarifying the correspondence of a habitat present to the definition of Annex I habitats etc.)

### Birds Directive- Gaps according LIFE Project<sup>232</sup>

Country/Territory	Site name	IBA Criteria	Final Code
Croatia	Hvar Channel	A1, C1	
Croatia	Jelas Field	A1, A4i, B1i, B2, C1, C2, C6	HR008
Croatia	Korcula Channel	A1, C1	
Croatia	Kornati National Park and Telascica Nature Park	B1i, B3, C2, C6	HR018
Croatia	Kvarner Islands	A1, B1i, B1iii, B2, B3, C1, C2, C6	HR032
Croatia	Lastovo Archipelago	A1, A4i, A4ii, B1i, B1ii, B1iv, B3, C1, C2, C5, C6	HR033
Croatia	Lastovo Channel	A1, A4, C1	
Croatia	Middle Dalmatian Islands and Peljesac Peninsula	A4i, B1i, B1iv, B2, B3, C2, C5, C6	HR048
Croatia	Neretva Delta	A4i, B1i, B2, C2, C6	HR023
Croatia	North Part of Zadar Archipelago	B1i, B3, C2, C6	HR045
Croatia	Northern Adriatic CRO	A1, C1	

<sup>232</sup> <http://datazone.birdlife.org/site/results?cty=52&fam=0&gen=0>

Croatia	NW Dalmatia and Pag Island	B1i, C2, C6	HR050
Croatia	NW Part of Mljet National Park	C6	HR051
Croatia	Offshore Islands	A1, A4i, A4ii, B1i, B1iii, B1iv, B2, C1, C2, C5, C6	HR041
Croatia	Western Istrian Maritime Zone	B1i, B3, C2, C6	HR024

## 2.2. GREECE

### 2.2.1. Legislation

#### 1) The Law for the Management Agencies of Protected Areas in Greece (No. 4519 of 8 February 2018)

This law regulates all issues concerning the organization and operation of protected areas management bodies. This act follows the revised national list of the NATURA 2000 Network in Greece. Presidential Decrees and management plans should gradually be adopted for all areas of the NATURA 2000 Network. With regard to the management of fisheries and marine sites, Law No. 4519/2018 implies new responsibilities for management agencies that should be compatible with both the general fisheries legislation and the environmental legislation, especially with regard to the Habitat Directive, the MSFD and marine spatial planning. Main challenges relate to governance, needed material and human resources and the planning and implementation of effective management measures.<sup>233</sup>

#### 2) Legislative Decree No. 420 introducing the Fisheries Code.<sup>234</sup>

The said Decree introduces the basic legislative text on which is based the regulation of all matters concerning the fisheries sector in Greece. It deals very extensively, among others, with the organization and functioning of fish reserves, sponge fishing, general regulations and restriction of fishing, research and international cooperation in the field of fisheries. The Minister of Agriculture shall be the competent authority in order to regulate in particular any matter regarding the sector, by issuing Orders related thereto.<sup>235</sup>

#### 3) Law No. 1740 on the development and protection of coral formations, aquaculture and fish breeding areas.<sup>236</sup>

<sup>233</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 130.

<sup>234</sup> 24.1.1970. Efimeris tis Kyverniseos No. 27, Part I, 31 January 1970, pp. 175-2000. Text available at <https://faolex.fao.org/docs/pdf/gre23636.pdf>.

<sup>235</sup> Source, FAOLEX Database at <https://www.fao.org/faolex/results/details/fr/c/LEX-FAOC023636/>

<sup>236</sup> 4.12.1987, Efimeris tis Kyverniseos No. 221, Part I, 14 December 1987, pp. 2145-2151, text available at: <https://faolex.fao.org/docs/pdf/gre23637.pdf>

This law sets forth measures for the protection of corals alongside with measures for the development and exploitation of them. Collection, processing and vending of corals coming from the Greek territorial waters is permitted only after obtaining a special licence which expires after three years for the date of issuing and after paying an annual fee. In general, all matters concerning the protection and exploitation of corals are subject to Orders issued by the Ministers of Agriculture and Commerce. The law also amends extensively the Fisheries Code as regards provisions concerning aquaculture and sets forth provisions regarding the fishery sector.<sup>237</sup>

#### **4) Law No. 4546 transposing into Greek legislation the EU Directive 2014/89 establishing a framework for maritime spatial planning and other provisions.**<sup>238</sup>

This law established a framework for maritime spatial planning aimed at promoting the sustainable growth of maritime economies with a view to promoting the sustainable development of maritime economies, areas and the sustainable use of marine resources. Maritime spatial planning shall be integrated into the integrated maritime policy of the European Union as a cross-sector policy instrument enabling public authorities and stakeholders to implement a coordinated, integrated and cross-border approach and contribute to the achievement of the objectives set out in Article 3, in accordance with United Nations Convention on the Law of the Sea (UNCLOS Convention), ratified by Law 2321/1995 (A '136). The Objectives of maritime spatial planning are: 1. Support and promote sustainable development and spatial cohesion between marine and coastal space, through the synthesis of ecological, environmental, socio-economic and cultural parameters, taking into account land-sea interactions, ecosystems and the principles of sustainable management; 2. Carry out a rational and integrated spatial development of activities in the maritime and coastal areas, including any activity related to sea, and taking into account the cultural heritage. In this context, the harmonious coexistence of all relevant activities and uses is sought, ensuring the resilience to the effects of climate change.<sup>239</sup>

#### **5) The National Maritime Spatial Strategy**

Strategy represents in this regard a policy-making framework, while maritime spatial plans- frameworks are referred to regional level, although they do not necessarily correspond to the boundaries of the Greek Administrative Regions. According to the Law 4447/16, Urban (territorial) Plans have to follow the provisions of Regional Spatial (territorial) Planning which have to take into considerations priorities, objectives and guidelines of Special Planning Frameworks. The Ministry of Environment and Energy is the body responsible to prepare both the onshore (territorial) spatial frameworks and plans and MSPs in Greece, it ensures their smooth cooperation in terms of priorities, tools and terminology.<sup>240</sup>

### **2.2.2. Implementation**

The international level such as the Directive 92/43 that is mandatory in its implementation, and in case of no compliance, can lead to the European Court of Justice. As an example Greece was taken to the European Court in 2002 because of the failure of Greece to ensure an effective protection of *Caretta caretta* in Zakynthos (Case 103-00) under the article 12 of the Directive, case that was archived in 2007 due to the operation of the National Marine Park and the effective management measures undertaken in order to ensure the protection of this species.

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<sup>237</sup> Source: FAO Datalex, at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC023637/>

<sup>238</sup> Government Gazette 101 / A of 12 June 2018, text available at: <https://faolex.fao.org/docs/pdf/gre192752.pdf>

<sup>239</sup> Source: <https://leap.unep.org/countries/gr/national-legislation/law-no-4546-transposing-greek-legislation-eu-directive-201489>

<sup>240</sup> Source: H. Coccossis et al, **Governance Scheme at National and sub- national levels for Spatial Planning in relation to MSP in Greece**, MSP Med, 2020.



The national level with the establishment of Marine protected areas Natura 2000 that were extended (National Gazette 4432/B/2017)<sup>241</sup> in 2017 from 6% of internal waters to 22% in Greece. The Ionian islands region encompasses 22 Natura 2000 sites, from which about 80% are marine areas.

Some general rules regarding those areas were defined in the Law 3639/2011 for the biodiversity. The next, but crucial step will be the publication of a **Presidential Decree and Management Plans** for the Natura 2000 sites in the Ionian Island regions (due to be published in 2023), that will institutionalize marine uses that are allowed in every natura 2000 site and allow the management of those areas. It is a very large area, hence the next step will be to ensure the implementation of the law with sufficient resources.

The local level, with the only marine area until now in the Ionian Island region that has been managed for more than 20 years, the National Marine Park of Zakynthos. A Presidential Decree was published in 1999 (national gazette 906/D/1999) that was clearly and very precisely defining protection zones at different levels of protection (strict to mild protection measures) as well as the allowed uses. Now a management unit oversees the whole Ionian islands region (National Gazette 92/A/2020, Law 4685)<sup>242</sup>

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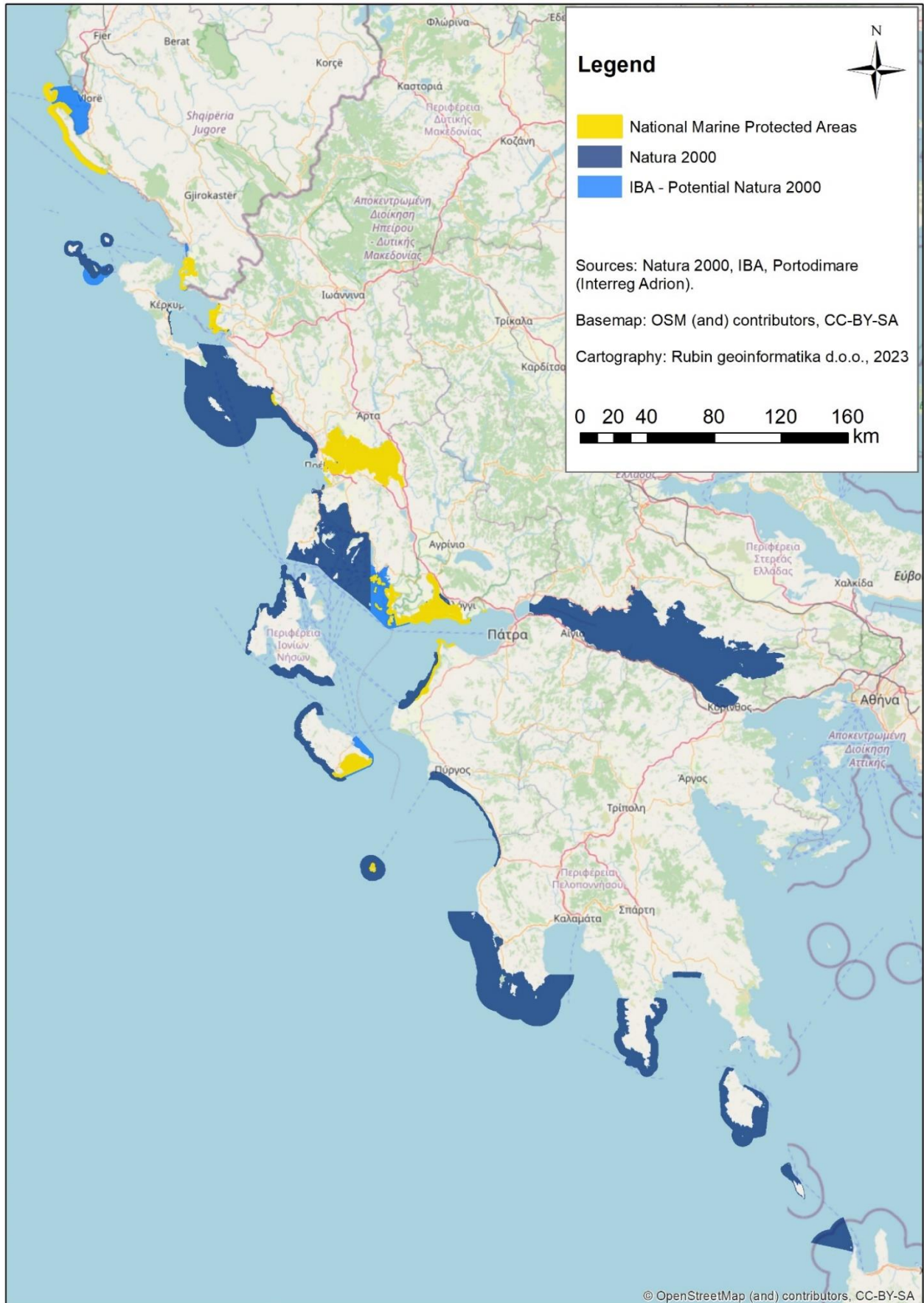
<sup>241</sup> Joint Ministerial Decision of the Ministries of Environment and Rural Development (Ref. 50 743 / 12.15.2017, GG 4432 B ') in December 2017, which revised the national list of the European Ecological Network NATURA 2000 in Greece.

<sup>242</sup> Official website <https://necca.gov.gr/en/n-e-c-c-a/>: “The year 2020 marks a milestone for the management of Protected Areas (PAs) in Greece with the publication of Law 4685/2020 (Government Gazette A92/7.5.2020), whereby the **National System of Governance of Protected Areas** is defined and the **Natural Environment and Climate Change Agency (N.E.C.C.A.)** is established. The management system reflected in the new law essentially reinforces the cooperation of all competent authorities and organizations, as well as the coordination of all Management Bodies under the umbrella of N.E.C.C.A. With the aim of implementing a modernized and contemporary system of governance for Protected Areas (PAs), the Ministry of Environment and Energy deemed it necessary to unify planning under one combined scientific, consulting and coordinating body for the effective organization of governance and management of these areas. Until recently, the management of PAs in Greece was carried out by the competent Department of Natural Environment and Biodiversity Management of the Ministry of Environment and Energy (MEEN) and by the Management Bodies of Protected Areas (MBPA), which are private law legal entities supervised by the MEEN. Throughout its 20 years of operation, this governance system encountered various difficulties, (involving coordination, absorption of EU funds, production of scientific information), and ultimately suffered from a lack of uniformity and absence of a common approach towards PA and species management. N.E.C.C.A aims to implement the policy formulated by the MEEN for the management of protected areas. The pre-existing 36 MBPAs, -which encompass all Greek areas of EU and international interest for the protection of habitats and species-, are integrated into N.E.C.C.A. as **24 Protected Area Management Units (PAMUs)** operating at a department level. Along with the Decentralized Administrations, Regions and Municipalities, they will now comprise the **PA Management System at the regional level**. As a central level authority of the National System of Governance of PAs, N.E.C.C.A is charged with coordinating a series of actions, projects and procedures regarding: the implementation of national policies set by the MEEN for the **management of PAs in Greece, biodiversity conservation, promotion and implementation of sustainable development actions and climate change mitigation**. N.E.C.C.A is also called upon to prepare an implementation program of PA management plans which are approved by the MEEN.

### **Chapter 3: Management of Protected Areas**

A set of regulations aiming at the implementation of a new and contemporary governance system of Protected Areas are providing in this chapter. In this context, a single body called Natural Environment and Climate Change Organisation (“OFYPEKA”), which is responsible for implementing the policy set by the Ministry of Environment and Energy for the management of the Protected Areas in Greece, for tackling climate change and for promoting and implementing sustainable development actions, is established (Article 27). Another critical responsibility of the new Organisation is to provide an opinion on the appropriate assessment of the impact of each project in its Protected”: <https://seelegal.org/news/law-4685-2020-a-promising-step-to-the-modernisation-of-environmental-legislation/>

### 2.2.3. Existing and potential MPAs





## 2.3. ITALY

### 2.3.1. National legal framework

#### 1) The Framework Law on Protected Areas (No. 394 of 6 December 1991)

The law sets forth the general category<sup>243</sup> of protected natural areas (*aree naturali protette*), which include national parks (*parchi nazionali*), regional natural parks (*parchi naturali regionali*) and nature reserves (*riserve naturali*)<sup>244</sup>. Both national parks and nature reserves can be composed of marine areas, while regional natural parks can only include marine areas adjoining the coast<sup>245</sup>.

### 2.3.2. Implementation

**Marine specially protected areas are specifically regulated by the previous Law No. 979 of 31 December 1982 (Provisions for the Defence of the Sea) which envisages the category of marine reserves (*riserve marine*). Law No. 979/1982 is still applicable to all matters which are not explicitly regulated by Law No. 394/1991.**

The definition of ‘marine reserve’, as envisaged by Art. 25 of Law No. 979/1982, is the following: *“marine nature reserves are composed of marine components, including by the waters, the seabed and the adjoining coasts, and showing remarkable interest because of their natural, geomorphological, physical and biochemical characteristics, with special regard to the coastal and marine flora and fauna, as well as the scientific, ecological, cultural, educational and economic importance”*.

Within marine protected areas, all activities which risk compromising the protection of the environmental characteristics and the objectives to be achieved by the protection regime are prohibited. In particular the following activities are forbidden hunting, collecting and damaging fauna and flora species and the removal of minerals and archaeological findings; the alteration of the geophysical environment and the biochemical and hydrobiological characteristics of the water; advertising activities; the introduction of arms, explosives and any destructive or catching equipment; navigation by motor vessels; any kind of disposal of either liquid or solid waste. All the prohibitions and any exceptions that may be made are specified in the regulations for each marine protected area.

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<sup>243</sup>MPAs, can be formed as: National Park, Marine Protected Area, Blue Oasis, Submarine Park, Nature Reserve, Integral Nature Reserve, Regional Nature Reserve

<sup>244</sup> Nature reserves can be established either by the State or by the regions.

<sup>245</sup> Other kinds of marine specially protected areas are envisaged by Decree No. 1639 of 2 October 1968, implementing the Italian framework law on fisheries. The decree provides for the creation of zones of biological protection (*zone di protezione biologica*), where fishing activities may be prohibited or restricted.

The regime of parks<sup>246</sup>, including marine parks, is more complex than that of reserves. In particular, the body in charge of the management of a national park, called the Park Institution (*Ente parco*), is entrusted with the adoption of a plan which, *inter alia*, may subdivide the area of the park based on different degrees of protection, providing for the following:

- integral reserves (*riserve integrali*) where the natural environment is conserved in its integrity.
- oriented general reserves (*riserve generali orientate*) where new buildings, widening of existing constructions and activities for the transformation of the territory are forbidden.

Traditional productive uses, the implementation of strictly necessary infrastructures, interventions for the management of the natural resources performed by the Park Institution, as well as maintenance activities of the existing structures, may be authorized.

- areas of protection (*aree di protezione*) where, with reference to the aims to be achieved by the establishment of the park and the general criteria fixed by the Park Institution, the agricultural-silvicultural, sheep-rearing and fishing activities and the collecting of natural products can continue, according to the local customs and the methods of biological agriculture, while the production of quality handicrafts is promoted.
- areas of economic and social promotion (*aree di promozione economica e sociale*), which make up part of the same ecosystem and are most widely modified by the impact of human processes, where all the activities aimed at the improvement of both the socio-cultural life of the local populations and the enjoyment of the park by visitors are allowed if compatible with the aims of the protection regime.

The rules applying to marine reserves are simpler than those relating to parks. All activities for the protection, research and promotion of a marine reserve are entrusted to the Minister of the Environment, relying on the Central Inspectorate for the Defence of the Sea. The competent harbour-master's office (*Capitaneria di Porto*) is in charge of the surveillance and management of the reserve. Proposals and advice for the appropriate management of the reserve are made by the Commission of the Reserve (*Commissione di Riserva*), appointed by the Minister of the Environment.

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All Italian marine protected areas are divided into three types of zones (A, B, C), corresponding to three different levels of protection. The marine reserve established as part of the trilateral Pelagos Sanctuary is a special case, due to its international character.<sup>247</sup>

#### a) Special areas of conservation

In Italy, the identification of the pSCIs is the responsibility of the 19 Regions and 2 Autonomous Provinces, which transmit data to the Ministry of the Environment, organized according to the standard European form and complete with cartographies; The Ministry, after a verification of the completeness and consistency of the data, transmits the database and cartographies to the EU Commission.

The SCIs, following the definition by the Regions and Autonomous Provinces of the specific conservation measures by site, habitats and species, are designated as SPECIAL AREA OF CONSERVATION (SPAs), with **ministerial decree adopted in agreement with each region and autonomous province concerned**<sup>248</sup>.

#### b) Special protection areas

For the sites identified pursuant to the bird directive, the procedure is shorter: they are designated directly by the Member States as special protection areas (SPAs), they automatically become part of the Natura 2000 network.

The identification of SPAs also belongs to the regions and autonomous provinces, which transmit data to the Ministry of the Environment; The Ministry, after the verification of the completeness and congruence of the information acquired, transmits the data to the European Commission. The SPAs are intended to be designated from the date of transmission to the Commission and the updated list of the SPAs is published on the Ministry's website, in the "List of SPAs" section.

#### c) Natura 2000 within the framework law

The legislation of adoption of the Natura 2000 directives did not identify specific safeguard measures and sanctioning in case of breaches of regimes. Unfortunately, there is a legal gap. The **framework law of protected areas**, which is lex priori to the adoption of Natura directives, could not be used for sanctioning the illicit acts committed within a Natura 2000 network area. The criminal penalties provided for in the framework law, cannot be enforced in the exclusively Natura 2000 sites.

For this reason, at the regional level, generic reference is made to the rule of the criminal code on environmental damage and the killing of protected fauna, leaving regional laws the identification of the pecuniary sanctions for non - compliance with the conservation measures. This situation does not favour the uniformity of the application of the criminal law and the law enforcement actions in the Natura 2000 areas.

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<sup>247</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 130-131.

<sup>248</sup> To date, 2302 SPAs (87,23%) have been designated belonging to the 19 Regions and the 2 Autonomous Provinces.

## 2) National Biodiversity Strategy 2030.<sup>249</sup>

Pursuant to the obligations deriving from the Convention on Biological Diversity, this text lays down the National Strategy on Biodiversity of Italy for the period 2021-2030, with a vision to 2050 to ensure the preservation and restoration of biodiversity, so that it can continue to sustainably support the economic prosperity and human well-being despite the deep changes taking place globally and locally.

The Strategy to 2030, which adopts a multi-sectoral approach, is structured in two Strategic Objectives divided into 8 Areas of Intervention. **The first Strategic Objective aims to build a coherent network of protected terrestrial and marine areas. This objective comprehends one area of intervention.** The Second Strategic Objective aims at **restoring terrestrial and marine ecosystems and it's declined** in the 7 following areas of intervention covering a) species, habitat and ecosystems; b) Agri-food systems and animal husbandry; c) forests; d) urban green; e) inland waters; f) sea; g) soil. Each area of intervention is organized in 7 points: 1- Specific Objectives 2- Cognitive framework / context 3- Main tools 4- Implementing / involved subjects **5- Indicators 6- Financing sources 7- Shares and sub-Shares.**<sup>250</sup>

<sup>249</sup> 14.4.2021. Text available at: <https://faolex.fao.org/docs/pdf/ita212815.pdf>

<sup>250</sup> The normative framework, national EU and international, in order to achieve the goals stated in the National Biodiversity Strategy 2030 is based on the Italian Strategy, as follows:

- *Convenzione di Ramsar*
- *REGOLAMENTO (UE) 2020/852 "EU Taxonomy" relativo all'istituzione di un quadro che favorisce gli investimenti sostenibili*
- *Direttiva 92/43/CEE "Habitat" del 21 maggio 1992 "Conservazione degli habitat naturali e seminaturali, della flora e della fauna selvatiche"*
- *Direttiva 2000/60/CE "Direttiva Quadro sulle Acque – DQA"*
- *Direttiva Quadro sulla Strategia per l'ambiente Marino (MSFD) 2008/56/CE - D. Lgs. 190/2010 - D.P.C.M. del 10 ottobre 2017 relativo al Programma di Misure, attualmente in fase di aggiornamento*
- *Direttiva 2009/128/CE "che istituisce un quadro per l'azione comunitaria ai fini dell'utilizzo sostenibile dei pesticidi"*
- *Direttiva 2009/147/CE del 30 novembre 2009, "La conservazione degli uccelli selvatici"*
- *Direttiva quadro per la Pianificazione dello Spazio Marittimo (MSP) 2014/89/UE*
- *Legge 394/91 "Legge Quadro sulle Aree Protette"*
- *D.P.R. 8 settembre 1997, n. 357 "Regolamento recante attuazione della direttiva 92/43/CEE relativa alla conservazione degli habitat naturali e seminaturali, nonché della flora e della fauna selvatiche"*
- *D. Lgs. 42/2004 Codice dei beni culturali e del paesaggio*
- *D. Lgs. 3 aprile 2006, n. 152 "Norme in materia ambientale"*
- *Decreto 17 ottobre 2007 "Criteri minimi uniformi per la definizione di misure di conservazione relative a Zone Speciali di Conservazione (ZSC) e Zone di Protezione Speciale (ZPS)*
- *D. Lgs. 14 agosto 2012, n. 150 - Attuazione della direttiva 2009/128/CE che istituisce un quadro per l'azione comunitaria ai fini dell'utilizzo sostenibile dei pesticidi (G.U. 30 agosto 2012, n. 202)*

### *Other instruments:*

- *Protocollo SPA/BD Specially Protected Areas and Biological Diversity in the Mediterranean della Convenzione di Barcellona*
- *Strategia Europea per la Biodiversità 2030*
- *Strategia EU per le infrastrutture Verdi (riesame effettuato nel 2019)*
- *Nuova Strategia Forestale dell'UE (COM 2021/572)*
- *Documenti di indirizzo Europei:*
  - *Technical Note on Criteria and Guidance for Protected Areas designations*
  - *Guidelines on wilderness in Natura 2000*
  - *Documenti tecnici sulla gestione dei siti Natura 2000*
  - *Servizi ecosistemici ed infrastrutture verdi*
  - *Links between the Water Framework Directive and Nature Directives*

3) **Legislative Decree No. 4 rearranging the national legislation on fisheries and aquaculture.**<sup>251</sup>

4) **Legislative Decree 17 October 2016, n. 201. Implementation of Directive 2014/89 / EU establishing a framework for maritime spatial planning**<sup>252</sup>.

This decree establishes a framework for the planning of maritime space in order to promote the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources, ensuring the protection of the marine and coastal environments through the application of the ecosystem approach, taking into account land-sea interactions and the strengthening of cross-border cooperation. It applies to the marine waters of the region of the Mediterranean Sea. It does not apply to coastal areas waters that fall within the urban and rural plans nor to activities whose goal is the defense or national security, nor to the urban and rural planning. The maritime spatial planning intends to contribute to the sustainable development of the energy sectors of the sea, maritime transport, fishing and aquaculture, for the conservation, protection and improvement of the environment, including impact resilience of climate change, promoting and guaranteeing the coexistence of relevant activities and relevant uses.

With regard to MSP (and MPAs), the following legislative acts are relevant:

- *Law No. 91- Institution of an exclusive economic zone beyond the external limit of the territorial sea, 14. June 2021.*
- *Decree of the President of the Republic, 27 October 2011, n. 209, with regulatory norms for the establishment of Ecological Protection Zones of North-Western Mediterranean, of Ligurian Sea and Tyrrhenian Sea.*
- *Legislative Decree 13 October 2010, n. 190, implementing the Directive 2008/56/CE establishing a framework for communitarian action in the field of politics for the marine environment (Marine Strategy Framework Directive);*
- *Law 8 February 2006, n. 61, establishing ecological protection zones beyond the external limit of territorial sea;*
- *Legislative decree 3 April 2006, n.152, with norms for the environmental sector;*
- *Law 2 December 1994, n. 689, ratifying and executing the United Nations Convention on the Law of the Sea - Montego Bay 10 December 1982, and the agreement on the application of part XI of the same Convention, included Annexes - New York 29 July 1994;*
- *Law 6 December 1991, n. 394, framework law on protected areas;*
- *Law 25 January 1979, n. 30, ratifying the Convention on the safeguard of Mediterranean Sea from Pollution, including two protocols and their Annexes,*

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<sup>251</sup> Gazzetta Ufficiale della Repubblica Italiana No. 26 of 1 February 2012. **For a full list of national fishery legislation see:** <https://www.fao.org/faolex/country-profiles/general-profile/see-more/en/?iso3=ITA&countryname=Italy&area=Fisheries&link=aHR0cDovL2Zhb2xleC5mYW8ub3JnL2NnaS1iaW4veG1sLmV4ZT9kYXRhYmFzZT1mYW9sZXgmYW1wO3NIYXJjaF90eXBIPXF1ZXJ5JmFtcDt0YWJsZT1hbGwmYW1wO3F1ZXJ5PUFSRUE6RkkqQU5EIEITTzpJVEEgQU5EIFQ6QUxMIEFORCBSRVBFQUxFRDpOIEFORCBTVVBFUIM6TiBOT1QgUk86WSBBTkQgWjooTCBSIE0pIE5PVCBaOIAmYW1wO3NvcnRfbmFtZT1Ac3ByZkZJJmFtcDtsYW5nPXhtbGYmYW1wO2ZvcmlhdF9uYW1lPUBUYU0hPUIQmYW1wO3BhZ2VfaGVhZGVyPUVYTUxIJmFtcDtwYWdlX2Zvb3Rlcj1FWE1MRg==>

<sup>252</sup> Decreto Legislativo 17 ottobre 2016, n. 201 . Attuazione della direttiva 2014/89/UE che istituisce un quadro per la pianificazione dello spazio marittimo, 17. 10.2016, No. 201

*adopted in Barcelona on 16 February 1976.*

- *Decree of the Ministry of Shipping and Ministry of Cultural Heritage and the Environment, 12 July 1989, with norms to protect marine areas of historical, artistic and archaeological interest.*
- *Decree of the President of the Republic 26 April 1977, n. 816, with operative norms to apply the Law 8 December 1961, n. 1658, authorizing adherence to and execution of the convention on the territorial sea and the contiguous zone, adopted in Genève on 29 April 1958.*
- **D.L. Prestigiacomio (22/06/2012 n° 83) which**  
*“... for the protection of the environment and the ecosystem ... prohibit prospecting, exploration as well as the cultivation of liquid and gas hydrocarbons at sea ... in the sea areas located within 12 miles from the coastlines along the entire national coastal perimeter and from the outer perimeter of the above-mentioned protected marine and coastal areas ...” as revised by the new D.L. 18/11/2022, no. 176 'Urgent support measures in the energy sector and public finance'.*

## **5) Proposal of the Italian Maritime Space Plan**

Maritime Space Plan for the Maritime Area "Adriatic" drafted in accordance with Legislative Decree 201/2016, the National Guidelines (DPCM 01/12/2017) and the operational methodology that the Technical Committee has subsequently developed and adopted. The Plan has been drawn up in coordination with the Plans for the "Central Ionian-Mediterranean" and "Western Tyrrhenian-Mediterranean" Maritime Areas.

The Plan is referable to the three sub-regions of the Marine Strategy (art. 4 of Directive 2008/56/EU): - The western Mediterranean Sea; - The Adriatic Sea; - The Ionian Sea and the central Mediterranean Sea. Furthermore, it is linked to the Marine Strategy regarding the identification of indicators and the acquisition of environmental data. The Plan will have a duration of 10 years, with the possibility of a mid-term review, or if deemed necessary following the monitoring of the implementation of the Plan or events that require revision<sup>253</sup>.

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<sup>253</sup> “The Plan has, therefore, the nature of a "first-level instrument, i.e., superordinate to the further and prevalent acts of planning of the management of the "marine territory", whose content must necessarily flow into it" (Council of State, section IV, 2 March 2020, no. 1486), and falls into the type of "super-plans" (together with the Basin Plan, as per art. 65 of legislative decree no. 152/2006, and the Landscape Plan, as per art. 145 of legislative decree no. 42/2004). Specifically, the relationship between the Maritime Spatial Management Plan and plans and programs concerning land-based activities, the scope of application of the Maritime Spatial Management Plan is different, but the Maritime Spatial Management Plan must take this into account and may affect it in relation to those aspects which may have an effect on the marine space, i.e., in the presence of land-sea interactions. In particular, the national legislator clarifies that the scope of application of the Maritime Spatial Management Plan is different from that of the urban plan (to which the port master plan, approved after the entry into force of law no. 84/1994, can be assimilated): in these terms should be interpreted the provisions contained both in d.lgs. n. 201/2016 as well as in the relevant supplementary guidelines, which have the care to clarify that the planning of the maritime space does not apply to urban (and rural: the terminology used textually takes up the content of the Directive, which leaves the "urban and rural planning" of the Member State unaffected).” **Italian Maritime Spatial Plans "Adriatic" Maritime Area Summary August 2022**



The Italian MSP at the time of drafting this study is in the phase of public consultation<sup>254</sup> including the cross – border part. The Plan defines the priority planning units<sup>255</sup> for environmental protection and natural resources in relation to EBSA<sup>256</sup>.

<sup>254</sup> <https://www.sid.mit.gov.it/documenti-piano>  
<sup>255</sup> <https://www.sid.mit.gov.it/documenti-piano>

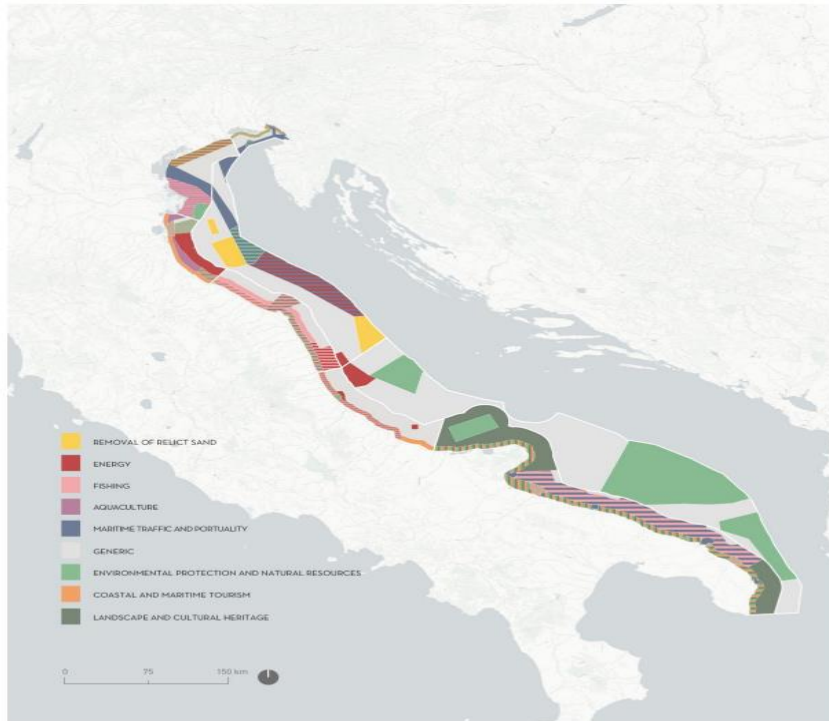


Figure 16 Planning Unit of the Maritime Area "Adriatic".

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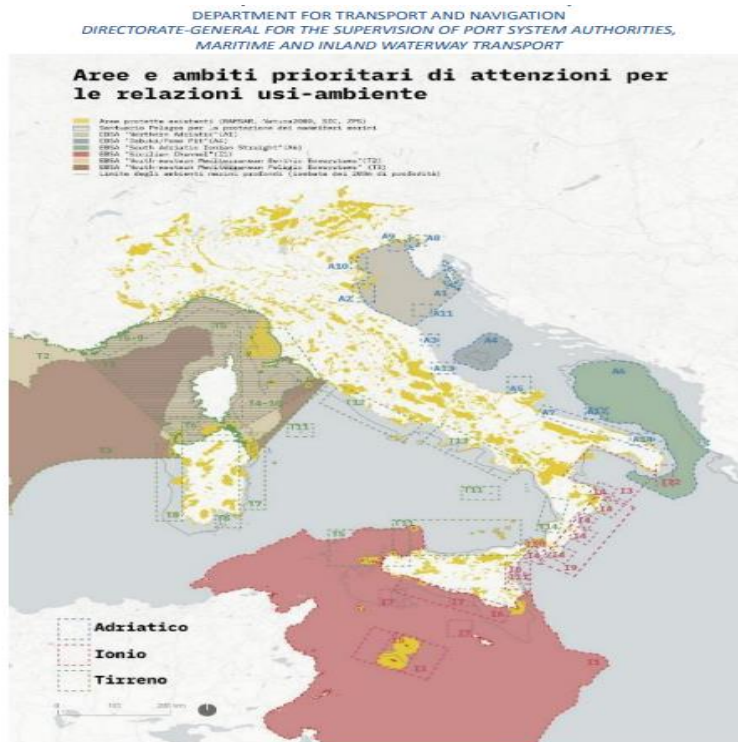
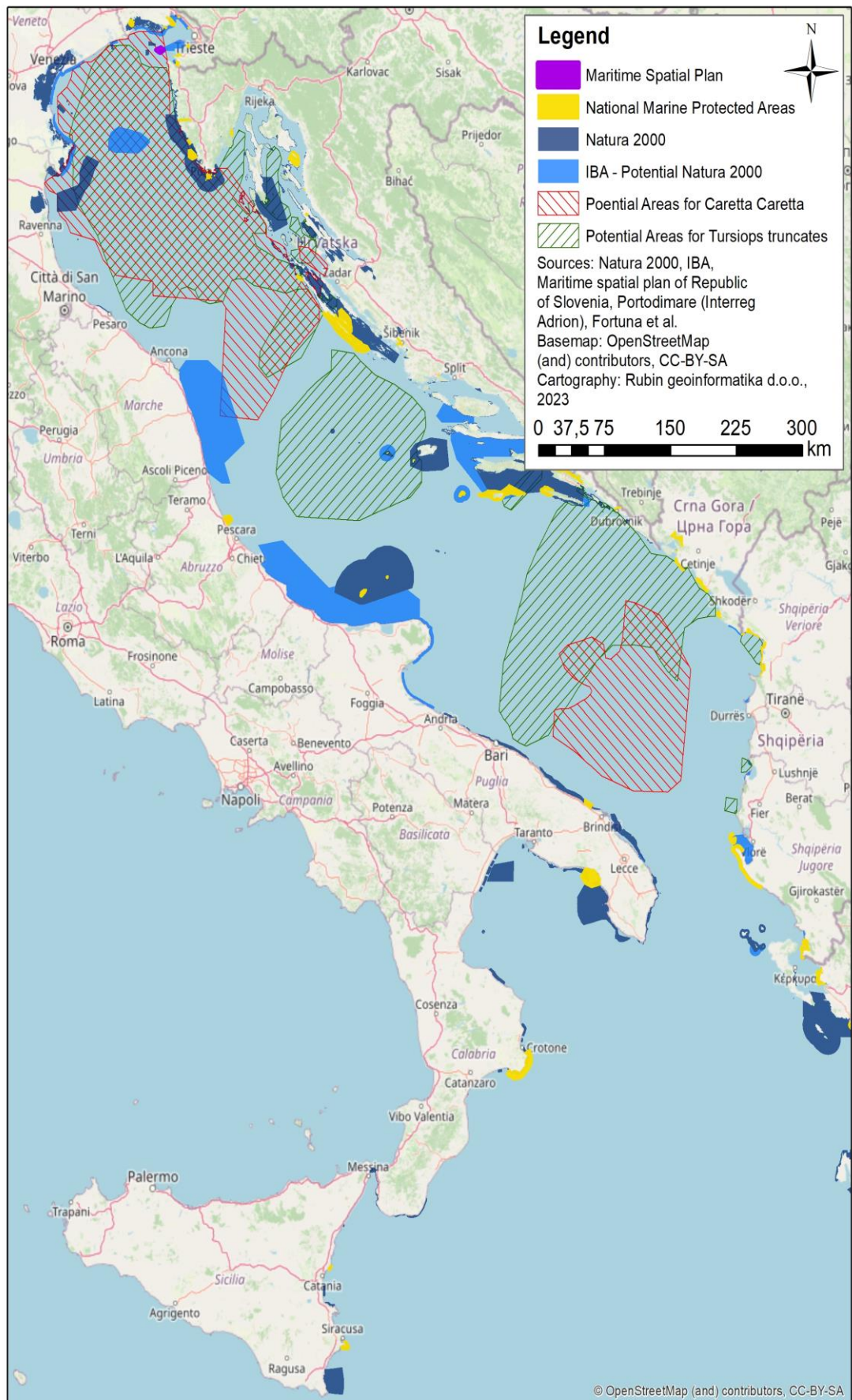


Figure 13 Priority areas and areas of attention for the use-environment relations. The areas are identified through alphanumeric codes, A= Adriatic Maritime Area, I= Ionian and Central Mediterranean Maritime Area, T= Tyrrhenian and Western Mediterranean Maritime Area; EBSA = Ecologically or Biologically Significant Marine Areas.

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### 2.3.3. Existing and potential MPAs



## 2.4. CROATIA

### 2.4.1. Legislation

#### 1) The Nature Protection Act of 24 June 2013<sup>257</sup>

The Law recognizes protection to nature, intended as “the overall biological, landscape and geological diversity” (Art. 3)<sup>258</sup>. Art. 6 provides that nature protection shall be implemented, *inter alia*, through “*designation of protected parts of nature*” and by “*establishing a system for management of nature and protected parts of nature*”. Art. 111 identifies nine categories of protected areas, namely: strict reserve, national park, special reserve, nature reserve (classified as of national importance) and regional park, nature monument, significant landscape, park forest and park architecture monument (classified as of local importance)<sup>259</sup>. Arts. 112 and following regulate each category of protected area. **Of relevance to this study is Art. 122, which explicitly provides that “protected areas may be connected across borders with protected areas of another country”.**

Arts. 123 and following regulate the designation of a protected area. Art. 126, in particular, establishes that the relevant designation shall indicate: the name and category of the protected area, a description of the borders of the protected area, a cartographic representation of the protected area in analogue and digital format, which constitutes an integral part of the act on designation, an indication of the scale of the cartographic representation, the special geodetic background document for entry of the legal regime into the cadaster and the land registry. The act on the designation of the protected area is published in the official gazette (Art. 127) or in the official journal of the regional self-government unit and in the official gazette, depending whether the area is of national or local importance.

#### 1) Law on marine fisheries.<sup>260</sup>

This Law regulates the effective implementation of the Common Fisheries Policy of the European Union, and closely defines and determines the relations, tasks and powers of various competent bodies; monitoring, additional control, and inspection matters; and rules governing the reporting to the European Commission. The Law also establishes, at national level, the objectives of the fisheries policy, management and protection of the marine biological resources, concrete fishing provisions, various data collection issues, participation in the work of international organizations in fisheries and/or international projects contributing to the achievement of fishery policy objectives at national level (all relevant to marine fisheries on the territory of the Republic of Croatia).<sup>261</sup>

#### 2) Physical Planning Act<sup>262</sup>.

The amendment to this Act (Official Gazette 65/17) came into force in July 2017, providing the complete transposition of the EU MSP Directive into the legislation of the Republic of Croatia. The provisions of that amendments

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<sup>257</sup> Text available at <http://extwprlegs1.fao.org/docs/pdf/cro143039.pdf>.

<sup>258</sup> Unofficial translation from Croatian.

<sup>259</sup> MPAs, can be: National Park, Natural Monument, Nature Park, Significant Landscape, Special Reserve

<sup>260</sup> Zakon o morskom ribarstvu, Narodne novine, 62/2017 as amm. For a list of secondary legislation adopted on the basis of this act, including with regard FRA, see <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC169841>.

<sup>261</sup> Source: FAOLEX Database, at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC169841>.

<sup>262</sup> Official Gazette 153/13, 65/17, 114/18, 39/19, 98/19

It is of particular importance, that the amendments to the Physical Planning Act from 2017, apart from enabling the implementation of Directive 2014/89/EU within the Croatian legal system, provided for an obligation of spatial planning in the at that time protected ecological-fishing zone (now EEZ) and on the continental shelf of the Republic of Croatia. In that regard, the amendments to the Physical Planning Act from 2017 included a new separate title, “Marine Area Planning,” with new articles 49a to 49f. As emphasized, these provisions prescribe new obligations for Croatia, namely adopting new categories of plans that did not exist until then including the Spatial Plan of the Ecological and Fishery Protection Zone (now EEZ) and the Spatial Plan of the Continental Shelf of the Republic of Croatia. Article 49a provides in that regard that the marine area is planned by the National Spatial Development Plan, the Spatial Plan of the Ecological and Fishery Protection Zone and the Spatial Plan of the Continental Shelf, and through spatial plans of national parks and nature parks covering the sea area, spatial plans of counties covering the sea area and spatial plans of cities and municipalities.<sup>263</sup>

#### 2.4.2. Implementation

**All protected areas shall be recorded in a Register of protected areas (Art. 129), which is kept by the Ministry of Environment and Energy, and all relevant data shall be public. Protected areas shall be managed by public institutions (Art. 130), which “shall carry out activities of protection, maintenance and promotion of the protected area with the aim of protecting and conserving the original state of nature, ensuring the unimpeded natural processes and sustainable use of natural resources, monitoring implementation of nature protection requirements and measures in the territory they manage, and participating in collection of data for the purpose of monitoring the state of conservation of nature” (Art. 131).** A specific provision refers to the funds of the operation of public institutions, which shall be ensured from State budget and budgets of local and regional self-government units, income from the use of protected areas, income from fees, and other sources established by the law and special regulations (Art. 132).

Specific provisions (Arts. 137-150) regulate the implementation of protective measures in the areas, by providing rules concerning the management plan, prohibited actions, forest protection program, military exercises<sup>264</sup>, general acts on protection and conservation of a protected area, projects, actions and exploration, visiting, rights of the owners to remuneration, and care for protected areas. Further, general provisions of the Croatian law regulate access to information and public participation (Arts. 198-200), financing (Art. 204), supervision in protected areas (Arts. 206-209) and inspectional supervision (Arts. 210-225). **In this regard, with particular reference to the marine and coastal environment, “authorized persons with the Coast Guard shall carry out inspectional supervision in the area of the ecological and fisheries protection zone or the exclusive economic zone of Croatia in accordance with a special regulation” (Art. 211, para. 2).** Authorized persons with the Coast Guard may carry out inspectional supervision in the internal waters and territorial sea of Croatia, if there exists reasonable doubt with regard to violation of the Act and connected regulations and civil servants with the inspectional service of

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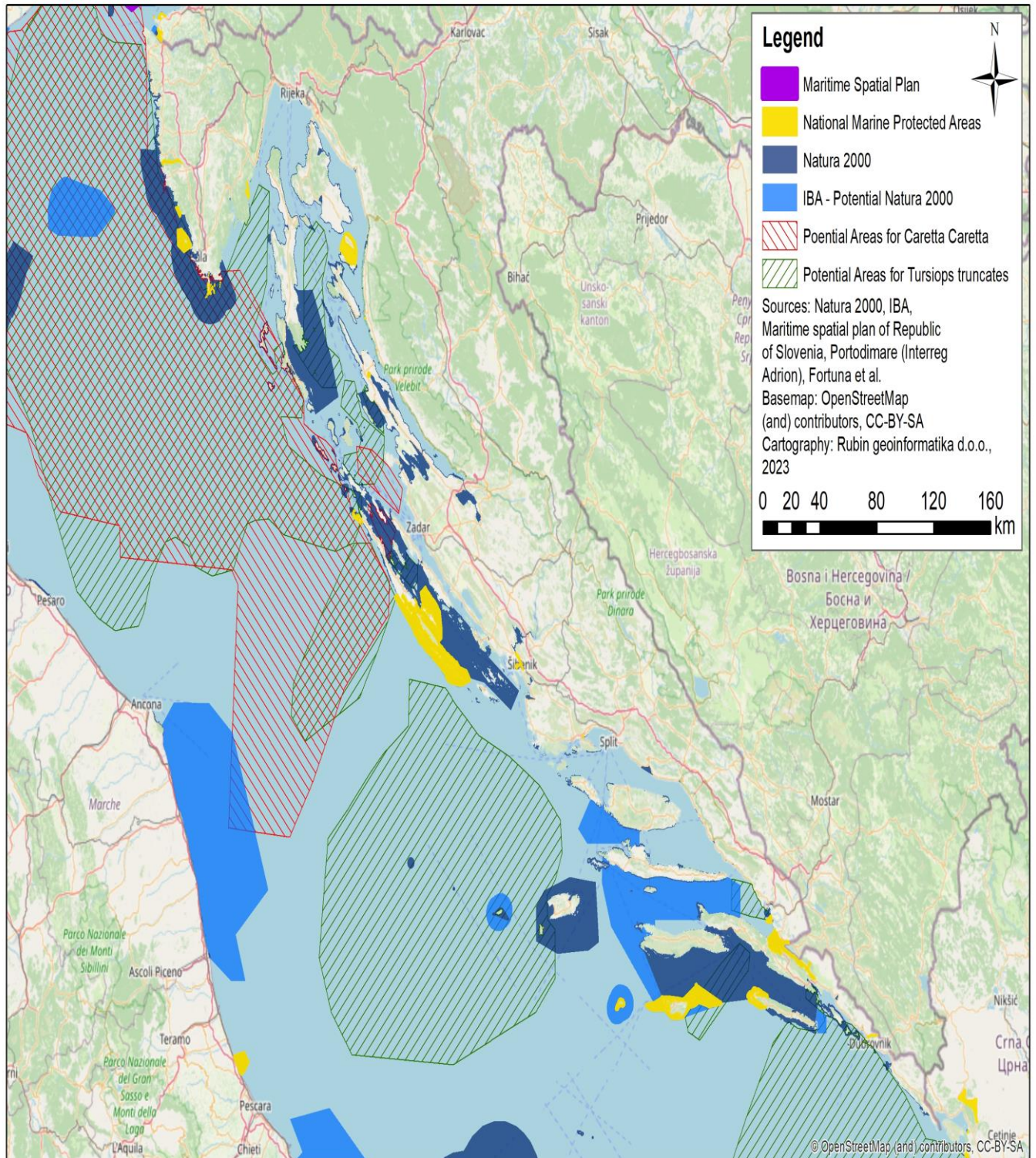
<sup>263</sup> Source: Kovačić et al, Marine Spatial planning in Croatia – legal and technical aspects, Scientific Journal of Maritime Research 36 (2022) 14-21 © Faculty of Maritime Studies Rijeka, 2022

<sup>264</sup> “(1) Performance of military exercises and other activities for defence purposes which could impair the features for which it was designated as such shall be prohibited in the protected area. (2) By way of derogation from paragraph 1 of this Article, performance of military exercises and other activities for defence purposes shall be allowed in areas in which at the moment of designation special (military) purpose was in place, in the scope and in a manner that does not endanger protected natural values” (Art. 141).



the Ministry are not present or are unable to intervene (Art. 211, para. 3). Part XIV of the Act lists the amounts of fines established for different types of infringements of the Act.<sup>265</sup>

### 2.4.3. Existing and potential MPAs



<sup>265</sup> Source: The legal Basis for the Establishment and Further Development of Marine protected Areas in EUSAIR with Particular Emphasis on Transboundary Marine Protected Areas, p. 128.

## 2.5. SLOVENIA

### 2.5.1. Legal framework

#### 1) **The Nature Conservation Act of 1999 as amended several times**<sup>266</sup>

The law prescribes biodiversity conservation measures and a system for the protection of valuable natural features. The general goals of this law have been implemented through specific decrees<sup>267</sup>. For what concerns the scope of this plan noteworthy are **the Decree on Ecologically Important Areas of 29 April 2004** (as amended on 19 April 2013)<sup>268</sup>, with an Annex containing the number and name of the relevant areas, which forms an integral part of the instrument; and the **Decree on Special Protection Areas (Natura 2000)** of 29 April 2004 (also amended on 19 April 2013)<sup>269</sup>.

#### 2) **Marine Fisheries Act (ZMR-2)**<sup>270</sup>.

This Act provides for the management, conservation and exploitation of fishery resources and transposes the contents of the Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. The stated purpose of this Act is to implement European Community policy in the field of fisheries. Fish is declared to be a natural resource under special national protection in accordance with national and Community rules. The Act regulates commercial fishing, non-commercial fishing and recreational fishing which may be carried out after obtaining valid fishing licenses by the Minister responsible for marine fishing. The text further specifies prohibitions and requirements concerning commercial and non-commercial fishing, and recreational fishing. The Minister responsible for marine fishing in agreement with the Minister responsible for waters and nature conservation shall determine marine organisms' breeding and harvesting areas. The Act establishes two fishing reserves where commercial and recreational fishing shall be forbidden.<sup>271</sup>

### 2.5.2. Implementation

**The MSP Directive** is implemented in Slovenia through the framework of the **Spatial Planning Act** adopted in 2017 (OG no. 61/17 – ZUreP-2.) Slovenia adopted its national maritime spatial plan in 2020. "**Decree on Maritime Spatial Plan Slovenia**«, «<sup>272</sup>

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<sup>266</sup> The latest amendments were affected in 2020. A consolidated version of the original act and its subsequent amendments is available at <http://extwprlegs1.fao.org/docs/pdf/slv61725.pdf>.

<sup>267</sup> According to the Law the legal forms of marine protected areas are:

- National Monument
- Landscape Park
- Nature Reserve

<sup>268</sup> Original text of the decree available at <http://extwprlegs1.fao.org/docs/html/slv113406.htm>. The amendments of 2013 are available at <http://extwprlegs1.fao.org/docs/html/slv130560.htm>.

<sup>269</sup> Original text of the decree available at <http://extwprlegs1.fao.org/docs/html/slv113405.htm>. The amendments of 2013 are available at <http://extwprlegs1.fao.org/docs/html/slv130559.htm>.

<sup>270</sup> OG RS 115/06 as amm. Text available at: <https://faolex.fao.org/docs/pdf/slv078035.pdf>

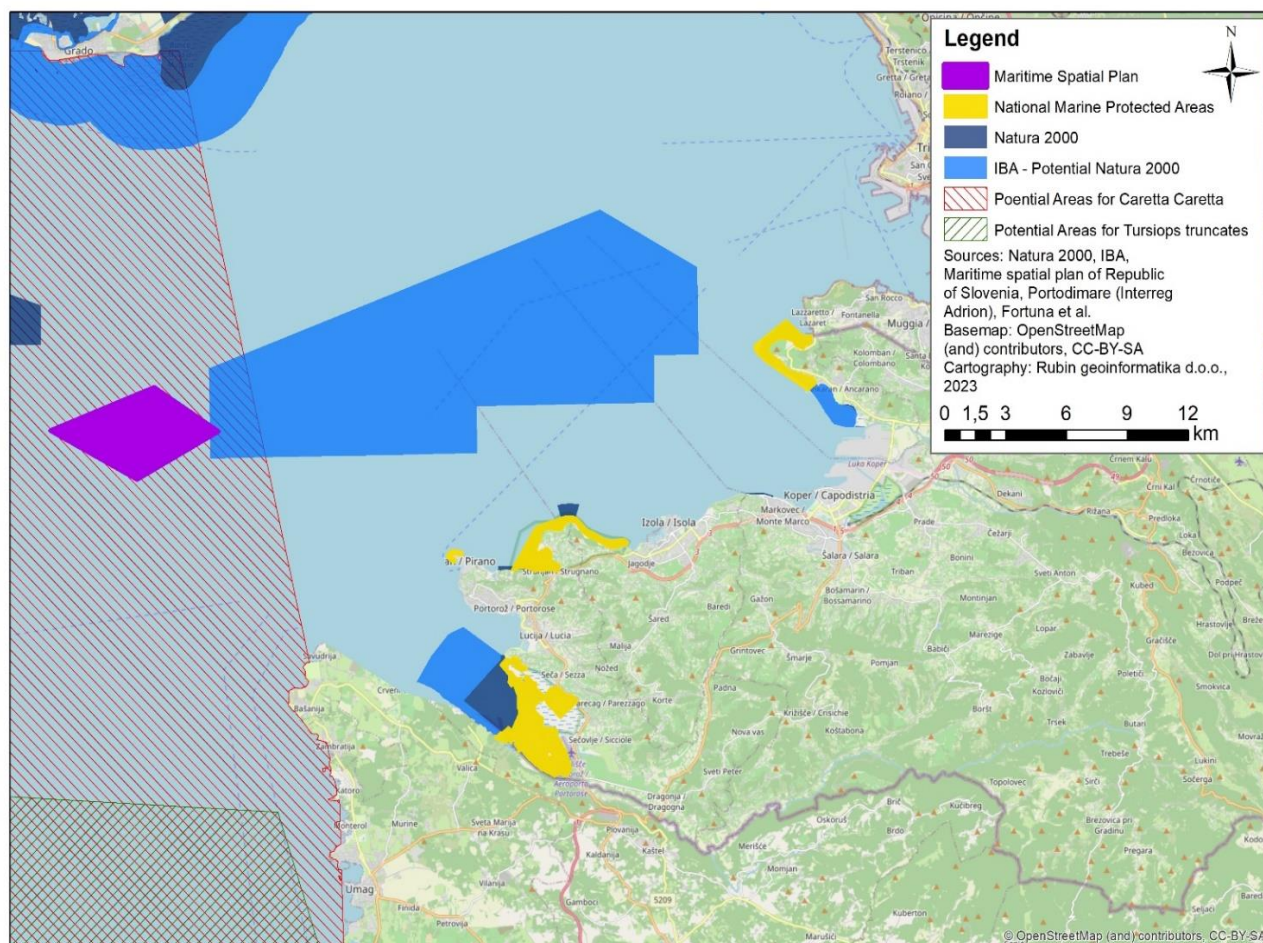
<sup>271</sup> Source FAOLEX Database, <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC078035>

<sup>272</sup> OG RS 116/21, text available at: OG RS 116/21.



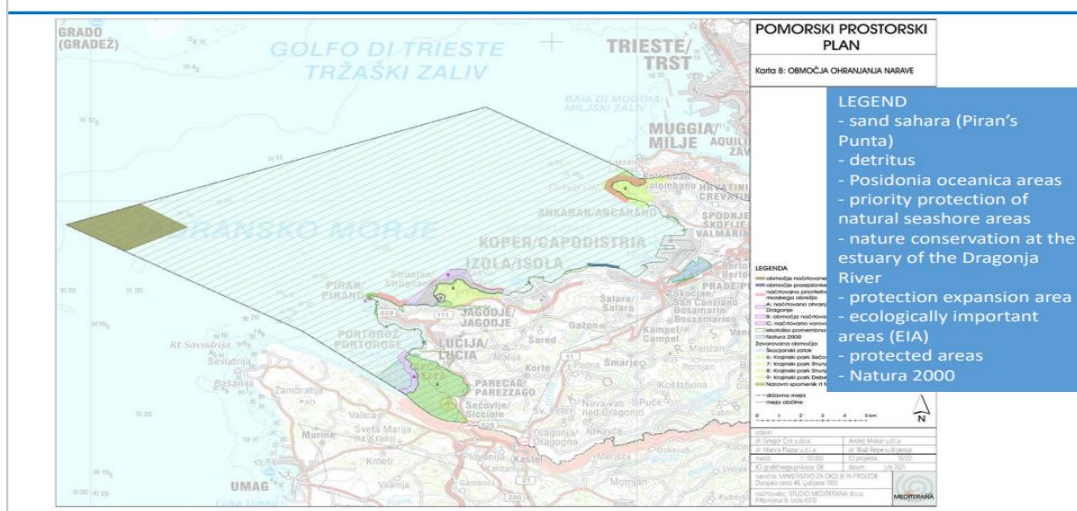
Slovenian Maritime spatial Plan defines the areas of the sea where the new MPAs are planned and the enlargement of existing MPAs is also defined in the MSP<sup>273</sup>. Slovenian MSP is defined as a strategic territorial plan. For the implementation of the planned regimes on the sea further normative activity is necessary. The adoption of the MSP by itself does not designate any MPAs, however it does prohibit any other (conflicting) activity on the site.

### 2.5.3. Existing and potential MPAs



Map 8: NATURE CONSERVATION AREAS

- general presentation of protection regimes and restrictions
- protection expansion area



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### 3. TABLE OF NATIONAL LEGISLATION IN EUSAIR

STATE	NATURE CONSERVATION (SOME RELEVANT LEGISLATION- LIST NOT EXHAUSTIVE)	FISHERIES (SOME RELEVANT LEGISLATION- LIST NOT EXHAUSTIVE)	MSP (SOME RELEVANT LEGISLATION- LIST NOT EXHAUSTIVE)
<b>ALBANIA</b>	The Protected Areas Act No. 81 of 2017	Decision of the Council of Ministers (DCM) No. 701 of 12.10.2016 “on the Approval of the National Fishery Strategy 2016-2021; - Law on Fisheries No. 64/2012; - Regulation No. 1 of 7.3.2014 of the Ministry of Agriculture, Rural Development and Water Administration “on the Implementation of Law No. 64 of 31.5.2012 On Fisheries; - DCM No. 402 of 8.5.2013 “concerning Management Measures for the Sustainable Exploitation of Marine Fishery Resources”.	Albania is a State Party to the ICZM Protocol to the Barcelona Convention since 2010.
<b>BOSNIA AND HERZEGOVINA</b>	The Nature Protection Act of 2013 (Federation of Bosnia and Herzegovina)	Law on Fisheries of the Hercegovnačko-Neretvanska županija-canton (2014)	Bosnia and Herzegovina has not ratified the ICZM Protocol and has not adopted yet specific legislation related to MSP, neither at the national, federal or cantonal level. See, however, in that regard
<b>CROATIA</b>	The Nature Protection Act of 24 June 2013	Law on marine fisheries. (2017)	Physical Planning Act (2013)
<b>GREECE</b>	The Law for the Management Agencies of Protected Areas in Greece (No. 4519 of 8 February 2018)	- Legislative Decree No. 420 introducing the Fisheries Code. (1970); -Law No. 1740 on the development and protection of coral formations, aquaculture and fish breeding areas (1987)	Law No. 4546 transposing into Greek legislation the EU Directive 2014/89 establishing a framework for maritime spatial planning and other provisions. (2018)
<b>ITALY</b>	- The Framework Law on Protected Areas	Legislative Decree No. 4 rearranging the	Legislative Decree 17 October 2016, n. 201.

	(No. 394 of 6 December 1991);  -National Biodiversity Strategy 2030.	national legislation on fisheries and aquaculture	Implementation of Directive 2014/89 / EU establishing a framework for maritime spatial planning.
<b>MONTENEGRO</b>	-The Nature Protection Act of 2016, -Decision on declaring the protected area of the nature park "Platamuni (2021); - <u>Decision declaring the protected area of Nature Park "Stari Ulcinj" (2021)</u>	-Law on marine fisheries and mariculture.(2009); - Law amending the Law on marine fisheries and mariculture. (2015); -	Law on spatial planning and construction of facilities (201/)
<b>SLOVENIA</b>	The Nature Conservation Act of 1999	Marine Fisheries Act (2006)	Spatial Planning Act (2017);  Decree on Maritime Spatial Plan Slovenia

## CHAPTER II – TRANSBOUNDARY PROTECTION OF MARINE AREAS

The analysis<sup>274</sup> of the legal status of some already identified or potential (transboundary) marine areas where it would be possible to establish a form of cross-border cooperation in the field of protection of the marine environment. The first part is focused on the available or potential (transboundary) legal bases for the establishment of marine protected areas, namely:

- Ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats (EBSAs) under the Convention on Biological Diversity (CBD);
- Specially Protected Areas of Mediterranean Importance (SPAMIs) under the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention);
- Marine Protected Areas for Cetaceans under the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS MPAs);
- Fishery Restricted Areas (FRAs) under the Agreement for the establishment of the General Fisheries Commission for the Mediterranean (GFCM); and
- Particularly Sensitive Sea Areas (PSSAs) within the framework of the International Maritime Organization (IMO).

In the second part, the analysis will include an identification of the necessary steps in the form of a manual for designating legal protection based on the mentioned (cross-border) legal grounds. Some observations with regard to the forms of management and control within discussed areas will be presented at the very end.

### **1. General remarks with regard to the jurisdictional status of the Adriatic and Ionian Seas as part of the wider Mediterranean Sea<sup>275</sup>**

It should be noted that once all Mediterranean States, including those bordering the Adriatic and Ionian Seas, proclaim their exclusive economic zones (EEZs), the high seas and the regime based on Part VII of the United Nations Convention on the Law of the Sea (UNCLOS) will no longer exist in the Mediterranean region. However, not all States bordering the Adriatic or Ionian Seas have declared an EEZ or implemented relevant legislation, resulting in an evolving nature and extent of coastal zones in these seas.

Croatia declared its exclusive economic zone in the Adriatic Sea on 5 February 2021, replacing previous decisions regarding an ecological and fishery protection zone. The current outer limit of Croatia's EEZ follows the delimitation line established under the 1968 Agreement between Italy and the former Yugoslavia, as well as the provisional delimitation line defined by the 2002 Protocol between Croatia and the former Yugoslavia (now Montenegro), pending specific agreements.

Italy has passed Law No. 91 of 14 June 2021 for the establishment of an exclusive economic zone, which will be implemented through a subsequent government decree. The exact outer limits of

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<sup>274</sup> The analysis is partially based and takes into account, as a starting point, the findings of the EUSAIR study entitled *The Legal Basis for the Establishment and Further Development of Marine Protected Areas in the European Union Strategy for the Adriatic and Ionian Region (EUSAIR) with Particular Emphasis on Transboundary Marine Protected Areas* prepared by Mitja Grbec, Tullio Scovazzi and Ilaria Tani (hereinafter: EUSAIR study).

<sup>275</sup> EUSAIR study, p. 26. For a further discussion on the juridical status of the Adriatic and Ionian Seas see chapter 1 of the EUSAIR study.

Italy's zone will be determined through agreements with neighboring States. For now, the legal status of waters on the Italian side of the Adriatic and Ionian Seas consists of a 12-nautical-mile territorial sea followed by an area of high seas.

An Agreement on the delimitation of exclusive economic zones between Italy and Croatia was concluded on 24 May 2022, but it is not yet in force. This agreement establishes a boundary line for the exclusive economic zones based on the continental shelf boundary between the two parties, as defined by previous agreements. Once in force, it will serve as the boundary for both the continental shelf and the Croatian and future Italian exclusive economic zones.

Montenegro's legislation provides for the application of an exclusive economic zone, but a decision to declare such a zone has not been made yet.

Albania has not claimed an exclusive economic zone, and Greece has not declared one either, but it has expressed the intention to do so when deemed appropriate. The 2020 Agreement on the delimitation of future maritime zones between Greece and Italy aligns with this direction.

While progress is being made by several coastal States in establishing exclusive economic zones, it is worth noting that substantial areas beyond national jurisdiction (high seas) still exist in the Adriatic and Ionian Seas. Approximately 40% of the Mediterranean waters remain as high seas, falling outside the jurisdiction of coastal States.

In the context of establishing transboundary marine protected areas in the Adriatic and Ionian Seas, it is important to recognize that such areas can be established within the exclusive economic zone or sui generis zone of a specific coastal State, as well as on the high seas, always above the continental shelves of the coastal states.

## **2. Documentation and additional analysis of the legal status of all identified marine areas where it would be advisable to establish a form of cross-border protection**

Reference will be made in this section on the available or potential (transboundary) legal bases for the establishment of marine protected areas: EBSAs, SPAMIs, ACCOBAMS MPAs, FRAs, and PSSAs, as well as to actual or potential areas where forms of cross-border cooperation could be envisaged.

### **2.1.EBSAs<sup>276</sup>**

The EBSAs criteria (and EBSAs in general) can provide the interested States useful information on where marine protected areas could be established according to scientific evidence. They do not enter into the political and legal questions that are linked to the creation of marine protected areas. As stated in Decision X/29 of the CBD Conference of the Parties in 2012, the application of BSAs criteria is a scientific and technical process. Areas meeting the criteria may require enhanced conservation measures, including marine protected areas and impact assessments. It is the responsibility of States and competent intergovernmental organizations, in accordance with international law, including the United Nations Convention on the Law of the Sea, to identify ecologically or biologically significant areas and select appropriate conservation measures (para. 26).

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<sup>276</sup> See EUSAIR study, pp. 72- 73. For a further discussion see chapter 3.3 of the EUSAIR study.

In 2008, the Conference of the Parties adopted the CBD EBSA criteria, comprising factors such as uniqueness or rarity, importance for species' life history stages, significance for threatened species or habitats, vulnerability or fragility, biological productivity, biological diversity, and naturalness. The Conference also provided scientific guidance for establishing a representative network of marine protected areas, outlining network properties and components such as ecologically and biologically significant areas, representativity, connectivity, replicated ecological features, and adequate and viable sites. The development of such networks involves initial identification of significant areas, classification schemes, site selection through qualitative or quantitative techniques, and assessment of site adequacy and viability.

In 2012, Decision XI/17 of the CBD Conference of the Parties listed EBSAs in the Western South Pacific, Wider Caribbean and Western Mid-Atlantic, and Mediterranean regions. The Mediterranean region alone includes 80 EBSAs, including four in the Adriatic Sea (Northern and central Adriatic, Polygon 1, Polygon 2, and Central western Adriatic) and five in the Ionian Sea (Ionian, Polygon 6, Eastern Ionian Sea, Lophelia and Madrepora in Gulf of Taranto, and Lophelia reefs).

Decision XII/22 of the CBD Conference of the Parties in 2014 provided the outcomes of regional workshops on EBSAs. The Mediterranean workshop, held in Malaga in 2014, described 15 EBSAs, three of which are located in the Adriatic and Ionian Seas.

The workshop for the Mediterranean, held in Malaga in 2014, described 15 EBSAs, including three located in the Adriatic and Ionian Seas:

### **3) Northern Adriatic**

The area is roughly delimited by the 9-meter isobath, encompassing the area above the straight line linking Ancona (Conero) and the island of Ilovik. The area is located in the northern part of the North Adriatic Sea Basin, off the coasts of Italy, Slovenia, and Croatia, with an average depth of 35 meters, and is strongly influenced by the Po river “plume”. The area includes portions of internal and territorial waters of the three bordering States, part of the Croatian exclusive economic zone, and part of the high seas (future Italian exclusive economic zone).

### **4) Jabuka/Pomo Pit**

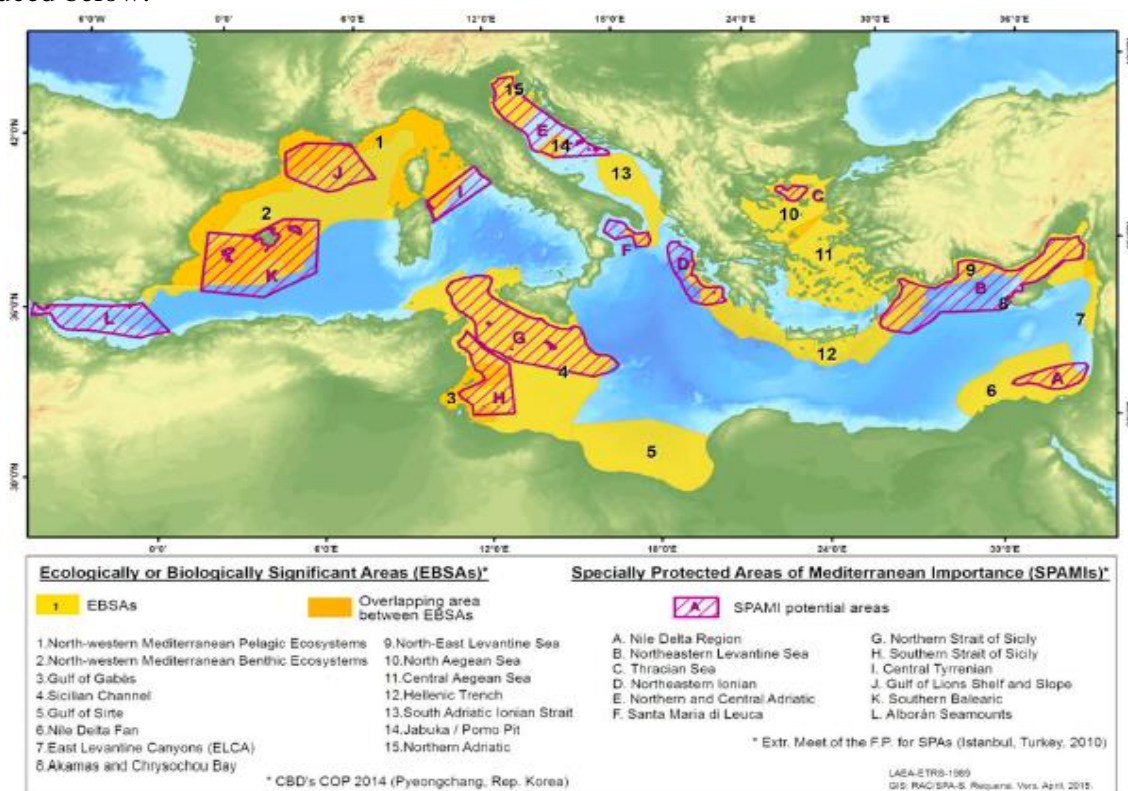
The area encompasses three distinct, adjacent depressions, with maximum depths of about 270 meters. The area extends 4.5 nautical miles from the 200-meter isobath. The area encompassing the adjacent depressions, the Jabuka (or Pomo) Pit is situated in the Middle Adriatic Sea and has a maximum depth of 200 – 260 meters. The Jabuka/Pomo pit EBSA seems to currently include territorial waters of Croatia and Italy, part of the Croatian exclusive economic zone, and part of the high seas (future Italian exclusive economic zone).

### **5) South Adriatic Ionian Strait**

The identified area is located in the center of the southern part of the Southern Adriatic basin and in the northern part of the Ionian Sea. It includes the deepest part of the Adriatic Sea on the western side and it encompasses a coastal area in Albania (Sazani Island and Karaburun peninsula). It also covers the slopes near Santa Maria di Leuca. The EBSA includes: the internal waters of Albania; the territorial waters of Croatia, Italy, Montenegro, and Albania; part of Croatian exclusive economic zone; and part of the high seas (future exclusive economic zones of Albania, Italy, and Montenegro) in the Adriatic and Ionian.

Document UNEP/CBD/COP/DEC/XII/22, of 17 October 2014, describes the EBSAs identified in

the Mediterranean, including in the Adriatic and Ionian seas.<sup>277</sup> The relevant figure and table are reproduced below.



Identified EBSA's s in the Adriatic and Ionian Seas (in yellow).

## LOCATION AND BRIEF DESCRIPTION OF IDENTIFIED EBSAs IN THE ADRIATIC AND IONIAN SEAS

### 1. NORTHERN ADRIATIC (CROATIA, ITALY, SLOVENIA)

**Location:** Part of the Northern Adriatic Basin, off the coasts of Croatia, Italy, and Slovenia. The area is roughly delimited by the 9-meter isobath, encompassing the area above the straight line linking Ancona (Conero) and the island of Ilovik. The area is located in the northern part of the North Adriatic Sea Basin, with an average depth of 35 meters and is strongly influenced by the Po river plume.

It includes mobile sandy bottoms, seagrass meadows, hard bottom associations and unique rocky outcrops called “trezze” and “tegnue”. The area is important for several threatened species. It hosts a population of the highest density of bottlenose dolphin (*Tursiops truncatus*) in the Mediterranean; it is one of the most important feeding grounds in the Mediterranean of the Loggerhead turtle (*Caretta caretta*); and it is a nursery area for a number of vulnerable species (blue shark (*Prionace glauca*), sandbar shark (*Carcharinus plumbeus*), anchovies (*Engraulis encrasicolus*), etc.). The area hosts a strong diversity of benthic and pelagic habitats due to an important gradient of environmental factors from its western portion to its eastern coasts. It is also one of the most productive areas in the Mediterranean Sea.

<sup>277</sup> Further details are provided in the appendix to annex IV of the Report of the Mediterranean Regional Workshop to Facilitate the Description of Ecologically or Biologically Significant Marine Areas (EBSAs), UNEP/CBD/EBSA/WS/2014/3/4.



## **2. JABUKA/POMO PIT (CROATIA, ITALY)**

**Location:** The area encompassing three distinct, adjacent depressions, with maximum depths of about 270 meters. The area extends 4.5 nautical miles from the 200-meter isobath. The area encompassing the adjacent depressions, the Jabuka (or Pomo) Pit is situated in the Middle Adriatic Sea and has a maximum depth of 200 - 260 meters.

It is a sensitive and critical spawning and nursery zone for important Adriatic demersal resources, especially European hake (*Merluccius merluccius*). This area hosts the largest populations of Norway lobster (*Nephrops norvegicus*) and is important especially for juveniles in the depths over 200 meters.

Based on available scientific data, it is a high-density area for the giant devil ray (*Mobula mobular*), an endemic species listed on Annex II SPA/BD protocol and listed as endangered on the IUCN Red List. The Pit could function as a favourable environment for some key life history stages of the porbeagle shark, and *Lamna nasus*, which is critically endangered (IUCN 2007), and both of which are listed on Annex II SPA/BD Protocol. Regarding benthic species, several types of corals can be found (*Scleractinia* and *Actiniaria*).

## **3. SOUTH ADRIATIC IONIAN STRAIGHT (ALBANIA CROATIA, ITALY, MONTENEGRO)**

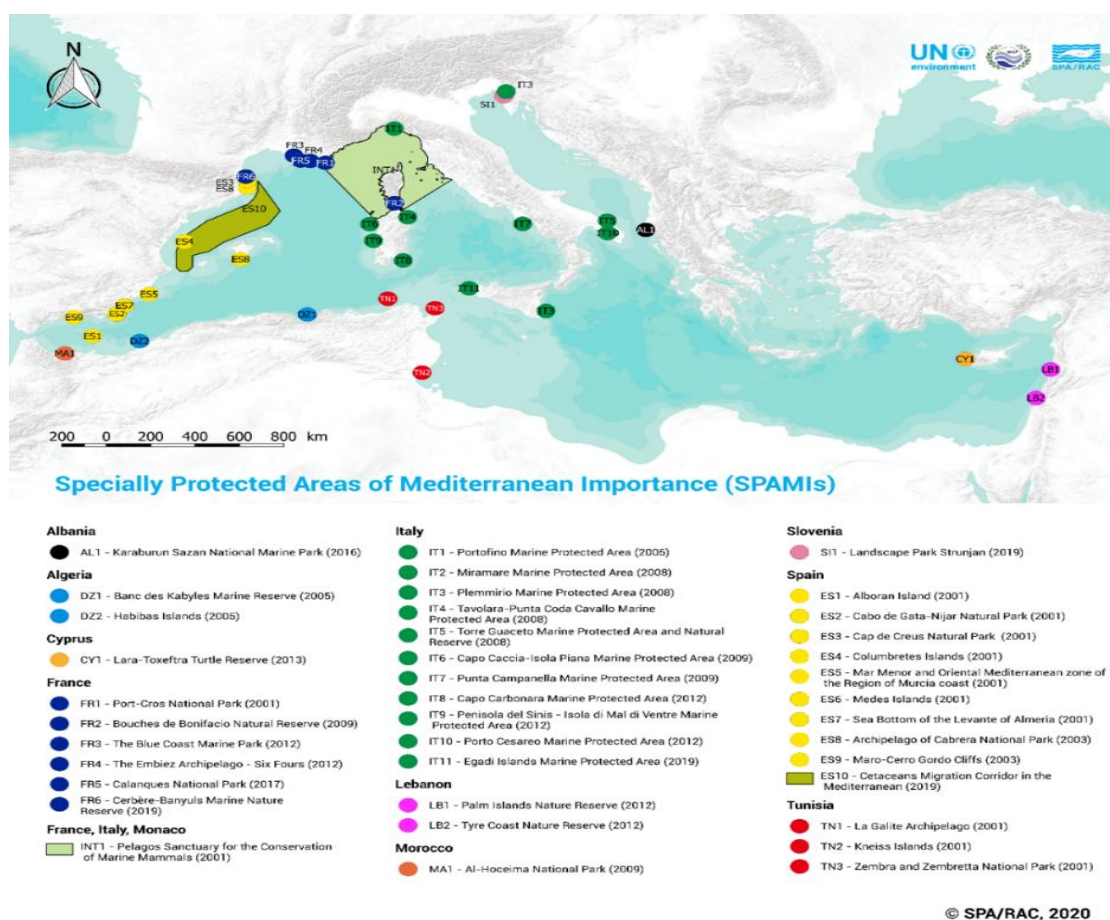
**Location:** The area is located in the centre of the southern part of the Southern Adriatic basin and in the northern part of the Ionian Sea. It includes the deepest part of the Adriatic Sea on the western side and it encompasses a coastal area in Albania (Sazani Island and Karaburuni peninsula). It also covers the slopes in near Santa Maria di Leuca.

It is characterized by steep slopes, high salinity and a maximum depth ranging between 200 meters to 1500 meters. Water exchange with the Mediterranean Sea takes place through the Otranto Channel, which has a sill that is 800-meter deep. This area contains important habitats for Cuvier's beaked whales (*Ziphius cavirostris*), an Annex II species of the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Areas Protocol) in the framework of Barcelona Convention, and significant densities of other megafauna such as the giant devil ray (*Mobula mobular*), striped dolphin (*Stenella coeruleoalba*), Mediterranean monk seal (*Monachus monachus*) and loggerhead turtle (*Caretta caretta*), all of which are listed in Annex II of the Areas Protocol. Benthos includes deep-sea cold-water coral communities and deep-sea sponge aggregations, representing important biodiversity reservoirs and contributing to the trophic recycling of organic matter. Tuna, swordfish, and sharks are also common in this area.

## 2.2.SPAMIs<sup>278</sup>

To date, 39 SPAMIs have been designated and included in the SPAMI List in accordance with the provisions of the Areas Protocol to the Barcelona Convention. Among these, the Pelagos Sanctuary, which aims to conserve marine mammals, has been jointly proposed by France, Italy, and Monaco. Additionally, the Cetacean Migration Corridor off the coasts of Spain also covers waters beyond the territorial sea.

Regarding the Adriatic and Ionian Seas, a total of 6 areas have been included in the SPAMI List. These areas, listed in chronological order, are the Miramare Marine Protected Area (Italy), Plemmirio Marine Protected Area (Italy), Torre Guaceto Marine Protected Area and Natural Reserve (Italy), Porto Cesareo Marine Protected Area (Italy), Karaburun Sazan National Marine Park (Albania), and Landscape Park Strunjan (Slovenia). A figure illustrating the existing SPAMIs within the Mediterranean can be found below.

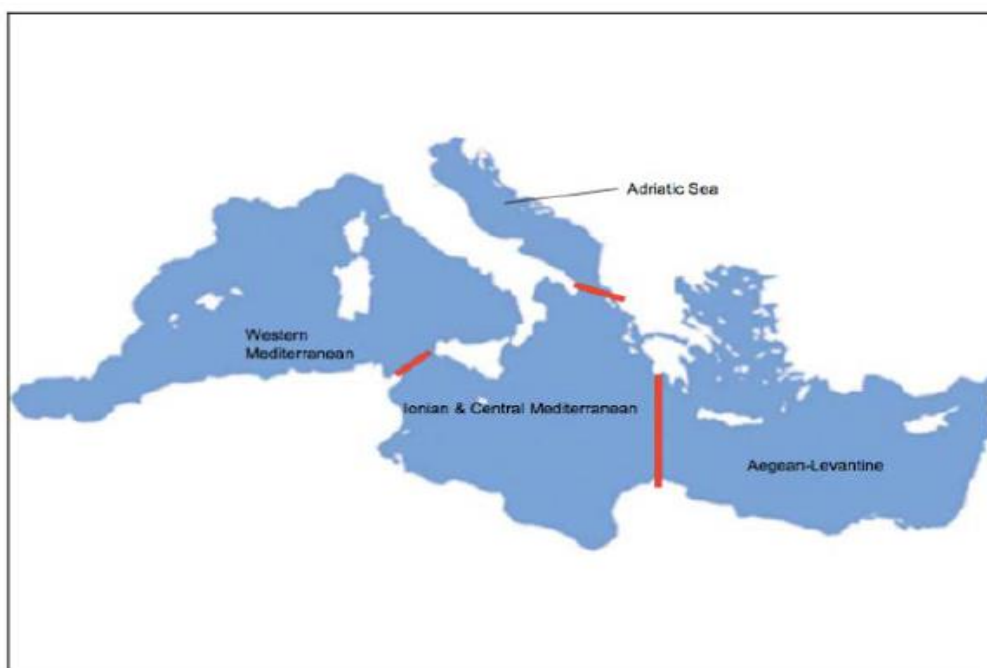


List of existing SPAMIs. Source: SPA/RAC.

Currently, no area in the central portion of the concerned region, which includes the coasts of Croatia, Bosnia and Herzegovina, Montenegro, Greece, and the eastern coast of Italy, has been designated and included in the SPAMI List for special protection. It is important to highlight that although the majority of Adriatic and Ionian States have ratified the amended 1995 version of the Areas Protocol, Bosnia and Herzegovina and Greece have yet to do so. The European Union ratified the Areas Protocol in 1999.

<sup>278</sup> EUSAIR study, pp. 106-111. For further discussion see chapter 5.1 of the EUSAIR study.

In terms of transboundary cooperation for potential new SPAMI listings, SPA/RAC has emphasized the importance of harmonized actions at the sub-regional level. As part of the proposed approach for the development of the Post-2020 SAP BIO coordinated by SPA/RAC, and for identifying related priorities, the Mediterranean Sea has been divided into four sub-regions agreed upon by the parties to the Barcelona Convention.<sup>279</sup> The sub-regions are: Western Mediterranean, Ionian and Central Mediterranean, Adriatic Sea, Aegean Sea – Levantine Sea.



Division of the Mediterranean Sea into sub-regions under the proposed approach for the elaboration of the Post-2020 SAP BIO.

In this categorization, the Adriatic Sea is classified as a separate sub-region, while the Ionian Sea has been grouped with the broader Central Mediterranean region, as depicted in the provided figure. This division appears to align with the relevant provisions of the Marine Strategy Framework Directive (MSFD).

Regarding the identification of potential SPAMIs, an exceptional meeting of the focal points of the Areas Protocol took place in Istanbul in 2010. The meeting, funded by the European Commission as part of a project, deliberated on the recognition of areas with conservation significance to facilitate the establishment of a more comprehensive ecological network of protected areas in the Mediterranean Sea. As a result, ten priority conservation areas located in the open seas, including the deep sea, were identified as potential candidates for inclusion in the SPAMI List.<sup>280</sup> Three of the areas proposed as SPAMIs are located in the Adriatic and Ionian Seas, namely:

#### **6) Northern and Central Adriatic**

This portion of the Adriatic has a high natural productivity that supports an extensive food web, including sea birds, loggerhead sea turtles, and several shark species. Considering the high level

<sup>279</sup> See Process for the Elaboration of the Post-2020 Strategic Action Programme for the Conservation of Biodiversity and Sustainable Management of Natural Resources in the Mediterranean Region (Post-2020 SAP BIO), Online Advisory Committee Meeting, 2 April 2020, Meeting Report, Annex V: Post-2020 SAP BIO Elaboration Guidance Document, p. 4.

<sup>280</sup> See Annex III to doc. UNEP(DEPI)/MED WG.348/5 of 4 June 2010.

of degradation of the North-western Adriatic Sea, establishing a protected area in this site would require significant marine restoration effort.

**7) Santa Maria di Leuca**

In addition to supporting a broad array of Mediterranean diversity, this northern extent of the Ionian has significant deep-sea coral habitats.

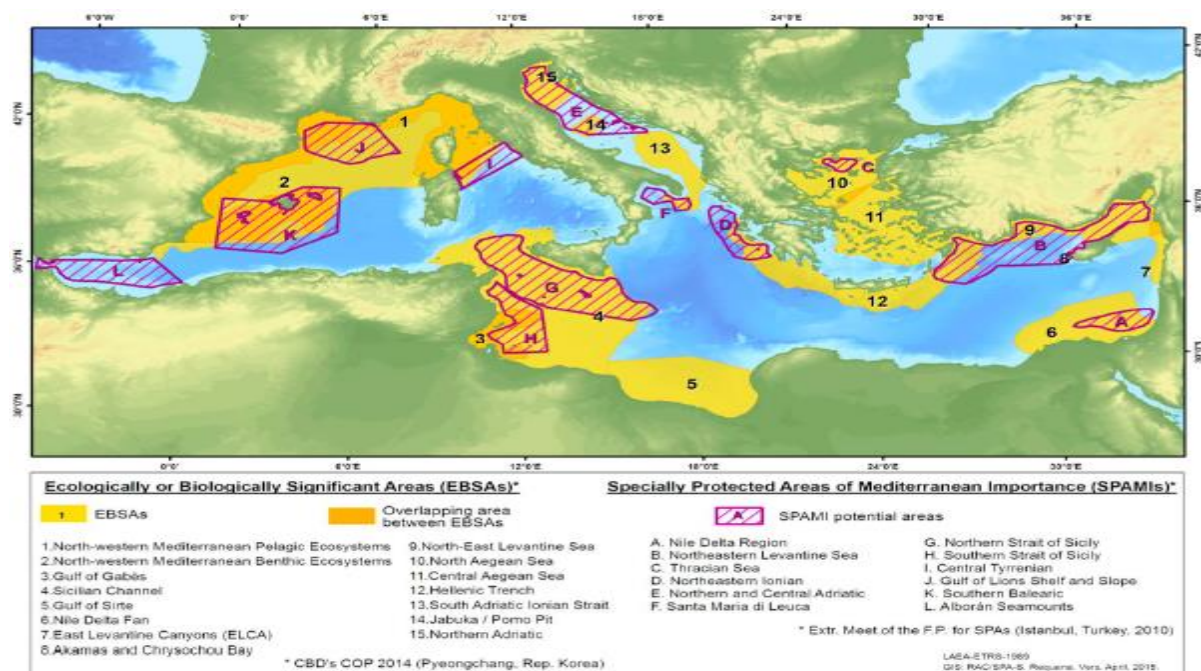
**8) Northeastern Ionian**

The northeastern Ionian Sea includes cetacean critical habitats and important nursery.



Identified locations of potential SPAMIs based on the 2010 study.

Identified EBSAs and their relation with potential SPAMIs in the Adriatic and Ionian Seas can be clearly discerned from the figure below:



EBSAs and their relation with potential SPAMIs in the Adriatic and Ionian Seas.



The three potential sites identified in the Adriatic and Ionian Seas as SPAMIs requires some further comments.

The proposed SPAMI for the **Northern and Central Adriatic** presents an opportunity for transboundary cooperation among the relevant coastal states, namely Croatia, Italy, and Slovenia. It is important to note that this potential SPAMI would not only cover the territorial waters of these states but also extend to the Croatian and future Italian exclusive economic zones in the Adriatic Sea, which fall under high seas jurisdiction.

Regarding the proposal for **Santa Maria di Leuca**, it appears to encompass waters under Italian jurisdiction, including those claimed by Italy as internal waters within the Gulf of Taranto, based on historical bay claims. Additionally, this proposed SPAMI would partially overlap with the South Adriatic Ionian Strait EBSA.

The proposal for the **Northeastern Ionian**, which predominantly covers Greek waters, poses challenges for implementation due to Greece's non-ratification of the Areas Protocol. However, it is noteworthy that although Greece has not ratified the protocol, it is part of the European Union, which has ratified the instrument, making it part of the EU legal framework. The table below provides a detailed description of the proposed SPAMIs based on the 2010 study.

**IDENTIFIED SPAMI's: UNEP(DEPI)/MED WG.348/5, 4 June 2010 (ANNEX 3)**

Adriatic Sea	<p>Northern and Central Adriatic: This portion of the Adriatic has a high natural productivity that supports an extensive food web, including sea birds, loggerhead sea turtles and several shark species. Considering the high level of degradation of the North-western Adriatic Sea, establishing a protected area in this site would require significant marine restoration effort.</p>	<p>Ecological value: Biological productivity Importance for life history Importance for threatened species</p>
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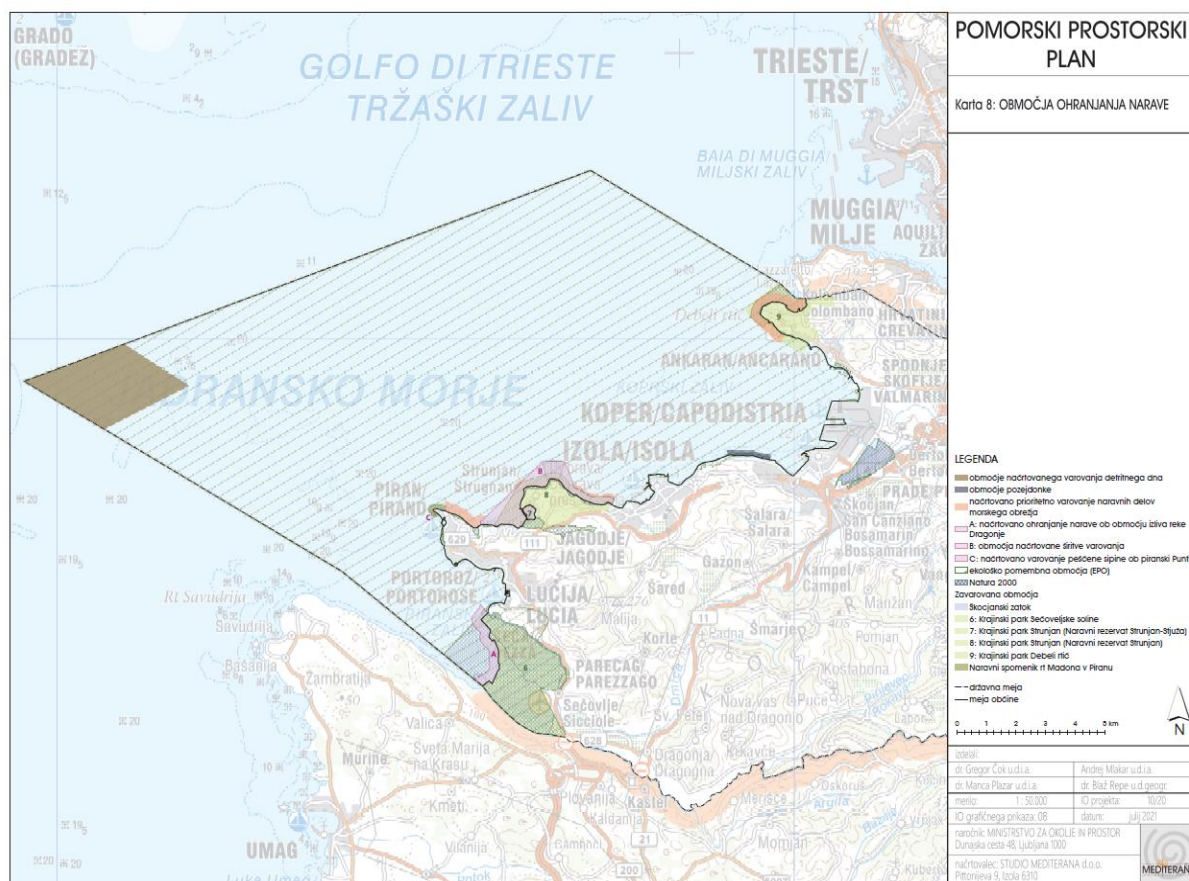
Ionian Sea	<p>Santa Maria di Leuca: In addition to supporting a broad array of Mediterranean diversity, this northern extent of the Ionian has significant deep sea coral habitats.</p>	<p>Ecological value: Fragility Naturalness Importance for life history Importance for threatened species</p>
	<p>Northeastern Ionian: The northeastern Ionian Sea includes cetacean critical habitats and important nursery areas for several shark species.</p>	<p>Ecological value: Importance for life history Importance for threatened species</p>

**2.2.1. Alternative potential areas in the Northern and Central Adriatic**

The creation of a transboundary SPAMI in the Northern and Central Adriatic, which involves Croatia, Italy, and Slovenia, is widely supported and merits careful consideration.

The following elements support the establishment of a transboundary SPAMI in the Northern and Central Adriatic, involving Croatia, Italy, and Slovenia:

1) In the Gulf of Trieste, Italy has established the Miramare Marine Protected Area, and Slovenia has designated the Landscape Park Strunjan as two small SPAMIs.<sup>281</sup> Moreover, according to the 2021 Slovenian Maritime Spatial Plan, two new marine protected areas have been envisaged, respectively at the border with Italy (Debeli Rtic / Punta Sottile) and at the border with Croatia (figure below).



Slovenian Maritime Spatial Planning related to Nature Conservation. Source: Decree on Maritime Spatial Planning, map no. 8 (Official Gazette of the Republic of Slovenia No. 116/2021).

2.) In 2010, the report presented at the extraordinary meeting of the Focal Points for the Areas Protocol identified the Northern and Central Adriatic as priority conservation areas.

3.) The Northern Adriatic was recognized as an EBSA by the Conference of the parties to the CBD in 2014 (Decision XII/22).

4.) The European Union Strategy for the Adriatic-Ionian Region (EUSAIR) has identified the Gulf of Trieste and the Pomo/Jabuka Pit as pilot areas for integrated coastal zone management and marine spatial planning review.

5) Croatia, Italy, and Slovenia have agreed on measures for a common routing system and traffic separation scheme in the Northern Adriatic and a common vessel traffic service and routing system in the Central Adriatic.

<sup>281</sup> Art. 10 of the Areas Protocol allows for changes in the delimitation or legal status of SPAMIs. In this case, *Miramare Marine Protected Area* and *Landscape Park Strunjan* could preserve their legal regime through appropriate zoning measures applicable within a much bigger SPAMI.



6.) The Jabuka/Pomo Pit FRA was established by the GFCM in 2017 and confirmed in 2021.

7.) The Meeting of the Parties to the ACCOBAMS recommended the creation of a marine protected area along the east coast of the Cres-Lošinj archipelago as a zone of special importance for cetaceans.

These precedents support a joint initiative by the three countries to establish one or two SPAMIs in order to address specific challenges:

- Coordinating existing or proposed protection instruments within a larger framework of transboundary cooperation and sustainable development.
- Including marine protected areas within a broader marine spatial planning concept covering the Adriatic and potentially extending to the Ionian Sea.
- Balancing economic activities (navigation and fishing) with environmental needs.
- Building confidence among Adriatic Sea bordering states, demonstrating that maritime boundary issues can be overcome for the establishment of transboundary protected areas.

Further consideration should be given to whether a single Adriatic SPAMI should cover the entire Northern and Central Adriatic or if separate SPAMIs should be established, one in the Northern Adriatic and another in the Central Adriatic around the Jabuka/Pomo Pit. Buffer zones and ecological corridors could be incorporated if appropriate.

Regarding other SPAMIs in the Adriatic and Ionian Seas, the lack of ratification by Bosnia and Herzegovina and Greece in the Areas Protocol makes the establishment of transboundary SPAMIs involving these states challenging, despite its desirability from an environmental perspective.

### **2.3. ACCOBAMS MPAs<sup>282</sup>**

The ACCOBAMS parties have yet to achieve their goal of establishing and maintaining a network of specially protected areas for cetacean conservation. Resolutions 3.22, 4.15, and 6.24 have addressed this issue thus far. These areas should coincide with sites recognized as Cetaceans Critical Habitats (CCHs), identified through the overlap of areas of interest for marine mammals (IMMAs) and the mapping of anthropogenic threats.

Resolution 3.22, adopted in 2007 under the title 'Marine Protected Areas for Cetaceans', introduced the initial list of recommended marine protected areas by the ACCOBAMS Scientific Committee. The list initially comprised 18 sites. The resolution includes selection criteria for protected areas, a proposal format (Annex 1), and guidelines for establishing and managing marine protected areas for cetaceans (Annex 2).

Resolution 4.15, adopted in 2010 as 'Marine Protected Areas of Importance for Cetaceans Conservation', expanded the previous list by adding new sites (totaling 22) and urged the concerned states to establish areas of special importance for cetaceans to ensure effective management. Notably, the ACCOBAMS parties expressed satisfaction with the progress made towards including the Cres-Lošinj marine protected area in Croatia, aimed at protecting small cetacean species, in the Natura 2000 network.

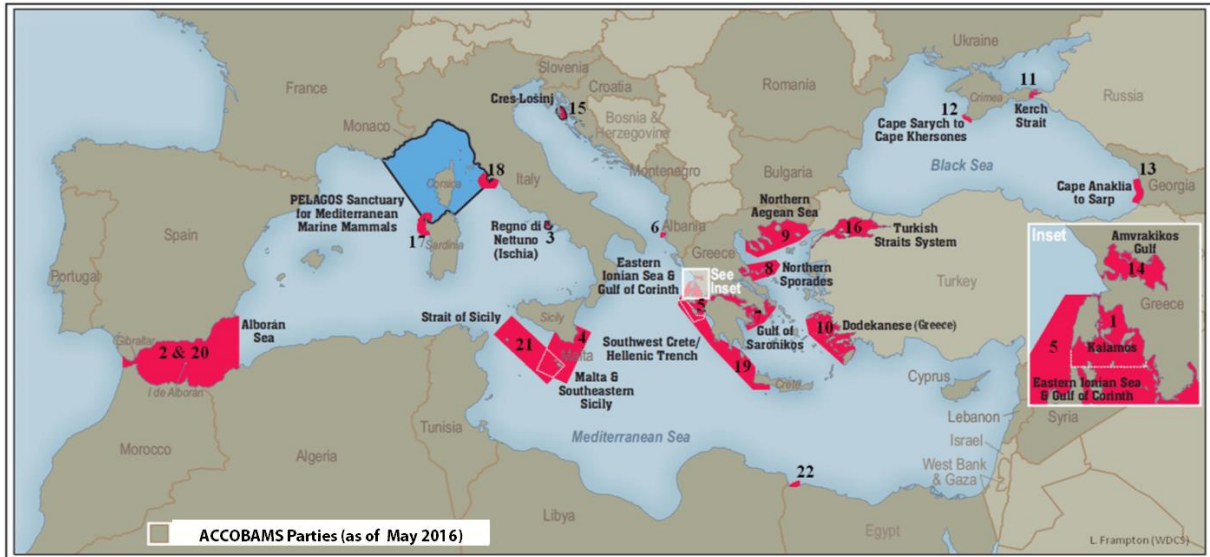
Resolution 6.24, adopted in 2016 as 'New Areas of Conservation of Cetaceans Habitats', acknowledged revised guidelines for establishing and managing marine protected areas for

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<sup>282</sup> EUSAIR study pp. 121-123. For a more detailed discussion see chapter 5.3 of the EUSAIR study.

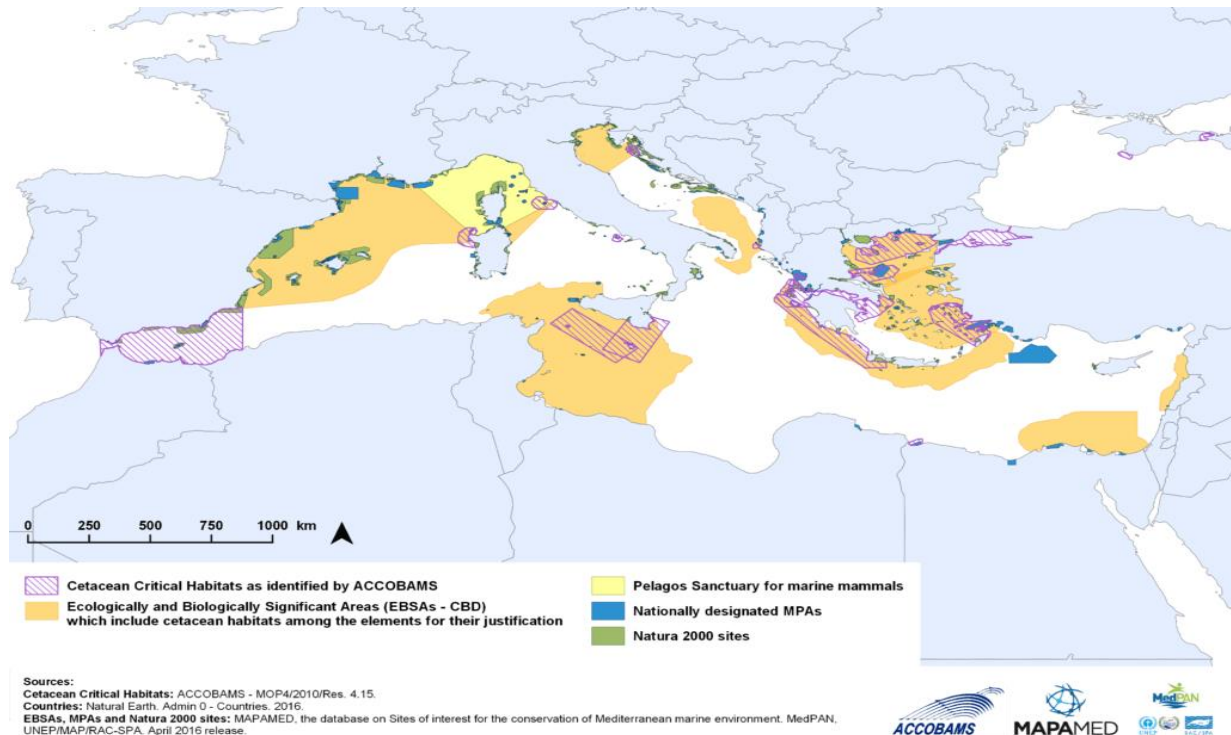
cetaceans. It encouraged MPA managers within CCHs to implement relevant management actions, called for regular updates of the CCH-containing areas list in collaboration with the Scientific Committee, and requested the revision of existing CCHs, considering proposed IMMAs and the threat-based management approach. The resolution also emphasized evaluating management effectiveness within CCHs and updating relevant tools.

The figure below provides a detailed identification of proposed CCHs within the ACCOBAMS framework. The map is currently undergoing updates using a threat management approach that combines human activities inventory and cetacean population distribution.



Proposed Cetacean Critical Habitats (CCHs). Source: ACCOBAMS.

The further figure below indicates the overlapping of CCHs identified by ACCOBAMS, EBSAs identified within the framework of the CBD (which include cetacean habitats among the elements for their justification), nationally designated marine protected areas, and NATURA 2000 sites.



Overlapping of area-based management tools for cetacean conservation in the Mediterranean Sea.  
Source: ACCOBAMS.

In addition to the identification and establishment of specially protected areas for cetaceans, at least two other issues relating to cetacean conservation are worth mentioning, as they prove particularly relevant to the Adriatic region. New research in the area of interest for this study – in particular, the northern Adriatic – shows that local dolphins contain high levels of PCBs, highly toxic chemicals, and that females pass on their pollutant burden to their young<sup>283</sup>. The study is noted by the Secretariat of ACCOBAMS, which publicized extensively the results on its website. Another issue of concern for the area of this study relates to the noise produced by offshore exploration activities in the Adriatic Sea and their impact on cetaceans<sup>284</sup>.

The table below describes the proposed CCHs in the Adriatic and Ionian Seas:

<b><i>The Waters along east coast of the Cres-Lošinj archipelago (Croatia)</i></b>	Area of special importance for the bottlenose dolphin
<b><i>The Sazani Island – Karaburun Peninsula (Albania)</i></b>	Area of special importance for the common dolphin and other cetaceans
<b><i>Eastern Ionian Sea and the Gulf of Corinth (Greece)</i></b>	Area of special importance for the common dolphin and other cetaceans
<b><i>Southwest Crete and the Hellenic Trench (Greece)</i></b>	Area of special importance for the sperm whale

<sup>283</sup> The study was led by Morigenos – Slovenian Marine Mammal Society from Piran (Slovenia): GENOV et al., *Linking Organochlorine Contaminants with Demographic Parameters in Free-ranging Common Bottlenose Dolphins from the Northern Adriatic Sea*, in *Science of the Total Environment*, 2019, pp. 200-212.

<sup>284</sup> The issue of anthropogenic noise as a threat to cetaceans and marine life in general is attentively followed within the framework of ACCOBAMS, and several initiatives are led in order to gather more accurate information, which is more abundant for the northern Adriatic and still poor as regards the waters of Albania and Montenegro.

## 2.4.FRAs<sup>285</sup>

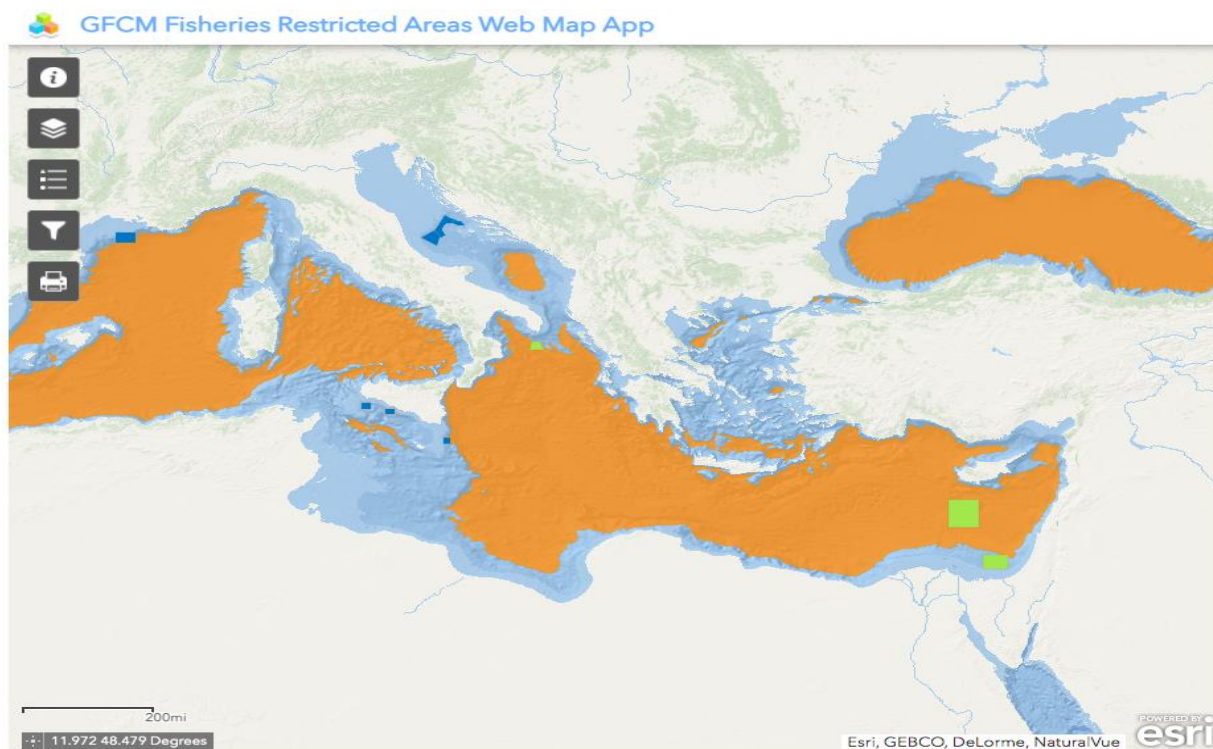
The GFCM has adopted a wide range of recommendations covering various topics, such as driftnets, closed seasons, fisheries restricted areas, mesh size, demersal fishery management, action plans, red coral, by-catch of seabirds or turtles, monk seal conservation, vessel records, port State control, illegal fishing vessel lists, logbooks, and vessel monitoring systems.

Of particular significance are the measures regarding the establishment of fisheries restricted areas (FRAs) to protect sensitive deep-sea habitats. FRAs are geographically-defined areas where specific fishing activities are temporarily banned or restricted to enhance the exploitation and conservation of demersal stocks.

Within the GFCM framework, four FRAs are particularly relevant to this analysis and present opportunities for transboundary cooperation in the Adriatic and Ionian Seas. They can also contribute to the European Union's biodiversity goals. Another FRA is proposed for the South Adriatic, offering potential for future establishment.

Another noteworthy measure within the GFCM framework is Recommendation 2005/1, which addresses the management of fisheries targeting demersal and deep-water species. This recommendation prohibits the use of towed dredges and trawl nets beyond a depth of 1000 meters. GFCM members are required to annually report to the Executive Secretary on the implementation of these management measures. The GFCM Scientific Advisory Committee on Fisheries (SAC) assesses the impact of these measures and may recommend adjustments or additional measures if needed

This measure demonstrates a form of "vertical" protection limited to the seabed and a specific portion of the water column. Both the South Adriatic and Ionian Seas contain areas covered by this measure, as indicated by the orange parts on the provided map.



Areas of the Mediterranean and Black Seas regulated by GFCM Recommendations. Source: <https://www.fao.org/gfcm/data/maps/fras>.

<sup>285</sup> EUSAIR study pp. 116-117 and 151-169.

### 9) *The Lophelia Reef off Capo Santa Maria di Leuca*

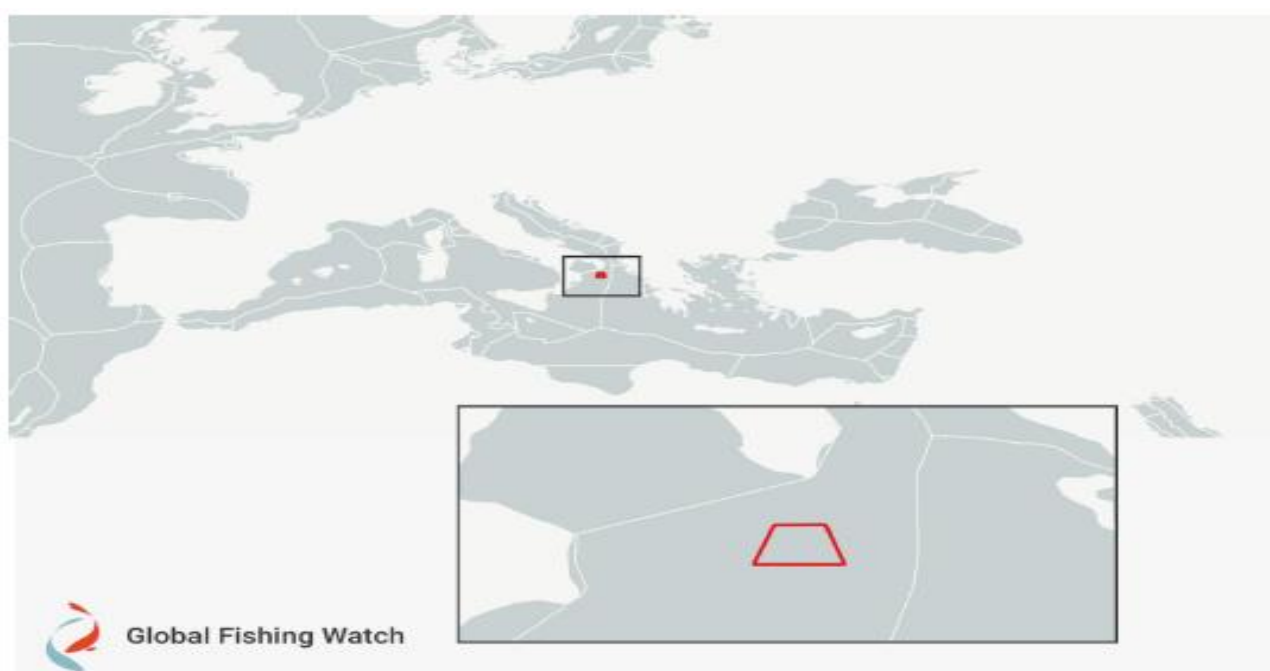
Based on Recommendation REC.CM-GFCM/29/2005/1 and the SAC's recommendation to protect the Lophelia reef off Capo Santa Maria di Leuca, a deep-water coral reef located in international waters, the GFCM has prohibited the use of towed dredges and bottom trawl nets in the designated area since 2006. The boundaries of the deep-sea Fisheries Restricted Area (FRA) known as Lophelia reef off Capo Santa Maria di Leuca are defined by the following coordinates:

- 39° 27' 72" N, 18° 10' 74" E
- 39° 27' 80" N, 18° 26' 68" E
- 39° 11' 16" N, 18° 04' 28" E
- 39° 11' 16" N, 18° 32' 58" E

According to Recommendation REC.CM-GFCM/30/2006/3, GFCM members are urged to draw the attention of relevant authorities to safeguard the area from any activities that could jeopardize the conservation of these unique habitats.

The Lophelia reef FRA is located in GSA19, the Western Ionian Sea, as per the geographical subarea division of the GFCM. Although presently outside Italy's territorial sea, the water column above the corals will become part of Italy's exclusive economic zone once the relevant law is implemented by presidential decree in 2021.

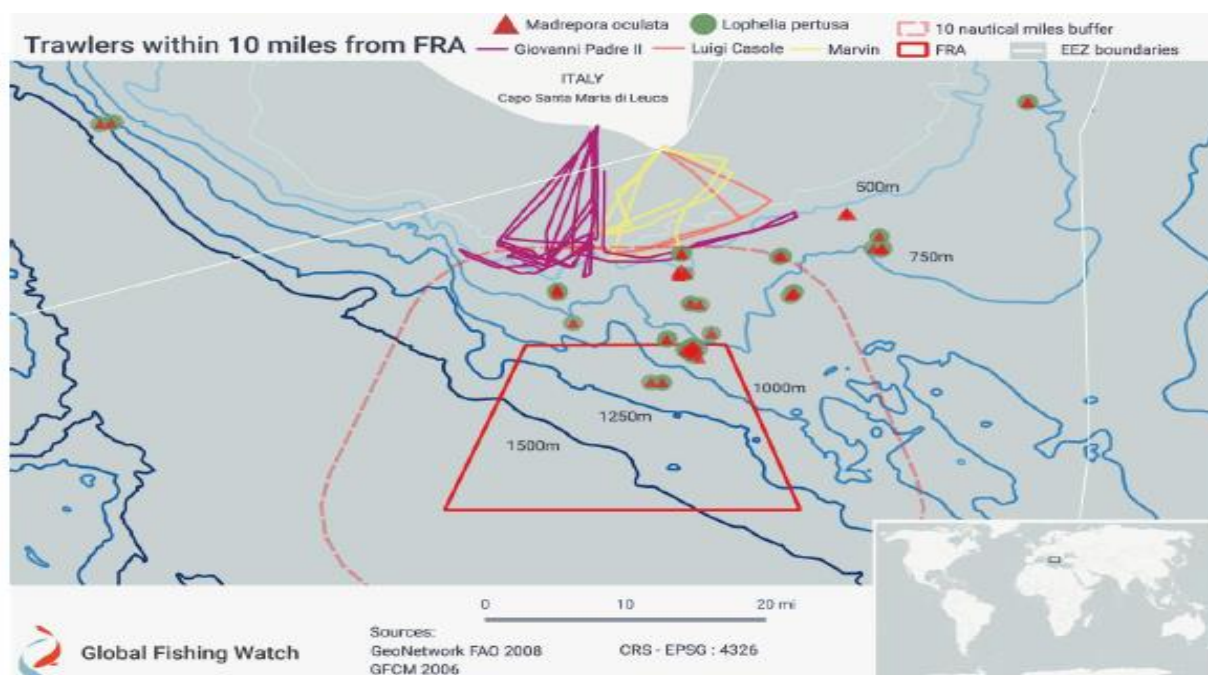
The depth range within the Lophelia reef FRA varies from 500 to 1500 meters. This reef is considered the largest known living white coral community in the Mediterranean and is home to endangered species, including *Lophelia pertusa* and *Madrepora oculata*, listed on the IUCN Red List. These coral species support diverse biodiversity and contribute to biogeochemical cycles by releasing organic matter, benefiting both planktonic and benthic organisms. The coral mounds are concentrated between the northern border of the FRA and the 500-meter isobath, as depicted below.



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



It is to be noted that substantial trawler activity was observed close to some of the cold-water coral mounds found just outside the northern limits of the FRA.



Tracks of three European Union fleet registered trawlers flying Italian flag that were recorded fishing within 10 n.m. of the FRA 'Lophelia Reef off Capo Santa Maria di Leuca' for a total of 70 fishing hours between January 2018 and October 2020 and to depths of around 500 m. Source: Global Fishing Watch (2021).

Based on these findings, it is worth considering that the SAC should evaluate the possibility of extending the existing protective measures beyond the current boundaries of the Fisheries Restricted Area (FRA). Specifically, an extension of at least 10 nautical miles could ensure the conservation of additional cold-water corals that lie outside the limits defined by Recommendation 2006/03, especially in the northern and north-western regions beyond the FRA boundary.

Alternatively, achieving the same objective could be accomplished by establishing the proposed new Specially Protected Area of Mediterranean Importance (SPAMI) off Capo Santa Maria di Leuca, as long as all sites harboring biodiversity relevant to the Areas Protocol are adequately covered.

### ***10) The Jabuka/Pomo Pit***

The establishment of the Jabuka/Pomo Pit Fisheries Restricted Area (FRA) in the Adriatic Sea was initiated in 2017 under Recommendation GFCM/41/2017/3. This measure is grounded in the precautionary approach, as outlined in the United Nations Fish Stocks Agreement of 1995 and the FAO Code of Conduct for Responsible Fisheries.

The decision to create the FRA aligns with Resolution GFCM/40/2016/2, which outlines a mid-term strategy (2017-2020) for the sustainability of fisheries in the Mediterranean and Black Sea. Specifically, Target 4, Output 2 (a) emphasizes the identification and establishment of new FRAs to safeguard ecologically or biologically significant marine areas (EBSAs) and vulnerable marine



ecosystems (VMEs) from detrimental fishing practices. The Jabuka/Pomo Pit qualifies as an EBSA under the CBD.

The FRA aims to protect two demersal fish species, European hake (*Merluccius merluccius*) and Norway lobster (*Nephrops norvegicus*), from the adverse impacts of harmful fishing activities. The long life-span of European hake requires long-term fishing restrictions to yield significant results, while Norway lobster spends its initial year concealed in burrows, thus avoiding trawlers. Scientists recommended a three-year experimental closure, subject to annual monitoring and subsequent review. Various options were presented to determine the size of the protected area, considering different extents of the nursery grounds.

Back in 2002, the GFCM had already recommended measures such as increasing mesh size or implementing area closures to safeguard these demersal species. In 2016, discussions within the GFCM focused on gathering crucial data on VME distribution to identify priority areas. Additionally, national efforts were made to monitor and prohibit fishing in the Jabuka/Pomo Pit. Specifically, an area known as "Scalata del Fondaletto," corresponding to the northeastern slope of the Jabuka/Pomo Pit, witnessed the introduction of temporary bans and monitoring rules for Italian fishing vessels.<sup>286</sup>



Punto	Lat (WGS84)	Lon (WGS84)
1	43° 32' 03" N	015° 16' 30" E
2	43° 05' 27" N	014° 58' 39" E
3	42° 49' 49" N	014° 29' 33" E
4	42° 47' 38" N	014° 34' 19" E
5	43° 02' 50" N	015° 02' 14" E
6	43° 29' 52" N	015° 20' 42" E

The red-bordered area represents the Scalata del Fondaletto, where fishing activities were prohibited in 2016. The table provides the coordinates of geographical points marking the vertex of the protected area. Source: European MSP Platform.

<sup>286</sup> GFCM Working Group on Demersal Species, Rome, Italy, 20-22 March 2002.

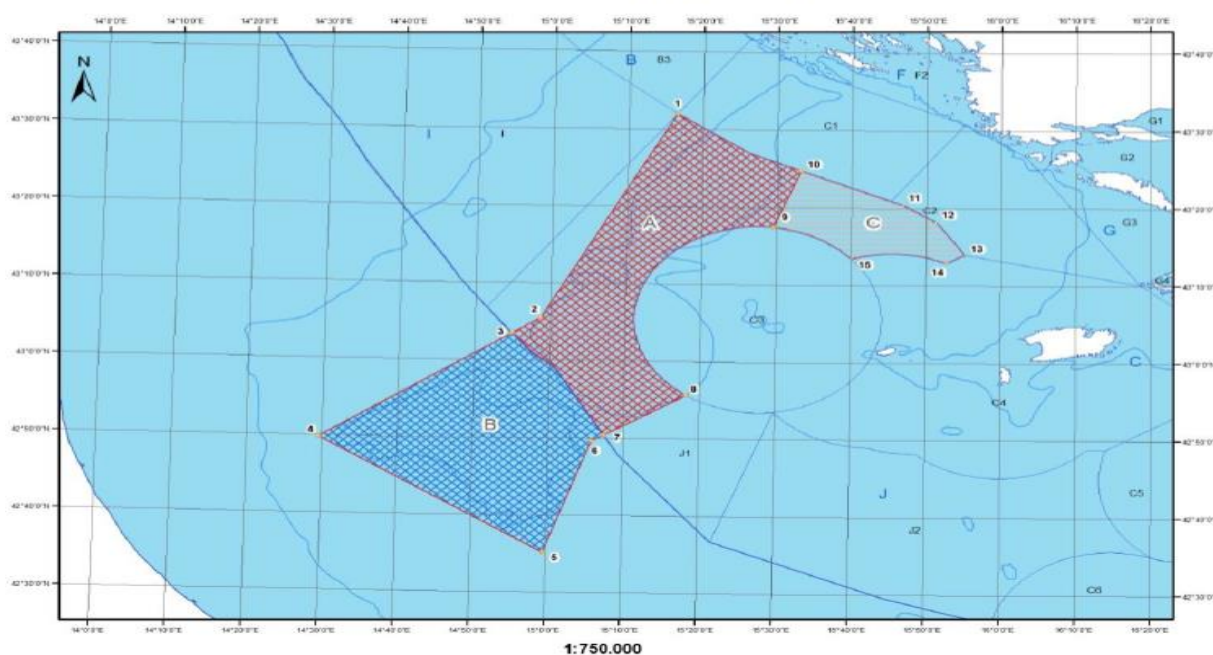
Following the work of MedReAct and the Adriatic Recovery Project, the Subregional Committee for the Adriatic Sea (SRC-AS) examined the proposal to establish a Fisheries Restricted Area (FRA) in the Jabuka/Pomo Pit. It was agreed to present the proposal to the GFCM Scientific Advisory Committee for final evaluation and potential submission to the GFCM. At the Our Ocean Conference in Malta, held in October 2017, the European Union committed to supporting the establishment of a FRA covering at least 2,700 km<sup>2</sup> in the Jabuka/Pomo Pit.

The current approach to protect demersal species in the area focuses on safeguarding Vulnerable Marine Ecosystems (VMEs) and essential habitats through an innovative area-based protection tool consisting of different zones.

In Zone A, professional fishing activities using bottom-set nets, bottom trawls, set longlines, and traps are prohibited. In Zone B, these fishing activities have been prohibited from September 1st to October 31st each year since 2017. Professional activities may be permitted in Zone B only if a specific authorization is obtained, and historical fishing activities are demonstrated. GFCM member states and cooperating non-members are required to maintain a register of authorized fishing vessels for this zone. However, these vessels are limited to fishing for a maximum of two days per week, while those using otter twin trawl gear are restricted to one day per week.

In Zone C, both the aforementioned fishing activities and recreational fisheries are prohibited from September 1st to October 31st each year. It should be noted that the relevant recommendation does not prohibit recreational fishing in Zone A or Zone B. Only professional activities are allowed in Zone C, subject to obtaining a specific authorization and demonstrating historical fishing activities in the zone. Vessels must be registered to access this zone. Those using bottom trawls are allowed to fish only on Saturdays and Sundays from 05:00 to 22:00 hours, while those using bottom-set nets, set longlines, and traps are allowed to fish only from Monday at 05:00 to Thursday at 22:00 hours. Fishing gear must be appropriately identified, numbered, and marked before commencing any fishing operations or navigation within the FRA.

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



The ‘Jabuka/Pomo Pit’ FRA and its zoning. Source: Recommendation GFCM/41/2017/3.

Demersal stocks caught in the Jabuka/Pomo Pit FRA must be landed only at designated landing points. GFCM members and cooperating non-members are responsible for designating these

points and providing the list of authorized vessels and landing points to the GFCM by April 30th each year.

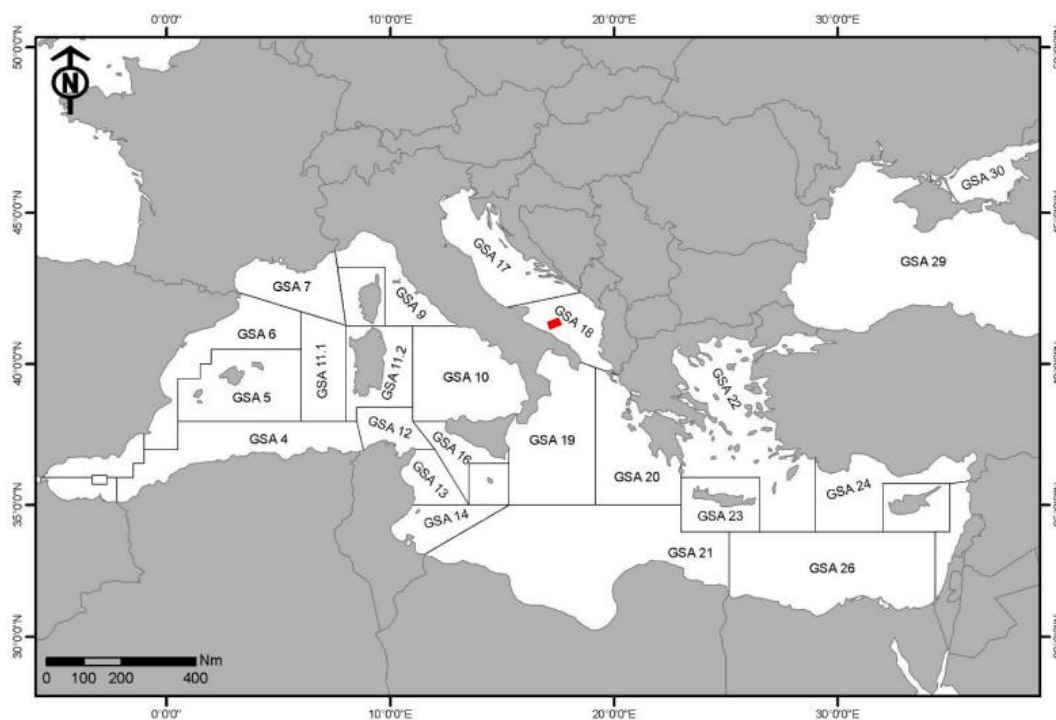
In addition to area-based measures and time closures, the instrument establishing the Jabuka/Pomo Pit FRA includes provisions related to navigation. Fishing vessels authorized to operate in Zone B or C must be equipped with vessel monitoring systems (VMS) or automated identification systems (AIS). Vessels not authorized for fishing in these zones are allowed to transit through the FRA only if they maintain a direct course at a minimum speed of 7 knots and have active VMS or AIS on board.

GFCM members and cooperating non-members are also required to raise awareness among relevant national and international authorities to protect the Jabuka/Pomo Pit FRA from any activities that could harm the conservation of its unique habitats. States may choose to impose stricter measures on vessels flying their flag.

Initially, the recommendation establishing the Jabuka/Pomo Pit FRA was effective until December 31st, 2020. However, based on information from the GFCM, it has been confirmed that the Jabuka/Pomo Pit FRA is considered an exemplary management approach for transboundary conservation of demersal species. As a result, at the 44th session of the GFCM (2-6 November 2021), Recommendation GFCM/44/2021/2 was adopted, designating the Jabuka/Pomo Pit FRA as a permanent FRA and amending Recommendation GFCM/41/2017/3.

### ***11) The Bari Canyon***

Based on a proposal developed in 2018 by ISMAR-CNR, IUCN Center for Mediterranean Cooperation, University of Bari, and Coispa Bari, the 44th session of the GFCM has established a Fisheries Restricted Area (FRA) in the Southern Adriatic known as the Bari Canyon. This action was taken through Recommendation GFCM/44/2021/3, which focuses on the establishment of the FRA in the Bari Canyon located in the southern Adriatic Sea within GSA 18.



In red, the location of the Bari Canyon FRA (GSA18, Southern Adriatic). Source: Recommendation GFCM/44/2021/3.

The *Bari Canyon* FRA is located in GSA18 – which is already identified as EBSA by the CBD<sup>287</sup>, together with the northern Ionian Sea – at around 20 nautical miles off the city of Bari and 50 nautical miles south of the Gargano National Park, in the Apulia Region.

In the proposal, the area was identified as:

- i) area of unique physical features and hydrological processes (deep-water circulation influencing the entire Mediterranean Sea);
- ii) a vulnerable marine ecosystem hosting numerous endangered mega- and macro-benthic organisms such as cnidarians;
- iii) a nursery for some deep-cartilaginous species impacted by fisheries; and
- iv) an area of important essential fish habitats for different commercial species such as anchovy, sardine, European hake, red mullet and deep-rose shrimp, among others.

The Bari Canyon FRA is composed of two main branches, almost parallel, indenting the shelf at depths of around 200 meters. Depth range is between 200 and 700 meters in the core area and between 200 and 1200 meters in the buffer area. The core area is 326 km<sup>2</sup> and the buffer area is 675 km<sup>2</sup>. According to the proposal, while the FRA core area includes the most valuable benthic habitats recorded in the Bari Canyon, such as the cold-water coral communities, the buffer area extends the protection of complex and heterogeneous habitats.

The core area and the buffer area had been defined by the following coordinates in the 2018 proposal.

Core area:

41° 23' 49" N – 17° 03' 24" E

41° 15' 27" N – 17° 19' 16" E

41° 16' 13" N – 17° 02' 42" E

41° 23' 03" N – 17° 19' 49" E

Buffer area:

41° 25' 11" N – 17° 02' 09" E

41° 24' 04" N – 17° 27' 31" E

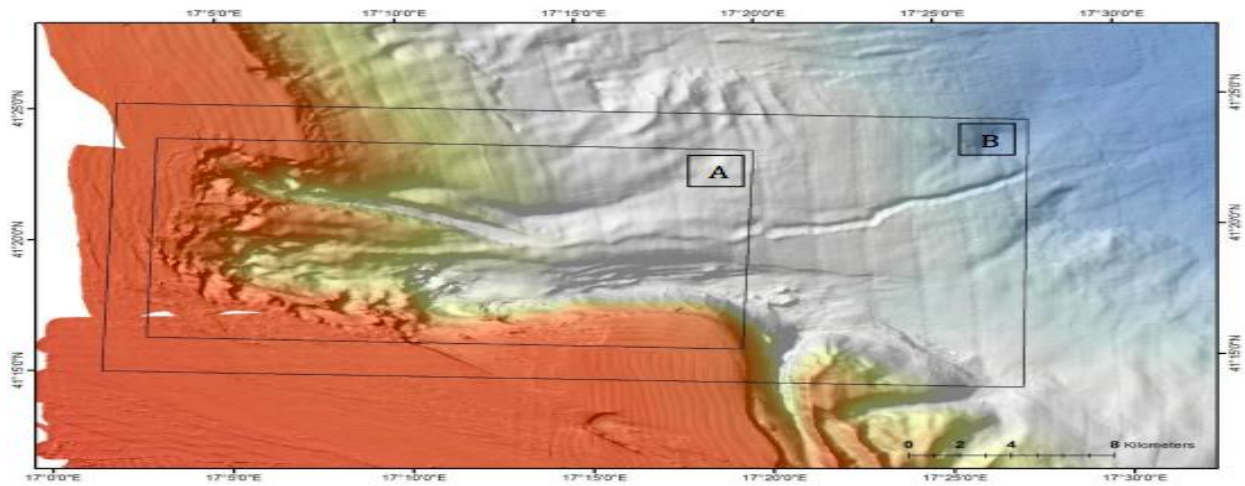
41° 13' 50" N – 17° 27' 01" E

41° 14' 57" N – 17° 01' 26" E

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<sup>287</sup> <https://chm.cbd.int/database/record?documentID=204126>.





The 2018 proposed zoning of the *Bari Canyon* FRA: (A) core area; (B) buffer area. Source: *Standard form for the submission of proposals for GFCM Fisheries Restricted Areas (FRAs) in the Mediterranean and the Black Sea (Bari Canyon)*, April 2018, p. 7.

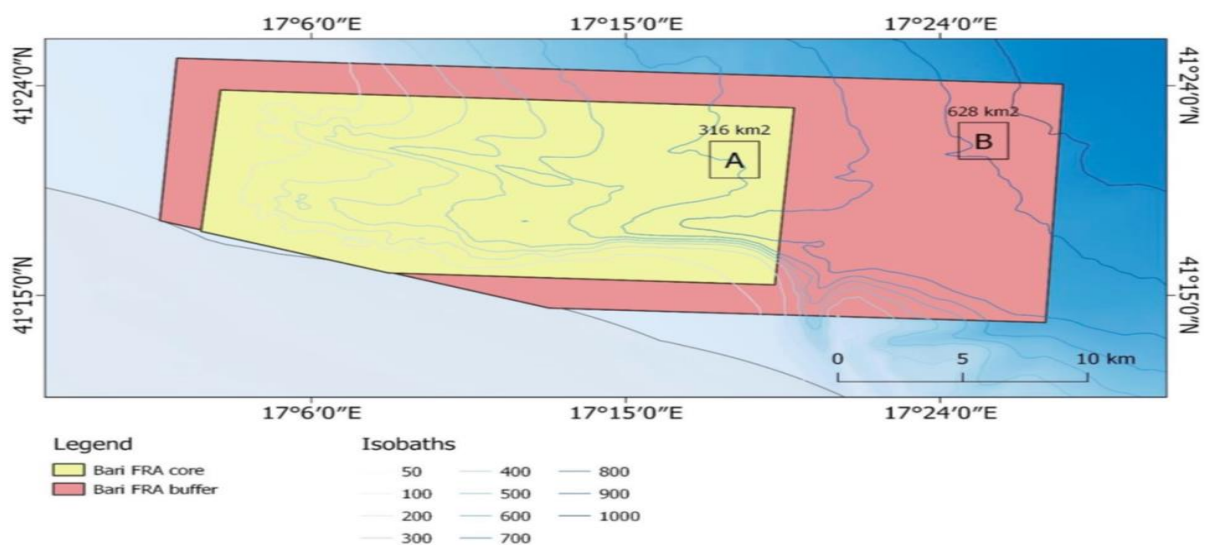
The 2021 recommendation has identified five series of coordinates and has maintained the distinction between core and buffer zones, as follows:

**Zone A:**

- 41° 23' 3" N – 17° 19' 49" E
- 41° 15' 27" N – 17° 19' 16" E
- 41° 15' 58" N – 17° 8' 12" E
- 41° 17' 45" N – 17° 2' 50" E
- 41° 23° 49" N – 17° 3' 24" E

**Zone B:**

- 41° 24' 4" N – 17° 27' 31" E
- 41° 13' 50" N – 17° 27' 1" E
- 41° 14' 27" N – 17° 12' 48" E
- 41° 18' 12" N – 17° 1' 40" E
- 41° 25' 11" N – 17° 2' 9" E



The current zoning of the *Bari Canyon* FRA: (A) core area; (B) buffer area. Source: Recommendation GFCM/44/2021/3.

In the core area of the Bari Canyon FRA (Zone A), the proposed protection measures in 2018 called for a permanent closure to all professional and recreational fishing activities. The 2021

recommendation has confirmed this prohibition. In the buffer area (Zone B), the 2018 proposal allowed fishing activities with set longlines and traps only for vessels with specific authorization and a demonstrated history of fishing in the buffer zone. Towed nets, bottom set nets, and recreational fishing were permanently prohibited in this area. Exploratory fishing with towed nets and bottom set nets could have been permitted for a limited period, subject to demonstrating no adverse impact on Vulnerable Marine Ecosystems (VMEs) and Essential Fish Habitats (EFHs). Detailed information about the vessels, gear, and technical parameters of the campaign would have been required for evaluation by the competent authorities before approval. The presence of observers on board would have been considered to assess the fishery's footprint.

The 2021 recommendation states that fishing activities with set longlines and traps may be allowed in the buffer area if the vessel or its master holds specific authorization and can demonstrate historical fishing activities in the zone. GFCM member States and cooperating non-member States are required to maintain a register of authorized fishing vessels for Zone B and provide a list of authorized vessels to the GFCM Secretariat by April 30th each year.

The 2018 proposal outlined various measures for effective enforcement of FRA protection. These included an access regime, control regime, monitoring regime, and reporting regime. However, the 2021 recommendation does not include the requirement for vessels equipped with VMS to provide positions every 30 minutes or declare catches before entering the FRA area.

Under the new instrument, fishing vessels equipped with bottom-set nets, bottom trawls, set longlines, and traps without authorization are permitted to transit through the FRA only if they follow a direct course at a speed of at least 7 knots and have active VMS or AIS on board.

The reporting provisions in the 2018 proposal involved capturing VME indicators and reporting vulnerable species as bycatch. Catches of VME indicator taxa were to be photographed, estimated in kilograms, and recorded in a logbook. Vulnerable species as bycatch were to be reported following the GFCM Protocols for self-reporting. This information would be shared with the Fisheries Management Authority, port inspectors, and observers on board. The Compliance Committee would review and assess enforcement and compliance in the FRA, while the Working Group on Vulnerable Marine Ecosystems would provide advice on technical measures and impact assessments for exploratory fishing. The 2021 recommendation is valid until December 31st, 2026, and will be reviewed annually by the Scientific Advisory Committee and the Compliance Committee. The management measures for the Bari Canyon FRA will be reviewed in 2026. GFCM member States and cooperating non-member States have the authority to adopt stricter measures for vessels under their flag and should draw the attention of relevant authorities to protect the FRA from activities that could harm its habitats.

The 2018 proposal recognized that spatial fishing closures in the Bari Canyon FRA could have short-term socio-economic impacts, particularly for local long-liners targeting large valuable species in the canyon. Therefore, an adequate program to mitigate these impacts, involving stakeholders and local fishermen, should be part of the FRA implementation strategy.

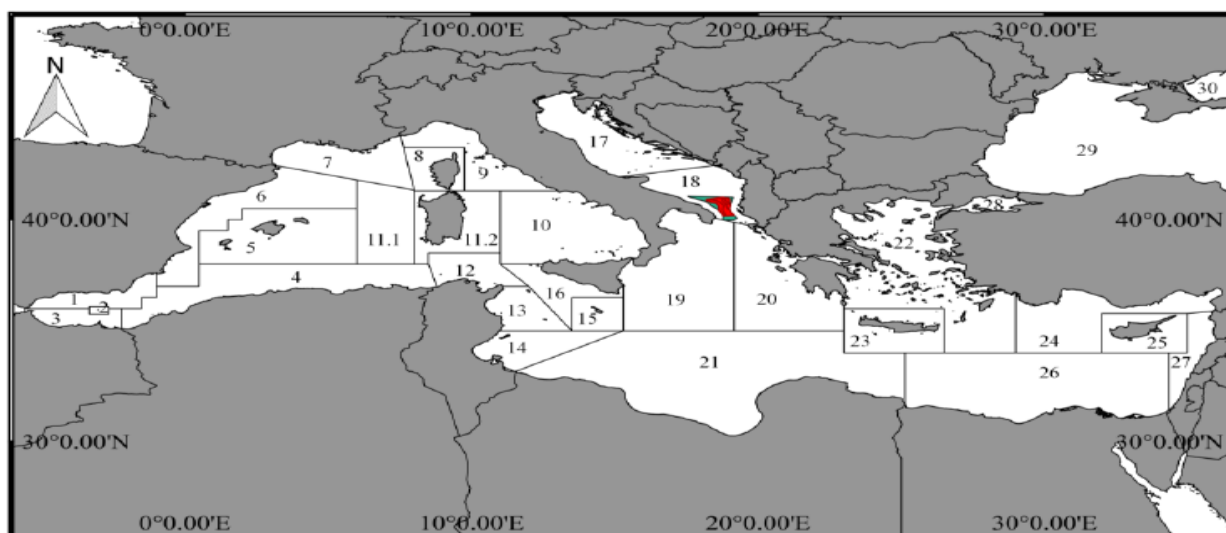
### **12) *The Deep-Water Essential Fish Habitats and Sensitive Habitats in The South Adriatic (proposal stage)***

The GFCM received a notable proposal on March 31, 2018, from MedReAct representing the Adriatic Recovery Project. The aim of the proposal was to safeguard the Deep-Water Essential Fish Habitats and Sensitive Habitats in the South Adriatic from the adverse effects of fishing activities. The proposed Fisheries Restricted Area (FRA) is situated in the Southern Adriatic area (GSA18). The area has been identified for the following reasons:

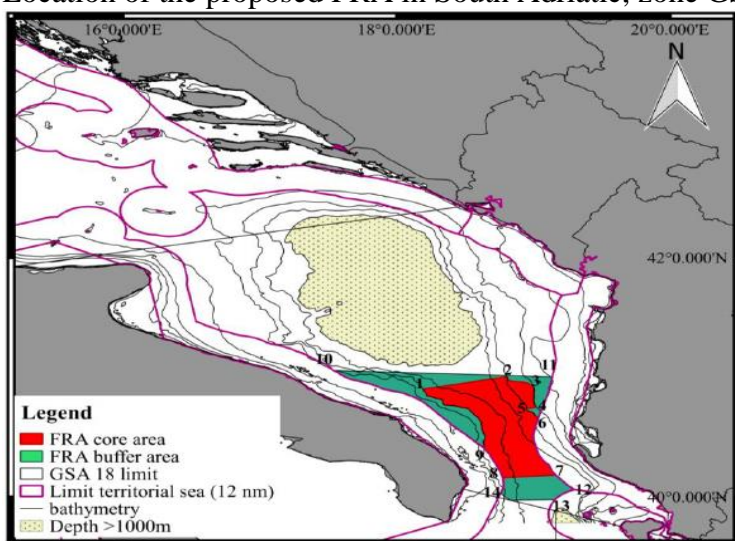


1. It possesses unique physical features that influence water circulation and exchange throughout the Mediterranean basin.
2. It serves as a crucial essential fish habitat for valuable species like deep-water shrimps (e.g., *Aristeomorpha foliacea*), deepwater rose shrimp (*Parapeneus longirostris*), European hake (*Merluccius merluccius*), and blackmouth catshark (*Galeus melastomus*).
3. It plays a vital role in supporting sea turtles, tuna, swordfish, sharks, and acts as a significant migratory corridor for megafauna such as cetaceans.
4. It contains vulnerable marine ecosystems that are susceptible to significant impacts caused by bottom trawling activities.

Fishing fleets operating in GSA18 are mainly from Albania and Italy. The Italian fleet is mainly composed of demersal trawlers<sup>288</sup>. The FRA proposal highlights that the South Adriatic Sea makes a substantial contribution to fish production. However, the steep slopes, with a maximum depth of more than 900 meters, together with the presence of hard bottoms (such as deep-water corals), oil and gas extraction, military and explosive sites located in the proposed FRA restrict trawling activities. According to the proposal, this circumstance would be indicative of the limited socio-economic impact of the proposed FRA.



Location of the proposed FRA in South Adriatic, zone GSA18. Source: 2018 Proposal.



<sup>288</sup> *Standard Form for the Submission of Proposals for GFCM Fisheries Restricted Areas (FRAs) in the Mediterranean and the Black Sea*, Proposal revised by (SAC technical group/subregional committee), submitted by MedReAct and Adriatic Recovery Project, 31 March 2018, p. 15.

Detailed position of the proposed FRA in South Adriatic. The numbers indicate the corresponding vertex of the core and buffer areas. Source: 2018 Proposal.

The proposal envisages a distinction between the core area, which covers important nursery and spawning grounds of valuable deep-water stocks and VMEs species, and a buffer zone, where other important nurseries and spawning grounds and complex and heterogeneous habitats are found. Both the core and buffer areas of the proposed FRA are inside the EBSA boundaries.

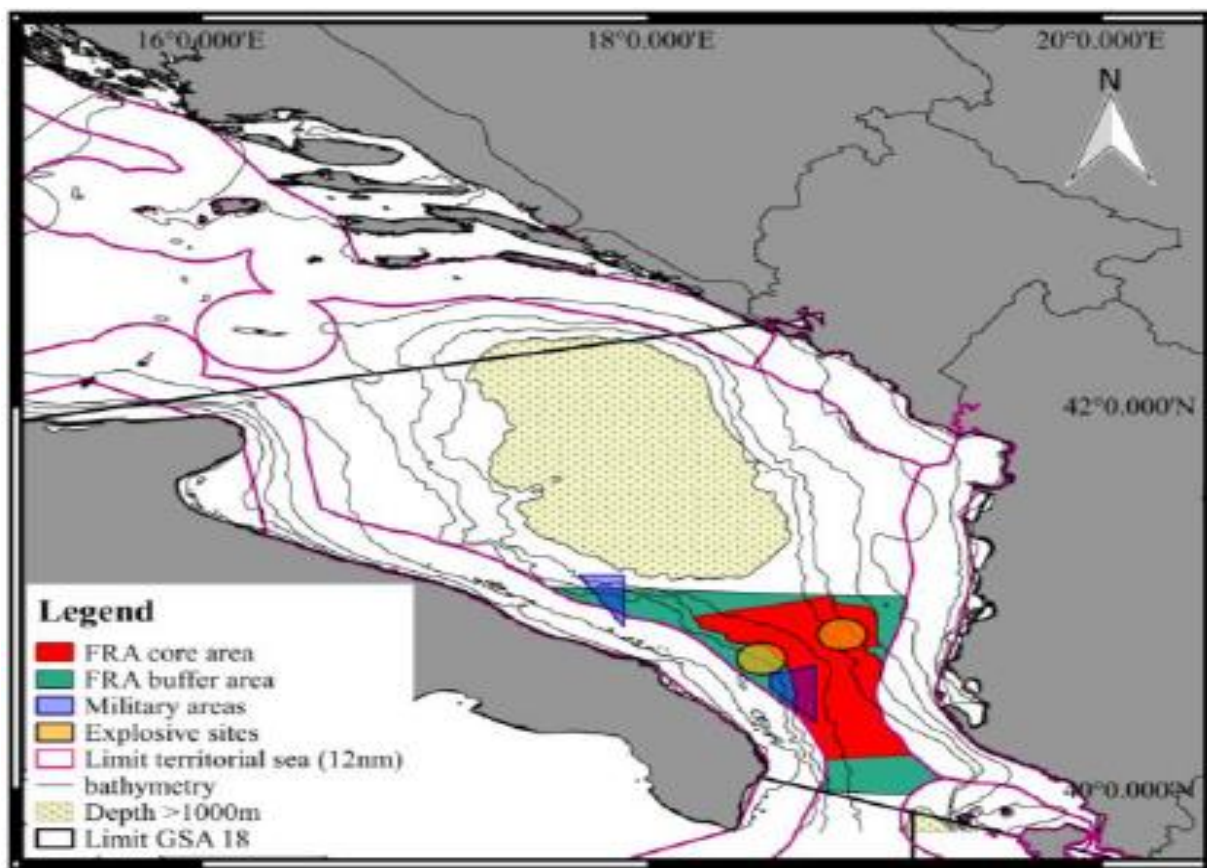
The core area covers a surface of 3545.22 km<sup>2</sup> and its depth ranges between 200 meters (minimum) to 968 meters (maximum). The core area is delimited by the vertices having the following coordinates, using the datum GCS WGS 1984:

Latitude	Longitude	Vertex
40°54'00" N	18°12'00" E	1
41°00'00" N	18°48'36" E	2
40°55'48" N	19°00'00" E	3
40°45'00" N	19°01'48" E	4
40°44'24" N	18°57'36" E	5
40°38'24" N	19°02'24" E	6
40°10'48" N	19°10'12" E	7
40°09'36" N	18°46'48" E	8
40°24'36" N	18°39'00" E	9

The buffer area, which covers a surface of 3095.6 km<sup>2</sup> and its depth ranges between 100 meters (minimum) to 900 meters (maximum). It is delimited by the vertices having the following coordinates, using the same datum GCS WGS 1984:

Latitude	Longitude	Vertex
41°03'28.8" N	17°32'20.4" E	10
41°00'13.32" N	19°08'23.28" E	11
40°03'36" N	19°18'10.8" E	12
39°58'35.4" N	19°09'37.68" E	13
39°59'45.6" N	18°44'52.8" E	14

Two military areas are present along the Italian side of the proposed FRA area. Moreover, two explosive sites are reported inside the proposed FRA area (dangerous circular area (r=5M) due to the presence of ordinance dropped from aircraft. There, navigation and fishing activities are banned for the presence of unexploded ordinance.



Military sites inside the proposed FRA in South Adriatic (blue polygons) and the two explosive sites (orange circles representing the dangerous circular areas due to the presence on the bottom of ordnance dropped from aircraft). Source: 2018 Proposal.

The FRA proposal outlines specific management measures aligned with the designated zoning system. Within the core area, the proposal advocates for a permanent ban on professional fishing activities involving towed nets, bottom set nets, and set longlines. In the buffer area, the proposal suggests that demersal fishing activities should require a special fishing authorization, provided that the fishing unit can demonstrate previous activity in the area within the past five years. GFCM members and cooperating non-members are required to compile and submit a list of authorized vessels to the Executive Secretary of the GFCM. Non-compliant vessels with GFCM conservation and management measures would not be permitted to fish in the FRA buffer area. Authorized vessels would be limited to fishing a maximum of two days per week.

Additionally, the proposal recommends that GFCM members and cooperating non-members take measures to protect the FRA from any human activities that could harm the conservation of essential fish habitats (EFHs), sensitive habitats, and vulnerable marine ecosystems (VMEs). The GFCM would conduct independent assessments to monitor the presence and status of EFHs, sensitive habitats, and VMEs in the area, as well as evaluate the impact of the conservation measures introduced with the FRA.

It is important to note that the boundaries and fishing conditions mentioned in the proposed management measures are subject to change based on advice from the GFCM Scientific Advisory Committee. Additionally, considering that the buffer area of the proposed FRA only partially covers European hake nursery areas (a GFCM priority species for the Adriatic) and that a significant portion of these nurseries falls within the territorial waters of Italy and Albania, it is

desirable for these two states to extend the proposed fishing restrictions to protect these important EFHs in their territorial waters.

The proposal acknowledges the need for a sustainable socio-economic impact resulting from the FRA, taking into account the current low number of vessels operating in deeper areas and the relatively low fishing effort within the selected FRA area. Notably, the presence of explosive sites, military areas, and extraction concessions already impose various fishing and navigational restrictions in the proposed FRA. It is worth mentioning that the majority of the proposed FRA falls within the South Adriatic Ionian Strait EBSA.

Despite the fact that the GFCM has not confirmed yet the proposed area, a Resolution GFCM/44/2021/3 on a roadmap for the establishment of a fisheries restricted area in the southern Adriatic Sea (geographical sub area 18) was adopted, which envisaged the following points of action:

1. The GFCM Secretariat, with the support of States parties, should launch in 2022 a pilot project to underpin the biology and ecology of bamboo coral in the Adriatic Sea, including a quantification of the interactions between *Isidella* and bottom contact fisheries and the determination of their footprint, within the framework of the Working Group on Vulnerable Marine Ecosystems, including a session on essential fish habitats.
2. The GFCM Secretariat, with the support of States parties, should support in 2023 the implementation of the roadmap towards the establishment of an FRA in the southern Adriatic (geographical subarea 18), as outlined in paragraph 3.
3. The States parties should implement technical actions to advance towards complying with the requirements of Recommendation GFCM/43/2019/5 with a view to establishing additional FRAs in the southern Adriatic, including:
  - a) investigating the monitoring activities needed to identify a possible FRA (fleet behaviors, impacts on sea bottom, observers on board) in the southern part of geographical subarea 18;
  - b) implementing an ad hoc socio-economic survey covering the fleets operating in the area;
  - c) designing an *ad hoc* scientific survey for a better definition of VMEs to identify a possible FRA; and
  - d) ensuring that the key components of a future proposal include VMEs, EFHs, spatial fishing fleet dynamics and socio-economic impacts, as provided by the national administrations.
4. In 2023, on the basis of the data collected under paragraph 3, States parties should jointly evaluate the possibility of establishing a FRA with the aim of protecting relevant VMEs and EFHs identified, following a bottom-up approach and engaging with relevant stakeholders.
5. In 2023, the GFCM Secretariat should organize, ahead of the SRC-AS meeting, a workshop with scientists and stakeholders to discuss the preparation of a FRA proposal, with a view to achieving the objectives of paragraph 4.
6. In 2023, the SAC should evaluate the possible FRA proposal in the southern Adriatic Sea and the GFCM should examine such proposal at its annual session in 2023.

**Table of existing and proposed FRAs beyond the limits of the territorial sea in the Adriatic and Ionian Seas**

FRA	AREA	ADOPTED MEASURES	STRICT PROTECTION	STATUS
<b>Recommendation 2005/1 on the management of certain fisheries exploiting demersal and deep-water species</b>	Both the South Adriatic and to an even greater extent Ionian Seas comprise areas covered by such measure	Prohibits the use of towed dredges and trawl nets fisheries at depths beyond 1000 m of depth	No. This can be considered as an example of ‘vertical’ protection of a specified area, extending only to the seabed together with a selected portion of the water column	Permanent
<b>THE LOPHELIA REEF OFF CAPO SANTA MARIA DI LEUCA</b> Recommendation on REC.CM-GFCM/29/2005/1	39° 27' 72" N, 18° 10' 74" E 39° 27' 80" N, 18° 26' 68" E 39° 11' 16" N, 18° 04' 28" E 39° 11' 16" N, 18° 32' 58" E (area located beyond the territorial sea of Italy, on the high seas, within the future EEZ of Italy)	Prohibition fishing with towed dredges and bottom trawl nets in the area	No	Permanent
<b>THE JABUKA/POMO PIT</b> Recommendation on GFCM/44/2021/2 on the establishment of a fisheries restricted area in the Jabuka/Pomo Pit in the Adriatic Sea, amending Recommendation on GFCM/41/2017/3	Jabuka/Pomo Pit (Zone A, B and C). For a list of coordinates see Recommendation GFCM/44/2021/2	In Zone A, any professional fishing activity with bottom-set nets, bottom trawls, set longlines and traps is prohibited. In Zone B, such fishing activities have been prohibited from 1 September to 31 October each year. In Zone C, both the above fishing activities and recreational fisheries are prohibited from 1 September to 31 October each year.	Yes, zone A	Permanent
<b>BARI CANYON</b> Recommendation on GFCM/44/2021/3 on the establishment	The <i>Bari Canyon</i> FRA is located in GSA18 – which is already identified as EBSA by the CBD, together with the northern Ionian Sea – at around	In the core area, the proposed protection measures consist of a permanent closure of the area to any professional or recreational	Yes, core area. The core area is 326 km <sup>2</sup> and the buffer area is 675 km <sup>2</sup>	Temporary, till 31 December 2026

<p>of a fisheries restricted area in the Bari Canyon in the southern Adriatic Sea</p>	<p>20 n.m. off the city of Bari and 50 n.m. south of the Gargano National Park, in the Apulia Region</p> <p>The core area and the buffer area are defined by the following coordinates.</p> <p>Core area:  41° 23' 49" N – 17° 03' 24" E  41° 15' 27" N – 17° 19' 16" E  41° 16' 13" N – 17° 02' 42" E  41° 23' 03" N – 17° 19' 49" E</p> <p>Buffer area:  41° 25' 11" N – 17° 02' 09" E  41° 24' 04" N – 17° 27' 31" E  41° 13' 50" N – 17° 27' 01" E  41° 14' 57" N – 17° 01' 26" E</p>	<p>fishing activity. As for the buffer area, fishing activities with set longlines and traps could be allowed provided that the vessel has a specific authorization and that historical fishing activities in the buffer zone is demonstrated.</p>																																
<p><b>THE DEEP-WATER ESSENTIAL FISH HABITATS AND SENSITIVE HABITATS IN THE SOUTH ADRIATIC (Proposal stage)</b></p> <p>See also: Resolution GFCM/44/202 1/3 on a roadmap for the establishment of a fisheries restricted area in the southern Adriatic Sea (geographical sub area 18)</p>	<p>Located on the high seas between Italy and Albania (future EEZs).</p> <p>Core area:</p> <table border="1" data-bbox="395 1294 671 1525"> <thead> <tr> <th>Latitude</th> <th>Longitude</th> <th>Vertex</th> </tr> </thead> <tbody> <tr> <td>40°54'00" N</td> <td>18°12'00" E</td> <td>1</td> </tr> <tr> <td>41°00'00" N</td> <td>18°48'36" E</td> <td>2</td> </tr> <tr> <td>40°55'48" N</td> <td>19°00'00" E</td> <td>3</td> </tr> <tr> <td>40°45'00" N</td> <td>19°01'48" E</td> <td>4</td> </tr> <tr> <td>40°44'24" N</td> <td>18°57'36" E</td> <td>5</td> </tr> <tr> <td>40°38'24" N</td> <td>19°02'24" E</td> <td>6</td> </tr> <tr> <td>40°10'48" N</td> <td>19°10'12" E</td> <td>7</td> </tr> <tr> <td>40°09'36" N</td> <td>18°46'48" E</td> <td>8</td> </tr> <tr> <td>40°24'36" N</td> <td>18°39'00" E</td> <td>9</td> </tr> </tbody> </table>	Latitude	Longitude	Vertex	40°54'00" N	18°12'00" E	1	41°00'00" N	18°48'36" E	2	40°55'48" N	19°00'00" E	3	40°45'00" N	19°01'48" E	4	40°44'24" N	18°57'36" E	5	40°38'24" N	19°02'24" E	6	40°10'48" N	19°10'12" E	7	40°09'36" N	18°46'48" E	8	40°24'36" N	18°39'00" E	9	<p>In the core area, the proposal includes the permanent closure to any professional fishing activity with towed nets, bottom set nets, and set longlines. Measures suggested in the buffer area include the subjection of any demersal fishing activity to a special fishing authorization, if the fishing unit can demonstrate to have carried out fishing activities in the area in the last five years.</p>	<p>Yes, core area. The core area covers a surface of 3545.22 km<sup>2</sup> and its depth ranges between 200 meters (minimum) to 968 meters (maximum). The buffer area, which covers a surface of 3095.6 km<sup>2</sup> and its depth ranges between 100 m (minimum) to 900 m (maximum).</p>	<p>Proposal stage</p>
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40°54'00" N	18°12'00" E	1																																
41°00'00" N	18°48'36" E	2																																
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40°10'48" N	19°10'12" E	7																																
40°09'36" N	18°46'48" E	8																																
40°24'36" N	18°39'00" E	9																																



## 2.5.PSSAs<sup>289</sup>

The proposal to establish an Adriatic Particularly Sensitive Sea Area (PSSA) has a history dating back to a Croatian initiative and studies conducted from 2004 to 2006. A Joint Expert Group on PSSA, later replaced by the Correspondence Group, was formed with representatives from all Adriatic States to discuss the proposal. Several meetings were held, including those in Opatija (April 2006), Portorož (October 2006), and Zagreb (June 2007). The draft proposal suggests additional protection measures within the Adriatic PSSA, such as strengthening existing measures, potential extension of routing measures, and upgrading the ADRIREP reporting system. It also considers associated protective measures based on the 2004 Ballast Water Convention, which was not yet in force at the time. Other proposed measures may include Special Area status based on MARPOL Annexes IV and VI, as well as potential future IMO Guidelines and Codes.

It is hoped that the proposal will be finalized and submitted to the International Maritime Organization (IMO), leading to the proclamation of the entire Adriatic Sea as a PSSA, similar to the Western European Atlantic Waters (2004) and the Baltic Sea (2005, excluding Russian waters). The Adriatic PSSA could serve as a flexible tool, a platform for discussion, and a significant incentive for Adriatic States to manage risks associated with international shipping, including operational pollution. It is plausible that establishing an Adriatic PSSA, alongside one or more SPAMIs or FRAs in vulnerable areas, would substantially contribute to protecting the Adriatic marine environment from shipping activities and operational pollution..

### 2.5.1. Marine areas to be covered and potential associated protected measures

Regardless of the fact that the 2006 draft proposal for designating the Adriatic Sea as a PSSA was not finalized or submitted to the IMO, it can serve as a solid foundation for either updating and finalizing the proposal or as a starting point for a new PSSA proposal. It's worth noting that the draft proposal was prepared by the Joint Expert Group on PSSA, comprising representatives from all Adriatic States except Greece. Additionally, the list of proposed associated protective measures (APMs) was developed in close coordination with the Trilateral Commission's sub-commission on ballast water management. Extensive efforts were invested by various bodies and experts in preparing the proposal, and its near-completion status makes updating, upgrading, and eventual submission to the IMO a viable option.

According to the proposal, the Adriatic PSSA area was intended to encompass the entire Adriatic Sea, including territorial seas, zones under coastal States' sovereign rights or jurisdiction, and the high seas. It was also intended to incorporate the entire Channel of Otranto area, north of latitude 40° 25' 00" N, aligning with the current application area of existing APMs in the Adriatic Sea. The proposal aimed to build upon and expand existing APMs, including mandatory and proposed routing measures and the ADRIREP system. In a potential new PSSA proposal, further research could explore the extension of the proposed PSSA into the Ionian Sea, particularly the area adjacent to the Channel of Otranto, but outside its boundaries.

### 2.5.2. New associated protective measures

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<sup>289</sup> EUSAIR study, p. 198.

One possibility for the designated Adriatic PSSA is to mirror existing measures, similar to the previously discussed scenario in the Wadden Sea. This approach offers the advantage of raising international awareness about the area's vulnerability to damage from international shipping, aided by the compulsory identification of all associated protective measures (APMs) that should be displayed on charts following IHO symbols and methods.

The second preferred option is to strengthen and upgrade existing APMs while considering proposals for new ones. These new APMs could apply to the entire Adriatic Sea or specific parts of it.<sup>290</sup>

Existing routing measures could be strengthened by upgrading proposed traffic flows, such as those in the central Adriatic near the Jabuka/Pomo Pit area and within the Otranto Channel, into compulsory traffic separation schemes. New compulsory traffic separation schemes or proposed traffic flows could be proposed for other areas in the Adriatic, including the Central and Southern Adriatic, such as the Sazani Strait and the Bay of Boka Kotorska.<sup>291</sup>

The ADRIREP reporting system could be upgraded to include additional types of ships required to report and expand the scope of reported information, particularly in the field of ballast water management. Another objective of ADRIREP's upgrade could be the harmonization and standardization of Vessel Traffic Services (VTS) in the region.

As for the Adriatic's status as a Special Area under MARPOL, another potential APM could be designating the Adriatic Sea, either independently or as part of the wider Mediterranean, as a Special Area under Annex IV of MARPOL for sewage discharges. Additionally, based on the provisions of Annex VI to MARPOL concerning air pollution, the Adriatic Sea could be designated as a Special Area. A comparable example is the Baltic Sea PSSA, which includes a Special Area status based on the provisions of Annex I, IV, and V, as well as a Sulphur Emission Control Area (SECA) (as of May 19, 2006) and a Nitrogen Emission Control Area (NECA) Special Area (as of January 1, 2021) under the relevant provisions of Annex VI to the MARPOL Convention.

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### **3. Identification of necessary steps in the form of a manual for designating legal protection based on individual (cross-border) legal grounds**

#### **3.1.EBSAs**

The procedure for identifying EBSAs aims at assessing the compliance of the potential areas with a set of scientific criteria listed in Annex I to Decision IX/20 adopted in 2008 by the Conference of the parties to the CBD. The scientific criteria are seven:

- *uniqueness or rarity;*
- *special importance for life-history stages of species;*
- *importance for threatened, endangered or declining species or habitats;*

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<sup>290</sup> An interesting case from the standpoint of an eventual proposal for the designation of the Adriatic Sea a PSSA is represented by the Klek/Neum Bay. The latter represents the only exit of Bosnia and Herzegovina to the Adriatic Sea. A peculiarity is represented by the fact that the Bosnian territorial waters in front of the Klek/Neum peninsula are encircled by Croatian internal waters over which, based on the provisions of the 2005 Revised Guidelines, a PSSA cannot be designed.

<sup>291</sup> Mediterranean Seminar on PSSAs, Report of the Seminar, 12 December 2019, Tirana, Albania.

- *vulnerability, fragility, sensitivity, or slow recovery;*
- *biological productivity;*
- *biological diversity; and*
- *naturalness.*

Annex II to the same decision provides scientific guidance for selecting areas to establish a representative network of marine protected areas. In this context, the EBSAs represent a required component of the network, together with the following properties:

- *representativity;*
- *connectivity;*
- *replicated ecological features; and*
- *adequate and viable sites.*

Ultimately, Annex III to the same decision identifies four initial steps to be considered in the development of representative networks of marine protected areas, namely:

- *scientific identification of an initial set of ecologically or biologically significant areas;*
- *develop/choose a biogeographic, habitat, and/or community classification system;*
- *drawing upon steps 1 and 2 above, iteratively use qualitative and/or quantitative techniques to identify sites to include in a network; and*
- *assess the adequacy and viability of the selected sites.*

The application of the EBSA criteria is a purely scientific and technical exercise, intended to provide a basis for determining which areas may be in need of a higher level of protection. Subsequent adoption of conservation and management measures in these areas is a matter for States and competent intergovernmental organizations, and not for the CBD.

Decision IX/20 does not provide for a precise process for identifying EBSAs<sup>292</sup>. It also recognizes that the criteria may require adaptation by the parties if they choose to apply them within their national jurisdiction, noting that they will do so with regard to national policies and criteria. As the scientific process for the identification of EBSAs covers both areas within and beyond national jurisdiction, the implications with respect to their protection are different: in areas within national jurisdiction, it is up to States to decide; in areas beyond national jurisdiction, more complex processes involve also global and regional organizations.

A process for identifying areas of ecological or biological significance was developed more precisely in Decision X/29, adopted in 2010. This decision further reiterates that the application of the EBSA criteria “*is a matter for States and competent international organizations, in accordance with international law, including the United Nations Convention on the Law of the Sea*”. It is clear that the CBD is not tasked with the identification of EBSAs, but simply plays a facilitating role.

The identification of EBSAs could eventually support the designation of a network of marine protected areas, but it could also serve other purposes. In fact, the designation of an area as an EBSA would not automatically mean that the area would become a marine protected area. The process is rather intended to provide a scientific basis for determining which areas may be in need of a higher level of protection, and such protection could come from a variety of

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<sup>292</sup> It simply “*urges Parties and invites other Governments and relevant organizations to apply, as appropriate, the scientific criteria in Annex I to the present decision (...) to identify ecologically or biologically significant and/or vulnerable marine areas in need of protection*”.

conservation and management measures (fisheries closures, marine protected areas, application of environmental impact assessments, and other similar measures).

Eventually, the process aims at informing decision-makers when it comes to complying with their obligations under the United Nations Convention on the Law of the Sea and other international instruments devoted to the protection and preservation of the marine environment, including beyond national jurisdiction.

In order to fulfil its facilitating role, the Executive Secretary of the CBD organizes, in cooperation with the competent authorities, a series of regional workshops, whose first aim would be to facilitate the description of EBSAs, using the seven scientific criteria and “other relevant compatible and complementary nationally and intergovernmentally agreed scientific criteria”<sup>293</sup>. The results of these regional workshops are made available to the Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA)<sup>294</sup>, which prepares summary reports “for consideration and endorsement in a transparent manner by the Conference of the Parties to the Convention, with a view to include the endorsed reports in the repository referred to in paragraph 39 and to submit them to the United Nations General Assembly (...)”<sup>295</sup>, i.e. the competent arena to discuss any future policy implication with respect to EBSAs identified in areas beyond national jurisdiction.

The EBSA identification process is well-engaged within the CBD and shows evident links with other processes in various international organizations, such as the identification of Vulnerable Marine Ecosystems by Regional Fisheries Management Organizations or of Particularly Sensitive Sea Areas by the International Maritime Organization. Although these processes serve different aims (the adoption of protective measures), the criteria they use are similar to the EBSAs criteria, and definitely compatible with them.

More recently, the major issue raised by this process concerns its relationship with the scope of the draft Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Agreement). Draft Part III of this instrument is devoted to *Measures such as area-based management tools, including marine protected areas*, and identifies a specific procedure for proposals, on the basis of criteria (indicated in draft Annex I) that include – among many others – those listed for the EBSAs under the CBD. The procedure entails a final decision by the conference of the parties that gives the legal status of the identified area an *erga omnes partes* effect. In fact, it is provided that “[p]arties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently with the decisions adopted under this Part”. Once adopted and entered into force, the BBNJ Agreement would definitely contribute to the aims so far pursued under the CBD through the identification of EBSAs, by providing a binding and detailed procedure for the establishment of networks of spatial protection tools in the high seas and the deep seabed.

### 3.2.SPAMIs

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<sup>293</sup> CBD COP 10, Decision X/29 on Marine and Coastal Biodiversity, para. 36.

<sup>294</sup> The SBSTTA, established by Art. 25 of the CBD, is an open-ended intergovernmental scientific body in charge of providing the Conference of the Parties with advice relating to the implementation of the convention.

<sup>295</sup> CBD COP 10, Decision X/29 on Marine and Coastal Biodiversity, para. 42.

The Areas Protocol applies to the area of the Mediterranean Sea as delimited in Art. 1 of the Barcelona Convention<sup>296</sup>. Under the Areas Protocol, the 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 Areas Protocol provides for the establishment of a List of SPAMIs (so-called SPAMI List). The SPAMI List may include sites that 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.

Importantly, the areas identified as potential SPAMIs may extend beyond national jurisdiction and also be given a transboundary character, if the parties to the Areas Protocol wish to do so. This is done by including in the relevant spatial measures marine waters that encompass portions of maritime zones (i.e., internal waters, territorial sea, exclusive economic zone, continental shelf) pertaining to different States or even portions of the high seas. Art. 9 of the Areas Protocol expressly provides that SPAMIs may be established in “(a) the marine and coastal zones subject to the sovereignty or jurisdiction of the Parties; (b) zones partly or wholly on the high seas”.

A without prejudice clause of the Areas Protocol is particularly relevant for cases of transboundary initiatives or proposals of SPAMIs including portions of high seas. It is to be noted that, according to Art. 2, para. 2, nothing in the Areas Protocol nor any act adopted on the basis of it shall prejudice the rights, the present and future claims or legal views of any State relating to the law of the sea, in particular, the nature and the extent of marine areas, the delimitation of marine areas between States with opposite or adjacent coasts, the freedom of navigation on the high seas, the right and modalities of passage through straits used for international navigation, and the right of innocent passage in territorial seas, as well as the nature and extent of the jurisdiction of the coastal State, the flag State and the port State. Para. 3 of the same provision mandates that no act or activity undertaken on the basis of the Protocol shall constitute grounds for claiming, contending, or disputing any claim to national sovereignty or jurisdiction.

Proposals for inclusion in the SPAMI List may be submitted:

- (i) by the party concerned, if the area is situated in a zone already delimited, over which that party exercises sovereignty or jurisdiction;
- (ii) by two or more neighboring parties concerned if the area is situated, partly or wholly, on the high seas; and
- (iii) by the neighboring parties concerned in areas where the limits of national jurisdiction have not yet been defined.

Parties making proposals for inclusion in the SPAMI List are required to provide the Specially Protected Areas Regional Activity Centre (SPA/RAC) with an introductory report containing information on the area's geographical location, its physical and ecological characteristics, its legal status, its management plan and the means for implementation, as well as a statement justifying its Mediterranean importance.

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<sup>296</sup> It also includes: the seabed and its subsoil; the waters, the seabed and its subsoil on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the freshwater limit; the terrestrial coastal areas designated by each of the Parties, including wetlands.

Since 2001, SPA/RAC has made available an annotated format for the presentation reports of areas that are proposed by the parties to the Areas Protocol for inclusion in the SPAMI List. The annotated format is available at the following link: [Annotated Format](#) (Annex 1).

The objective of the annotated format is to guide the parties to the Areas Protocol in producing reports of comparable contents, including information necessary for the adequate evaluation of the conformity of the proposed site with the criteria set out in the Areas Protocol and in its Annex I (*Common criteria for the choice of protected marine and coastal areas that could be included in the SPAMI List*).

The presentation report must include the following information:

- (i) identification of the proposed protected area;
- (ii) site description;
- (iii) its Mediterranean importance;
- (iv) the activities in and around the area and their impacts;
- (v) legal status;
- (vi) management measures;
- (vii) human and financial resources available for the management and the protection of the site.

The reports should be submitted to the RAC/SPA in English or French, two months before the meeting of National Focal Points for SPAs.

Dossiers should be compiled on A4 paper (210 mm x 297 mm), with maps and plans annexed on paper with a maximum size of an A3 paper (297 mm x 420 mm). The parties are also encouraged to submit the full text of the proposal in electronic form.

Relevant annexes to the proposal are the following:

- copies of relevant legal instruments;
- copies of planning and management documents;
- maps (administrative boundaries, zoning, land tenure, land use, and distribution of habitats and species, as appropriate);
- existing inventories of flora and fauna species;
- photographs, slides, films and videos, CD-ROMs;
- list of publications concerning the site, with the full text of the main references.

The SPA/RAC requires to compile all sections of the annotated format: even those that do not apply to the proposed area. Should the latter be the case, the submitting parties are required to note *“not applicable to the proposed area”*.

The annotated format is divided into sections covering, respectively:

- (1) area identification, requesting data related to its geographic location, boundaries, and spatial extension;
- (2) an executive summary of maximum three pages, recapping the information contained in sections from (3) to (9);
- (3) site description, including physical and biological features, as well as human population and use of natural resources (such as fishing and tourism);
- (4) Mediterranean importance of the site, which must include the indication of the ecosystem and habitats specific to the Mediterranean region and their estimated spatial extension; the



- presence of habitats that are critical to endangered, threatened or endemic species; as well as other relevant features in accordance with Art. 8, para. 1, of the Areas Protocol, namely the scientific, aesthetic, cultural or educational special interests of the proposed site;
- (5) impacts and activities affecting the area, including activities within the site (exploitation of natural resources, threats to habitats and species, demand by an increased population and infrastructures, historic and current conflicts) and around the site (pollution, other external threats, either natural or anthropogenic, and sustainable development measures);
  - (6) expected developments and trends, meant as the those that are “thought [as the] most likely to occur in the absence of any deliberate intervention to protect and manage the site”;
  - (7) protection regime, with the inclusion of the legal texts concerning the site, the relevant objectives;
  - (8) institutional framework;
  - (9) available resources;
  - (10) other information, if any;
  - (11) contact addresses;
  - (12) signature(s) on behalf of the State(s) making the proposal; and
  - (13) date.

The annotated format includes an expressed reference to a plurality of submitting parties for proposals concerning “transboundary areas” (section 1.1). The same document requires to provide information on the spatial extension of the proposed area with the indication of the legal status of the relevant marine spaces (marine internal waters, territorial sea, high seas).

The geographic location of the proposed SPAMI should be described in the relevant section (1.4) without inserting the list of geographical coordinates, which should rather be indicated in a separate annex with a map and the legal basis for the area that contains the list of coordinates. Additionally, the geology and geomorphology must be briefly described (i.e., geological aspects, processes of sedimentation and erosion observable in the area, coastal geomorphology, and island system), with a list of relevant bibliographical sources (section 3.2.1). Other relevant physical features, such as hydrodynamics, volcanic formations, caves, underwater formations, coastal dunes and beach formations, must also be described (sections 3.2.2 and 3.2.3). The dominant marine and terrestrial habitats should be indicated on the basis of the habitat classifications adopted within the framework of the Mediterranean Action Plan, together with the indication of their spatial coverage.

The species to be listed are only those protected by international agreements, particularly those species included in Annex II to the Areas Protocol (*List of endangered or threatened species*) that are present in the proposed area. Any other species may be listed if it is clearly considered of regional importance given its high representation in the area. Specific information must be provided for each species, namely: whether its relative abundance is Common (C), Uncommon (U), or Occasional (O); whether its status is rare (r), endemic (e), or threatened (t); and whether its status represent an important resident population (R), or important for its breeding (B), feeding (F), wintering (W), or migratory passage (M).

It is to be noted that the “*foreseeable developments and trends*”, which are to be described in the annotated format under section (6), do not appear in the list of common criteria for the choice of protected marine and coastal areas that could be included in the SPAMI List, as established in Annex I to the Areas Protocol. The annotated format recognizes this aspect, adding that it is not always easy to assess such developments and trends. Accordingly, it is not mandatory to fill (all the boxes of) section (6) of the format. In any case, the annotated format

highlights that “*the assessment of foreseeable developments and trends constitutes a dynamic supplement to the statistic knowledge of the site*” and, as such, it is a significant information for the definition of the objectives of the management plan of the site. Consequently, it is desirable to outline, at least, some related information, such as the foreseeable development of economic activities in the area, the potential conflicts between different users, and the expected increase in the pressure on the marine environment.

The description of proposed protection regime must include an historical background of the former protection of the site (7.1.1) and indicate whether the proposed national protection regime arises from international treaties.

Of particular relevance is section 7.2, which relates to the international status of the proposed SPAMI. Specific information must be provided if the proposed area is transboundary, or totally or partially in the high seas, or within areas where the limits of national sovereignty or jurisdiction have not yet been defined. In these cases, the annotated format requires to mention the modalities of consultation used to implement Art. 9, para. 3 (a), of the Areas Protocol, which provides that “where a proposal is formulated [concerning a transboundary area], the parties concerned shall consult each other with a view to ensuring the consistency of the proposed protection and management measures, as well as the means for their implementation”. Annex I, A (*Protection, planning and management measures*), to the Areas Protocol is also relevant in this regard, as it states that “[t]he SPAMIs will have to constitute the core of a network aiming at the effective conservation of the Mediterranean heritage. To attain this objective, the Parties will develop their cooperation on bilateral and multilateral bases in the field of conservation and management of natural sites and notably through the establishment of transboundary SPAMIs”. It should also be mentioned if the area, or part of it, is subject to any legal claim or to any file open in that connection within the framework of an international body. The same section requires the description of whether the area, or part of it, has been designated (and on what date) with an international conservation category (e.g., Specially Protected Area, Biosphere Reserve, Ramsar Site, World Heritage Site, Natura 2000, Emerald Network, etc.).

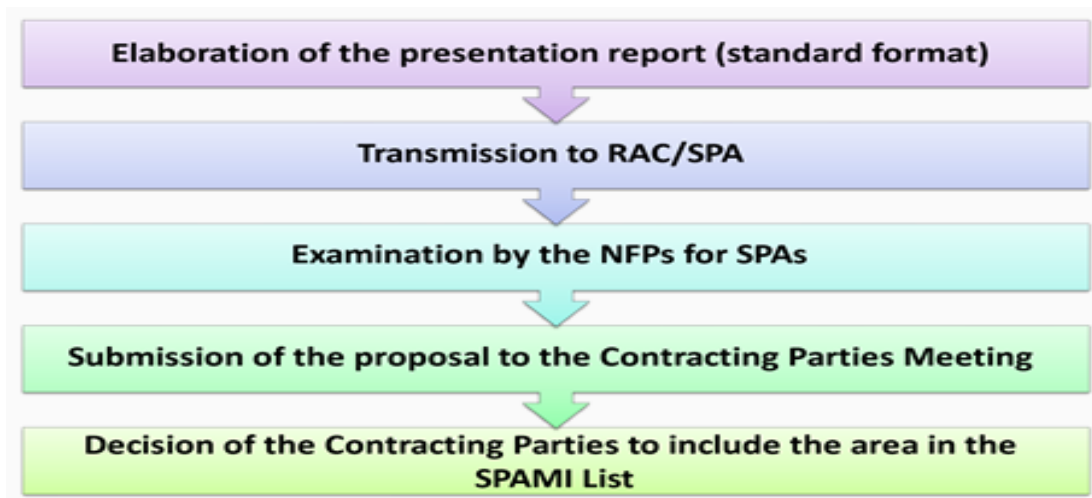
The submitting parties are required to specify also the legal provisions for management, including zoning, basic regulations, and legal competencies with regard to administration and implementation of conservation measures, which should also identify the coordination means among the relevant authorities. Specific information, to be provided with the proposal, includes the management (institutional) framework and the proposed management plan, the available resources (available staff, finances, equipment, state of knowledge of the area).

After having been submitted to the SPA/RAC, the proposal for the establishment of the SPAMI is sent to the National Focal Points, which shall examine it in conformity with the *Guidelines for the Establishment and Management of Mediterranean Marine and Coastal Protected Areas* (adopted in 2006 in compliance with Art. 16, c, of the Areas Protocol)<sup>297</sup> and the criteria set forth in Annex I to the Areas Protocol. If the proposal is considered to be consistent by the National Focal Points, SPA/RAC transmits it to the Secretariat. The latter “shall inform the meeting of the Parties, which shall decide to include the area in the SPAMI List” (Art. 9, para. 4, b, of the Areas Protocol).

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<sup>297</sup> <https://www.rac-spa.org/dl/gm2006.pdf>.

The decision to include the area in the SPAMI List shall be taken by consensus by the parties, which shall also approve the management measures applicable to the area (Art. 9, para. 5, of the Areas Protocol).



Necessary steps in the process of submission of a SPAMI proposal (Source: official website of SPA/RAC ([rac-spa.org](http://rac-spa.org))).

The parties may revise the SPAMI List according to the *Procedure for the Revision of the Areas Included in the SPAMI List* (2008)<sup>298</sup>. The aim of this procedure is to evaluate SPAMI sites in order to examine whether they meet the criteria set forth in Annex I to the Areas Protocol. For this aim, another annotated format (*Format for the Periodic Review of SPAMIs*) has been prepared and is available at the following link: [Format for Periodic Review](#) (Annex 2).

Notably, changes in the delimitation or legal status of a SPAMI or the suppression of all or part of such an area are not allowed, unless there are important reasons for doing so, taking into account the need to safeguard the environment and comply with the obligations laid down in the Areas Protocol. A procedure similar to that followed for the establishment of the SPAMI and its inclusion in the SPAMI List shall be observed.

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<sup>298</sup> [https://www.rac-spa.org/sites/default/files/doc\\_spamis/procedure\\_spami\\_review\\_eng.pdf](https://www.rac-spa.org/sites/default/files/doc_spamis/procedure_spami_review_eng.pdf).

### 3.3.ACCOBAMS MPAs

The ACCOBAMS binds the parties to achieve and maintain a favorable conservation status for cetaceans. The main obligations of the parties are to prohibit any deliberate taking of cetaceans, to create and maintain a network of specially protected areas to conserve cetaceans (Art. II, para. 1), and to take the measures specified in the conservation plan (Annex 2).

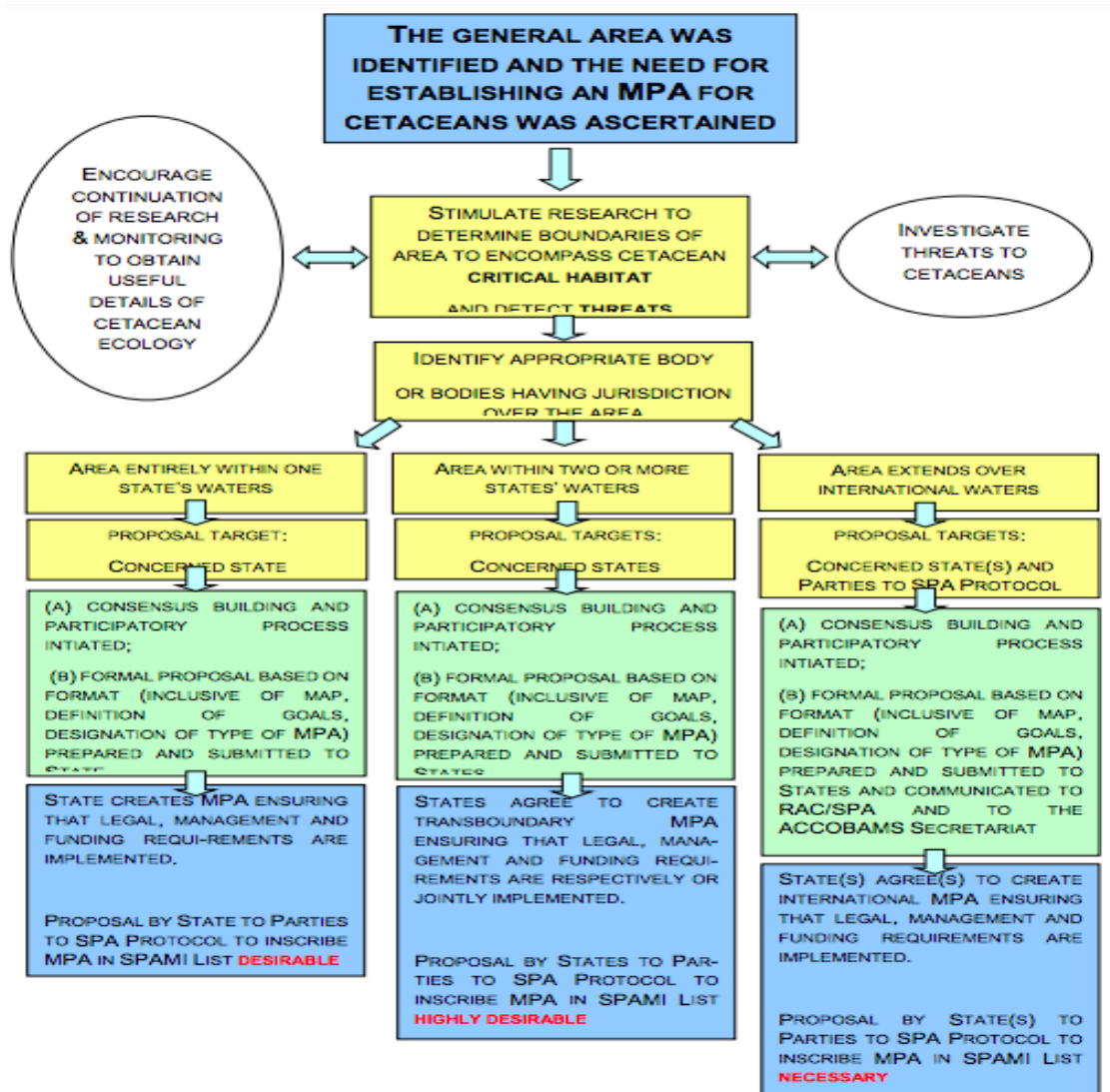
In this regard, para. 3 of Annex 2 to ACCOBAMS makes a specific reference to the Barcelona Convention and its Areas Protocol as the appropriate framework within which specially protected areas can be established that serve as habitats for cetaceans or provide important food resources for them. In addition to this explicit reference, para. 3 of Annex 2 to ACCOBAMS leaves open the possibility to use for this purpose “other appropriate instruments”.

Resolution 3.22 (*Marine Protected Areas for Cetaceans*), adopted in 2007, includes the first list of marine protected areas recommended by the Scientific Committee of ACCOBAMS. At the time of its adoption, the list comprised 18 sites. The instrument contains a number of *Criteria for the selection of protected areas*, together with a format for the related proposal (Annex 1), as well as a set of *Guidelines for the establishment and management of marine protected areas for cetaceans* (Annex 2).

The format for the proposals is based on the SPAMI template and is composed of seven main sections, namely:

- area identification;
- executive summary;
- site description;
- statement about the importance of the area for the cetacean species;
- human population and use of natural resources;
- protection regime; and
- proposed management measures and relevant institutional arrangements.

In addition to its practical aim of ensuring that proposals are standardized, the format represents a checklist of the types of information that need to be collected to make a proposal complete. As such, the Guidelines recommend that the format be considered an integral part of them.



Necessary steps in the process of submission of a proposal for the establishment of a marine protected areas for cetaceans. Source: ACCOBAMS-MOP3/2007/Res.3.22.

If a marine protected area for cetaceans is proposed entirely under national jurisdiction, it will have to be established under the general domestic legislation of the relevant coastal State, which covers both the substantial and institutional aspects of the matter. However, considering the pelagic habits of most cetacean species found in the Mediterranean Sea, important portions of their critical habitat will be located beyond national jurisdiction and entail international cooperation.

Resolution 4.15 (*Marine Protected Areas of Importance for Cetaceans Conservation*), adopted in 2010, added new sites to the previous list (which reached 22 sites) and encouraged the States concerned to promote the institution of the areas of special importance for cetaceans to ensure their effective management. Notably, it urged the States concerned, with the assistance of the Scientific Committee and the Secretariat, to implement the development of high seas SPAMIs as part of a regional network, working in conjunction with UNEP-MAP RAC/SPA. Moreover, it renewed the recommendation to give “*full consideration*” to the criteria for the selection and format of proposal for marine protected areas for cetacean and the guidelines for the establishment and management of marine protected areas for cetaceans.

Resolution 6.24 (*New Areas of Conservation of Cetaceans Habitats*), adopted in 2016, took note, *inter alia*, of the revised guidelines for the establishment and management of marine protected areas for cetaceans (ACCOBAMS/MOP6/2016/Doc33).

This document states that the process for establishing a marine protected area for cetaceans is complex and involves, in sequence:

- (a) the definition of goals of the prospective MPA, based on the existing knowledge of the presence of cetaceans in the area and of the existence of threats to their survival;
- (b) the rationale for the proposal, where the case is made for the establishment of an MPA as an effective tool to counteract the known threats to cetaceans and thus to ensure the populations' favorable status;
- (c) the compilation of all the pertinent bibliographic information (published as well as "grey" literature and user knowledge derived from interviews, etc.);
- (d) the collection of updated scientific information through dedicated research targeting the species of concern, human activities in the area, and the existence, types and distribution of threats;
- (e) the analysis of data to identify the existence of critical habitats within the considered area, or sites where the target species concentrate for specific activities or purposes;
- (f) the drafting of a science-based proposal, inclusive of maps to support decisions on conservation priorities based on links among areas important to cetacean populations, ecological processes and human activities, to be presented for consideration by the competent authorities and by all the stakeholders; and
- (g) the beginning of a consultation phase involving the building of consensus through awareness campaigns, stakeholder participation, socio-economic analysis and, wherever necessary, conflict resolution.

Proposals may be brought to the attention of the authorities by anybody. However, the process may be greatly facilitated by channeling proposals through recognized regional bodies such as the RAC/SPA and ACCOBAMS. Each Mediterranean coastal State may independently assess needs and opportunities for establishing marine protected areas for cetaceans within its jurisdiction, in order to grant as quickly as possible legal protection to those sites that have already been identified as particularly important for cetaceans. While that happens, however, an attempt to initiate such a process in an organized, region-wide fashion is strongly encouraged by the ACCOBAMS guidelines<sup>299</sup>.

The guidelines indicate that criteria to identify sites containing critical habitat may include:

- areas used by cetaceans for feeding, breeding, calving, nursing and social behavior;
- migration routes and corridors and related resting areas;
- areas where there are seasonal concentrations of cetacean species;
- areas of importance to cetacean prey;
- natural processes that support continued productivity of cetacean foraging species (upwellings, fronts, etc.);
- topographic structures favorable for enhancing foraging opportunities for cetacean species (canyons, seamounts).

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<sup>299</sup> With one exception (the Pelagos Sanctuary), all marine protected areas existing in the Mediterranean Sea have been exclusively or primarily established to protect coastal waters. As a consequence, most existing sites contain habitats of coastal cetaceans.



These criteria can be applied for the identification of sites containing cetacean critical habitats, in need of protection due to the occurrence of significant interactions between cetaceans and human activities, where:

- conflicts between cetaceans and fishing activities have been reported;
- significant or frequent bycatch of cetaceans is reported;
- intensive whale watching or other marine tourism activities occur;
- navigation presents a potential threat to cetaceans;
- pollution runoff, outflow or other marine dumping occur;
- military exercises are known to routinely occur.

However, marine protected areas for cetaceans may also be desirable to stave off potential threats, which may presumably occur in the future as a consequence of the predictable expansion of impacting activities.

An initial list (by no means complete) of more than 80 potential candidate sites for cetacean protection is contained in the document UNEP(DEPI/MED WG.308/inf.11 (pages 32-67), where the following information is provided for each site: concerned country; concerned cetacean species; additional features (e.g., other protected species found on site); size of cetacean population thought to be using the area; known threats to cetaceans in the area; known problems caused to humans by cetaceans (e.g., net depredation); current protection status; list of researchers, NGOs, local groups active in the area; and relevant references.

### 3.4.FRAs

Art. 8, b, iv, of the GFCM Agreement aims to establish FRAs for the protection of vulnerable marine **ecosystems** (VMEs), including, but not limited to, nursery and spawning areas. All measures formulated by the GFCM must be based on the best scientific advice available, taking into account relevant environmental, economic and social factors.

Output 1.3 of the GFCM 2030 Strategy for sustainable fisheries and aquaculture in the Mediterranean and the Black Sea (*Efficient area-based conservation measures, technical and nature-based solutions strengthened to conserve biodiversity and enhance the productivity of marine living resources*) aims at the identification of new fisheries restricted areas and, once established, the enhancement of their efficiency and monitoring in order to manage the significant adverse impacts of fisheries on vulnerable species, ecosystems and essential fish habitats.

Notably, para. 22 of Recommendation GFCM/43/2019/5 required that FRAs be established for the conservation and management of stocks in the southern Adriatic and in the northern Adriatic Sea. Annex II to the same recommendation considered that, “in the wake of the positive implementation of the Jabuka/Pomo pit FRA, with similar cooperative spirit and recognizing the value of adopting similar measures in the rest of the Adriatic Sea, work should progress towards the establishment of FRAs in the southern Adriatic and in the northern Adriatic”.

Accordingly, *Terms of reference towards the establishment of FRAs in the Adriatic Sea* were identified, as follows:

1. States separately evaluate the feasibility of FRAs, in consultation with national stakeholders.
2. The key components should cover vulnerable marine ecosystems (VME), essential fish habitats (EFH), spatial fishing fleet dynamics and the socio-economic impacts, as provided by the national administrations.

3. Bilateral discussions are held between States regarding potential FRAs.
4. A workshop is convened with State representatives, scientists and stakeholders, and with the support of the FAO AdriaMed project, to examine all key components for the establishment of new FRAs.

FRA proposals are to be submitted through the Standard form for the submission of proposals for GFCM fisheries restricted areas in the Mediterranean and the Black Sea, available at the following link: [Standard form](#) (Annex 3). As in the case of ACCOBAMS MPAs, also the standard form for FRA proposals is based on the annotated format for SPAMI proposals and includes:

- an executive summary;
- area identification, with the name of the FRA;
- site description;
- regional importance of the site;
- impacts and activities affecting the area, within and around the site;
- expected developments and trends;
- management and protection regime;
- rationale for the establishment of a FRA and proposed management measures;
- other relevant information, if any;
- relevant contacts.

Proposals are then examined by the GFCM at its annual sessions.

### 3.5.PSSAs

PSSAs may be located within or beyond the limits of the territorial sea. It is worth noting that, on the one hand, due to its exercise of sovereignty within the territorial sea, a coastal state enjoys wide rights with regard to the adoption of restrictive navigational measures (including routing measures) and, therefore, the designation of a PSSA solely within the territorial sea would not represent, in most cases, a substantial added value. On the other hand, the adoption of more stringent measures for the protection of the marine environment (including biodiversity) from international shipping activities in an exclusive economic zone, also on the basis of Art. 211, para. 6, UNCLOS, is nowadays primarily possible through the designation of a PSSA.

One of the challenges could be to convince other States, particularly those using the area for international navigation, of the environmental importance of the area and of its vulnerability to international shipping. Even in that case, third States need to be assured that, through the designation of a PSSA and adoption of associate protective measures, navigation will be regulated and made environmentally safer, but not unnecessarily hindered or even prevented.

The set of *Guidelines for the Identification of PSSAs*, adopted on 6 November 1991 by the Assembly of the IMO under Resolution A.720(17), were revised under Resolutions A.927(22) of 29 November 2001 and A.982(24) of 1 December 2005.

To be identified as a PSSA, an area should meet at least one among a number of ecological criteria (namely: *uniqueness or rarity; critical habitat; dependency; representativity; diversity; productivity; spawning or breeding grounds; naturalness; integrity; vulnerability; biogeographic importance*), social, cultural and economic criteria (namely: *economic benefit; recreation; human dependency*) or scientific and educational criteria (namely: *research; baseline and monitoring studies; education*).

In addition, the area should be at risk from international shipping activities, taking into consideration vessel traffic (operational factors; vessel types; traffic characteristics; harmful substances carried) and natural factors of hydrographical, meteorological and oceanographic character.

The 2005 revised PSSAs guidelines specify that at least one of the relevant criteria should be present in the entire proposed PSSA, though this does not have to be the same criterion throughout the area. Cultural heritage has been reinstated as a criterion under the label of social, cultural and economic criteria.

The legal nature of the PSSA and the diplomatic and technical process for its designation within the IMO imply important opportunities and substantial challenges. 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 (APMs). 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.

The identification and designation of a PSSA and the adoption of its APMs 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 APMs within the competences of the IMO to prevent, reduce or eliminate risks from such shipping activities.

APMs within a PSSA are limited to actions that are to be, or have been, approved or adopted by the IMO, and include the following options:

- (1) designation of an area as a Special Area under MARPOL Annexes I, IV or V, or a SO<sub>x</sub> or NO<sub>x</sub> emission control area under MARPOL Annex VI, or application of a special discharge restrictions to vessels operating in a PSSA;
- (2) adoption of ships’ routing and reporting systems near or in the area, under the SOLAS Convention and in accordance with the *General provisions on Ships’ Routing* and the *Guidelines and Criteria for Ship Reporting Systems*;
- (3) development and adoption of other measures aimed at protecting specific sea areas against environmental damage from ships, provided they have an identified legal basis (application of discharge restrictions)<sup>300</sup>.

An application for a PSSA designation should be submitted by an IMO Member State or more affected Member States (i.e., the States bordering the PSSA area) to the IMO and include, apart from the proposed geographical extent of the PSSA, a proposal for at least one APM<sup>301</sup>. If there are already APMs in the area, as currently the case in the Adriatic Sea (i.e., routing measures, reporting obligations, MARPOL Special Area Status etc.), then there is no requirement to propose additional APMs, although such measures may be identified in the future. In the latter

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<sup>300</sup> 2005 PSSA Guidelines, Art. 6.1.

<sup>301</sup> *Ibid.*, Art. 7.1.

case, the application should identify the threat of damage or damage being caused to the area by international shipping activities and show how the area is already being protected from such identified vulnerability by the APMs already in place<sup>302</sup>. Each PSSA application should, accordingly, consist of two parts:

- (1) description, significance of the area and vulnerability;
- (2) appropriate APMs and IMO's competence to approve or adopt such measures.

The application needs to identify the legal basis for each proposed associated protective measure. A legal basis in this regard may be:

- (i) any measure that is already available under an existing IMO document (whether in force or not);
- (ii) any measure that does not exist yet, but could become available through amendment of an IMO instrument or adoption of a new IMO instrument. However, the legal basis for any such measure will only be available after amendment or adoption of a new IMO instrument;
- (iii) any measure proposed for the adoption in the territorial sea or pursuant to Art. 211, para. 6, UNCLOS related to the exclusive economic zone, where existing measures or a generally applicable measure would not adequately address the particularized needs of the proposed area. Such measures may include ships' routing measures, reporting requirements, discharge restrictions, operational criteria and prohibited activities. They should be specifically tailored to meet the need of the area to prevent, reduce or eliminate the identified vulnerability of the area from international shipping activities<sup>303</sup>. The application should furthermore indicate the categories of ships to which the proposed APMs would apply, whereby account should be taken of the relevant provisions of the UNCLOS and other pertinent documents, with particular regards to vessels entitled to sovereign immunity<sup>304</sup>.

Once the proposal reaches the IMO, then the Marine Environment Protection Committee (MEPC) considers the application and establishes an informal technical group formed by its representatives with appropriate environmental, scientific, maritime and legal expertise. The task of the informal technical group is to prepare a brief report to the MEPC, summarizing their findings and the outcome of the assessment, which should be also reflected in the MEPC final report<sup>305</sup>.

The MEPC considers applications on a case-by-case basis, with the final aim to establish whether the application fulfils at least one of the criteria among ecological, socio-economic or scientific attributes. After adoption by the MEPC, the particular APMs are referred to the competent IMO body, which may be, depending on the nature of the proposed APMs, the MSC, the NCSR Sub-Committee or the Assembly itself<sup>306</sup>.

The PSSA does not in itself provide a legal basis for the enforcement of a specific APM, as the latter require a separate approval process within the relevant IMO body. Eventually, the MEPC endorses a PSSA only after the proposed APMs are adopted by the competent IMO body. Due to such demanding procedure, involving IMO Member States, the MEPC, its informal technical group and the relevant IMO Committee or the IMO Assembly itself, the procedure for the designation of a PSSA, from the time of submission of the proposal until the time of actual designation, may last more than one year.

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<sup>302</sup> *Ibid.*, Arts. 7.2 and 7.3.

<sup>303</sup> *Ibid.*, Art. 7.5.2.4.

<sup>304</sup> *Ibid.*, Art. 7.5.2.5.

<sup>305</sup> *Ibid.*, Art. 8.3.1.

<sup>306</sup> *Ibid.*, Art. 8.3.2.

#### **4. Identification of possible forms of management and control within designated forms of cross-border cooperation**

##### **4.1. Management**

###### **4.1.1. EBSAs**

As recalled in the previous section, the process of EBSAs identification does not lead to a definite type of spatial conservation tool, labelled under a specific legal framework. Consequently, the forms of management for areas identified as EBSAs may vary according to the type of instrument under which the relevant area will be protected.

COP 10 encouraged the parties to the CBD, non-parties and competent intergovernmental organizations to cooperate collectively or on a regional or subregional basis, to identify and adopt appropriate measures for the conservation and sustainable use in relation to EBSAs, including by establishing representative networks of marine protected areas in accordance with international law, including the UNCLOS, and based on the best scientific information available, informing the relevant processes within the United Nations General Assembly.

Areas identified as EBSAs may be protected through a variety of instruments; however, considering their spatial objective, once adopted and entered into force, the BBNJ Agreement will provide the appropriate framework for the management of sites located on the high seas and in the deep seabed. Under this framework, the establishment of area-based management tools shall not include any areas within national jurisdiction, and shall not be relied upon as a basis for asserting or denying any claims to sovereignty, sovereign rights, or jurisdiction including in respect of any disputes relating thereto. The conference of the parties of the instrument shall not consider for decision proposals for the establishment of such area-based management tools, and in no case shall such proposals can be interpreted as recognition or nonrecognition of any claims to sovereignty, sovereign rights, or jurisdiction.

Proposals regarding the establishment of area-based management tools under the BBNJ Agreement, including marine protected areas identified as EBSAs under the CBD framework, shall be submitted by the parties, individually or collectively, to the secretariat. Proposals shall include a draft management plan encompassing the proposed measures and outlining proposed monitoring research and review activities to achieve specific objectives.

The procedures and management objectives set forth in the new instrument are evidently based on the experience that States have achieved in relation to area-based management tools established under legal frameworks at the regional level. The regional and subregional – as well as sectoral – bodies will play, in fact, an important role in the management of areas identified as EBSAs and protected under the BBNJ Agreement, as the latter invites such bodies to provide information to the conference of the parties on the implementation of measures that they will adopt to achieve the objectives of the area-based management tool, including marine protected area, established under the new agreement. Moreover, on the basis of the proposals and draft management plans, the conference of the parties to the BBNJ Agreement may take decisions on measures compatible with those adopted by relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, in cooperation and coordination with those instruments, frameworks and bodies; and, where proposed measures are within the competences of other global, regional, subregional or sectoral bodies, it may make

recommendations to the parties and to global, regional, subregional and sectoral bodies to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates. In taking such decisions, the conference of the parties shall respect the competences of, and not undermine, relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies.

Notably, in cases where an area-based management tool, including a marine protected area, established under the BBNJ Agreement subsequently falls, either wholly or in part, within the national jurisdiction of a coastal State, the part within national jurisdiction shall immediately cease to be in force. The part remaining in areas beyond national jurisdiction shall remain in force until the conference of the parties, at its following meeting, reviews and decides whether to amend or revoke the area-based management tool, including a marine protected area, as necessary.



#### 4.1.2. SPAMIs

As general obligations under Art. 3 of the Areas Protocol, the parties shall take the necessary measures to:

- (a) protect, preserve and manage in a sustainable and environmentally sound way areas of particular natural or cultural value, notably by the establishment of SPAMIs; and
- (b) protect, preserve and manage threatened or endangered species of flora and fauna.

Protection measures to be applied in the SPAMIs, according to Art. 6, include:

- (a) the strengthening of the application of the other Protocols to the Barcelona Convention and of other relevant treaties to which they are parties;
- (b) the prohibition of the dumping or discharge of wastes and other substances likely directly or indirectly to impair the integrity of the SPAMI;
- (c) the regulation of the passage of ships and any stopping or anchoring;
- (d) the regulation of the introduction of any species not indigenous to the SPAMI, or of genetically modified species, as well as the introduction or reintroduction of species which are or have been present in the SPAMI;
- (e) the regulation or prohibition of any activity involving the exploration or modification of the soil or the exploitation of the subsoil of the land part, the seabed or its subsoil;
- (f) the regulation of any scientific research activity;
- (g) the regulation or prohibition of fishing, hunting, taking of animals and harvesting of plants or their destruction, as well as trade in animals, parts of animals, plants, parts of plants, which originate in SPAMIs;
- (h) the regulation and, if necessary, the prohibition of any other activity or act likely to harm or disturb the species or that might endanger the state of conservation of the ecosystems or species or might impair the natural or cultural characteristics of the SPAMI; and
- (i) any other measure aimed at safeguarding ecological and biological processes and the landscape.

Art. 7 of the Areas Protocol indicates measures for the planning and management of SPAMIs, which include, *inter alia*: the development and adoption of a management plan that specifies the legal and institutional framework and the management and protection measures applicable; the active involvement of local communities and populations, as appropriate, in the management of SPAMIs, including assistance to local inhabitants who might be affected by the establishment of such areas; and the adoption of mechanisms for financing the promotion and management of SPAMIs, as well as the development of activities that ensure that management is compatible with the objectives of such areas.

National contingency plans should also be established that incorporate measures for responding to incidents that could cause damage or constitute a threat to the SPAMIs.

Part III of the Areas Protocol enumerates in detail the objectives and means for the protection, conservation and recovery of species, including cooperation measures in the range area of threatened or endangered species that extend both sides of a national frontier or of the limit that separates the areas subject to the sovereignty or national jurisdiction of more than one party. Part IV indicates provisions common to protected areas and species, which include the compilation of inventories (Art. 15), the undertaking of environmental impact assessments (Art. 17), integration of traditional activities, such as subsistence and cultural activities of local populations (Art. 18), scientific, technical and management research, giving priority to SPAMIs and species appearing in the annexes (Art. 20). Notably, the parties are bound to establish cooperation programs to coordinate not only the establishment, but also conservation, planning

and management of SPAMIs and the selection, management and conservation of protected species (Art. 21). Mutual assistance among the parties and with the SPA/RAC includes programs of training of scientific, technical and management personnel, scientific research, the acquisition, utilization, design and development of appropriate equipment, and transfer of technology on advantageous terms to be agreed among the parties concerned (Art. 22).

The outcomes of the management measures are to be submitted to the ordinary meetings of the parties through a report, indicating the status and the state of the areas included in the SPAMI List; any changes in the delimitation or legal status of the SPAMIs and protected species; and possible exemptions allowed (e.g., those granted to local populations undertaking traditional activities).

To pursue the management objectives within the framework of the Areas Protocol, the parties may rely on the institutional framework established by the instrument, in particular the RAC/SPA, which assists the parties not only in the establishment, but also in the management of the SPAMIs, including for the preparation of the management plans.

According to Annex II to the Areas Protocol, conservation and management objectives must be clearly defined in the texts relating to each site, and will constitute the basis for assessment of the adequacy of the adopted measures and the effectiveness of their implementation at the revisions of the SPAMI List.

Measures applicable to each area must be adequate for the achievement of the conservation and management objectives set for the site in the short and long-term and take in particular into account the threats on it. Management measures must be based on an adequate knowledge of the elements of the natural environment and of socioeconomic and cultural factors that characterize each area. In case of shortcomings in basic knowledge, an area proposed for inclusion in the SPAMI List must have a program for the collection of the unavailable data and information.

It is to be noted that, in order to be included in the SPAMI list, a protected area:

- must have a **management body**, endowed with sufficient powers as well as means and human resources to prevent and control activities likely to be contrary to the aims of the protected area;
- must have a **management plan**. The main rules of this management plan are to be laid down as from the time of inclusion and implemented immediately. A detailed management plan must be presented within three years of the time of inclusion. Failure to respect this obligation entails the removal of the site from the SPAMI List.
- must have a **monitoring program**. This program should include the identification and monitoring of a certain number of significant parameters for the area in question, in order to allow the assessment of the state and evolution of the area, as well as the effectiveness of protection and management measures implemented, so that they may be adapted if need be. To this end, further necessary studies are to be commissioned.

Since the very first step for the establishment of the SPAMI – the filling out of the annotated format for the SPAMI proposal – the submitting parties must indicate if the legal text protecting the site provides for different zones to allocate different management objectives of the area (e.g., core and scientific zones in both land and sea, fishing zones, visitation, gathering, restoration zones, etc.). In such cases, the surface of area of each zone must be provided, including a map in the annex.

The competence and responsibility with regard to administration and implementation of conservation measures for areas proposed for inclusion in the SPAMI List must be clearly defined in the texts governing each area. This requirement deserves special attention in the case of transboundary protected areas that inevitably involve the authorities of more than one State.

The Areas Protocol also calls for the provision of clear competencies and coordination between national land and sea authorities, with a view to ensuring the appropriate administration and management of the protected area as a whole. The parties proposing a SPAMI must therefore mention in which way the legal provisions clearly establish the institutional competencies and responsibilities for the administration and conservation of the area, as well as their coordination means, including those between land and sea authorities. Information must also be provided on whether the management plan is formulated by an expert team or under consultation or participation with other institutions and stakeholders.

Particular attention should be devoted to what have been described as the main barriers to an effective management, namely:

- lack of political will or support for marine protected areas establishment and management;
- insufficient financing: not enough, not sustainable, heavy reliance on external fund;
- inadequate human resources: not enough marine protected area staff, where staff are occurring, many do not have the necessary technical skills for marine protected areas management;
- lack of sectoral and stakeholder involvement, cooperation and support: poor coherence and harmonization of policies, plans and actions;
- insufficient knowledge: knowledge gaps for effective decision-making; (...)
- lack of management plans;
- inadequate surveillance and enforcement: unclear procedure in legislation, lack of by-laws, poor cooperation with enforcement agencies, irregular routine patrols, unclear mandates and responsibilities for enforcement;
- insufficient monitoring and evaluation: insufficient and inadequate monitoring of management effectiveness, insufficient biodiversity and biological monitoring<sup>307</sup>

A solid basis for the functioning of a SPAMI or SPAMIs could be a treaty, which would include general principles and objectives, define the geographical limits of the area and set up an institutional body in charge for the adoption of more specific regulations. This course of action was followed by France, Italy, and Monaco that, after having concluded a treaty for the establishment of the Pelagos Sanctuary (1999), submitted the area for inclusion in the SPAMI List (2001). The option of a treaty would require an extended period of time, as needed for the negotiations and the procedures of subsequent ratification according to the constitutional law of the States concerned.

However, the Areas Protocol does not necessarily require a previous treaty for proposing the inclusion of a transboundary area in the SPAMI List. What is needed is the submission by the neighboring parties of a joint proposal, complying with the requirements of the annotated format. If a treaty is not indispensable, the adoption of consistent national legislation and regulations, which implies a previous coordination at the intergovernmental level, is however a specific requirement for any transboundary SPAMI proposal and effective management.

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<sup>307</sup> Doc. UNEP/MED WG.502/12 of 22 May 2021, Post-2020 Regional Strategy for Marine and Coastal Protected Areas (MCPAs) and Other Effective Area-Based Conservation Measures (OECMs) in the Mediterranean, para. 15.

The Guidelines for the establishment and management of Mediterranean marine and coastal protected areas<sup>308</sup> provides further guidance, particularly with regard to the requirements for the successful implementation of the management plan, the involvement of stakeholders and visitors management, and the management of monitoring data, with considerations based on different case studies.

#### **4.1.3. FRAs**

The proposal for FRAs to be established within the GFCM framework shall include management measures, as well as monitoring, control, and surveillance measures. The FRAs themselves may be used “in addition to or to complement similar measures that may already be included in management plans” (Art. 8, b, iv, of the GFCM Agreement). In fact, one of the main functions of the GFCM is to adopt multiannual management plans applied in the totality of the relevant subregions based on an ecosystem approach to fisheries to guarantee the maintenance of stocks above levels which can produce maximum sustainable yield, consistent with actions already taken at the national level.

Following the establishment of the FRA, in order to secure evidence for its contribution to the objectives set forth in the GFCM Agreement, it is also essential to set up scientific monitoring plans. Accordingly, any FRA proposal is expected to include not only a clear description of the objectives, but also a scientific monitoring plan to evaluate the progress made towards their achievement, ideally included within the framework of a multiannual management plan.

The prospective monitoring plans could ideally include:

- regular collection of fishery-independent data, by means of surveys-at-sea, with a focus on the key stocks protected by the FRA;
- regular collection of fisheries-related data, in accordance with the GFCM Data Collection Reference

Framework, with a focus on the key stocks protected by the FRA;

- comprehensive socio-economic data collection aimed at assessing the effects of changes in the volume and composition of the landings of the fisheries affected by the FRA;
- collection of local ecological knowledge from fishers and stakeholders directly affected by the FRA; and
- formulation of regular advice on the status of fisheries affected by the FRA by the existing expert groups (e.g., the Working Groups on Stock Assessment and the Working Group on Management Strategy Evaluation), based on the information above.

This FRA is also the first to be accompanied by a comprehensive scientific monitoring plan. The initiative of a monitoring plan for the Jabuka/Pomo Pit FRA was proposed by the Study Group on Jabuka/Pomo Pit of the FAO AdriaMed regional project in early 2018 and subsequently approved by the Scientific Advisory Committee on Fisheries and the GFCM. The main objective of the monitoring plan at that time was to assess the effectiveness of the FRA in:

- i) contributing to the rebuilding of stocks in the Adriatic Sea through the protection of essential fish habitats;
- ii) protecting vulnerable marine ecosystems in the area; and
- iii) increasing the densities of organisms in term of biomass and abundance within the FRA.

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<sup>308</sup> <https://www.rac-spa.org/dl/gm2006.pdf>.

The scientific monitoring plan was designed to rely on activities already in place, as well as on existing historical datasets to be made available to the Jabuka/Pomo Pit AdriaMed Study Group and additional monitoring and surveys.

Examples of activities already in place and datasets included expanded scientific surveys-at-sea, spatial information on fishing effort, and socio-economic data.

An effective monitoring plan thus would entail the scientific analysis of the collected data with an aim to quantitatively determining the effects of the closure and include, among other aspects, an assessment of important commercial stocks and a spatial and socio-economic analysis of authorized fishing fleets.

Assessing the effectiveness of FRAs established to protect different types of sensitive benthic habitats (e.g., cold-water coral assemblages, sponge fields, chemosynthetic communities) is particularly challenging, especially if monitoring plans were not foreseen from the start. For future FRAs, it will be important to plan specifically for the biological and ecological characteristics of the benthic habitat subject to protection, giving priority to non-destructive survey methods, such as those relying on the use of ROVs or gliders.

As a tool specifically designed to be implemented in areas of economic interest for fishing revenues, adequately enforced compliance and monitoring, control and surveillance measures provide the most critical contributions to ensuring that FRAs are effective in their conservation objectives.

#### **4.1.4. PSSAs**

To the extent approved by the IMO, the PSSA status allows coastal States to enforce specific APMs within the competence of the IMO. The possible measures may include ships' routing or reporting measures; discharge restrictions; operational criteria; and prohibited activities, and should be specifically tailored to meet the need of the area at risk. These APMs can already be in place or be put in place at the time of PSSA recognition.

Each APM must have an identified legal basis and be consistent with the legal instrument under which it is proposed. In case a measure is not yet available under an IMO instrument, the proposal should contain the steps that the State is pursuing to have the measure approved or adopted by IMO under an identified legal basis. In this case, the proposing State must also append a draft of the proposal that is intended to be submitted to the appropriate IMO Sub-Committee or Committee.

If a protective measure already exists to protect the area, States are expected to show how the area is being protected by this measure. Additional APMs may be introduced in the future to address identified vulnerabilities: as with APMs that are proposed at the time of the initial application for PSSA designation, such measures must comply with the PSSA Guidelines.

PSSA measures apply to a specific category or categories of ships, consistent with the provisions of the UNCLOS and other pertinent instruments.

Any possible impact of any proposed measures on the safety and efficiency of navigation must be assessed (and described since the elaboration of the PSSA proposal), taking into account the area of the ocean in which the proposed measures are to be implemented.

The size of the area should be commensurate with that necessary to address the identified need, and a nautical chartlet must clearly mark the location of the area and the existing or proposed APMs.

Steps to protect the proposed PSSA may include any domestic regulations, any previously adopted IMO measures, and measures taken to address the adverse effects from activities other than shipping.

Three of the above-mentioned IMO protective measures are already in force in the Adriatic Sea (namely: the Special Area status on the basis of Annexes I and V of MARPOL; the reporting system on the basis of SOLAS – ADRIREP; and a system of compulsory routing measures in the Northern Adriatic coupled with proposed traffic flows in the Central and Adriatic and Channel of Otranto on the basis of COLREG). However, the proposed APMs may have an identified legal basis also in IMO Conventions or Codes that are not in force yet, or in proposed amendments to the said Conventions or Codes<sup>309</sup>. Additionally, it should be noted that the Mediterranean Sea (including the Adriatic and Ionian Seas) does not have for the time being, differently from the Baltic Sea, the status of a Special Area under Annex VI of MARPOL (*Regulations for the Prevention of Air Pollution from Ships*), which allows for the establishment of special emission control areas (SO<sub>x</sub> and NO<sub>x</sub>), nor a Special Area status under Annex IV or MARPOL (*Prevention of Pollution by Sewage from Ships*).

APMs are granted validity *erga omnes partes*, even if a certain IMO document has not entered into force. They may differ within the area and be tailored for a specific (smaller) part of a broader PSSA. Even in the case that the designated PSSA mirrors (only) existing measures, the sole designation of a PSSA may represent an important cooperative framework for participating IMO member States and their governmental (maritime) authorities. The main advantage in this regard seems to be the internationally raised awareness about the area's vulnerability to damage by international shipping, which in turn may and should increase community and mariners' awareness of the sensitivity of, and risk to, navigation in the area. Noteworthy is the fact that when a PSSA receives a final designation, all APMs – therefore both pre-existing and new – should be identified on charts in accordance with the symbols and methods of the International Hydrographic Organization (IHO).

A proposed Adriatic PSSA should have embraced the entire Adriatic Sea, including the territorial seas, zones under sovereign rights or jurisdiction of coastal States and the high seas. It should have included the entire Channel of Otranto area, North from the latitude 40°25'00" N. Such geographical extent corresponded – and still corresponds – to the area of application of ADRIREP. Accordingly, the proposal intended to include and, furthermore, build upon existing APMs, including mandatory and proposed routing measures and ADRIREP. With the view of an eventual new PSSA proposal, researches could be undertaken on whether to geographically extend the proposed PSSA further into the Ionian Sea, particularly an additional area within and adjacent to the Channel of Otranto.

A first possibility in the context of a new proposal could be that the designated Adriatic PSSA mirrors (only) already existing measures<sup>310</sup>. In the case of the Adriatic Sea, this would include routing measures (both compulsory and proposed), compulsory reporting (ADRIREP), and Special Area status under MARPOL Annexes I and V.

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<sup>309</sup> An outstanding example in the past was represented by the 2004 Ballast Water Convention, between its adoption in 2004 and its entry into force in 2017.

<sup>310</sup> Similarly, as in the Wadden Sea PSSA.



The second (preferred) option could be the strengthening and upgrading of existing APMs, coupled with eventual proposals for new ones. The latter could be applicable to the entire Adriatic Sea, or only to part of it.

Apart from an upgrade of ADRIREP and the existing system of routing measures within the Adriatic, a further APM could be the designation of the Adriatic Sea, either alone or as part of the wider Mediterranean, as a Special Area under, firstly, Annex IV of MARPOL in relation sewage discharges and, secondly, based on the provisions of Annex VI to MARPOL, related to air pollution<sup>311</sup>.

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<sup>311</sup> UNEP, *Road Map for a Proposal for the Possible Designation of the Mediterranean Sea, as a whole, as an Emission Control Area for Sulphur Oxides Pursuant to MARPOL Annex VI, within the Framework of the Barcelona Convention*, UNEP/MED IG.24/22. A straightforward example in this regard is represented by the Baltic Sea PSSA, which includes among its protective measures a Special Area status based on the provisions of Annex I, IV and V, as well as a SECA (as per 19 May 2006) and NECA Special Area (as per 1<sup>st</sup> January 2021) based on the relevant provisions of Annex VI to the MARPOL Convention.

#### 4.1.5. Potential role of the EGTC in the management of transboundary MPAs

The European Grouping of Territorial Cooperation (EGTC) is a tool consisting of an entity with legal personality under European Union law. It was introduced in 2006 with the adoption of Regulation (EC) 1082/2006 of 5 July 2006 (hereinafter: EGTC Regulation). This instrument aims at improving the implementation conditions for territorial cooperation with a view to strengthening cohesion in the European Union. In doing so, it complements funding instruments for European Territorial Cooperation (ETC), known as Interreg. In particular, 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 (...) with the aim of strengthening Union economic, social and territorial cohesion.

Within this overall objective, an EGTC may formulate more specific objectives. These may definitely include transboundary cooperation between members in the field of marine environment protection, through the extension, beyond national borders, of national area-based conservation tools and other area-based effective conservation measures. In any case, the EGTC “shall act within the confines of the tasks given to it” (Art. 7, para. 1, of the EGTC Regulation).

Primarily, the tasks of an EGTC may concern the implementation of cooperation programs, or parts thereof, or the implementation of operations supported by the European Union through the European Regional Development Fund, the European Social Fund or the Cohesion Fund<sup>312</sup>. However, European Union member States may limit the tasks that EGTCs may carry out without the financial support from the European Union (Art. 7 of the EGTC Regulation).

The decision to establish an EGTC is taken at the initiative of the prospective members. Entities that may become members of an EGTC include European Union member States, regional and local authorities of European Union member States, public undertakings and public bodies, as well as, under certain conditions, States that are not members of the European Union and their public entities. What is necessary is that the EGTC – which aims at promoting transboundary cooperation – 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 as members one or more third States that are “neighboring” at least one European Union member State that is a member of the same EGTC. This implies that Albania, Bosnia and Herzegovina, and Montenegro – or public bodies of these States – could become members of an EGTC in the Adriatic and Ionian region with a view to protecting the marine environment. In fact, a State that is not a member of the European Union is considered as a “neighboring State” by 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 program under the European territorial cooperation goal, or are eligible under another cross-border, sea-crossing or sea-basin cooperation program, including where they are separated by international waters” (Art. 3a, para. 1, EGTC Regulation). The maritime borders between the countries concerned are included.

Each EGTC is governed by a convention (Art. 8 of the EGTC Regulation) concluded unanimously by its members, which specifies the founding elements of the entity, namely:

- the name of the EGTC and its registered office;
- the extent of the territory in which the EGTC may execute its tasks;
- the objective and the tasks of the EGTC;

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<sup>312</sup> Member States may limit the tasks that EGTCs may carry out without financial support from the European Union (Art. 7, para. 3, of the EGTC Regulation).

- the duration of the EGTC and the conditions for its dissolution;
- the list of the EGTC members;
- the list of the EGTC organs and their respective competences;
- the applicable laws, rules, procedures and arrangements; and
- the procedures for adoption of the statutes and amendment of the convention.

Each EGTC is composed of at least an assembly, which is made up of the representatives of its members, and a director, who represents the EGTC and acts on its behalf (Art. 10 of the EGTC Regulation). Each EGTC also establishes an annual budget which shall be adopted by the assembly (Art. 11). The legal personality of the EGTC entails that the entity shall be liable for all its debts, and members shall be liable for such debts irrespective of the nature of them, each share being fixed in proportion to the member's financial contribution (Art. 12).

It is essential to note that the EGTC limits the membership to primarily public authorities and institutions. This limitation and the corresponding tasks of EGTCs characterize the legal form of this instrument. However, the EGTC Regulation does not specify such legal form, which ultimately depends on the applicable member State's law. In practice, the legal form of the EGTC will depend on the member State where the EGTC has its registered office<sup>313</sup> and, according to the relevant law, will be subject to public or private law. In some member States, implementing national legislation explicitly considers EGTCs as public legal entities. In other member States, EGTCs may be considered private legal entities.

Before an EGTC may obtain a legal personality, public institutions, especially local and regional authorities, will have to go through the founding process. The roadmap towards this objective involves different steps. A first step entails a needs assessment, during which prospective EGTC members should assess whether the EGTC instrument is the most suitable option for the proposed objectives and activities. A second step involves the development of a common understanding of the respective tasks, the legal framework in force within the different member States participating in the EGTC, the identification of the location of registration of their office, as well as the means of the EGTC financing. The final step – prior to formal approval and registration – is the implementation phase, when prospective members develop the founding documents, i.e. the EGTC convention and statutes. Such documents describe the structures, the legal framework and the rules of procedure of the EGTC and are subject to the approval procedures of the corresponding national authorities. Eventually, EGTC approval and registration are finalized at the European Union level. The Committee of the Regions conducts these processes on the basis of the information provided.

Approval and registration procedures are not only needed when setting up an EGTC, but also for certain modifications of an existing EGTC. Particularly challenging are the implications stemming from a change of membership in an EGTC, therefore it is advisable that the differentiation of tasks and responsibilities between the EGTC members is not likely to change after the setting up of the body.

The variety of approval and registration procedures among the different States may raise difficulties. On the one hand, local and regional authorities wishing to set up an EGTC may find it challenging to contact the right authority and apply the appropriate procedures; on the other hand, authorities in charge of approving EGTC membership and registration may face difficulties in coordinating different member States.

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<sup>313</sup> The registered office shall be located in a member State under whose law at least one of the EGTC's members is established (Art. 1, para. 5, of the EGTC Regulation).

Moreover, due to a lack of experience, some member States do not have procedures for approval and registration, but simply refer back to the EGTC Regulation. Therefore, in certain cases, procedures elaborated by more experienced member States could be used as examples to be followed by less experienced prospective EGTC members, provided that the national, regional and local legal frameworks allow for such comparison. Overall, the need to follow several steps to setting up an EGTC and the variety of approval and registration procedures show the potential complexity of processes to establish an EGTC. Such complexity often led to misconceptions of the EGTC instrument, which were partially summarized in a report edited by the Committee of the Regions<sup>314</sup>. Among such misconceptions, for example, there is the assumption that EGTCs must cover a continuous territory: on the contrary, the territory does not need to be continuous, as the EGTC instrument aims at transnational and interregional cooperation between member States (and neighboring countries), although the instrument is not applicable for cooperation within only one member State. This means that a network of marine protected areas falling under the jurisdiction of different States may definitely be pursued through an EGTC.

Coming to the opportunities offered by the EGTC to its members, they truly depend on the context of the EGTC and are linked to its tasks and objectives. Since the adoption of the relevant regulation in 2006, the EGTC instrument has been widely implemented. EGTCs offer the opportunity to establish a stable, long-term commitment of their members, therefore strengthening cooperation, including for actions of macro-regional strategies. Their legal personality, entailing legal capacity, brings advantages compared to other forms of cooperation. Among others, it offers the possibility for EGTC members to jointly hire personnel, acquire properties and manage public services. The legal personality of EGTCs also allow them to be parties to legal proceedings. Through an EGTC, members may also build links to other programs and funding sources, spreading the reach of territorial cooperation.

Noteworthy is that EGTCs are not necessarily connected to any financial programs or funding source of the European Union, therefore they are not limited to any of the European Union financial periods. By fulfilling a wide range of purposes in crucial areas (from environmental protection to transport planning, from integrated tourism to economic cooperation, etc.), the EGTC tool establish a long-term territorial cooperation that goes beyond the project horizon. Although setting up an EGTC may take some time, running it is not an expensive solution to transboundary environmental protection. In fact, an EGTC can use the existing resources of the involved entities; its structure allows it to act across borders for the benefit of the whole region or its members; and, in this way, it can even contribute to a more efficient use of resources. In this regard, an EGTC offers indeed a framework with permanent structures that facilitates the continuity of the relevant activities<sup>315</sup>. The joint decision-making across borders enhances participation in, and ownership of, cross-border activities: in this way, the EGTC identity-building may also contribute to combat nationalization tendencies.

More generally, EGTCs can act as strategic players that integrate different activities in a joint policy approach. Consequently, each EGTC becomes a means to deepen existing cooperation activities that may also receive further acknowledgement. The EGTC instrument may in fact contribute to visibility for cooperation activities, and its European nature contributes to the opportunity to promote local and regional interests at European Union level. Last but not least, with members from different member States, an EGTC may be in a favorable position when it comes to participate in tendering under European Union programs, as its peculiar membership

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<sup>314</sup> EUROPEAN COMMITTEE OF THE REGIONS, *Guidebook on registering EGTCs*, 2021.

<sup>315</sup> This benefit is closely linked to legally binding decisions due to the long-term commitment of members.

improves the capability to benefit as a single beneficiary in Interreg programs (such as ADRION).

Since one of the main characteristics of EGTC Regulation is its focus on public bodies, the details of rules to implement the relevant objectives in national contexts varies greatly between EU member States and implies different legal and liability regimes for EGTCs. Accordingly, when identifying potential areas to be subjected to an EGTC, a need arises also to shed light on the different approval and registration procedures applied by each member State.

Notable is the potential recourse to the EGTC tool in four transboundary pilot areas within the Gulf of Trieste, the Jabuka/Pomo Pit, the Bay of Neum-Klek and the Otranto Channel. All four areas lie within the same region and, as such, they could benefit from the establishment of either one EGTC encompassing a network including of all of them or different EGTCs focusing on the specific management of each area. In any event, of paramount necessity is the identification of the applicable EGTC approval and registration procedures in accordance with the legal framework of the relevant Adriatic and Ionian coastal States. In fact, the EGTC acquires legal personality with its registration or the publication of the founding documents (the EGTC convention and statutes) on the official gazette of the State that hosts the EGTC registered office. A final step implies that the members inform the EU Member States concerned and the Committee of the Regions of the registration. Within 10 working days of the registration or publication, the EGTC ensures that a request is sent to the Committee of the Regions for the publication of a notice on the Official Journal of the European Union, which announces the establishment of the EGTC.

As regards Albania, Bosnia and Herzegovina, and Montenegro, potentially acting as neighboring States, the EGTC Regulation remains the only general reference, while the legislation of Croatia, Greece, Italy and Slovenia regulates in detail the national procedures for EGTC approval and registration. Both in the case of an EGTC encompassing a network of marine protected areas in the Adriatic and Ionian Seas and in the case of separate EGTCs focusing on the conservation of one or more areas, the relevant cooperating member States should register the office in one of the members' territory.

Although the procedures for approval and registration of EGTCs vary among the Adriatic and Ionian coastal States, both in terms of identification of the competent administrations and the setting of time limits for the finalization of the process, it is a matter of fact that the EGTC instrument is flexible enough<sup>316</sup> and offers an appropriate institutional structure for territorial cooperation in the Adriatic and Ionian Seas, also with a view to pursuing, among the wide range of its possible objectives of cooperation, the goals of marine environment protection through the use of area-based management tools and other effective area-based conservation measures. In fact, 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. As an autonomous legal entity, such EGTC would be in the position to identify, and propose to the appropriate authorities, also those measures that, although envisaged by international and regional instruments not in force for all Adriatic and Ionian coastal States (such as the Areas Protocol), are nevertheless deemed appropriate for the areas of concern. This is an evident advantage of the EGTC tool, as its founding convention could allow the pursue of

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<sup>316</sup> The benefits implied in the flexibility of EGTC legal texts was recalled by Mr. Andrej Čokert, Ministry of Public Administration of Slovenia, in his presentation on Cross-Border Cooperation in Slovenia, delivered at the international conference on Cross-Border Cooperation in Europe, held on 25 May 2018 in Dubrovnik, Croatia.

environmental objectives that, on the basis of the international and regional instruments, do not always bind all Adriatic and Ionian coastal States.

As of today, the EGTC instrument has been hardly used for the original intent of functioning as a management authority. Its implementation for the managing of transboundary marine protected areas in the Adriatic and Ionian Seas would therefore represent an example of best practice in the field of marine conservation through the use of an instrument that enhances cooperation between European Union member and non-member States, facilitates decision-making across borders, promotes jointly-developed objectives and strategies and ensures high European visibility. The *2018 Assessment of the Application of EGTC Regulation* (Final Report), issued under the auspices of the European Commission, highlighted that the EGTC supports multi-level governance structures enhancing cross-border bottom-up approaches that allow for more intensified and higher levels of cross-border cooperation. Border regions can enhance joint planning and implementation of strategies putting their joint interests above national interests. Through the acknowledged legal entity, EGTCs obtain better visibility and improved acceptance by other public and management authorities: they are acknowledged as intermediaries that may initiate new cross-border actions and in some cases obtain more power in decision-making processes. EGTCs also act as a reliable and sustainable communication channel and support the harmonization of the legal framework across countries.

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 on the basis of scientific findings. Its legal personality based on public law, with tasks specified in the constitutive instruments, would ensure that the EGTC may participate through its legal and institutional representations in the most appropriate fora where marine environment protection tools are discussed and approved.

In addition, an EGTC would be in the position to examine ways to obtain funding for the implementation of its tasks at national, regional or European level. The potential efficacy of a management authority of this kind can be substantively appreciated in comparison with other situations – such as in the case of the Pelagos Sanctuary – where the institutional settings (secretariat) and the means of management implementation (management plan) show evident limitations. The potential of having an autonomous representation within the IMO could be of utmost interest for an EGTC in charge of pursuing the objectives of environment cooperation, also through economic and social cohesion, in areas that, while hosting important biodiversity sites, are crucial for navigational purposes, such as the Gulf of Trieste and the Otranto Channel.

The relevant legislations concerning the approval and registration procedures for EGTCs within the Adriatic and Ionian coastal States are recalled hereafter.

*Croatia.* According to Croatian law<sup>317</sup>, the competent authority in charge of EGTC registration is the Ministry of Justice and Public Administration (*Ministarstvo pravosuđa i uprave*). It follows that, if an entity registered in Croatia intends to join an EGTC, the notice of intent to participate in the EGTC and a copy of the proposal of the EGTC convention and statutes is to be sent to this administration. Once it has received the founding documents, the Ministry consults those State administration bodies in charge of regional development and European Union funds, foreign and European affairs, as well as those bodies whose scope include tasks

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<sup>317</sup> Law No. 74/14 of 13 June 2014.



covered by the purpose of the EGTC in question. When it receives the results of this consultation process, the Ministry assesses the coherence of the EGTC convention and statutes with European Union regulations and Croatian law and, where necessary, formulates requests to the prospective member for modifications and amendments. The suggested modification should be considered by the prospective member and, once the founding documents have been modified accordingly, the competent Ministry proposes to the Croatian government the adoption of a decision approving participation in the EGTC and the founding convention. The government adopts the formal approval decision on the basis of the proposal approved by the Ministry of Justice and Public Administration. So far, no EGTCs have been registered in Croatia. An EGTC with the registered office in Croatia would be established as a public entity and, as such, subject to the Institutions Act (Official Gazette No. 76/93, 29/97, 47/99, 35/08 and 127/19) of Croatian law. For any subsequent modification of the EGTC, the Ministry of Justice and Public Administration would receive the notice of amendments to the convention. The same Ministry would consult the State administration bodies in charge of the consultation process mentioned above and would eventually obtain a formal decision by the government.

*Greece.* According to the Greek legislation on EGTC<sup>318</sup>, municipalities, regions, associations and their networks, the Greek public sector, including the decentralized administrations, universities, public undertakings, bodies governed by public law and enterprises that were assigned the task of providing services of general economic interest, in compliance with Union and national law, may participate in an EGTC. Their participation is approved by the Minister of the Interior after receipt of the agreement of the Committee referred to in Art. 4, para. 2, *b*, of Greek Law No. 3345/2005. The Committee includes among its members a representative of the Ministry of Economy and Development. The entity that intends to participate in an EGTC, therefore, shall notify the Committee in writing of its intention, sending copies of the proposed EGTC founding documents. The participation of entities in EGTCs which have their registered offices abroad is approved upon agreement of the Committee and a decision is issued by the Minister of Interior within 6 months from the submission of an admissible application to the Committee together with the texts of the EGTC founding documents<sup>319</sup>. For EGTCs which have their registered offices in Greece, the application is to be submitted to the Committee together with the texts of the EGTC founding documents. The Minister of Interior, following an agreement of the Committee, approves the participation of the interested entities and the text of the convention<sup>320</sup>. Existing associations of entities, networks of cities and other undertakings of various legal personalities seeking to fulfill purposes similar to those of an EGTC, which have their registered offices in Greece, may be transformed into an EGTC, upon decision of their administrative bodies and the approval of the Minister of Interior, following the same procedures. It is provided that the Committee keep an EGTC Register. This includes data on EGTCs having their registered offices in Greece, as well as data on entities participating in an EGTC having its registered office in another member State. In particular, the EGTC Register includes the name of the EGTC and the registered office, the purposes and the duties, the statutes and convention, the personnel, the participation in national or European programs, the projects undertaken, the implementation process of the projects undertaken, as well as any activity assumed by the EGTCs.

*Italy.* Italian law<sup>321</sup> provides that EGTCs registered in Italy have legal personality of public law. The EGTC acquires legal personality through its inscription in the EGTC Register, deposited

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<sup>318</sup> Law No. 4483/2017 of 28 July 2017.

<sup>319</sup> This deadline is interrupted if the Committee decides to request additional information.

<sup>320</sup> The deadline provided for participation in EGTCs registered abroad is not applicable to these cases.

<sup>321</sup> Law No. 88 of 7 July 2009.

with the Presidency of the Council of Ministers (General Secretariat). All entities listed in Art. 3, para. 1, of the EGTC Regulation may become members of an EGTC. In the Italian legal context, such entities include the regions and the autonomous provinces of Trento and Bolzano, as well as the local entities. The founding documents of the EGTC are approved unanimously by the members and signed in public form. It is to be noted that, without prejudice to Art. 7, paras. 1, 2, 4 and 5, of the EGTC Regulation, Italian law explicitly states that members may entrust the EGTC with, *inter alia*, “the role of management Authority, the exercise of tasks of joint technical secretariat, the promotion and implementation of operations in the context of operational programs co-financed with structural [European Union] funds and linked to the objective of ‘European territorial cooperation’, as well as the promotion and implementation of actions of interregional cooperation within other operational programs co-financed by [European Union] structural funds. ... In addition to [the above tasks], the EGTC may be entrusted with the implementation of further actions of territorial cooperation, provided that they are coherent with the goal of strengthening economic and social cohesion, as well as in compliance with the international obligations of the State” (Art. 46 of Law No. 88 of 7 July 2009). A first phase provides that the prospective members notify their intent to establish an EGTC to the Presidency of the Council of Ministers (Department for Regional Affairs and Autonomies) together with the founding documents. The Department verifies the compliance of the transmitted documentation with the EGTC Regulation, as well as with Law No. 88 of 7 July 2009, Arts. 46, 47 and 48. After this verification of compliance, the preliminary phase formally starts and the documentation is transmitted to the competent Ministries for approval and acquisition of the relevant opinions. In case of amendments, any remarks made by the Ministries or by the relevant Department of the Presidency of the Council of Ministers must be taken into account and the documentation must be modified accordingly and shared with the foreign counterparts. Should any foreign member also propose modifications, the same Department shall be informed and proceed with verification. Once the preliminary phase has been positively concluded, the Department communicates to the prospective members the authorization to set up the EGTC. Within a maximum period of 6 months from the date of such authorization – after whose expiration the authorization becomes ineffective – each prospective member, or the relevant management organ if already in place, shall request the entry in the EGTC Register. For an EGTC registered in a foreign country, the EGTC is registered in the special section “EGTC Based abroad”. The EGTC convention and statutes are then published on the national Official Gazette (where all modifications of the EGTC shall also be published). Within 10 days of the registration or publication, the EGTC shall send a request for registration to the European Committee of the Regions, on the basis of the model annexed to the EGTC Regulation. The European Committee of the Regions transmits this request to the relevant offices for publication in the Official Journal of the European Union. The provisions above apply also to the participation of an Italian entity in an EGTC that is already established.

*Slovenia.* The EGTC approval and registration process regulated by Slovenian law<sup>322</sup> is almost the same for an EGTC registered in Slovenia or in a foreign country. The prospective members notify their intention to the competent administration, which is identified in the Ministry of Public Administration (*Ministrstvo za javno upravo*), both in the case the members wish to establish a new EGTC and in the case they wish to adhere to an already existing EGTC. Art. 3 of Decree No. 1062 of 9 April 2015 lists the possible prospective co-founders and members of an EGTC under Slovenian law. These entities may become members of an EGTC established in Slovenia and participate in the establishment of, or join, an EGTC established in another member State. The competent administration shall receive the complete application, including

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<sup>322</sup> Decree No. 1062 of 9 April 2015.

the EGTC founding documents. Once the Ministry of Public Administration receives the application, in accordance with Art. 8 of the Slovenian decree, it prepares a proposal for the government decision referred to in Art. 7 of the same instrument. The government shall adopt the decision within 6 months of receiving the application for approval (Art. 9, para. 1). If the government does not issue a decision within such time limit, the approval shall be deemed to have been given (Art. 9, para. 3). The EGTC shall acquire legal personality with the status of public institution. The status of legal entity under public law is subject upon the entry of the EGTC in the court register (Art. 4). Once it becomes operational, the EGTC may perform tasks in the territory of Slovenia with or without a financial contribution from the European Union (Art. 5, para. 1) and its members are limitedly liable for the obligations of the public legal entity, if the latter has insured risks related to its activities under Slovenian law. The ministries in whose field of work the tasks determined by the EGTC convention and the government are competent to supervise the legality of the work of the EGTC bodies. The operations and rational use of public funds managed by an EGTC established in Slovenia shall be verified by the Slovenian Court of Audit (Art. 12).

## **5. Control and enforcement**

### **5.1.SPAMIs**

Once the areas are included in the SPAMI List, all the parties (Areas Protocol) agree to recognize the particular importance of these areas for the Mediterranean, to comply with the measures applicable to the SPAMIs and not to authorize nor undertake any activities that might be contrary to the objectives for which the SPAMIs were established. This gives to the SPAMIs and to the measures adopted for their protection an *erga omnes partes* effect.

As regards the relationship with third countries, the parties are called to invite States that are not parties to the Areas Protocol and international organizations to cooperate in the implementation of the instrument. They also undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles and purposes of the Areas Protocol. This provision aims at facing the problems arising from the fact that any treaty, including the Areas Protocol, can create rights and obligations only for the parties.

While there should not be major problems with regard to the control and enforcement of the SPAMIs regime within the internal waters, territorial sea and the exclusive economic zone of the coastal States parties (and for vessels flying their flags), some problems may arise with regard to the enforcement of the SPAMI regime on the part of the Adriatic and Ionian Seas (still) having the status of the high seas. With regard to the exclusive economic zones, reference should be made to the fact, that a coastal State is entitled to exercise within its exclusive economic zone (among other), sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and jurisdiction with regard the protection and preservation of the marine environment;

Notably, Art. 14, para. 2, of the 1999 Sanctuary Agreement (Pelagos) includes the following text:

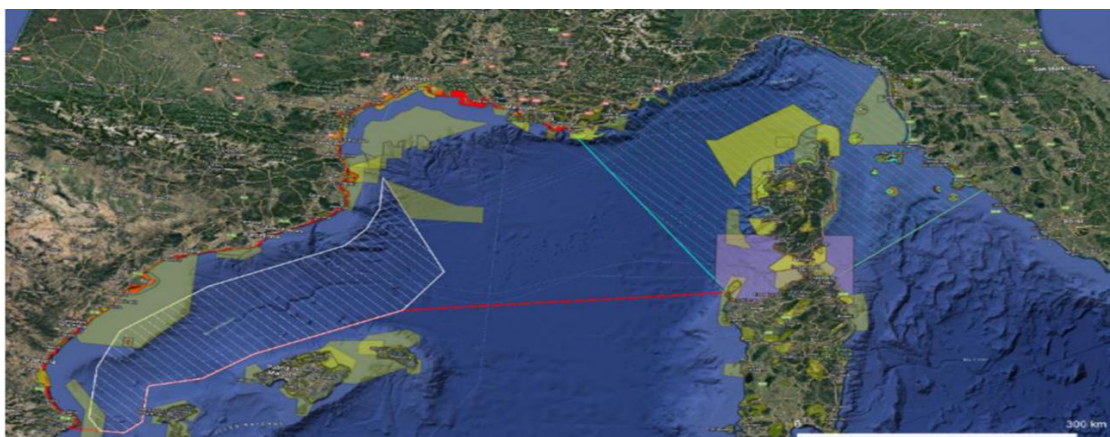
*In the other parts of the sanctuary [beyond the limits of the territorial sea], each of the State Parties is responsible for the application of the provisions of the present Agreement with respect*

*to ships flying its flag as well as, within the limits provided for by the rules of international law, with respect to ships flying the flag of third States.*

It seems clear that the rules of international law which could give the three coastal States specific rights (including enforcement rights) against third States in the field of the protection and preservation of marine mammals in that part of the sea located beyond their territorial seas, are the relevant provisions of UNCLOS on the exclusive economic zone, particularly Arts. 56(1) and 65. Art. 65, in particular, expressly grants the coastal State(s) the right to prohibit, limit or regulate the exploitation of marine mammals within its exclusive economic zone. It is noteworthy that Art. 4 of the 1999 Sanctuary Agreement imposes an obligation on the three States to “*adopt within the Sanctuary [including on the adjacent high seas] the appropriate measures [...] so as to ensure the favorable conservation status of marine mammals, by protecting both them and their habitat, from any negative direct or indirect impacts resulting from human activities*”.

A sound legal interpretation of the assessed provisions of the 1999 Sanctuary Agreement could be that France, Italy, and Monaco, with that instrument, proclaimed a zone *in plus stat minus* beyond the limits of their territorial seas, where only one element of the exclusive economic zone (the protection of marine mammals) is directly applicable. The Sanctuary seems therefore to be one of the earliest examples of the application of the principle *in plus stat minus* in the Mediterranean and one of the rare examples of a joint management zone, also involving superjacent waters in the mentioned Sea. This in turn seems to point to the advantages of a situation where a SPAMI is established, or should be ideally established within an exclusive economic zone or a *sui generis* zone (e.g., a zone of ecological protection) of a coastal State, when it comes to its implementation and enforcement. Furthermore, the inclusion of a certain area on a SPAMI List should be ideally followed by a designation of a PSSA, with the aim to address dangers posed by international shipping. A straightforward example in this regard is the legal regime of the waters within the Strait of Bonifacio (MPA/Natura2000/SPAMI/PSSA).

Another extremely important example in this regard occurred in 2022, when the IMO Marine Environment Protection Committee agreed in principle on the proposal for the designation of a PSSA in the North-Western Mediterranean Sea to protect cetaceans from international shipping, submitted by France, Italy, Monaco, and Spain (MEPC 79/10 of 9 September 2022), which includes within its geographical areas the two Mediterranean SPAMIs located beyond the limits of the territorial sea (the Pelagos Sanctuary and the Cetaceans Migration Corridor in front of the Spanish coast ).



Proposed PSSA in the North-Western Mediterranean Sea.

## 5.2. FRAs

The GFCM has adopted a vast array of binding recommendations related to monitoring, control and surveillance aspects, with a particular aim to come to grips with illegal, unreported, and unregulated (IUU) fishing in the Mediterranean region. The list includes measures as, for example, an IUU list, port State measures, VMS, and a process leading to the identification of cases of non-compliance. Some of the GFCM Recommendations in this field are listed below:

- *GFCM/44/2021/13 on appropriate measures to deter non-compliance;*
- *GFCM/44/2021/10 on flag state performance;*
- *GFCM/44/2021/9 on the implementation of an electronic logbook;*
- *GFCM/44/2021/8 on the implementation of a vessel monitoring system;*
- *GFCM/44/2021/7 on the implementation of a winch sensor system for demersal fisheries in the Adriatic Sea (geographical subareas 17 and 18);*
- *GFCM/44/2021/4 on a pilot project for the control and inspection of common dolphinfish fisheries;*
- *GFCM/44/2021/21 on vessel sightings;*
- *GFCM/44/2021/19 on the establishment of a list of vessels presumed to have carried out illegal, unreported and unregulated fishing, repealing Recommendation GFCM/33/2009/8;*
- *GFCM/44/2021/18 on the establishment of a GFCM record of authorized vessels over 15 meters in the GFCM area of application, amending Recommendation GFCM/33/2009/6;*
- *GFCM/43/2019/5 on a compliance assessment scheme for the implementation of Recommendation;*
- *GFCM/38/2014/2 concerning the identification of non-compliance;*
- *GFCM/43/2019/3 on the implementation of a vessel monitoring system and an electronic logbook in the GFCM area of application;*
- *GFCM/43/2019/8 on the establishment of a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the GFCM area of application, amending Recommendation GFCM/33/2009/8;*
- *GFCM/43/2019/7 on information on access agreements in the GFCM area of application.*

Provisions regarding monitoring, control and surveillance, based on the above-listed recommendations, have been included in practically every designation of a new FRA.

Reference will be made below to the Jabuka/Pomo Pit and the Bari Canyon FRA, and additionally to the proposal with regard the establishment of a new FRA in the South Adriatic.

### **13) Jabuka/Pomo Pit FRA**

Recommendation GFCM/44/2021/2 on the establishment of a FRA in the Jabuka/Pomo Pit in the Adriatic Sea (GSA 17), amending Recommendation GFCM/41/2017/3, provides for the following control measures in the said FRA:

- States parties and cooperating non-parties shall communicate to the GFCM Secretariat, not later than 30 April 2022, the list of authorized vessels for 2022 and subsequently, not later than 30 April each year, the list of authorized vessels for the forthcoming year. For each vessel, the list shall contain the information detailed in Annex 2.
- Authorized fishing vessels shall only land catch of demersal stocks at the parties' and cooperating non-parties' designated landing points. To this end, each relevant State shall designate landing points in which the landings of demersal stocks from the Jabuka/Pomo Pit FRA are authorized. The list of such landing points shall be communicated to the GFCM Secretariat by 30 April each year.
- Fishing vessels authorized to fish in Zone B and/or Zone C shall be equipped with VMS

and AIS in correct working order, and the fishing gear on board or in use shall be duly identified, numbered and marked before starting any fishing operation or navigation in the FRA.

- Fishing vessels equipped with bottom-set nets, bottom trawls, set longlines and traps without authorization shall be allowed to transit through the FRA only if they follow a direct course at a constant speed of not less than 7 knots and are equipped with VMS and AIS active on board.

Additionally, parties and cooperating non-parties shall call the attention of the relevant national and international authorities in order to protect the Jabuka/Pomo pit FRA from the impacts of any activity that may jeopardize the conservation of the characteristic features of its particular habitats. Furthermore, this recommendation shall be without prejudice to stricter measures adopted by States for the vessels flying their flag.

Among the FRAs so far established by the GFCM, the scientific monitoring plan in place in the Jabuka/Pomo Pit FRA can be considered exemplary. The management of this area is in fact considered an example of best practice in transnational cooperation and in the integration of the views of fishers and stakeholders in the implementation of spatial protection measures. Although the FRA was established by the GFCM in 2017, different measures had already been implemented by one or both of the two main countries, Croatia and Italy, on their fleets operating in the area.<sup>323</sup>

#### - **Bari Canyon**

The proposal for the declaration of the Bari Canyon FRA mentioned the measures suggested to effectively enforce the protection of the FRA. In particular, monitoring, control and surveillance measures under the umbrella of the MSFD should have included the following:

- an access regime, with a closed list of authorized vessels, which should also meet a number of requirements, namely: be equipped with a VMS or AIS in correct working order, as well as registration obligations, including those for the fishing gear on board;
- a control regime, with the designation of landing points, obligations of notice of arrival in port and control of landings. To this end, the relevant fisheries authority should designate landing points in which landings from captures in the FRA is authorized. The control of landings should cover a minimum of 20% of the landings;
- a monitoring regime: in line with Recommendation MCS-GFCM/33/2009/7 and European Union Regulation 1224/2009 for fishing vessels operating or transiting in a FRA, the VMS should give positions in the FRA every 30 minutes, communicate the entry into the FRA area with the declaration of catches on the ship's hold before the entry;
- a reporting regime for fishing catches, with a VME indicator of taxa capture and vulnerable species as bycatch.

Measures should include a logbook filled in for each haul and the reporting of the total catch for any commercial species obtained partially or totally in the FRA core or buffer zones. It is suggested that catches of VME indicator taxa are photographed in order to be identifiable, in addition to indicating their estimated amount in kg that should be consistently recorded in the logbook. Catches of vulnerable species as bycatch should be reported following the GFCM Protocols for self-reporting. This information should be sent to the Fisheries Management Authority and be available for port inspectors and observers on board. The GFCM Compliance Committee would regularly review and assess the level of enforcement and compliance in the FRA and provide relevant recommendations. GFCM Working Group on Vulnerable Marine

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<sup>323</sup> See also <https://www.fao.org/gfcm/technical-meetings/detail/en/c/1539844/>.



Ecosystems could revise the management measures applied in the area and provide advice on the technical measures to decrease any adverse impact on VMEs and EFHs, as well as on the means to undertake impact assessment prior exploratory fishing.

Ultimately, based on Part III of Recommendation GFCM/44/2021/3 on the establishment of a fisheries restricted area in the Bari Canyon in the Southern Adriatic Sea (geographical subarea 18), the following control measures are envisaged within the newly established FRA:

- The CPCs shall communicate to the GFCM Secretariat, not later than 30 April 2022 of the first year of implementation, the list of authorized vessels for 2022 and subsequently, not later than 30 April each year, the list of authorized vessels for the forthcoming year.
- Authorized fishing vessels shall only land catch of demersal stocks at the States' designated landing points. To this end, each party and cooperating non-party shall designate landing points in which the landings of demersal stocks from the Bari Canyon FRA is authorized. The list of such landing points shall be communicated to the GFCM Secretariat by 30 April each year starting from 2022.
- Fishing vessels authorized to fish in Zone B shall be equipped with VMS and AIS in correct working order, and the fishing gear onboard or in use shall be duly identified, numbered and marked before starting any fishing operation or navigation in the FRA.
- Fishing vessels equipped with bottom-set nets, bottom trawls, set longlines and traps without authorization shall be allowed to transit through the FRA only if they follow a direct course at a constant speed of not less than 7 knots and are equipped with VMS and AIS active on board.

Similarly, as with regard the Jabuka/Pomo pit, parties and cooperating non-parties shall call the attention of the relevant national and international authorities in order to protect the Bari Canyon FRA from the impacts of any activity that may jeopardize the conservation of the characteristic features of its particular habitats. Furthermore, the recommendation shall be without prejudice to stricter measures adopted by States for the vessels flying their flag.

- **The deep-water essential fish habitats and sensitive habitats in the South Adriatic (proposal phase)**

As regards the measures to effectively enforce environmental and species protection within the FRA, the proposal for the designation of the new FRA in the South Adriatic proposes that authorized fishing vessels should be allowed to land catches of demersal stocks only in designated ports. Fishing vessels without a special fishing authorization and equipped with towed nets, bottom set nets, and set longlines should transit inside and through the FRA exclusively by keeping a direct course, at a constant speed exceeding 7 knots and with VMS and AIS active onboard. Transit in the core area should be prohibited to any vessel carrying on board set longlines. The GFCM should define mechanisms to ensure control and enforcement of the FRA, through VMS, AIS or remote-control systems, as well as identify criteria for the regular evaluation of the status of the FRA.

Monitoring, control and surveillance measures in the FRA could include the provision of VMS onboard and transmission of position data at regular intervals in line with Recommendation MCS-GFCM/33/2009/7 and European Union Regulation 1224/2009 for fishing vessels operating or transiting in a FRA; AIS onboard and transmission for fishing vessels operating or transiting in the FRA. The proposal further suggests at sea inspections and, possibly, aerial controls by the flag States of vessels operating in the area. The GFCM Compliance Committee would regularly review and assess the level of enforcement and compliance in the FRA and provide relevant recommendations.

Noteworthy is the fact that Recommendation GFCM/41/2017/7 on a regional plan of action to combat illegal, unreported and unregulated fishing in the GFCM area of application distinguishes and provides in this regard the responsibilities flag, coastal and port States:

With regard to flag State responsibilities:

- the party or cooperating non-party flag State shall ensure that vessels entitled to fly its flags do not undermine the effectiveness of regional conservation and management measures adopted by the GFCM, including by supporting and/or engaging in IUU fishing;
- a party or cooperating non-party flag State shall ensure that each of the vessels entitled to fly its flag fishing in waters outside its jurisdiction holds a valid authorization for this purpose. Party or cooperating non-party flag States fishing in the waters of another party or cooperating non-party shall be duly and preventively authorized by the coastal State and respect its jurisdiction and national legislation;
- the party or cooperating non-party flag State shall effectively exercise its jurisdiction and control over vessels flying its flag. (...).

Additionally, the party or cooperating non-party flag States shall ensure that they have in place a law enforcement regime that includes:

- a) the capacity to detect violations of national fisheries laws, including regulations, permits and practices, as well as of international fisheries instruments and GFCM recommendations; and
- b) a system of sanctions applicable in respect of violations that is adequate in severity to secure compliance and to discourage violations wherever they occur thereby depriving offenders of the benefits accruing from IUU fishing activities.

With regard to the coastal State responsibilities in order to prevent, deter, and eliminate IUU fishing, the said Regulation provides that party or cooperating non-party coastal States shall take measures to prevent, deter and eliminate IUU fishing from occurring in waters under their jurisdiction. Such measures should include among other that:

- a) they have the ability to conduct effective monitoring, control and surveillance of all fishing activities in their waters;
- b) they ensure cooperation and exchange information with other party or cooperating non-party States and the GFCM Secretariat.
- c) they ensure that no vessels undertake fishing activities in their waters without a valid authorization to fish;
- d) they authorize fishing in waters covered by GFCM rules only vessels not flying their flag when such vessels have been entered on the national and GFCM regional fleet register;
- e) they do not authorize vessels with a history of non-compliance to engage in fishing activities in their waters;
- f) they ensure that each vessel fishing in their waters maintains a logbook recording its fishing activities where appropriate;
- g) they authorize, duly monitor and control at-sea transshipment and processing of fish and fishproducts in their waters; and
- h) they have regulations governing fishing activities in their waters to prevent IUU fishing.

Finally, with regard to port State responsibilities, the said regulations provides that each party or cooperating non-party State shall, in its capacity as a port State, fully and effectively implement the GFCM regional scheme on port State measures contained in Recommendation GFCM/40/2016.

Taking into account the exclusive jurisdiction of the European Union in the field of fisheries,

for European Union member States Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy is of paramount importance. This instrument establishes a system for control, inspection and enforcement to ensure compliance with the rules of the common fisheries policy, which shall apply to all activities covered by the common fisheries policies carried out on the territory of member States or in European Union waters or by European Union fishing vessels or, without prejudice to the primary responsibility of the flag member State, by nationals of member States.

### 5.3. PSSAs

The PSSA Guidelines place an obligation on all IMO member States to ensure that ships flying their flag comply with the APMs adopted to protect the designated PSSA.

It has been deemed advisable, nonetheless, that in submitting proposals for APMs as part of a PSSA submission, proposing States give careful consideration to strategies for ensuring compliance by international shipping. Reference has been made in this regard to the applicable legal system; jurisdiction; presentation of evidence; standards of proof of violation; whether sanctions are administrative, civil, or penal; and the rights of the accused.

The IMO has suggested that an effective compliance program should incorporate the following elements:

- compliance monitoring through routine inspections, surveys, and/or examinations;
- detection and policing patrols;
- reporting procedures and incentives, including incentives for self-reporting;
- adequate investigations of violations reported or otherwise detected;
- a system of adequate sanctions in respect of violations;
- education and public awareness programs; and
- cooperation and coordination with other States<sup>324</sup>.

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<sup>324</sup> UNEP/MAP-REMPEC-SPA/RAC, Guidance document for the identification and designation of Particularly Sensitive Sea Areas in relation to Specially Protected Areas of Mediterranean Importance, SPA/RAC, Tunis, 2021, pp. 41-42.

## SUMMARY AND CONCLUSIONS

### 1. LEGAL BASIS FOR MARINE ENVIRONMENTAL PROTECTION IN EUSAIR

Marine protected areas (MPAs) contribute to the protection of the marine environment. They form part of a larger sets of measures in the field of environmental law. The aim of the “Scenario” is to focus on the most relevant European Union (EU) legal framework for the designation (and management) of new MPAs.

#### 1.1. Historical importance of the Nature Directives

Within the framework of the **Birds and Habitats Directives (hereafter called Nature Directives)**, member States are obliged to designate and manage areas to ensure the protection of the most threatened species and habitats across the EU. The so called NATURA 2000 network, including sites designated under the Nature Directives, is the most substantive regional network of protected areas in the world. This network forms the “backbone” of EU nature protection in general.

The European Environmental Agency (EEA) reported<sup>325</sup> that the Nature Directives “exclude significant aspects of the marine ecosystem from formal protection schemes”, referring, in particular, to marine fish (e.g., commercially exploited species), invertebrate species (e.g., mussels and sea stars) and marine offshore habitats (e.g., sandbanks below 20 m or soft-bottom habitats)<sup>326</sup> and their associated communities of fauna and flora. Annexes of the Habitats Directive have limited focus on marine species and habitats, more especially for what concerns offshore waters.

The European Commission excludes any legislative reform, by adopting a pragmatic approach, namely: even when a species is not listed in the annexes of the Directives, the NATURA 2000 network, through its umbrella effect, covers a high proportion of species of conservation concern beyond those listed in the Annexes.

By reference to the **Marine Strategy Framework Directive (MSFD)**, the Commission stresses that it is up to member States to protect all marine species and habitats, without need to refer to each individual species (listed in the Nature Directives).

As regards habitat protection within the EUSAIR, the Habitats Directive has strongly influenced the institutional functioning of the Bern Convention. The Bern Convention is the intellectual precursor to the Habitat Directive<sup>327</sup> and has been implemented since 1996<sup>328</sup>. It can

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<sup>325</sup> EEA report 3/2015, *Marine protected areas in Europe's seas*.

<sup>326</sup> For example, the Maltese skate (*Leucoraja melitensis*) – a specie considered by the IUCN as critically endangered – and its nursery habitats (sandy and muddy flats below 60 metres) are not covered by the Nature Directives.

<sup>327</sup> ...Directive 79/409/EEC on the conservation of wild birds (the Birds Directive) was adopted the same year as the Bern Convention, 1979, and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) was adopted in 1992. The European Union is also a party to the Bern Convention – and indeed the two directives are regarded as the way of implementation of the convention by the European Union.

<sup>328</sup> Council of Europe Convention on conservation of European wildlife and natural habitats, Explanatory document and compilation of relevant texts T-PVS/PA (2016). Strasbourg, 10. June 2016:

be stated<sup>329</sup> that the Bern Convention was the conceptual and political “parent” of the Nature directives of the EU. It is, however, the implementation or the enforcement procedure that differs significantly, due to the different legal nature of the Council of Europe, on the one side, and the European Union, on the other side.

## **1.2. Long-term obligations under the Marine Strategy Framework Directive**

Besides individual actions taken on marine protection, there was a need for these actions to be coordinated and extended in a comprehensive framework. The MSFD established the basis for achieving this objective. The directive aims at achieving a good environmental status for the full marine area of the EU by requiring the member States to adopt and implement strategies and programmes of action already by 2020.

The requirements of this directive relate to a wide range of descriptors and criteria. The MSFD recognise that spatial protection measures, including MPAs, should form part of the programmes of measures required for its implementation<sup>330</sup>.

The European Court of Auditors’ Special report<sup>331</sup>, “Marine environment: EU protection is wide but not deep”, defines comprehensively the framework of distribution responsibilities for action in the following tables:

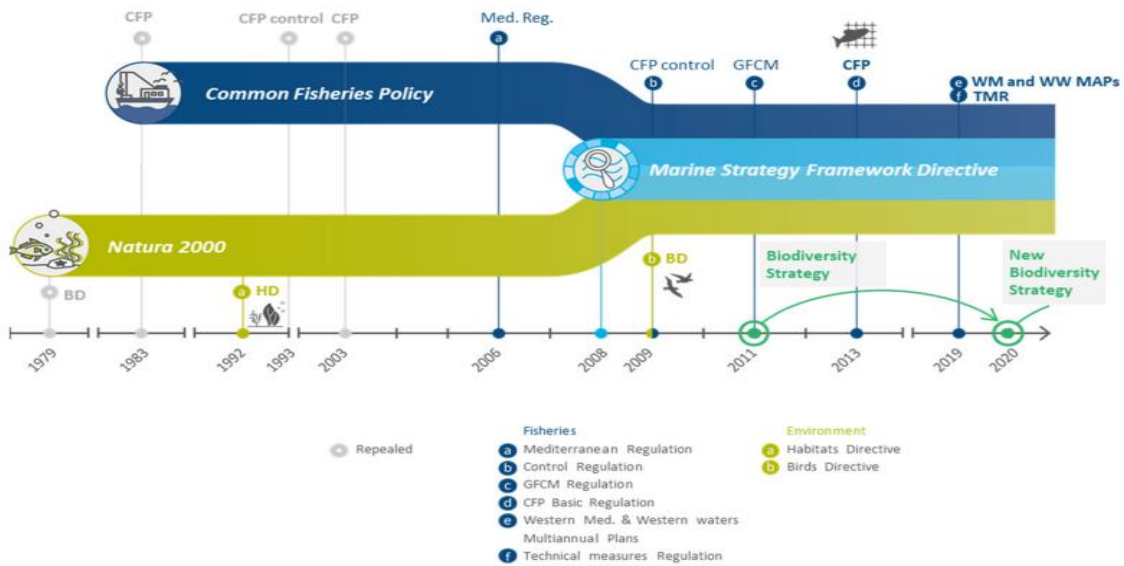
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“In January 1996, enough States of Central and Eastern Europe had become Parties to the Convention and were requesting the development of the network of ASCIs. The Standing Committee, realising this wish and noting that the Habitats Directive was already sufficiently advanced in its work to build NATURA 2000, decided to adopt its Resolution No. 3 (1996), in which it resolved to “*set up a network (Emerald Network) which would include the Areas of Special Conservation Interest designated following its Recommendation No. 16*”; it furthermore “*encouraged Contracting Parties and observer states to designate Areas of Special Conservation Interest and to notify them to the Secretariat*”. Resolution No. 3 (1996) was, in a sense, a second act of birth of the network, after its first creation in 1989. More precisely, it was an act of baptism as the network had not been given a name in 1989 and it had proved rather awkward to promote a network under the name of “network to develop Recommendation No. 16 (1989) of the Standing Committee of the Convention on areas of special conservation interest”.

<sup>329</sup> The Habitat Directive and the Bern Convention: Synergy and Disfunction in public international and EU Law, Yaffa Epstein, 2014.

<sup>330</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS).

<sup>331</sup> Special report 26/2020: Marine environment: EU protection is wide but not deep.



Source: ECA.

		Fisheries	Environment
12 nautical miles (nm) 100 nm in Macaronesia <sup>(a)</sup>	Territorial waters	Member States <sup>(b)</sup> European Union <sup>(c)</sup>	Coastal Member States
12-200 nm 100-200 nm in Macaronesia	Declared EEZs	European Union	Coastal Member States
Other areas <sup>(d)</sup>	Areas beyond EEZs	RFMOs <sup>(e)</sup>	RSCs and RFMOs (if international waters) Member States (if sovereign)

- <sup>(a)</sup> This rule applies to all EU outermost regions.
- <sup>(b)</sup> Member States regulate access of fishing vessels to these waters under a temporary exception
- <sup>(c)</sup> The CFP gives competences to the EU all over EU waters
- <sup>(d)</sup> CFP rules apply to EU vessels and EU nationals in international waters
- <sup>(e)</sup> The GFCM is competent for territorial, EEZ and international waters in the Mediterranean and Black seas

Source: ECA.

### 1.3. Marine Spatial Planning an instrument for biodiversity protection

The European Court of Auditors does not refer to **maritime spatial planning (MSP)** as a tool for environmental protection. MSP is procedural in nature and defined by the Directive 2014/89/EU (MSP Directive) as “a process by which the relevant authorities analyse and organise human activities in marine areas to achieve ecological, economic and social objectives”.

The MSP process results in a maritime spatial plan. Responsibilities for designing the formats and contents of such plan, including institutional arrangements and allocation of maritime activities, are left to EU member States.

Restrictions related to human uses can be established via the MSP Directive, which requires member States to establish and implement MSP following the ecosystem-based approach. These objectives represent potential synergies for marine protection and MPAs networks.



Establishing ecologically coherent networks of MPAs at eco-regional and sub-regional scales is the cornerstone of MSP.

The European Commission is explicit in the evaluation of the progress in implementation<sup>332</sup> of the MSP Directive: “MSP is a key tool to achieve the MSFD’s good environmental status objectives for EU waters and to help preserve biodiversity<sup>333</sup>...ecosystem-based approach in MSP<sup>334</sup>.”

The Commission stresses the responsibility of member States under the Directive 2001/42/EC<sup>335</sup> (SEA Directive) to realize the biodiversity strategic goals: “Strategic planning, including spatial planning, is essential to scale up marine protected areas from the current 12% area coverage to 30% by 2030, with at least one third of protected areas under strict protection as envisaged in the EU Biodiversity Strategy for 2030”<sup>336</sup>.

For the current plans that were due in March 2021, the integration of biodiversity strategy objectives was not required, therefore the environmental assessment of most plans had already been completed before the necessary guidance and framework were delivered to member States.

**The European Commission concluded that the role in biodiversity protection of MSP might only become fully apparent during the review of the national plans.**

In other Mediterranean Countries, non-EU States, the UNEP/MAP Conceptual framework for MSP is a tool for the implementation of MSP and is considered as a tool of the ICZM Protocol.

## 2. ACHIVING EU 2030 BIODIVERITY STRATEGY TARGETS

Following the European Green Deal, the European Commission adopted, on 20 May 2020, a Communication on an “*EU Biodiversity Strategy for 2030 – Bringing nature back into our lives*” (the Strategy). The Strategy<sup>337</sup> highlights the importance of a coherent network of protected areas. It concludes that protected areas are important for the conservation of biodiversity and that the existing network of protected areas is not sufficiently large to safeguard biodiversity.

It stresses the evidence that the Aichi biodiversity targets, of 17% of land and inland waters and 10% of sea covered by protected areas, are insufficient. Further states that currently 18% of land and 8% of sea in the EU are integrated in NATURA 2000, with an additional 8% of land and 3% of sea covered by national protection schemes. Only 3% of land and 1% of sea are strictly protected.

The Strategy sets the objective of establishing a truly coherent Trans-European Nature Network, to legally protect at least 30% of the land, including inland waters, and 30% of the sea in the EU, of which at least one third (10% of land and 10% of sea) to be under strict

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<sup>332</sup> Report COM (2022)185 final.

<sup>333</sup>In 2021, the Commission launched the review of the MSFD, in which consistency with other policies is a central aspect.

<sup>334</sup>*Guidelines for implementing an ecosystem-based approach in maritime spatial planning*, <https://op.europa.eu/en/publication-detail/-/publication/a8ee2988-4693-11ec-89db-01aa75ed71a1>.

<sup>335</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

<sup>336</sup> COM(2020) 380 final.

<sup>337</sup> Section 2.1.

protection. Policy and targets have been reaffirmed by the *EU Council of Ministers in its Conclusion in October 2020*.

EU member States should have submitted their pledges for targets to be achieved by 2030<sup>338</sup> by the end of 2022. At the time of the drafting of this study, no national pledges have been made public yet.

### 2.1. How to define and interpret the pledges?

All pledges were expected to follow the format and contents agreed with the European Commission and the European Environment Agency (EEA). The Commission recognizes that the time factor is crucial and that further clarification for targets on protected areas is necessary.

The questions define the structure of the issue at hand:

- 1) *Are the national pledges in line with the ambition for achieving a coverage of 30% of protected areas and 10% strictly protected areas in each of the Biogeographical regions?*
- 2) *Are pledges for additional nationally protected areas (including OECMs and urban green areas) covering the known key biodiversity areas, particularly for red-listed species and habitats not covered by the Annexes of EU nature legislation?*
- 3) *Are the pledges ensuring that the EU-wide network of protected area in its entirety will be sufficiently robust, coherent, and connected, and is the need for transboundary coherence and ecological corridors sufficiently considered?*
- 4) *For the 10% target for strict protection: are all known areas with remaining primary and old-growth forests covered by pledges for strictly protected areas, and are significant areas of other carbon-rich ecosystems (also including marine ecosystems) considered for strict protection?*

For the evaluation of the submitted pledges biogeographical seminars are planned in 2023. For the **marine biogeographical regions**, the Commission proposed three separate seminars covering (a) the Baltic, (b) the Atlantic and Macaronesia and (c) the Mediterranean and Black seas. According to the Commission Member States must present the quantitative and qualitative aspects of their baseline and the information that can be summarized from their pledges for additional areas declare as counting for the target.

The planned process includes qualitative assessment of the protection regime of different types of protected area in different Member States and regions due to the need for common understanding of different levels of national site protection.

### 2.2. Overview of NATURA 2000 sites in the Adriatic Ionian region by countries<sup>339</sup>

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<sup>338</sup> [Circabc \(europa.eu\)](https://circabc.europa.eu): *EU Biodiversity Strategy target for achieving, by 2030 at the latest, non-deterioration in the conservation status and trends of all protected habitats and species and ensuring that at least 30% of habitats and species not currently in favorable status are in that category or show a strong positive trend. Is assessed by Sub-target 1: no further deterioration in conservation trends and status by 2030 and Sub-target 2: improving (“strongly positive”) trends for 30% of species and habitats in unfavourable/non-secure status by 2030.*

<sup>339</sup> EU Site of Community Importance (Habitat Directive), Special Protected Area (Bird Directive), Special area of Conservation (Habitat Directive), SPA (Bird Directive) + SCI (Habitat Directive), SPA (Bird Directive) + SCIp (Habitat Directive), SPA (Bird Directive) + SAC (Habitat Directive), Proposed Site of Community Importance (Habitat Directive) according to the Project PORTODIMARE [https://www.portodimare.eu/layers/geonode:NATURA\\_2000\\_coastal\\_and\\_bgvoi/metadata\\_detail](https://www.portodimare.eu/layers/geonode:NATURA_2000_coastal_and_bgvoi/metadata_detail)

The Habitats Directive lists nine marine habitat types and 16 species, for which marine site designation is required, whilst the Birds Directive lists a further 60 bird species, whose conservation requires marine site protection. By the end of 2018, more than 3150 marine NATURA 2000 sites have been designated, covering almost 10% of the total EU marine area (over 550 000 km<sup>2</sup>)<sup>340</sup>

Analysis of marine NATURA 2000 sites<sup>341</sup> has shown that that the surface of the NATURA 2000 network was covered most regional seas by 2016 (except for the **Adriatic, Aegean and Ionian** Seas). In 2015, the mid-term review of the strategy recognised that marine species and ecosystems were still declining in the EU's seas and that the NATURA 2000 marine network remained incomplete<sup>342</sup>.

In the last years, the number of marine NATURA 2000 sites with conservation measures has increased. **For a significant increase in marine protection, MPAs beyond 12 NM have to be designated.**

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<sup>340</sup> Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS).

<sup>341</sup> <https://www.eea.europa.eu/themes/water/europes-seas-and-coasts/assessments/marine-protected-areas#about>

<sup>342</sup> COM (2015) 478 final of 2 October 2015: Report from the Commission to the European Parliament and the Council, "The mid-term review on the EU Biodiversity Strategy to 2020".



Total number of sites: 642  
 A type sites: SPA (Special Protection Areas): 64  
 B type sites: SCI (Special Conservation Interest): 548  
 C type sites: both SPA and SCI: 30  
 Total area (km<sup>2</sup>): 43535,99  
 Total marine area (km<sup>2</sup>): 15793,67  
**Covering 3,3% of the Adriatic Ionian Sea**

### 2.2.1. Habitat Directive

Some gaps have been identified at the last Mediterranean biogeographical region seminar, concluded by the Commission in 2016 (see the following table)<sup>343</sup>. Since 2016, no published conclusions have been made available; however, the biogeographical process continues.

<sup>343</sup> Overview: gaps in NATURA 2000: relevant Habitats Directive features (species of annex II /habitat types of annexes I of the Directive) in the Mediterranean biogeographical region seminar concluded by the Commission in 2016.

	<b>Number of habitat types in need for further research/additional proposals of SCIs (SR/IN MOD/IN MAJ)</b>	<b>Habitat type</b>	<b>Comments</b>
Croatia	2	*Posidonia beds ( <i>Posidonion oceanicae</i> )	SR <sup>344</sup>
		Reefs	SUF/SR
Italy	4	Sandbanks which are slightly covered by sea water all the time	IN MOD/MIN
		Reefs	IN MOD <sup>345</sup>
		Submarine structures made by leaking gases	IN MAJ/IN MIN <sup>346</sup>
		Submerged or partially submerged sea caves	IN MOD
Greece	3	*Posidonia beds ( <i>Posidonion oceanicae</i> )	IN MOD/CD <sup>347</sup>
		Reefs	IN MOD
		Submarine structures made by leaking gases	IN MAJ <sup>348</sup>
Slovenia	0		

	<b>Number of species in need for further research/additional proposals of SCIs (SR/IN MOD/IN MAJ)</b>	<b>Species</b>	<b>Comments</b>
Croatia	2	<i>Caretta caretta</i> *	SR
		<i>Tursiops truncatus</i>	SUF/SR
Italy	5	<i>Petromyzon marinus</i>	SR/CD
		<i>Lampetra fluviatilis</i>	SR
		<i>Caretta caretta</i> *	IN MOD/SR
		<i>Tursiops truncatus</i>	IN MOD/SR
		<i>Monachus monachus</i>	IN MOD/CD
Greece	5	<i>Caretta caretta</i> *	IN MOD
		<i>Chelonia mydas</i> *	IN MAJ

<sup>344</sup> SR (Scientific reserve): further research is required to identify the most appropriate SCIs for this species / habitat type (research on identifying the most appropriate sites, on clarifying the correspondence of a habitat present to the definition of Annex I habitats, etc.)

<sup>345</sup> IN MOD (Insufficient moderate): one or several additional SCIs (or extensions of SCIs) must be proposed to achieve a sufficient coverage of the NATURA 2000 network for this species/ habitat type (IN MOD GEO means additional site(s) are only required in a specifically named region).

<sup>346</sup> Codes can be combined, for example 'IN MOD/ CD' would indicate that additional sites are required and that the existing proposals need correcting or completing. existing proposals need correcting or completing species / habitat type (research on identifying the most appropriate sites, on clarifying the correspondence of a habitat present to the definition of Annex I habitats etc.)

<sup>347</sup> CD (Correction of data): the information about this species /habitat type in the Standard Data Form needs to be corrected / completed / deleted.

<sup>348</sup> IN MAJ (Insufficient major): none of the sites where this species/ habitat type occurs have been proposed as SCIs so far; in order to achieve a sufficient coverage of the NATURA 2000 network for the species /habitat type, one or several of these new SCIs must therefore be proposed.

		<i>Tursiops truncates</i>	IN MOD
		<i>Phocoena phocoena</i>	SR
		<i>Monachus monachus</i>	IN MOD
Slovenia	2	<i>Caretta caretta</i> *	SR
		<i>Tursiops truncates</i>	IN MAJ

The European Commission<sup>349</sup> stresses the importance to designate more areas for Bottlenose dolphins and Loggerhead turtles in the Adriatic in the area beyond 12 NM. There has been a meeting between Slovenia, Croatia, and Italy in March 2019, in Zagreb on the topic. The conclusions of the meeting have not been published yet.

On the same topic an influential case study was produced<sup>350</sup>, that identifies potential areas for the protection of the species. The case study evaluates the ability of the Habitat Directive to protect the species of Bottlenose dolphins and Loggerhead turtles in the Adriatic. Based on an aerial system of monitoring, the study discovers necessary areas for the protection of these migratory species, which are significantly larger than the NATURA sites.

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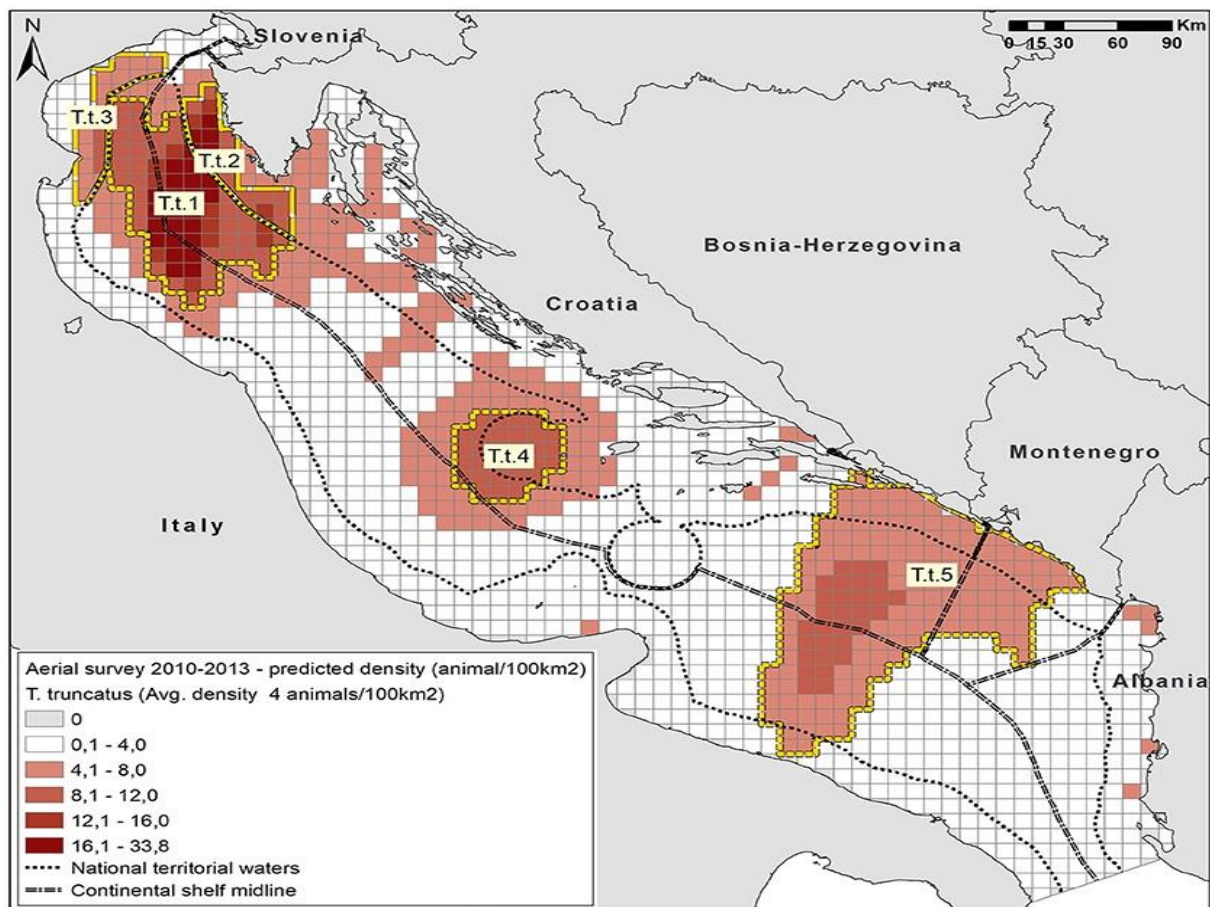
<sup>349</sup> Regarding loggerhead turtle The Northern Adriatic shelf area is the most significant feeding and wintering area for the Mediterranean loggerheads, mainly those nesting in Greece and Turkey. These turtles spend their entire life in the Adriatic Sea, coming back to their nesting beaches to reproduce. According to conservative estimates, there are at least 200 000 animals present in the Adriatic. The main hotspot is the Northern Adriatic with slightly different patterns of movement and distribution between the summer and winter periods. The seabed of the continental shelf in that area is the most important feeding ground for the turtles and during the winter they rest on the sea bottom almost completely inactive, spending up to 8 hours there before surfacing for air. This is when they are most endangered by fishing activities - mainly trawling, but also static nets pose a significant threat as they cause a higher mortality. It is estimated that in the Adriatic Sea about 7000 sea turtles are bycaught in trawlers and up to 4000 in gillnets every year. Significant efforts were made to survey the distribution and abundance of the loggerhead turtles in the Adriatic Sea through aerial surveys and a new survey is planned for 2019. The hotspots of abundance resulting from this research indicate the areas of potential NATURA 2000 sites that could be further refined. On the conservation measures, LIFE EUROTURTLES project is working on the coordinated conservation actions between the Mediterranean countries and aims to develop innovative mitigation measures to prevent bycatch and to work with fishers and other stakeholders.

For the bottlenose dolphins, the similar distribution pattern was presented, clearly distinguishing coastal resident populations (for which the existing Croatian NATURA 2000 sites mostly correspond to very well) and the offshore populations and their abundance hotspots, mainly located in the same area of the Northern Adriatic important for the loggerhead turtles, but also in the central and southern part, the latter being subject to inter-annual variations. More data will be collected through additional aerial surveys, however the data available already points to the main potential areas for site designation. The main threats also include bycatch in fishing gear, mainly static nets.

<sup>350</sup> <https://www.frontiersin.org/articles/10.3389/fmars.2018.00356/full>



The ongoing **LIFE project SEA.NET** stresses the importance of transboundary<sup>351</sup> protection for mobile species and the necessary coordination of measures for the protection of the same species on transboundary areas.



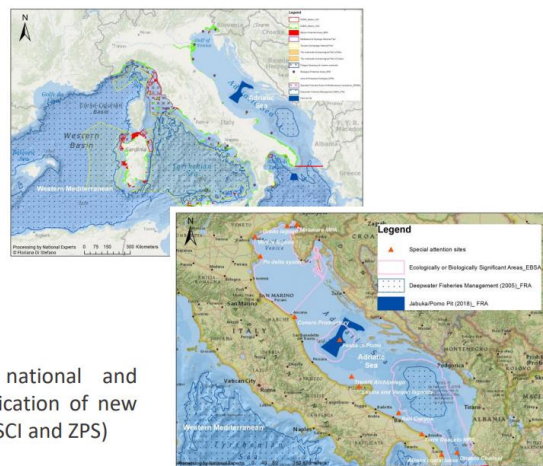
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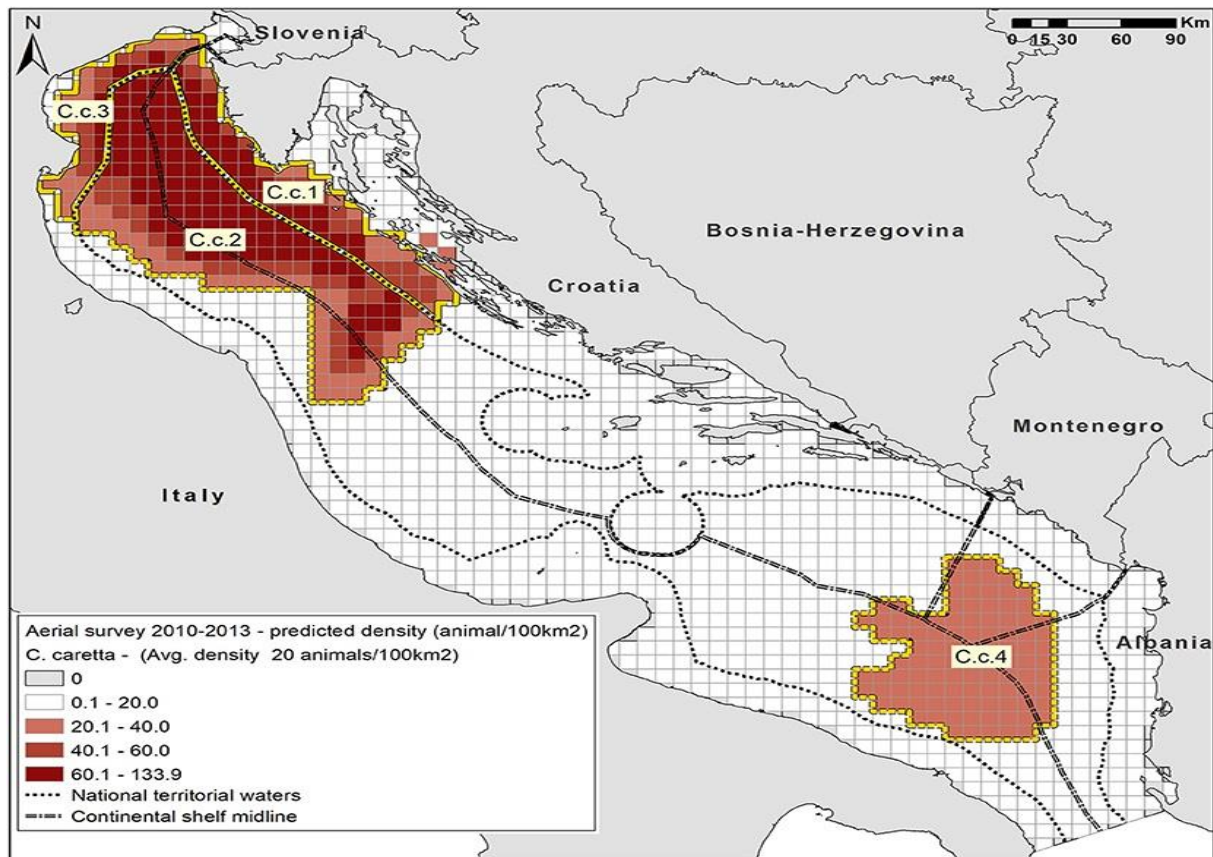
## B4 Actions on offshore sites

The objective of the Action B4 is the creation of a handbook conceived in order to propose a series of targeted actions, necessary to strengthen the process of identification and management of offshore sites.

The handbook will contain:

- The founding objectives of the new sites, organized according to the protection of habitats and/or species, aimed at favoring the identification of new Natura 2000 areas and the relative perimeters
- The most appropriate management solutions, defined based on pressures and threats and the definition of the most suitable measures for the conservation of target habitats or species
- The international standards for the management of new offshore sites
- Strategies of collaboration with other national and international administrations for the identification of new areas to be designated as Natura 2000 sites (SCI and ZPS)





## 2.2.2. Bird Directive and marine protection

Regarding the designation of new marine protected areas under the Bird Directive there has been a lot done by International Bird Association in identifying so called IBA areas<sup>352</sup> that significantly enlarge the prospective NATURA 2000. There is even a case of IBA area that is shared by Italy and Croatia in Nord Adriatic.

<sup>352</sup> Source: Birdlife International (2023) Important Bird and Biodiversity Area (IBA) digital boundaries: March 2023 version. Birdlife International, Cambridge.





Country	Name IBA	km <sup>2</sup>
Italy	Middle Adriatic	6448,15
	Northern Adriatic IT	216,86
	Gargano Promontory and Capitanata Wetlands	2371,84
		<b>9036,85</b>
Croatia	Northern Adriatic CRO	251,31
	Korčulanski kanal	951,06
	Hvarski kanal	261,06
	Lastovski kanal	790,8
	Lastovsko otočje	347,42
	Pučinski otoci	246,49
		<b>2848,14</b>
Albania	Karavasta Lagoon	191,26
	Narta Lagoon	196,29
	Vlora Bay, Karaburun Peninsula and Cika mountain	657,34
		<b>1044,89</b>

Total: **12929,88** km<sup>2</sup>

### 2.3. Marine Strategy Framework Directive

According to the Art. 13(4) of the MSFD, EU member States need to include into their programmes of measures “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 Habitat Directive, special protection areas pursuant to the Birds Directive, and marine protected area as agreed by

the Community or Member States concerned in the framework of international or regional agreements to which they are parties”.

Even if no member State has established spatial measures under the MSFD so far, some proposed measures have been introduced in the new program of measures under the MSFD by Italy, such as:

- *The ban of industrial fishing within 3 NM from the coast or at depths less than 50 m*
- *Increase by 2026 of the area of marine protected areas through the expansion of the NATURA 2000 network and the creation or strengthening of the measures in place in MPAs also characterized by other space protection tools.*
- *In support of the implementation of environmental target 6.3, the mapping of biogenic seabed of conservation interest in waters is implemented, and solutions to reduce the impacts of anchoring on protected habitats are implemented.*
- *Moratorium on recreational fishing of specimens of species of high conservation value, such as groupers and corvina by non-professional recreational and underwater fisheries.*

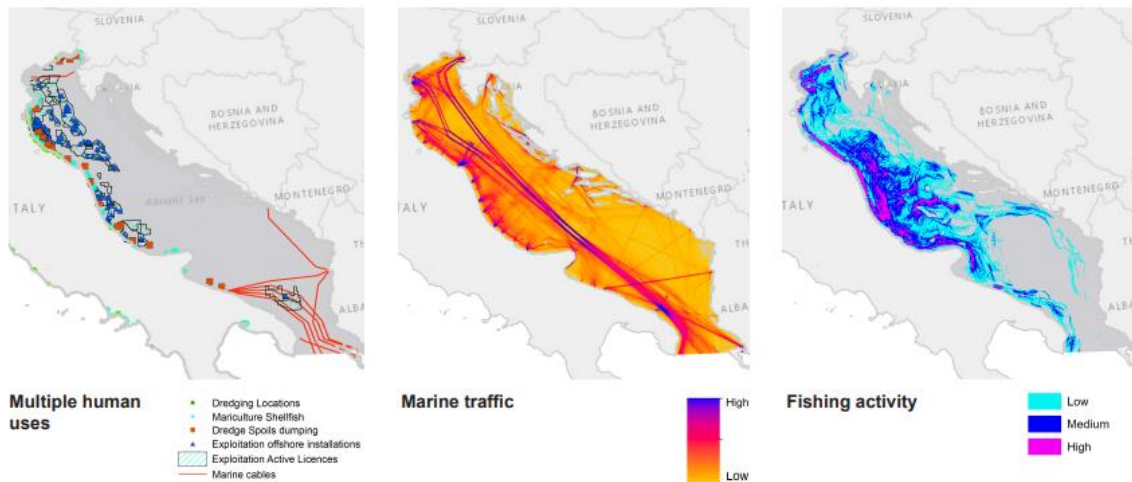
#### **2.4. Case studies for networks of MPAs under the EUSAIR**

There are two recent EU financed projects that deal with ampliation ant connection of marine protection areas in the region. One is “Cohenet” project (2020), that *made a preliminary assessment of coherence of the current MPAs as possible nodes of a network focused on the Adriatic Sea*. The other is *The Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS)*, offers a comprehensive evaluation on existing and potential MPA in the EUSAIR non-EU member states.

How to evaluate the candidate areas within an integrated planning and taking in account the priorities for advancing the Adriatic MPA network is the central issue. An effort to produce the spatial analysis of the existing data on key habitats and species in the Adriatic was performed in the “Cohenet” project, and also in the *Study on Proposals for New Marine Protected Areas*.

Ecological coherence assessment is based on the oceanographic circulation patterns, selection of key habitats and species and criteria for MPAs network selection. The assessment analysis on the cumulative human impacts in the Adriatic Sea is specially telling. The following illustration shows the locations of the areas that are currently under pressure, but also those that are less so and where MPA’s could be designated.

### Human activities



The Adriatic is subject to intense human stressors and is one of the most impacted regions within the Mediterranean Sea, both near-shore and off-shore<sup>353</sup>. The key pressures of wide spatial extent and distribution in the Adriatic Sea are the physical loss (due to coastal construction/coastal defence), the physical damage (due to fishing pressure from bottom trawling, hydrocarbons extraction, discharge and dredging areas), the introduction of NIS (e.g., ports), and the underwater noise (due to maritime traffic and military activities). The high-pressured areas are mainly located in the Northern Adriatic, in Italy and in Croatia, and some of these areas are overlapping with the existing MPAs.

The new proposed MPAs in the “cohenet” project does not cover the target of 30 % of the marine area, however it develops a comprehensive ecosystem methodology for MPA network evaluation.

On the similar note *The Study on Proposals for New Marine Protected Areas in Albania, Bosnia and Hercegovina and Montenegro, September 2021, (NIRAS)*, offers a comprehensive evaluation on existing and potential MPA in the EUSAIR non-EU member states, therefore proposes the inclusion of the proposed new designations and network forming in the light of the larger ecological context of the region.

### 3. ENVIRONMENTAL MARINE PROTECTION IN EUSAIR MEMBER STATES

The designation of the MPAs requires special attention in drafting, implementing, reviewing or amending the protected areas’ laws, relating to MPAs and marine conservation.

Each country needs to designate MPAs using their existing legislation relative to management of the key activities to be achieved, which can be fisheries, tourism, navigation and other development. The designation must be in line with national legal traditions and administration practices. Such an approach does not exclude exchange of good practices.

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<sup>353</sup> Coll et al., 2012, Micheli et al., 2013

Applicant countries, such as Albania, Bosnia-Herzegovina and Montenegro are transposing the Birds Directive and Habitats Directive into their national legislation. This should be a key framework for the MPAs designations. Pending this transposition, national legislation can be used and international instruments, such as the Bern Convention, can offer useful legal and institutional frameworks.

### 3.1. National legislation

The following table offers the analysis of national legal frameworks for the protection of the marine environment, including the establishment of MPAs in individual member States.

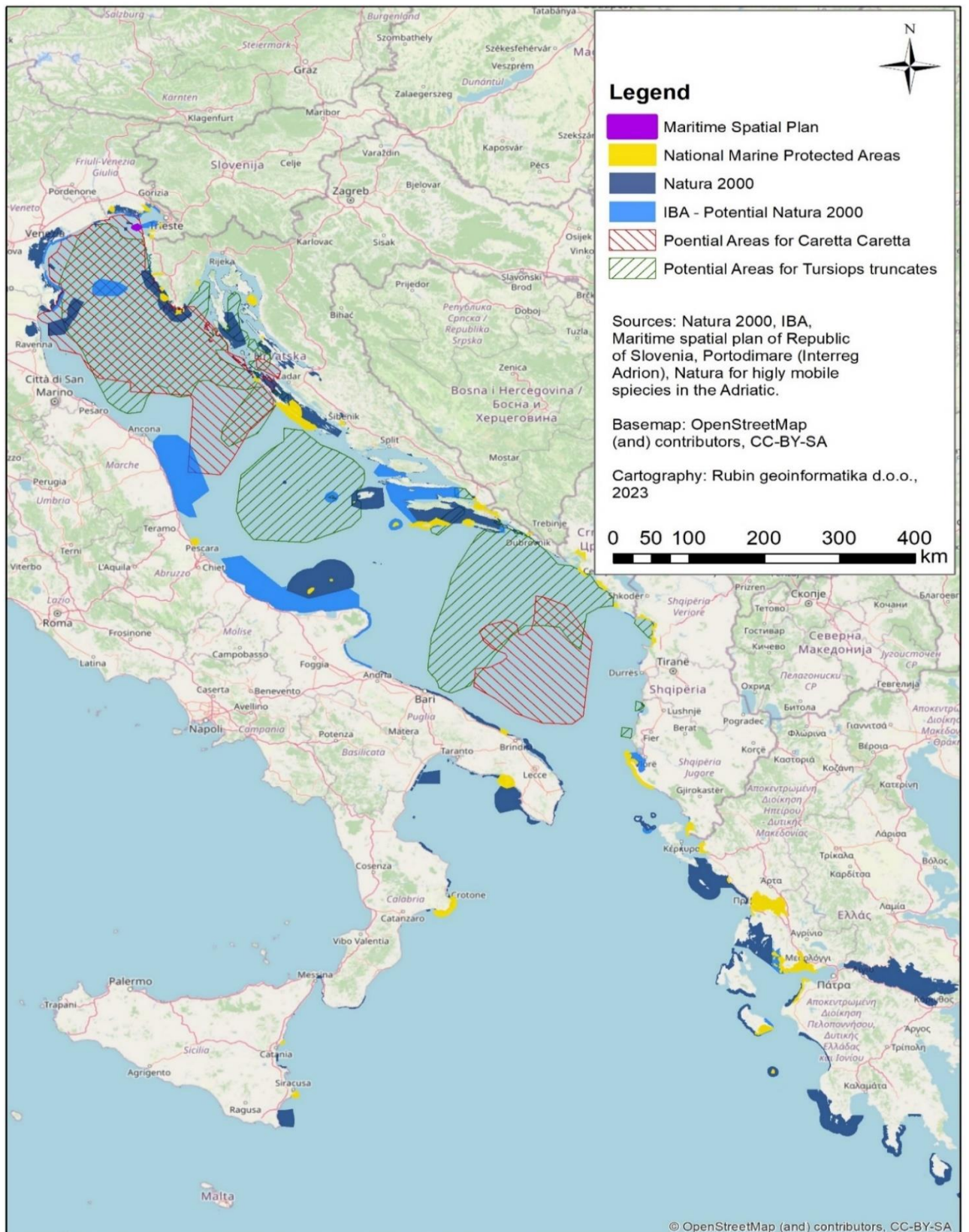
<b>STATE</b>	<b>NATURE CONSERVATION (SOME RELEVANT LEGISLATION-LIST NOT EXHAUSTIVE)</b>	<b>FISHERIES (SOME RELEVANT LEGISLATION-LIST NOT EXHAUSTIVE)</b>	<b>MSP (SOME RELEVANT LEGISLATION-LIST NOT EXHAUSTIVE)</b>
<b>ALBANIA</b>	The Protected Areas Act No. 81 of 2017	Decision of the Council of Ministers (DCM) No. 701 of 12.10.2016 “on the Approval of the National Fishery Strategy 2016-2021; - Law on Fisheries No. 64/2012; - Regulation No. 1 of 7.3.2014 of the Ministry of Agriculture, Rural Development and Water Administration “on the Implementation of Law No. 64 of 31.5.2012 On Fisheries; - DCM No. 402 of 8.5.2013 “concerning Management Measures for the Sustainable Exploitation of Marine Fishery Resources”.	Albania is a State Party to the ICZM Protocol to the Barcelona Convention since 2010.
<b>BOSNIA AND HERZEGOVINA</b>	The Nature Protection Act of	Law on Fisheries of the Hercegovacko-	Bosnia and Herzegovina has not



	2013 (Federation of Bosnia and Herzegovina)	Neretvanska županija-canton (2014)	ratified the ICZM Protocol and has not adopted yet specific legislation related to MSP, neither at the national, federal or cantonal level. See, however, in that regard
<b>CROATIA</b>	The Nature Protection Act of 24 June 2013	Law on marine fisheries. (2017)	Physical Planning Act (2013)
<b>GREECE</b>	The Law for the Management Agencies of Protected Areas in Greece (No. 4519 of 8 February 2018)	- Legislative Decree No. 420 introducing the Fisheries Code. (1970); -Law No. 1740 on the development and protection of coral formations, aquaculture and fish breeding areas (1987)	Law No. 4546 transposing into Greek legislation the EU Directive 2014/89 establishing a framework for maritime spatial planning and other provisions. (2018)
<b>ITALY</b>	- The Framework Law on Protected Areas (No. 394 of 6 December 1991);  -National Biodiversity Strategy 2030.	Legislative Decree No. 4 rearranging the national legislation on fisheries and aquaculture	Legislative Decree 17 October 2016, n. 201. Implementation of Directive 2014/89 / EU establishing a framework for maritime spatial planning.
<b>MONTENEGRO</b>	-The Nature Protection Act of 2016, -Decision on declaring the protected area of the nature park "Platamuni (2021); - <u>Decision declaring the protected area of Nature Park "Stari Ulcinj" (2021)</u>	-Law on marine fisheries and mariculture.(2009); - Law amending the Law on marine fisheries and mariculture. (2015); -	Law on spatial planning and construction of facilities (201/)
<b>SLOVENIA</b>	The Nature Conservation Act of 1999	Marine Fisheries Act (2006)	Spatial Planning Act (2017);  Decree on Maritime Spatial Plan Slovenia

### **3.2. EXISTING MPAs AND AREAS OF POTENTIAL DESIGNATION IN INDIVIDUAL EUSAIR MEMBER STATES**

The following map show the existing MPAs and areas of potential designation under national and EU law (including Bern convention) in the whole EUSAIR area.



**4. INTERNATIONAL LEGAL BASIS FOR THE ESTABLISHMENT OR DESIGNATION OF (TRANSBOUNDARY) MPAS: THE JURISDICTIONAL STATUS OF THE ADRIATIC AND IONIAN SEAS AS PART OF THE WIDER MEDITERRANEAN SEA**

Noteworthy is the fact that in the context of the establishment or designation of new (transboundary) marine protected areas in the Adriatic and Ionian Seas, such (transboundary) marine protected areas beyond the limits of the territorial sea may be established either within the exclusive economic zone or *sui generis* zone of a specific coastal State and on the high seas – and, in all cases, above the continental shelves of the coastal states. Several Adriatic or Ionian coastal States have established or are moving towards the establishment of an exclusive economic zone.

#### 4.1.EBSAs

Reference should be made to the fact, that EBSAs criteria (and EBSAs in general) can provide the interested States useful information on where marine protected areas could be established according to scientific evidence. They do not enter into the political and legal questions that are linked to the creation of marine protected areas. The Annex to Decision XII/22, adopted by the Conference of the parties held in 2014, provides the results of seven regional workshops on the description of areas meeting the scientific criteria for EBSAs. The workshop for the Mediterranean, held in Malaga in 2014, described 15 EBSAs, including three located in the Adriatic and Ionian Seas:

### **LOCATION AND BRIEF DESCRIPTION OF IDENTIFIED EBSAs IN THE ADRIATIC AND IONIAN SEAS**

#### **1. NORTHERN ADRIATIC (CROATIA, ITALY, SLOVENIA)**

Location: Part of the Northern Adriatic Basin, off the coasts of Croatia, Italy, and Slovenia. The area is roughly delimited by the 9-meter isobath, encompassing the area above the straight line linking Ancona (Conero) and the island of Ilovik. The area is located in the northern part of the North Adriatic Sea Basin, with an average depth of 35 meters and is strongly influenced by the Po river plume.

It includes mobile sandy bottoms, seagrass meadows, hard bottom associations and unique rocky outcrops called “trezze” and “tegnue”. The area is important for several threatened species. It hosts a population of the highest density of bottlenose dolphin (*Tursiops truncatus*) in the Mediterranean; it is one of the most important feeding grounds in the Mediterranean of the Loggerhead turtle (*Caretta caretta*); and it is a nursery area for a number of vulnerable species (blue shark (*Prionace glauca*), sandbar shark (*Carcharinus plumbeus*), anchovies (*Engraulis encrasicolus*), etc.). The area hosts a strong diversity of benthic and pelagic habitats due to an important gradient of environmental factors from its western portion to its eastern coasts. It is also one of the most productive areas in the Mediterranean Sea.

## **2. JABUKA/POMO PIT (CROATIA, ITALY)**

**Location:** The area encompassing three distinct, adjacent depressions, with maximum depths of about 270 meters. The area extends 4.5 nautical miles from the 200-meter isobath. The area encompassing the adjacent depressions, the Jabuka (or Pomo) Pit is situated in the Middle Adriatic Sea and has a maximum depth of 200 - 260 meters.

It is a sensitive and critical spawning and nursery zone for important Adriatic demersal resources, especially European hake (*Merluccius merluccius*). This area hosts the largest populations of Norway lobster (*Nephrops norvegicus*) and is important especially for juveniles in the depths over 200 meters.

Based on available scientific data, it is a high-density area for the giant devil ray (*Mobula mobular*), an endemic species listed on Annex II SPA/BD protocol and listed as endangered on the IUCN Red List. The Pit could function as a favourable environment for some key life history stages of the porbeagle shark, and *Lamna nasus*, which is critically endangered (IUCN 2007), and both of which are listed on Annex II SPA/BD Protocol. Regarding benthic species, several types of corals can be found (*Scleractinia* and *Actiniaria*).

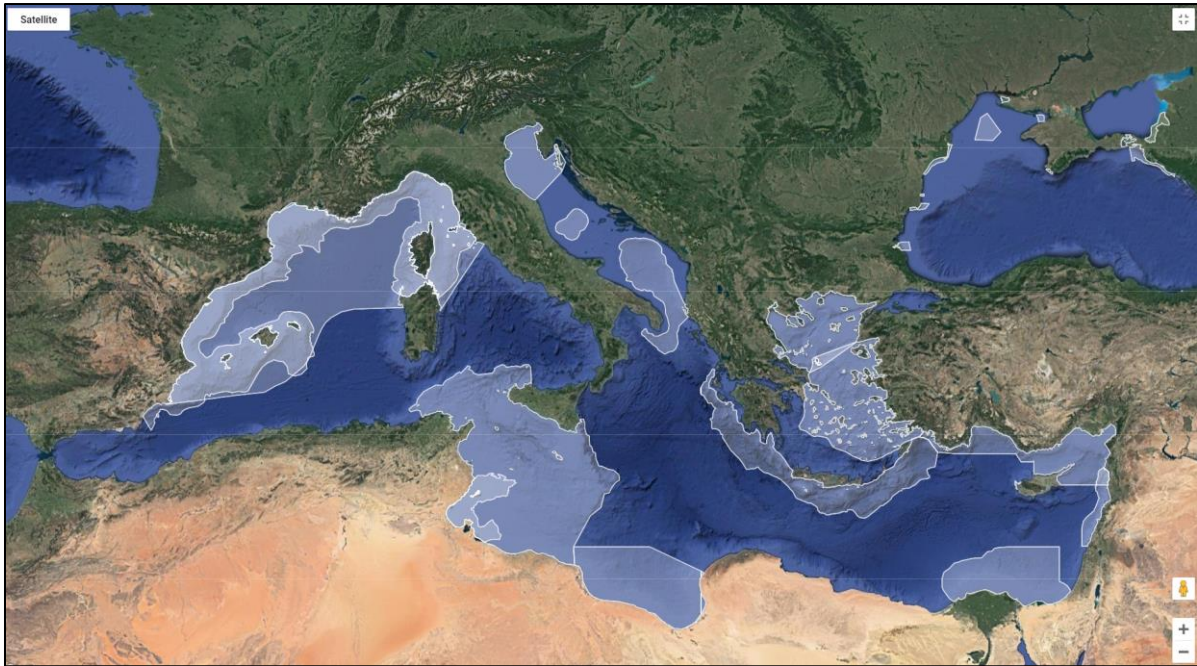
## **3. SOUTH ADRIATIC AND IONIAN STRAIT (ALBANIA CROATIA, ITALY, MONTENEGRO)**

**Location:** The area is located in the centre of the southern part of the Southern Adriatic basin and in the northern part of the Ionian Sea. It includes the deepest part of the Adriatic Sea on the western side and it encompasses a coastal area in Albania (Sazani Island and Karaburun peninsula). It also covers the slopes in near Santa Maria di Leuca.

It is characterized by steep slopes, high salinity and a maximum depth ranging between 200 meters to 1500 meters. Water exchange with the Mediterranean Sea takes place through the Otranto Channel, which has a sill that is 800-meter deep. This area contains important habitats for Cuvier's beaked whales (*Ziphius cavirostris*), an Annex II species of the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Areas Protocol) in the framework of Barcelona Convention, and significant densities of other megafauna such as the giant devil ray (*Mobula mobular*), striped dolphin (*Stenella coeruleoalba*), Mediterranean monk seal (*Monachus monachus*) and loggerhead turtle (*Caretta caretta*), all of which are listed in Annex II of the Areas Protocol. Benthos includes deep-sea cold-water coral communities and deep-sea sponge aggregations, representing important biodiversity reservoirs and contributing to the trophic recycling of organic matter. Tuna, swordfish, and sharks are also common in this area.

Identified EBSA's based on Annex to Decision XII/22, adopted by the Conference of the parties held in 2014 (source: Peter Mackleworth, ([https://www.adriatic-ionian.eu/wp-content/uploads/2023/02/Legal-options-and-limiting-factors-SAIS\\_EBSA\\_-Peter-MACKELWORTH.pdf](https://www.adriatic-ionian.eu/wp-content/uploads/2023/02/Legal-options-and-limiting-factors-SAIS_EBSA_-Peter-MACKELWORTH.pdf)))





#### **4.2.SPAMIs**

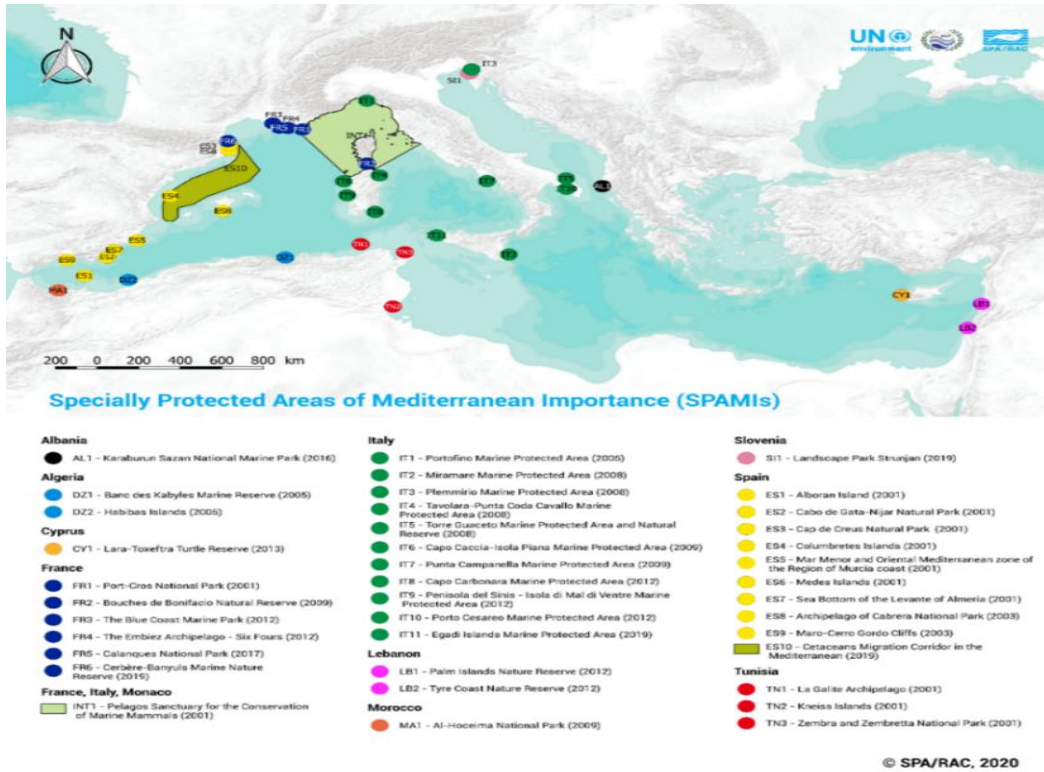
So far, 39 SPAMIs have been included in the SPAMI List based on the provisions of the Areas Protocol to the Barcelona Convention.

Among them, the Pelagos Sanctuary for the conservation of marine mammals, jointly proposed by France, Italy, and Monaco, and the Cetacean Migration Corridor off the coasts of Spain cover also waters located beyond the territorial sea.

It may be noted that no area in the central portion of the region of concern – i.e., off the coasts of Croatia, Bosnia and Herzegovina, Montenegro, Greece, and the eastern coast of Italy – has yet been included under the special protection regime of the SPAMI List

List of existing SPAMIs. Source: SPA/RAC.





Noteworthy is the fact, that in 2010, an extraordinary meeting of the focal points of the Areas Protocol – held in Istanbul within the framework of a project funded by the European Commission – discussed the question of identification of areas of conservation interest with a view to promoting the establishment of a more representative ecological network of protected areas in the Mediterranean Sea.

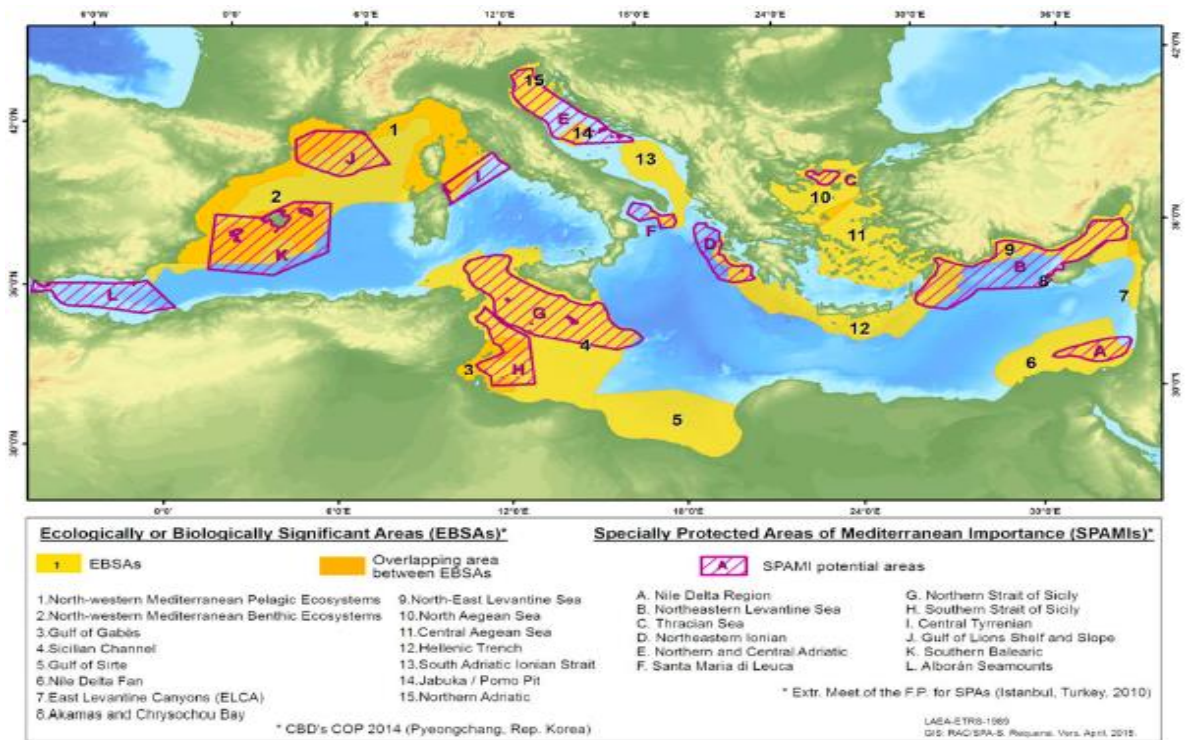
The project identified ten “*priority conservation areas lying in the open seas (beyond the limits of the territorial sea), including the deep sea, likely to contain sites that could be candidates for the SPAMI List*”. Three of the areas proposed as SPAMIs are located in the Adriatic and Ionian Seas, namely:

**IDENTIFIED SPAMI's: UNEP(DEPI)/MED WG.348/5, 4 June 2010 (ANNEX 3)**

Adriatic Sea	Northern and Central Adriatic: This portion of the Adriatic has a high natural productivity that supports an extensive food web, including sea birds, loggerhead sea turtles and several shark species. Considering the high level of degradation of the North-western Adriatic Sea, establishing a protected area in this site would require significant marine restoration effort.	Ecological value: Biological productivity Importance for life history Importance for threatened species
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Ionian Sea	Santa Maria di Leuca: In addition to supporting a broad array of Mediterranean diversity, this northern extent of the Ionian has significant deep sea coral habitats.	Ecological value: Fragility Naturalness Importance for life history Importance for threatened species
	Northeastern Ionian: The northeastern Ionian Sea includes cetacean critical habitats and important nursery areas for several shark species.	Ecological value: Importance for life history Importance for threatened species

EBSAs and their relation with potential SPAMIs in the Adriatic and Ionian Seas.



4.3. ACCOBAMS MPAs

ACCOBAMS parties still have to achieve the declared objective of creating and maintaining a network of specially protected areas to conserve cetaceans.

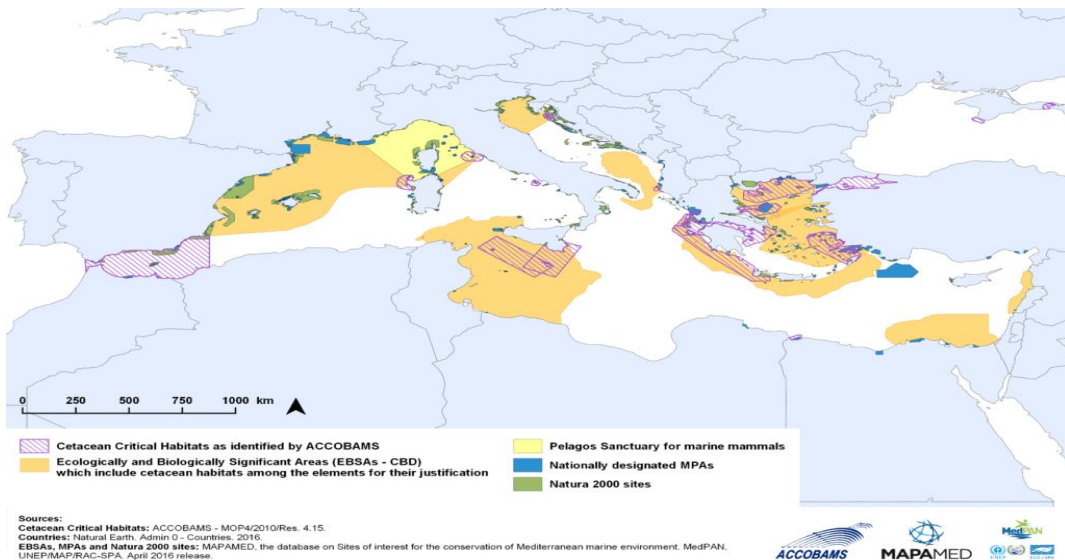
The table below describes the proposed CCHs in the Adriatic and Ionian Seas:

<b><i>The Waters along east coast of the Cres-Lošinj archipelago (Croatia)</i></b>	Area of special importance for the bottlenose dolphin
<b><i>The Sazani Island – Karaburuni Peninsula (Albania)</i></b>	Area of special importance for the common dolphin and other cetaceans
<b><i>Eastern Ionian Sea and the Gulf of Corinth (Greece)</i></b>	Area of special importance for the common dolphin and other cetaceans
<b><i>Southwest Crete and the Hellenic Trench (Greece)</i></b>	Area of special importance for the sperm whale

Proposed Cetacean Critical Habitats (CCHs). Source: ACCOBAMS.



Overlapping of area-based management tools for cetacean conservation in the Mediterranean Sea. Source: ACCOBAMS.



#### 4.4.GFCM FRAs

With regard to the GFCM, reference should be made to the fact that recommendations so far adopted relate to a broad range of matters, including driftnets, closed seasons, fisheries restricted areas, mesh size, management of demersal fisheries, plans of actions, red coral, incidental by-catch of seabirds or turtles, conservation of monk seal, records of vessels, port State control, lists of vessels engaged in illegal, unreported and unregulated fishing, logbooks, vessel monitoring systems. Noteworthy is the fact that in the Mediterranean and the Black Sea,

1 760 000 km<sup>2</sup> of sea habitats are protected by ten FRAs established by the GFCM. At least four FRAs established within the GFCM framework are of particular relevance to this Scenario, as they represent opportunities for transboundary cooperation in the Adriatic and Ionian Seas.

Additionally, they may be counted towards the achievements of the goals of the European Union in the field of biodiversity. A further FRA could be soon established in the region of concern (South Adriatic), on the basis of a recent proposal.

**Table of existing and proposed FRAs beyond the limits of the territorial sea in the Adriatic and Ionian Seas**

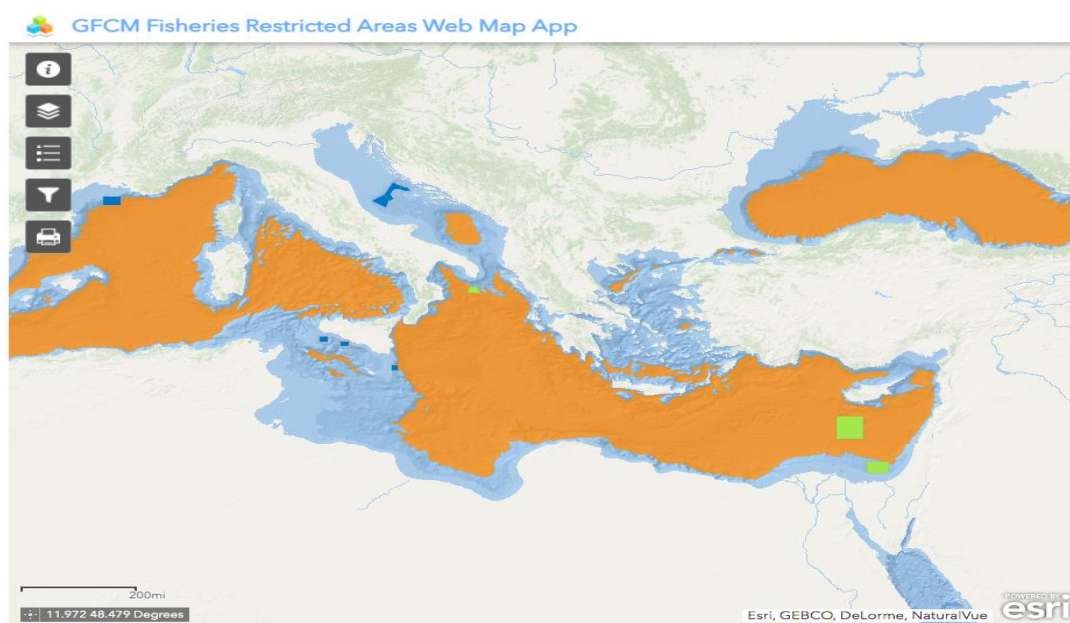
<b>FRA</b>	<b>AREA</b>	<b>ADOPTED MEASURES</b>	<b>STRICT PROTECTION</b>	<b>STATUS &amp; SIZE</b>
<b>I. Recommendation 2005/1 on the management of certain fisheries exploiting demersal and deep-water species</b>	Both the South Adriatic and to an even greater extent Ionian Seas comprise areas covered by such measure	Prohibits the use of towed dredges and trawl nets fisheries at depths beyond 1000 m of depth	No. This can be considered as an example of ‘vertical’ protection of a specified area, extending only to the seabed together with a selected portion of the water column	Permanent
<b>2. THE LOPHELIA REEF OFF CAPO SANTA MARIA DI LEUCA</b> Recommendation on REC.CM-GFCM/29/2005/1	39° 27' 72" N, 18° 10' 74" E 39° 27' 80" N, 18° 26' 68" E 39° 11' 16" N, 18° 04' 28" E 39° 11' 16" N, 18° 32' 58" E (area located beyond the territorial sea of Italy, on the high seas, within the future EEZ of Italy).	Prohibition fishing with towed dredges and bottom trawl nets in the area	No	Permanent
<b>3. THE JABUKA/POMO PIT</b> Recommendation on GFCM/44/2021/2 on the establishment of a fisheries restricted area in the Jabuka/Pomo Pit in the Adriatic Sea, amending Recommendation	Jabuka/Pomo Pit (Zone A, B and C). For a list of coordinates see Recommendation GFCM/44/2021/2	In Zone A, any professional fishing activity with bottom-set nets, bottom trawls, set longlines and traps is prohibited. In Zone B, such fishing activities have been prohibited from 1 September to 31 October each year. In Zone C, both the above fishing activities and	Yes, zone A	Permanent

<p>on GFCM/41/201 7/3</p>		<p>recreational fisheries are prohibited from 1 September to 31 October each year.</p>																																
<p><b>4. BARI CANYON</b> Recommendation on GFCM/44/202 1/3 on the establishment of a fisheries restricted area in the Bari Canyon in the southern Adriatic Sea</p>	<p>The <i>Bari Canyon</i> FRA is located in GSA18 – which is already identified as EBSA by the CBD, together with the northern Ionian Sea – at around 20 n.m. off the city of Bari and 50 n.m. south of the Gargano National Park, in the Apulia Region</p> <p>The core area and the buffer area are defined by the following coordinates. Core area: 41° 23' 49" N – 17° 03' 24" E 41° 15' 27" N – 17° 19' 16" E 41° 16' 13" N – 17° 02' 42" E 41° 23' 03" N – 17° 19' 49" E Buffer area: 41° 25' 11" N – 17° 02' 09" E 41° 24' 04" N – 17° 27' 31" E 41° 13' 50" N – 17° 27' 01" E 41° 14' 57" N – 17° 01' 26" E (cc 1.000,00 km2)</p>	<p>In the core area, the proposed protection measures consist of a permanent closure of the area to any professional or recreational fishing activity. As for the buffer area, fishing activities with set longlines and traps could be allowed provided that the vessel has a specific authorization and that historical fishing activities in the buffer zone is demonstrated.</p>	<p>Yes, core area.</p>	<p>Temporary, till 31 December 2026 The core area is 326 km<sup>2</sup> and the buffer area is 675 km<sup>2</sup></p>																														
<p><b>5. THE DEEP-WATER ESSENTIAL FISH HABITATS AND SENSITIVE HABITATS IN THE SOUTH ADRIATIC (Proposal stage)</b></p>	<p>Located on the high seas between Italy and Albania (future EEZs). Core area:</p> <table border="1" data-bbox="411 1704 687 1933"> <thead> <tr> <th>Latitude</th> <th>Longitude</th> <th>Vertex</th> </tr> </thead> <tbody> <tr> <td>40°54'00" N</td> <td>18°12'00" E</td> <td>1</td> </tr> <tr> <td>41°00'00" N</td> <td>18°48'36" E</td> <td>2</td> </tr> <tr> <td>40°55'48" N</td> <td>19°00'00" E</td> <td>3</td> </tr> <tr> <td>40°45'00" N</td> <td>19°01'48" E</td> <td>4</td> </tr> <tr> <td>40°44'24" N</td> <td>18°57'36" E</td> <td>5</td> </tr> <tr> <td>40°38'24" N</td> <td>19°02'24" E</td> <td>6</td> </tr> <tr> <td>40°10'48" N</td> <td>19°10'12" E</td> <td>7</td> </tr> <tr> <td>40°09'36" N</td> <td>18°46'48" E</td> <td>8</td> </tr> <tr> <td>40°24'36" N</td> <td>18°39'00" E</td> <td>9</td> </tr> </tbody> </table>	Latitude	Longitude	Vertex	40°54'00" N	18°12'00" E	1	41°00'00" N	18°48'36" E	2	40°55'48" N	19°00'00" E	3	40°45'00" N	19°01'48" E	4	40°44'24" N	18°57'36" E	5	40°38'24" N	19°02'24" E	6	40°10'48" N	19°10'12" E	7	40°09'36" N	18°46'48" E	8	40°24'36" N	18°39'00" E	9	<p>In the core area, the proposal includes the permanent closure to any professional fishing activity with towed nets, bottom set nets, and set longlines. Measures suggested in the buffer area include the subjection of any demersal fishing activity to a</p>	<p>Yes, core area. The core area covers a surface of 3545.22 km<sup>2</sup> and its depth ranges between 200 meters (minimum) to 968 meters (maximum). The buffer area, which covers a surface of 3095.6 km<sup>2</sup> and its depth ranges between 100 m (minimum) to 900 m (maximum).</p>	<p>Proposal stage</p>
Latitude	Longitude	Vertex																																
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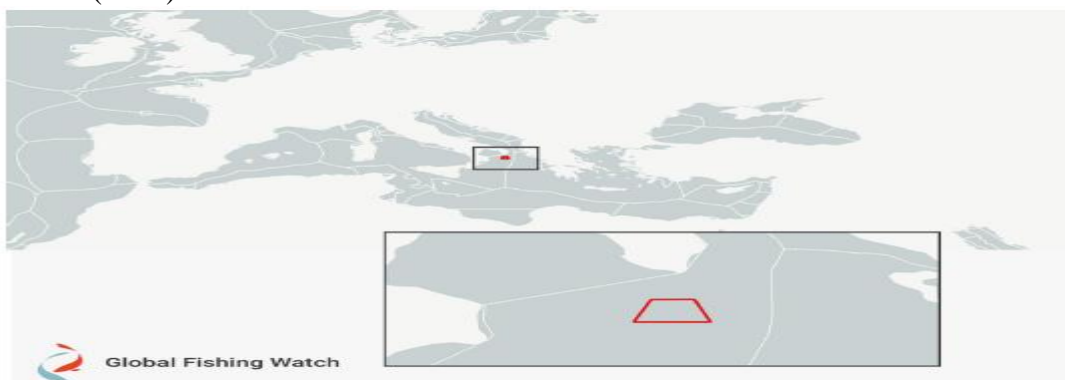


<p>See also: Resolution GFCM/44/202 1/3 on a roadmap for the establishment of a fisheries restricted area in the southern Adriatic Sea (geographical sub area 18)</p>		<p>special fishing authorization, if the fishing unit can demonstrate to have carried out fishing activities in the area in the last five years.</p>		
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Areas of the Mediterranean and Black Seas regulated by GFCM Recommendation 2005/1 (Depths beyond 1000 meters). Source: <https://www.fao.org/gfcm/data/maps/fras>

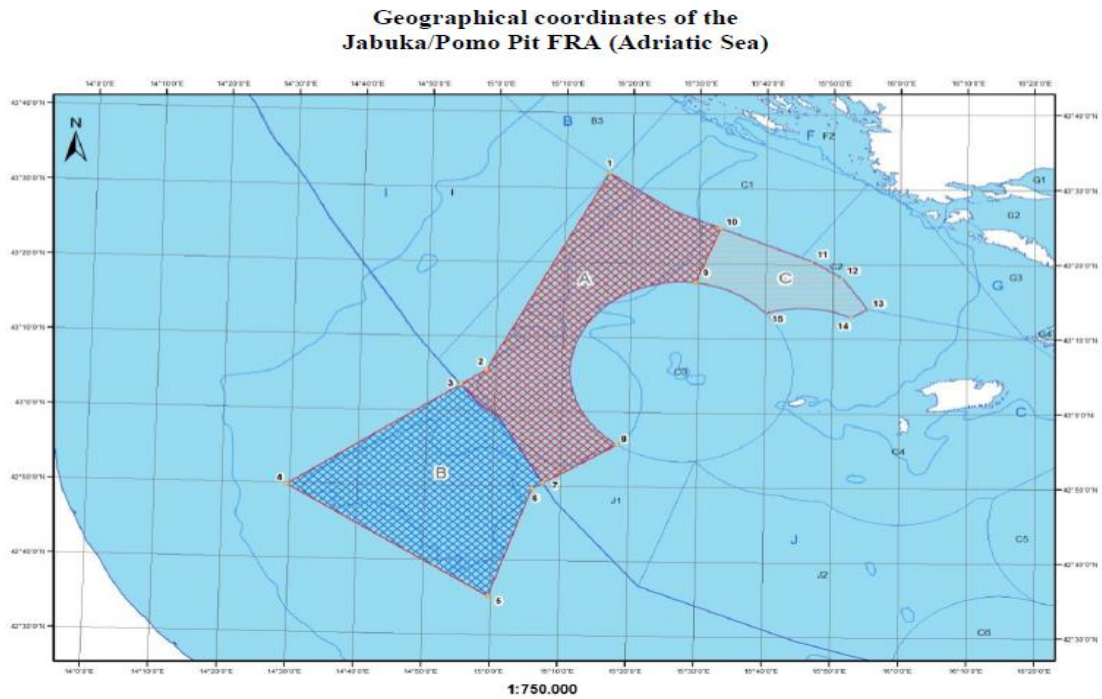


The Lophelia Reef off Capo Santa Maria di Leuca (in red). Source: Global Fishing Watch (2021).

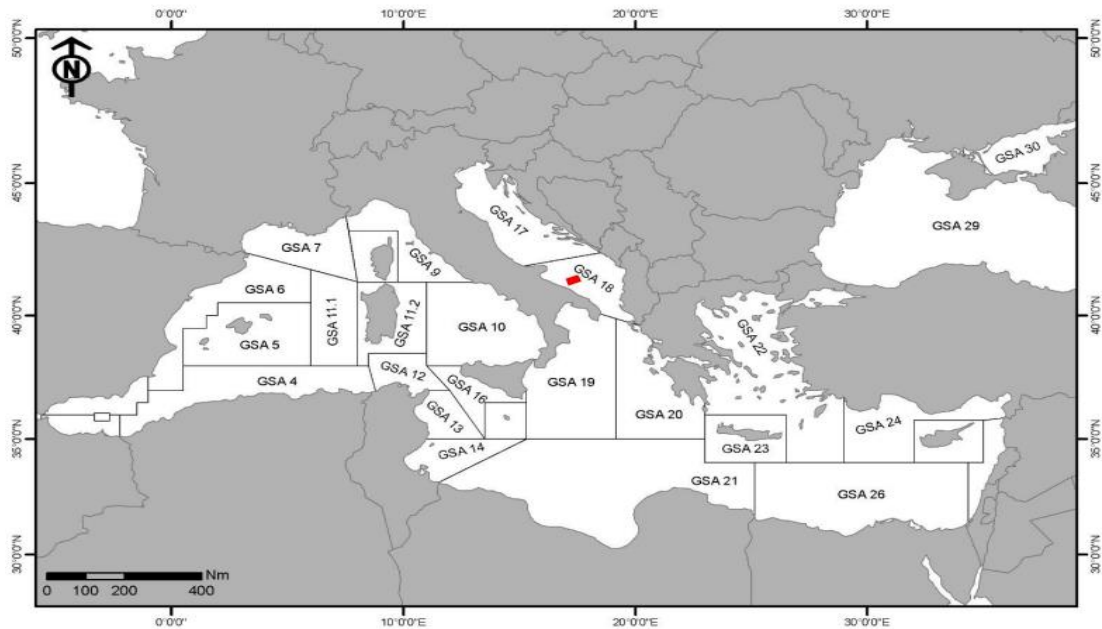




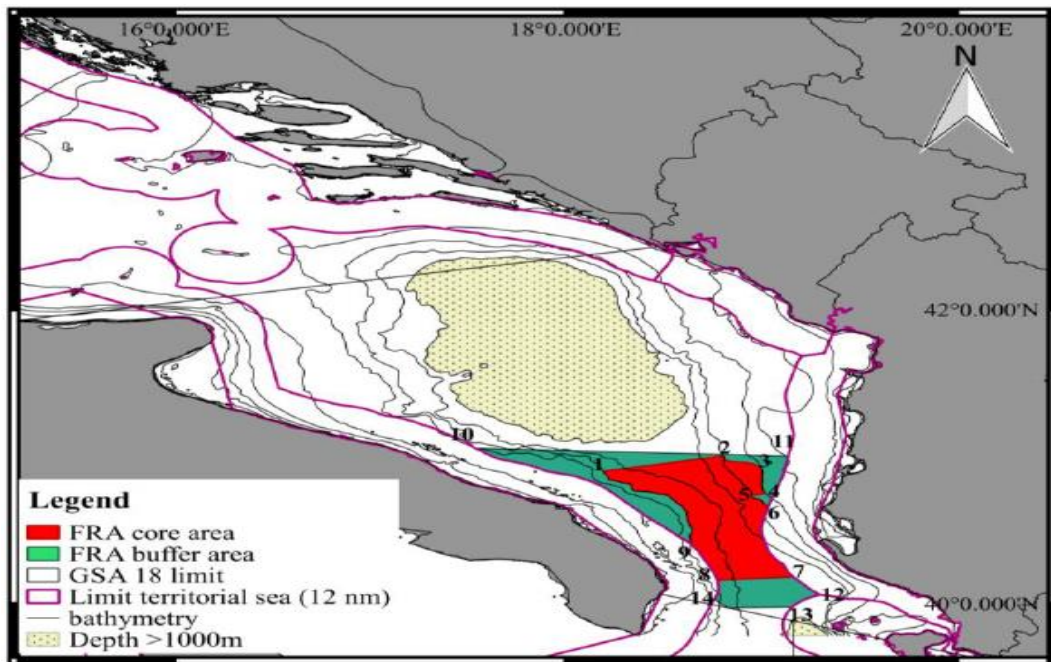
The 'Jabuka/Pomo Pit' FRA and its zoning. Source: Recommendation GFCM/41/2017/3.



The location of the Bari Canyon FRA (GSA18, Southern Adriatic). Source: Recommendation GFCM/44/2021/3.



Detailed position of the proposed FRA in South Adriatic. The numbers indicate the corresponding vertex of the core and buffer areas. Source: 2018 Proposal.



Notably, para. 22 of Recommendation GFCM/43/2019/5 required that FRAs be established for the conservation and management of stocks in the southern Adriatic and in the northern Adriatic Sea. Annex II to the same recommendation considered that, “in the wake of the positive implementation of the Jabuka/Pomo pit FRA, with similar cooperative spirit and recognizing the value of adopting similar measures in the rest of the Adriatic Sea, **work should progress towards the establishment of FRAs in the southern Adriatic and in the northern Adriatic**”.

#### 4.5. PSSAs

The proposal for the designation of an Adriatic Particularly Sensitive Sea Area (PSSA) is not a new concept. Its origins can be traced back to a proposal made by Croatia, which was based on studies conducted between 2004 and 2006. In 2006, the Croatian initiative led to the establishment of a Joint Expert Group on PSSA, composed of representatives from all Adriatic States. This group, later replaced by the Correspondence Group, held multiple meetings, including gatherings in Opatija (April 2006), Portorož (October 2006), and Zagreb (June 2007).

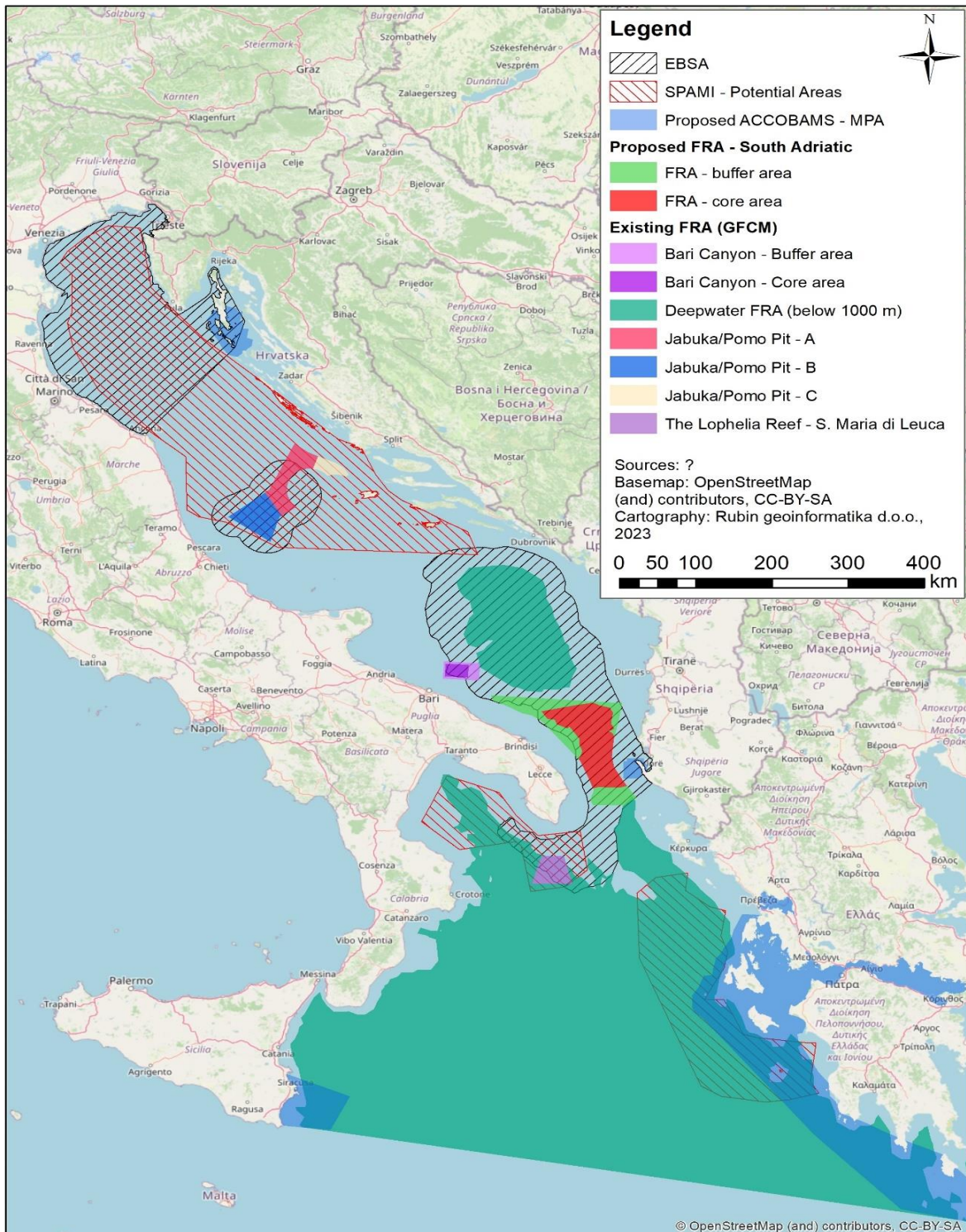
According to the initial proposal, the Adriatic PSSA would encompass the entire Adriatic Sea, including territorial seas, zones under sovereign rights or jurisdiction of coastal States, and the high seas. If a new PSSA proposal were to be considered, research could be undertaken to explore the possibility of extending the proposed PSSA into the Ionian Sea, particularly in the area outside, but adjacent to, the Channel of Otranto.

It is suggested that the establishment of an Adriatic PSSA would serve as a flexible tool, providing a potential forum and a primary incentive for Adriatic States to discuss the management of risks posed by international shipping, including operational pollution. Therefore, it is conceivable that proclaiming an Adriatic PSSA, in addition to declaring one or more Specially Protected Areas of Mediterranean Importance (SPAMIs), Fisheries Restricted Areas (FRAs), or other forms of transboundary cooperation over the most vulnerable areas of the Adriatic Sea, could significantly contribute to the safeguarding of the Adriatic marine environment against shipping activities, including operational pollution.



#### 4.6. PRESENTATION OF THE EXISTING AND POTENTIAL TRANSBOUNDARY MARINE AREAS IN EUSAIR REGION

The following graphic illustration identifies the marine areas that have been presented above.



## **5. IDENTIFICATION OF STEPS IN A HANDBOOK FORMAT FOR ESTABLISHING LEGAL PROTECTION BASED ON INDIVIDUAL (CROSS-BORDER) LEGAL FRAMEWORKS (SPAMI, ACCOBAMS, PSSA)**

### **5.1.EBSAs**

The identification of EBSAs can potentially support the establishment of a network of marine protected areas, but it can also serve other purposes. Designating an area as an EBSA does not automatically make it a marine protected area. Instead, the process aims to provide a scientific basis for determining areas that may require a higher level of protection, which can be achieved through various conservation and management measures such as fisheries closures, marine protected areas, environmental impact assessments, and similar actions.

A process for identifying ecologically or biologically significant areas was further elaborated in Decision X/29 of 2010 (CBD). The decision emphasizes that the application of EBSA criteria is the responsibility of states and competent international organizations, in accordance with international law, including the United Nations Convention on the Law of the Sea. The CBD's role is to facilitate the process rather than directly identify EBSAs.

To fulfil its facilitating role, the Executive Secretary of the CBD, in collaboration with competent authorities, organizes regional workshops. These workshops primarily aim to assist in describing EBSAs using the seven scientific criteria and other relevant criteria agreed upon nationally and internationally. The results of these workshops are shared with the Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA), which prepares transparent summary reports for consideration and endorsement by the Conference of the Parties to the Convention. The endorsed reports are then included in the repository referred to in paragraph 39 and submitted to the United Nations General Assembly, which is the appropriate forum for discussing policy implications related to EBSAs beyond national jurisdiction.

The EBSA identification process is therefore actively undertaken within the CBD and has significant connections with other processes in international organizations. For example, Regional Fisheries Management Organizations identify Vulnerable Marine Ecosystems, and the International Maritime Organization identifies Particularly Sensitive Sea Areas. While these processes have different objectives, they use criteria similar to those of EBSAs and are compatible with them.

### **5.2.SPAMIs**

Since 2001, SPA/RAC has made available an annotated format for the presentation reports of areas that are proposed by the parties to the Areas Protocol for inclusion in the SPAMI List.

The objective of the annotated format is to guide the parties to the Areas Protocol in producing reports of comparable contents, including information necessary for the adequate evaluation of the conformity of the proposed site with the criteria set out in the Areas Protocol and in its Annex I (*Common criteria for the choice of protected marine and coastal areas that could be included in the SPAMI List*).

The presentation report must include the following information:

- (i) identification of the proposed protected area;
- (ii) site description;

- (iii) its Mediterranean importance;
- (iv) the activities in and around the area and their impacts;
- (v) legal status;
- (vi) management measures;
- (vii) human and financial resources available for the management and the protection of the site.

The reports should be submitted to the RAC/SPA in English or French, two months before the meeting of National Focal Points for SPAs. The annotated format is available at the following link: [Annotated Format](#) (Annex 1).

The annotated format includes an expressed reference to a plurality of submitting parties for proposals concerning “transboundary areas” (section 1.1). The same document requires to provide information on the spatial extension of the proposed area with the indication of the legal status of the relevant marine spaces (marine internal waters, territorial sea, high seas).

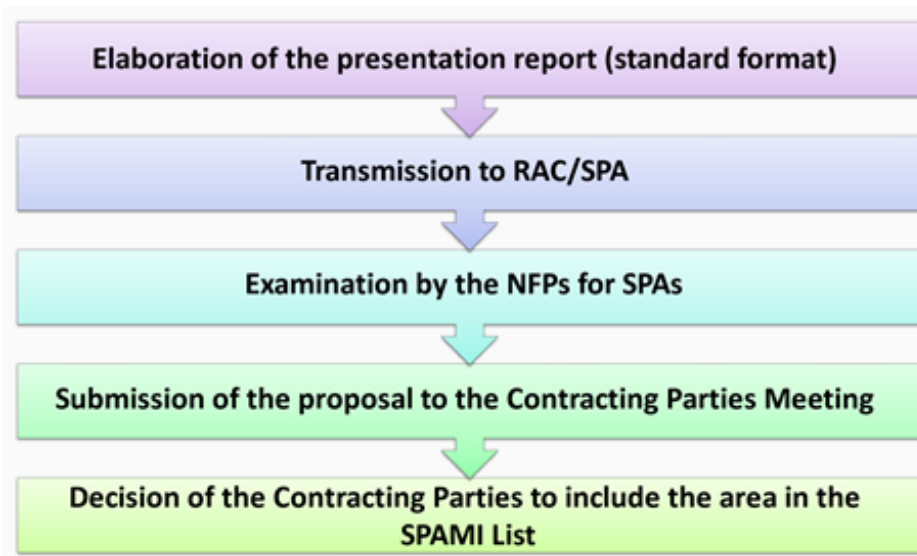
Of particular relevance is section 7.2, which relates to the international status of the proposed SPAMI. Specific information must be provided if the proposed area is transboundary, or totally or partially in the high seas, or within areas where the limits of national sovereignty or jurisdiction have not yet been defined. In these cases, the annotated format requires to mention the modalities of consultation used to implement Art. 9, para. 3 (a), of the Areas Protocol, which provides that “where a proposal is formulated [concerning a transboundary area], the parties concerned shall consult each other with a view to ensuring the consistency of the proposed protection and management measures, as well as the means for their implementation”. Annex I, A (*Protection, planning and management measures*), to the Areas Protocol is also relevant in this regard, as it states that “[t]he SPAMIs will have to constitute the core of a network aiming at the effective conservation of the Mediterranean heritage. To attain this objective, the Parties will develop their cooperation on bilateral and multilateral bases in the field of conservation and management of natural sites and notably through the establishment of transboundary SPAMIs”. It should also be mentioned if the area, or part of it, is subject to any legal claim or to any file open in that connection within the framework of an international body. The same section requires the description of whether the area, or part of it, has been designated (and on what date) with an international conservation category (e.g., Specially Protected Area, Biosphere Reserve, Ramsar Site, World Heritage Site, NATURA 2000, Emerald Network, etc.).

After having been submitted to the SPA/RAC, the proposal for the establishment of the SPAMI is sent to the National Focal Points, which shall examine it in conformity with the *Guidelines for the Establishment and Management of Mediterranean Marine and Coastal Protected Areas* (adopted in 2006 in compliance with Art. 16, c, of the Areas Protocol)<sup>354</sup> and the criteria set forth in Annex I to the Areas Protocol. If the proposal is considered to be consistent by the National Focal Points, SPA/RAC transmits it to the Secretariat. The latter “shall inform the meeting of the Parties, which shall decide to include the area in the SPAMI List” (Art. 9, para. 4, b, of the Areas Protocol).

Table: Necessary steps in the process of submission of a SPAMI proposal (Source: official website of SPA/RAC ([rac-spa.org](http://rac-spa.org))).

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<sup>354</sup> <https://www.rac-spa.org/dl/gm2006.pdf>.



### 5.3.ACCOBAMS

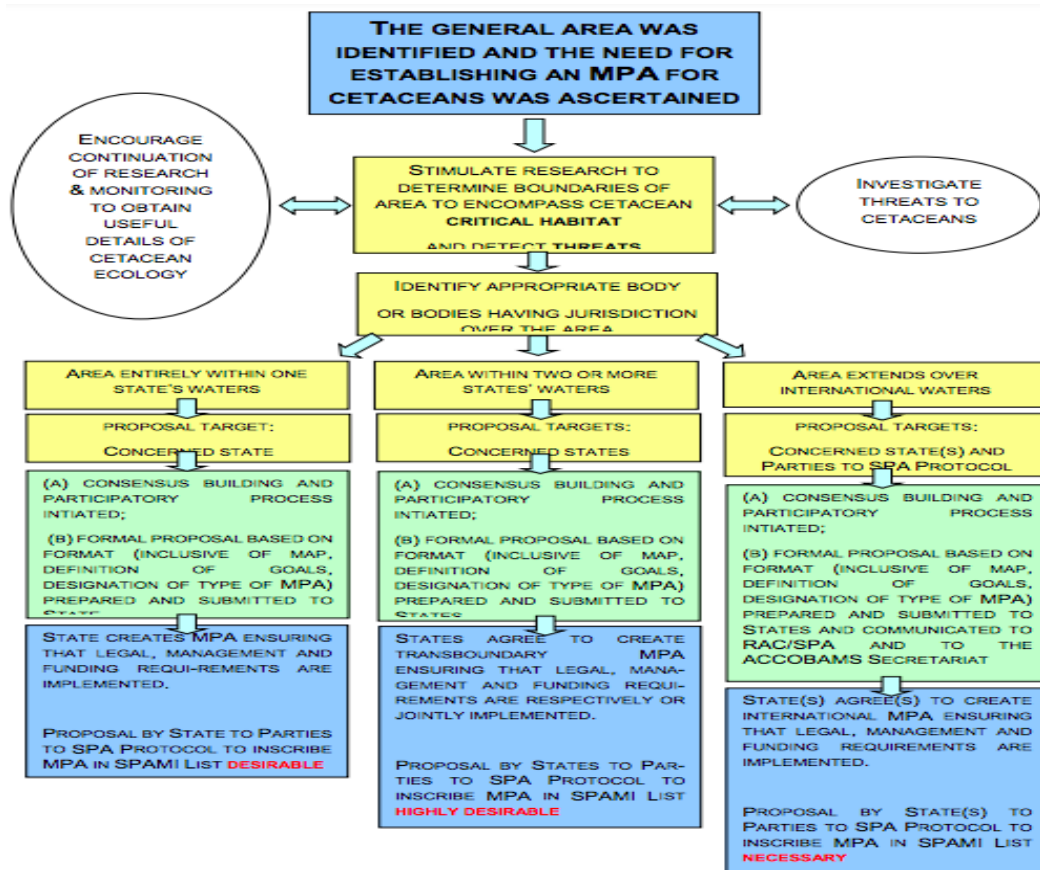
Resolution 6.24 (*New Areas of Conservation of Cetaceans Habitats*), adopted in 2016, took note, *inter alia*, of the revised guidelines for the establishment and management of marine protected areas for cetaceans (ACCOBAMS/MOP6/2016/Doc33).

This document states that the process for establishing a marine protected area for cetaceans is complex and involves, in sequence:

- (a) *the definition of goals of the prospective MPA, based on the existing knowledge of the presence of cetaceans in the area and of the existence of threats to their survival;*
- (b) *the rationale for the proposal, where the case is made for the establishment of an MPA as an effective tool to counteract the known threats to cetaceans and thus to ensure the populations' favorable status;*
- (c) *the compilation of all the pertinent bibliographic information (published as well as "grey" literature and user knowledge derived from interviews, etc.);*
- (d) *the collection of updated scientific information through dedicated research targeting the species of concern, human activities in the area, and the existence, types and distribution of threats;*
- (e) *the analysis of data to identify the existence of critical habitats within the considered area, or sites where the target species concentrate for specific activities or purposes;*
- (f) *the drafting of a science-based proposal, inclusive of maps to support decisions on conservation priorities based on links among areas important to cetacean populations, ecological processes and human activities, to be presented for consideration by the competent authorities and by all the stakeholders; and*
- (g) *the beginning of a consultation phase involving the building of consensus through awareness campaigns, stakeholder participation, socio-economic analysis and, wherever necessary, conflict resolution.*

**Table:** Necessary steps in the process of submission of a proposal for the establishment of a marine protected areas for cetaceans. Source: ACCOBAMS-MOP3/2007/Res.3.22.





Proposals may be brought to the attention of the authorities by anybody. However, the process may be greatly facilitated by channeling proposals through recognized regional bodies such as the RAC/SPA and ACCOBAMS. Each Mediterranean coastal State may independently assess needs and opportunities for establishing marine protected areas for cetaceans within its jurisdiction, in order to grant as quickly as possible legal protection to those sites that have already been identified as particularly important for cetaceans. While that happens, however, an attempt to initiate such a process in an organized, region-wide fashion is strongly encouraged by the ACCOBAMS guidelines.

If a marine protected area for cetaceans is proposed entirely under national jurisdiction, it will have to be established under the general domestic legislation of the relevant coastal State, which covers both the substantial and institutional aspects of the matter. However, considering the pelagic habits of most cetacean species found in the Mediterranean Sea, important portions of their critical habitat will be located beyond national jurisdiction and entail international cooperation.

#### 5.4.GFCM (FRAs)

FRA proposals are to be submitted through the Standard form for the submission of proposals for GFCM fisheries restricted areas in the Mediterranean and the Black Sea, available at the following link: [Standard form](#) (Annex 3).

As in the case of ACCOBAMS MPAs, also the standard form for FRA proposals is based on the annotated format for SPAMI proposals and includes:

- *an executive summary;*
- *area identification, with the name of the FRA;*
- *site description;*
- *regional importance of the site;*
- *impacts and activities affecting the area, within and around the site;*
- *expected developments and trends;*
- *management and protection regime;*
- *rationale for the establishment of a FRA and proposed management measures;*
- *other relevant information, if any;*
- *relevant contacts.*

Proposals are then examined by the GFCM at its annual sessions.

Notably, para. 22 of Recommendation GFCM/43/2019/5 required that FRAs be established for the conservation and management of stocks in the southern Adriatic and in the northern Adriatic Sea. Annex II to the same recommendation considered that, “in the wake of the positive implementation of the Jabuka/Pomo pit FRA, with similar cooperative spirit and recognizing the value of adopting similar measures in the rest of the Adriatic Sea, work should progress towards the establishment of FRAs in the southern Adriatic and in the northern Adriatic”.

Accordingly, *Terms of reference towards the establishment of FRAs in the Adriatic Sea* were identified, as follows:

1. *States separately evaluate the feasibility of FRAs, in consultation with national stakeholders.*
2. *The key components should cover vulnerable marine ecosystems (VME), essential fish habitats (EFH), spatial fishing fleet dynamics and the socio-economic impacts, as provided by the national administrations.*
3. *Bilateral discussions are held between States regarding potential FRAs.*
4. *A workshop is convened with State representatives, scientists and stakeholders, and with the support of the FAO AdriaMed project, to examine all key components for the establishment of new FRAs.*

## **5.5.PSSAs**

Each PSSA application should consist of two parts:

- (1) description, significance of the area and vulnerability;
- (2) appropriate APMs and IMO’s competence to approve or adopt such measures.

The application needs to identify the legal basis for each proposed associated protective measure. A legal basis in this regard may be:

- any measure that is already available under an existing IMO document (whether in force or not);
- any measure that does not exist yet, but could become available through amendment of an IMO instrument or adoption of a new IMO instrument. However, the legal basis for any such measure will only be available after amendment or adoption of a new IMO instrument;
- any measure proposed for the adoption in the territorial sea or pursuant to Art. 211, para. 6, UNCLOS related to the exclusive economic zone, where existing measures or a generally applicable measure would not adequately address the particularized needs of the proposed area.

Such measures may include ships' routing measures, reporting requirements, discharge restrictions, operational criteria and prohibited activities. They should be specifically tailored to meet the need of the area to prevent, reduce or eliminate the identified vulnerability of the area from international shipping activities<sup>355</sup>. The application should furthermore indicate the categories of ships to which the proposed APMs would apply, whereby account should be taken of the relevant provisions of the UNCLOS and other pertinent documents, with particular regards to vessels entitled to sovereign immunity<sup>356</sup>.

Once the proposal reaches the IMO, then the Marine Environment Protection Committee (MEPC) considers the application and establishes an informal technical group formed by its representatives with appropriate environmental, scientific, maritime and legal expertise. The task of the informal technical group is to prepare a brief report to the MEPC, summarizing their findings and the outcome of the assessment, which should be also reflected in the MEPC final report<sup>357</sup>.

The MEPC considers applications on a case-by-case basis, with the final aim to establish whether the application fulfils at least one of the criteria among ecological, socio-economic or scientific attributes. After adoption by the MEPC, the particular APMs are referred to the competent IMO body, which may be, depending on the nature of the proposed APMs, the MSC, the NCSR Sub-Committee or the Assembly itself<sup>358</sup>.

The PSSA does not in itself provide a legal basis for the enforcement of a specific APM, as the latter require a separate approval process within the relevant IMO body. Eventually, the MEPC endorses a PSSA only after the proposed APMs are adopted by the competent IMO body.

## **6. IDENTIFICATION AND PROPOSALS OF FORMS FOR IMPLEMENTATION OF MANAGEMENT, CONTROL, AND PROTECTION OF ESTABLISHED FORMS OF CROSS-BORDER COOPERATION**

### **6.1.MANAGEMENT**

#### **6.1.1. EBSAs**

As recalled in the previous section, the process of EBSAs identification does not lead to a definite type of spatial conservation tool, labelled under a specific legal framework. Consequently, the forms of management for areas identified as EBSAs may vary according to the type of instrument under which the relevant area will be protected.

Areas identified as EBSAs may be protected through a variety of instruments; however, considering their spatial objective, once adopted and entered into force, the BBNJ Agreement will provide the appropriate framework for the management of sites located on the high seas and in the deep seabed. Under this framework, the establishment of area-based management tools shall not include any areas within national jurisdiction, and shall not be relied upon as a basis for asserting or denying any claims to sovereignty, sovereign rights, or jurisdiction

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<sup>355</sup> *Ibid.*, Art. 7.5.2.4.

<sup>356</sup> *Ibid.*, Art. 7.5.2.5.

<sup>357</sup> *Ibid.*, Art. 8.3.1.

<sup>358</sup> *Ibid.*, Art. 8.3.2.

including in respect of any disputes relating thereto. The conference of the parties of the instrument shall not consider for decision proposals for the establishment of such area-based management tools, and in no case shall such proposals can be interpreted as recognition or nonrecognition of any claims to sovereignty, sovereign rights, or jurisdiction.

The procedures and management objectives set forth in the new instrument are evidently based on the experience that States have achieved in relation to area-based management tools established under legal frameworks at the regional level. The regional and subregional – as well as sectoral – bodies will play, in fact, an important role in the management of areas identified as EBSAs and protected under the BBNJ Agreement, as the latter invites such bodies to provide information to the conference of the parties on the implementation of measures that they will adopt to achieve the objectives of the area-based management tool, including marine protected area, established under the new agreement. Moreover, on the basis of the proposals and draft management plans, the conference of the parties to the BBNJ Agreement may take decisions on measures compatible with those adopted by relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, in cooperation and coordination with those instruments, frameworks and bodies; and, where proposed measures are within the competences of other global, regional, subregional or sectoral bodies, it may make recommendations to the parties and to global, regional, subregional and sectoral bodies to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates. In taking such decisions, the conference of the parties shall respect the competences of, and not undermine, relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies.

Notably, in cases where an area-based management tool, including a marine protected area, established under the BBNJ Agreement subsequently falls, either wholly or in part, within the national jurisdiction of a coastal State, the part within national jurisdiction shall immediately cease to be in force. The part remaining in areas beyond national jurisdiction shall remain in force until the conference of the parties, at its following meeting, reviews and decides whether to amend or revoke the area-based management tool, including a marine protected area, as necessary.

### **6.1.2. SPAMI**

Art. 7 of the Areas Protocol indicates measures for the planning and management of SPAMIs, which include, *inter alia*: the development and adoption of a management plan that specifies the legal and institutional framework and the management and protection measures applicable; the active involvement of local communities and populations, as appropriate, in the management of SPAMIs, including assistance to local inhabitants who might be affected by the establishment of such areas; and the adoption of mechanisms for financing the promotion and management of SPAMIs, as well as the development of activities that ensure that management is compatible with the objectives of such areas.

National contingency plans should also be established that incorporate measures for responding to incidents that could cause damage or constitute a threat to the SPAMIs.

It is to be noted that, in order to be included in the SPAMI list, a protected area:

- must have a **management body**, endowed with sufficient powers as well as means and human resources to prevent and control activities likely to be contrary to the aims of the protected area;

- must have a **management plan**. The main rules of this management plan are to be laid down as from the time of inclusion and implemented immediately. A detailed management plan must be presented within three years of the time of inclusion. Failure to respect this obligation entails the removal of the site from the SPAMI List.
- must have a **monitoring program**. This program should include the identification and monitoring of a certain number of significant parameters for the area in question, in order to allow the assessment of the state and evolution of the area, as well as the effectiveness of protection and management measures implemented, so that they may be adapted if need be. To this end, further necessary studies are to be commissioned.

Since the very first step for the establishment of the SPAMI – the filling out of the annotated format for the SPAMI proposal – the submitting parties must indicate if the legal text protecting the site provides for different zones to allocate different management objectives of the area (e.g., core and scientific zones in both land and sea, fishing zones, visitation, gathering, restoration zones, etc.). In such cases, the surface of area of each zone must be provided, including a map in the annex.

The competence and responsibility with regard to administration and implementation of conservation measures for areas proposed for inclusion in the SPAMI List must be clearly defined in the texts governing each area. This requirement deserves special attention in the case of transboundary protected areas that inevitably involve the authorities of more than one State.

The Areas Protocol also calls for the provision of clear competencies and coordination between national land and sea authorities, with a view to ensuring the appropriate administration and management of the protected area as a whole. The parties proposing a SPAMI must therefore mention in which way the legal provisions clearly establish the institutional competencies and responsibilities for the administration and conservation of the area, as well as their coordination means, including those between land and sea authorities. Information must also be provided on whether the management plan is formulated by an expert team or under consultation or participation with other institutions and stakeholders.

### 6.1.3. *GFCM (FRAs)*

The proposal for FRAs to be established within the GFCM framework shall include management measures, as well as monitoring, control, and surveillance measures. The FRAs themselves may be used “in addition to or to complement similar measures that may already be included in management plans” (Art. 8, b, iv, of the GFCM Agreement). In fact, one of the main functions of the GFCM is to adopt multiannual management plans applied in the totality of the relevant subregions based on an ecosystem approach to fisheries to guarantee the maintenance of stocks above levels which can produce maximum sustainable yield, consistent with actions already taken at the national level.

Following the establishment of the FRA, in order to secure evidence for its contribution to the objectives set forth in the GFCM Agreement, it is also essential to set up scientific monitoring plans. Accordingly, any FRA proposal is expected to include not only a clear description of the objectives, but also a scientific monitoring plan to evaluate the progress made towards their achievement, ideally included within the framework of a multiannual management plan.

The prospective monitoring plans could ideally include:

- regular collection of fishery-independent data, by means of surveys-at-sea, with a focus on the key stocks protected by the FRA;

- regular collection of fisheries-related data, in accordance with the GFCM Data Collection Reference Framework, with a focus on the key stocks protected by the FRA;
- comprehensive socio-economic data collection aimed at assessing the effects of changes in the volume and composition of the landings of the fisheries affected by the FRA;
- collection of local ecological knowledge from fishers and stakeholders directly affected by the FRA; and
- formulation of regular advice on the status of fisheries affected by the FRA by the existing expert groups (e.g., the Working Groups on Stock Assessment and the Working Group on Management Strategy Evaluation), based on the information above.

The JabukaPomo pit FRA has been the first to be accompanied by a comprehensive scientific monitoring plan. The initiative of a monitoring plan for the Jabuka/Pomo Pit FRA was proposed by the Study Group on Jabuka/Pomo Pit of the FAO AdriMed regional project in early 2018 and subsequently approved by the Scientific Advisory Committee on Fisheries and the GFCM. The main objective of the monitoring plan at that time was to assess the effectiveness of the FRA in:

- i) contributing to the rebuilding of stocks in the Adriatic Sea through the protection of essential fish habitats;
- ii) protecting vulnerable marine ecosystems in the area; and
- iii) increasing the densities of organisms in term of biomass and abundance within the FRA.

The scientific monitoring plan was designed to rely on activities already in place, as well as on existing historical datasets to be made available to the Jabuka/Pomo Pit AdriMed Study Group and additional monitoring and surveys.

#### **6.1.4. PSSAs**

PSSA measures apply to a specific category or categories of ships, consistent with the provisions of the UNCLOS and other pertinent instruments.

Any possible impact of any proposed measures on the safety and efficiency of navigation must be assessed (and described since the elaboration of the PSSA proposal), taking into account the area of the ocean in which the proposed measures are to be implemented.

The size of the area should be commensurate with that necessary to address the identified need, and a nautical chart must clearly mark the location of the area and the existing or proposed APMs.

Steps to protect the proposed PSSA may include any domestic regulations, any previously adopted IMO measures, and measures taken to address the adverse effects from activities other than shipping.

Three of the above-mentioned IMO protective measures are already in force in the Adriatic Sea (namely: the Special Area status on the basis of Annexes I and V of MARPOL; the reporting system on the basis of SOLAS – ADRIREP; and a system of compulsory routing measures in the Northern Adriatic coupled with proposed traffic flows in the Central and Adriatic and Channel of Otranto on the basis of COLREG). However, the proposed APMs may have an identified legal basis also in IMO Conventions or Codes that are not in force yet, or in proposed amendments to the said Conventions or Codes<sup>359</sup>. Additionally, it should be noted that the

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<sup>359</sup> An outstanding example in the past was represented by the 2004 Ballast Water Convention, between its adoption in 2004 and its entry into force in 2017.



Mediterranean Sea (including the Adriatic and Ionian Seas) does not have for the time being, differently from the Baltic Sea, the status of a Special Area under Annex VI of MARPOL (*Regulations for the Prevention of Air Pollution from Ships*), which allows for the establishment of special emission control areas (SO<sub>x</sub> and NO<sub>x</sub>), nor a Special Area status under Annex IV or MARPOL (*Prevention of Pollution by Sewage from Ships*).

A first possibility in the context of a new proposal could be that the designated Adriatic PSSA mirrors (only) already existing measures<sup>360</sup>. In the case of the Adriatic Sea, this would include routing measures (both compulsory and proposed), compulsory reporting (ADRIREP), and Special Area status under MARPOL Annexes I and V.

The second (preferred) option could be the strengthening and upgrading of existing APMs, coupled with eventual proposals for new ones. The latter could be applicable to the entire Adriatic Sea, or only to part of it.

Apart from an upgrade of ADRIREP and the existing system of routing measures within the Adriatic, a further APM could be the designation of the Adriatic Sea, either alone or as part of the wider Mediterranean, as a Special Area under, firstly, Annex IV of MARPOL in relation to sewage discharges and, secondly, based on the provisions of Annex VI to MARPOL, related to air pollution<sup>361</sup>

#### **6.1.5. The potential role of the EGTC in the management of (transboundary) MPAs in the Adriatic and Ionian Sea (inc. Gulf of Trieste, the Jabuka/Pomo pit, the Bay of Neum Klek and the Otranto Channel)**

Notable is the potential recourse to the EGTC tool in four transboundary pilot areas within the Gulf of Trieste, the Jabuka/Pomo Pit, the Bay of Neum-Klek and the Otranto Channel. All four areas lie within the same region and, as such, they could benefit from the establishment of either one EGTC encompassing a network including all of them or different EGTCs focusing on the specific management of each area. In any event, of paramount necessity is the identification of the applicable EGTC approval and registration procedures in accordance with the legal framework of the relevant Adriatic and Ionian coastal States. In fact, the EGTC acquires legal personality with its registration or the publication of the founding documents (the EGTC convention and statutes) on the official gazette of the State that hosts the EGTC registered office. A final step implies that the members inform the EU Member States concerned and the Committee of the Regions of the registration. Within 10 working days of the registration or publication, the EGTC ensures that a request is sent to the Committee of the Regions for the publication of a notice on the Official Journal of the European Union, which announces the establishment of the EGTC.

As regards Albania, Bosnia and Herzegovina, and Montenegro, potentially acting as neighboring States, the EGTC Regulation remains the only general reference, while the legislation of Croatia, Greece, Italy and Slovenia regulates in detail the national procedures for

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<sup>360</sup> Similarly, as in the Wadden Sea PSSA.

<sup>361</sup> UNEP, *Road Map for a Proposal for the Possible Designation of the Mediterranean Sea, as a whole, as an Emission Control Area for Sulphur Oxides Pursuant to MARPOL Annex VI, within the Framework of the Barcelona Convention*, UNEP/MED IG.24/22. A straightforward example in this regard is represented by the Baltic Sea PSSA, which includes among its protective measures a Special Area status based on the provisions of Annex I, IV and V, as well as a SECA (as per 19 May 2006) and NECA Special Area (as per 1<sup>st</sup> January 2021) based on the relevant provisions of Annex VI to the MARPOL Convention.

EGTC approval and registration. Both in the case of an EGTC encompassing a network of marine protected areas in the Adriatic and Ionian Seas and in the case of separate EGTCs focusing on the conservation of one or more areas, the relevant cooperating member States should register the office in one of the members' territory.

Although the procedures for approval and registration of EGTCs vary among the Adriatic and Ionian coastal States, both in terms of identification of the competent administrations and the setting of time limits for the finalization of the process, it is a matter of fact that the EGTC instrument is flexible enough<sup>362</sup> and offers an appropriate institutional structure for territorial cooperation in the Adriatic and Ionian Seas, also with a view to pursuing, among the wide range of its possible objectives of cooperation, the goals of marine environment protection through the use of area-based management tools and other effective area-based conservation measures. In fact, 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. As an autonomous legal entity, such EGTC would be in the position to identify, and propose to the appropriate authorities, also those measures that, although envisaged by international and regional instruments not in force for all Adriatic and Ionian coastal States (such as the Areas Protocol), are nevertheless deemed appropriate for the areas of concern. This is an evident advantage of the EGTC tool, as its founding convention could allow the pursue of environmental objectives that, on the basis of the international and regional instruments, do not always bind all Adriatic and Ionian coastal States.

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 on the basis of scientific findings. Its legal personality based on public law, with tasks specified in the constitutive instruments, would ensure that the EGTC may participate through its legal and institutional representations in the most appropriate fora where marine environment protection tools are discussed and approved.

In addition, an EGTC would be in the position to examine ways to obtain funding for the implementation of its tasks at national, regional or European level. The potential efficacy of a management authority of this kind can be substantively appreciated in comparison with other situations – such as in the case of the Pelagos Sanctuary – where the institutional settings (secretariat) and the means of management implementation (management plan) show evident limitations. The potential of having an autonomous representation within the IMO could be of utmost interest for an EGTC in charge of pursuing the objectives of environment cooperation, also through economic and social cohesion, in areas that, while hosting important biodiversity sites, are crucial for navigational purposes, such as the Gulf of Trieste and the Otranto Channel

## **6.2. CONTROL AND ENFORCEMENT**

### **6.2.1. SPAMIs**

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<sup>362</sup> The benefits implied in the flexibility of EGTC legal texts was recalled by Mr. Andrej Čokert, Ministry of Public Administration of Slovenia, in his presentation on Cross-Border Cooperation in Slovenia, delivered at the international conference on Cross-Border Cooperation in Europe, held on 25 May 2018 in Dubrovnik, Croatia.

Once the areas are included in the SPAMI List, all the parties (Areas Protocol) agree to recognize the particular importance of these areas for the Mediterranean, to comply with the measures applicable to the SPAMIs and not to authorize nor undertake any activities that might be contrary to the objectives for which the SPAMIs were established. This gives to the SPAMIs and to the measures adopted for their protection an *erga omnes partes* effect.

As regards the relationship with third countries, the parties are called to invite States that are not parties to the Areas Protocol and international organizations to cooperate in the implementation of the instrument. They also undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles and purposes of the Areas Protocol. This provision aims at facing the problems arising from the fact that any treaty, including the Areas Protocol, can create rights and obligations only for the parties.

This in turn seems to point to the advantages of a situation where a SPAMI is established, or should be ideally established within an exclusive economic zone or a *sui generis* zone (e.g., a zone of ecological protection) of a coastal State, when it comes to its implementation and enforcement. Furthermore, the inclusion of a certain area on a SPAMI List should be ideally followed by a designation of a PSSA, with the aim to address dangers posed by international shipping. A straightforward example in this regard is the legal regime of the waters within the Strait of Bonifacio (MPA/NATURA2000/SPAMI/PSSA). Another extremely important example in this regard occurred in 2022, when the IMO Marine Environment Protection Committee agreed in principle on the proposal for the designation of a PSSA in the North-Western Mediterranean Sea to protect cetaceans from international shipping, submitted by France, Italy, Monaco, and Spain (MEPC 79/10 of 9 September 2022), which includes within its geographical areas the two Mediterranean SPAMIs located beyond the limits of the territorial sea (the Pelagos Sanctuary and the Cetaceans Migration Corridor in front of the Spanish coast).

### 6.2.2. GFCM (FRAs)

The GFCM has adopted a vast array of binding recommendations related to monitoring, control and surveillance aspects, with a particular aim to come to grips with illegal, unreported, and unregulated (IUU) fishing in the Mediterranean region. The list includes measures as, for example, an IUU list, port State measures, VMS, and a process leading to the identification of cases of non-compliance. Some of the GFCM Recommendations in this field are listed below:

- GFCM/44/2021/13 on appropriate measures to deter non-compliance;
- GFCM/44/2021/10 on flag state performance; - GFCM/44/2021/9 on the implementation of an electronic logbook;
- GFCM/44/2021/8 on the implementation of a vessel monitoring system;- GFCM/44/2021/7 on the implementation of a winch sensor system for demersal fisheries in the Adriatic Sea (geographical subareas 17 and 18);
- GFCM/44/2021/4 on a pilot project for the control and inspection of common dolphinfish fisheries;
- GFCM/44/2021/21 on vessel sightings;
- GFCM/44/2021/19 on the establishment of a list of vessels presumed to have carried out illegal, unreported and unregulated fishing, repealing Recommendation GFCM/33/2009/8;

- GFCM/44/2021/18 on the establishment of a GFCM record of authorized vessels over 15 meters in the GFCM area of application, amending Recommendation GFCM/33/2009/6;
- GFCM/43/2019/5 on a compliance assessment scheme for the implementation of Recommendation;
- GFCM/38/2014/2 concerning the identification of non-compliance;- GFCM/43/2019/3 on the implementation of a vessel monitoring system and an electronic logbook in the GFCM area of application;
- GFCM/43/2019/8 on the establishment of a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the GFCM area of application, amending Recommendation GFCM/33/2009/8;
- GFCM/43/2019/7 on information on access agreements in the GFCM area of application.

Provisions regarding monitoring, control and surveillance, based on the above-listed recommendations, have been included in practically every designation of a new FRA.

Recommendation GFCM/44/2021/2 on the establishment of a FRA in the Jabuka/Pomo Pit in the Adriatic Sea (GSA 17), amending Recommendation GFCM/41/2017/3 shall be deemed to be an example of best practice and provides for the following control measures in the said FRA: (i) States parties and cooperating non-parties shall communicate to the GFCM Secretariat, not later than 30 April 2022, the list of authorized vessels for 2022 and subsequently, not later than 30 April each year, the list of authorized vessels for the forthcoming year. For each vessel, the list shall contain the information detailed in Annex 2; (ii) Authorized fishing vessels shall only land catch of demersal stocks at the parties' and cooperating non-parties' designated landing points. To this end, each relevant State shall designate landing points in which the landings of demersal stocks from the Jabuka/Pomo Pit FRA are authorized. The list of such landing points shall be communicated to the GFCM Secretariat by 30 April each year; (iii) Fishing vessels authorized to fish in Zone B and/or Zone C shall be equipped with VMS and AIS in correct working order, and the fishing gear on board or in use shall be duly identified, numbered and marked before starting any fishing operation or navigation in the FRA; (iv) Fishing vessels equipped with bottom-set nets, bottom trawls, set longlines and traps without authorization shall be allowed to transit through the FRA only if they follow a direct course at a constant speed of not less than 7 knots and are equipped with VMS and AIS active on board.

Additionally, parties and cooperating non-parties shall call the attention of the relevant national and international authorities in order to protect the Jabuka/Pomo pit FRA from the impacts of any activity that may jeopardize the conservation of the characteristic features of its particular habitats. Furthermore, this recommendation shall be without prejudice to stricter measures adopted by States for the vessels flying their flag.

Taking into account the exclusive jurisdiction of the European Union in the field of fisheries, for European Union member States Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy is of paramount importance. This instrument establishes a system for control, inspection and enforcement to ensure compliance with the rules of the common fisheries policy, which shall apply to all activities covered by the common fisheries policies carried out on the territory of member States or in European Union waters or by European Union fishing vessels or, without prejudice to the primary responsibility of the flag member State, by nationals of member States.

### 6.2.3 PSSAs

The PSSA Guidelines place an obligation on all IMO member States to ensure that ships flying their flag comply with the APMs adopted to protect the designated PSSA.

It has been deemed advisable, nonetheless, that in submitting proposals for APMs as part of a PSSA submission, proposing States give careful consideration to strategies for ensuring compliance by international shipping. Reference has been made in this regard to the applicable legal system; jurisdiction; presentation of evidence; standards of proof of violation; whether sanctions are administrative, civil, or penal; and the rights of the accused.

The IMO has suggested that an effective compliance program should incorporate the following elements:

- compliance monitoring through routine inspections, surveys, and/or examinations;
- detection and policing patrols;
- reporting procedures and incentives, including incentives for self-reporting;
- adequate investigations of violations reported or otherwise detected;
- a system of adequate sanctions in respect of violations;
- education and public awareness programs; and
- cooperation and coordination with other States<sup>363</sup>.

## **7. POTENTIAL APPLICATION OF IDENTIFIED (TRANSBOUNDARY) LEGAL BASIS IN THE CASES OF THE GULF OF TRIESTE; JABUKA (POMO) PIT, KLEK (NEUM) BAY AND OTRANTO CHANNEL**

### **7.1.1. GULF OF TRIESTE**

It is important to note that the Gulf of Trieste has been designated as an EBSA within the broader Northern Adriatic EBSA. The mentioned EBSA encompasses part of the Northern Adriatic Basin, including the Gulf of Trieste, situated off the coasts of Croatia, Italy, and Slovenia. The area is approximately defined by the 9-meter isobath, covering the region above the straight line connecting Ancona (Conero) and the island of Ilovik. Located in the northern section of the North Adriatic Sea Basin, the area has an average depth of 35 meters and is heavily influenced by the Po river plume.

Furthermore, the Gulf of Trieste has also been recognized as a potential Specially Protected Area of Mediterranean Importance (SPAMI) within the wider Northern and Central Adriatic region. This recognition was established during an extraordinary meeting of the focal points of the Areas Protocol, held in Istanbul in 2010 as part of a European Commission-funded project. The area's high natural productivity, supporting a diverse food web including sea birds, loggerhead sea turtles, and various shark species, played a significant role in its potential SPAMI designation. Given the substantial degradation observed in the North-western Adriatic Sea, the establishment of a protected area in this site would necessitate significant marine restoration efforts. The proposal for the Northern and Central Adriatic represents an opportunity for transboundary cooperation among the relevant coastal States, namely Croatia, Italy, and

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<sup>363</sup> UNEP/MAP-REMPEC-SPA/RAC, Guidance document for the identification and designation of Particularly Sensitive Sea Areas in relation to Specially Protected Areas of Mediterranean Importance, SPA/RAC, Tunis, 2021, pp. 41-42.

Slovenia. It is worth noting that this potential SPAMI would also encompass the Jabuka/Pomo Pit EBSA (see below) and existing Fishery Restricted Areas (FRAs).

According to the EUSAIR study, there is widespread support for the establishment of a transboundary SPAMI in the Northern and Central Adriatic, particularly within the Gulf of Trieste, which shares borders with Croatia, Italy, and Slovenia. Several elements contribute to the justification of this measure, including the following:

1) Within the Gulf of Trieste, Italy has already created the Miramare Marine Protected Area, and Slovenia has established the Landscape Park Strunjan as small SPAMIs. Additionally, the 2021 Slovenian Maritime Spatial Plan includes plans for two new marine protected areas at the border with Italy (Debeli Rtic / Punta Sottile) and the border with Croatia.

2) In 2010, the report presented to the extraordinary meeting of the Focal Points for the Areas Protocol listed the Northern and Central Adriatic among the priority conservation areas.

3) In 2014, the Conference of the Parties to the Convention on Biological Diversity (CBD) identified the Northern Adriatic as an EBSA (Decision XII/22).

4) The European Union Strategy for the Adriatic-Ionian Region (EUSAIR) has designated the Gulf of Trieste and the Pomo/Jabuka Pit as two of the four pilot areas for reviewing the implementation of integrated coastal zone management and marine spatial planning concepts.

5) Measures for the establishment of a common routing system, traffic separation scheme, and mandatory ship reporting system have been agreed upon by Croatia, Italy, and Slovenia for the Northern Adriatic (Memoranda of Understanding of 19 May 2000). Similar measures for the establishment of a common vessel traffic services (VTS) and a common routing system and traffic separation scheme have been agreed upon by Croatia and Italy for the Central Adriatic (Memoranda of Understanding of 19 May 2000).

7) In 2010, the Meeting of the Parties to the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea, and Contiguous Atlantic Area (ACCOBAMS) recommended the creation of a marine protected area along the east coast of the Cres-Lošinj archipelago in Croatia. This area is recognized as a zone of special importance for cetaceans.

All these previous actions could serve as a basis to support a collaborative initiative by Croatia, Italy, and Slovenia to establish one or two Specially Protected Areas of Mediterranean Importance (SPAMIs). These SPAMIs would address three specific challenges:

- Building upon existing or proposed instruments of restricted or sectoral protection by coordinating them within a larger and coherent framework of transboundary cooperation and sustainable development.

- Including marine protected areas within a broader marine spatial planning concept that applies to the entire Adriatic Sea and potentially extends to the Ionian Sea.

- Integrating and balancing economic activities, especially navigation and fishing, with environmental needs in a sound manner.

- Increasing confidence among the Adriatic Sea bordering States by demonstrating that pending issues of maritime boundaries do not impede the strengthening of environmental cooperation through the establishment of transboundary protected areas.

Further elaboration is required, based on relevant political, legal, and environmental factors, to determine whether a single Adriatic SPAMI should cover the entire Northern and Central Adriatic area or if two independent SPAMIs should be established. One SPAMI would be designated in the Northern Adriatic, and the other around the Jabuka/Pomo Pit in the Central Adriatic. If appropriate, buffer zones could be attached to the two SPAMIs, and ecological corridors could be envisioned to connect them.

Additionally, it should be noted that paragraph 22 of Recommendation GFCM/43/2019/5 stipulated the establishment of FRAs for the conservation and management of stocks in the



southern Adriatic and northern Adriatic Sea. Annex II of the same recommendation acknowledged that, following the successful implementation of the Jabuka/Pomo Pit FRA, with a similar cooperative spirit and recognizing the value of adopting comparable measures in the rest of the Adriatic Sea, efforts should progress towards establishing FRAs in the southern Adriatic and northern Adriatic.

Furthermore, it is important to mention that the Gulf of Trieste was also intended to be included in the potential Adriatic Particularly Sensitive Sea Area (PSSA) according to the 2007-2011 draft proposal.

### 7.1.2. JABUKA/POMO PIT

The Jabuka/Pomo Pit has been identified as an Ecologically or Biologically Significant Area (EBSA) due to its unique characteristics. This area consists of three distinct, neighboring depressions, with maximum depths reaching approximately 270 meters. It extends 4.5 nautical miles from the 200-meter isobath. Situated in the Middle Adriatic Sea, the Jabuka (or Pomo) Pit is of utmost importance as a sensitive spawning and nursery zone for crucial demersal resources in the Adriatic, particularly the European hake (*Merluccius merluccius*). It also serves as a vital habitat for the largest populations of Norway lobster (*Nephrops norvegicus*), especially for juveniles residing in depths over 200 meters. Scientific data indicates that the Jabuka/Pomo Pit is a high-density area for the giant devil ray (*Mobula mobular*), an endemic species listed on Annex II of the SPA/BD protocol, and classified as endangered on the IUCN Red List. The Pit is also considered favorable for key life stages of the critically endangered porbeagle shark (*Lamna nasus*), also listed on Annex II of the SPA/BD Protocol. In terms of benthic species, various types of corals, including Scleractinia and Actiniaria, can be found in this area.

Additionally, the Jabuka/Pomo Pit has been acknowledged as a potential Specially Protected Area of Mediterranean Importance (SPAMI) within the broader Northern and Central Adriatic region. This recognition was established during an extraordinary meeting of the focal points of the Areas Protocol, which took place in Istanbul in 2010 under the auspices of a European Commission-funded project. The area's exceptional Natural productivity, supporting a diverse food web that includes sea birds, loggerhead sea turtles, and several shark species, played a significant role in its potential designation as an SPAMI. It is important to note that a potential SPAMI in the Northern and Central Adriatic would also encompass the Jabuka/Pomo Pit EBSA and the existing FRAs established by the GFCM.

Furthermore, it is worth mentioning that the Jabuka/Pomo Pit was also proposed for inclusion in the potential Adriatic Particularly Sensitive Sea Area (PSSA) according to the draft proposal from 2007-2011.

The promotion and establishment of a transboundary SPAMIs over the waters of the Jabuka/pomo Pit, complementing the existing GFCM FRA, as well as a PSSA specifically targeting the risks associated with international shipping should be strongly encouraged.

### 7.1.3. KLEK NEUM BAY

Considering that the Croatian waters surrounding the Bosnian waters in the Klek/Neum Bay are already protected as NATURA 2000 sites, it is of particular importance to emphasize the plans of Bosnia and Herzegovina to protect its waters in the Klek/Neum Bay in close cooperation and coordination with neighbouring Croatia. It should be noted that Bosnia and Herzegovina is currently not a State party to the Areas Protocol to the Barcelona Convention, nor to the GFCM or ACCOBAMS. However, all EUSAIR member States are parties to the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), including Bosnia and Herzegovina, can contribute to the EU's nature conservation goals either through its national legislation (Federation B&H) or by relying on the provisions of the Bern Convention, thus contributing to the expansion of the EMERALD NETWORK of marine protected areas. Membership in the BERN Convention therefore provides an opportunity for non-member States in the Adriatic and Ionian region, such as Bosnia and Herzegovina, to establish protected areas equivalent to those established by European Union member States within the NATURA 2000 Network (EMERALD NETWORK). This allows for coordination of policies with EU member States and the undertaking of joint transboundary projects of cooperation with the European Union and its member States, including within the framework of the EUSAIR macro-region.

It is important to note that the Nature Protection Act of 2013 of the Federation of Bosnia and Herzegovina distinguishes different categories of protected areas, such as strict nature reserves, wilderness areas, national parks, nature parks, habitat/species management areas, protected landscapes, and protected areas with sustainable use of natural resources. The establishment of protected areas at the federal or cantonal level requires the consent of the municipal councils in whose territory the area is protected, in accordance with the spatial plan. The relevant instrument should include the name and category of the protected natural value, a precise description of the boundaries, the name of the area's category, the scale of the cartographic representation, and a cartographic presentation with precisely described boundaries as an integral part of the proclamation.

Significant progress has already been made towards the development of a proposal for a Marine Protected Area (MPA). Biodiversity research activities have been conducted through the project "Achieving Biodiversity Conservation through Creation and Effective Management of Protected Areas and Capacity Building for Nature Protection in Bosnia and Herzegovina." This project aims to establish several protected areas, including the candidate marine area for conservation, the Botanical and Floristic Reserve Mediteranetum, covering an area of 1,256 hectares. The coastal area of the Klek peninsula has long been legally protected as a Mediterranean arboretum. Additionally, SharkLab Adria (NGO) is working on the implementation of the project "Establishing the first MPAs in Bosnia: Protecting the highly endangered habitats and spawning sites of skates and rays in the Neum Bay."

The wider ecosystem, including the bay of Neum-Klek, the Neretva Delta, which contains a large complex of wetlands, and the bay of Mali Ston, is ecologically sensitive and valuable. It represents a representative range of key habitats and species and is part of the NATURA 2000 network in Croatia as a Site of Community Importance. A cross-border approach is proposed for the candidate MPA located between Bosnia and Herzegovina and Croatia, integrating the sensitive habitats and species in the area in line with the Barcelona Convention.

Bosnia and Herzegovina can accordingly achieve the EU goals in the field of (marine) biodiversity primarily on the basis of its national legislation (Federation B&H) or, alternatively, on the basis of the provisions of the Bern Convention to which B&H is a State Party, contributing in such a way to the enlargement of the EMERALD NETWORK of (marine) protected areas.

#### **7.1.4. CHANNEL OF OTRANTO**

The inclusion of the Channel of Otranto in the South Adriatic and Ionian Strait EBSA is a notable fact. This EBSA is located in the central part of the Southern Adriatic basin and the northern part of the Ionian Sea. It comprises the deepest section of the Adriatic Sea on its western side and encompasses a coastal area in Albania, including Sazani Island and the Karaburuni peninsula. Additionally, it covers the slopes near Santa Maria di Leuca. The EBSA is characterized by steep slopes, high salinity, and a maximum depth ranging from 200 meters to 1500 meters. The Otranto Channel facilitates water exchange with the Mediterranean Sea, featuring a sill that is 800 meters deep. This area is of significant importance as it provides crucial habitats for various marine species, including Cuvier's beaked whales (*Ziphius cavirostris*), listed as an Annex II species under the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Areas Protocol) within the framework of the Barcelona Convention. Other megafauna such as the giant devil ray (*Mobula mobular*), striped dolphin (*Stenella coeruleoalba*), Mediterranean monk seal (*Monachus monachus*), and loggerhead turtle (*Caretta caretta*), also listed in Annex II of the Areas Protocol, can be found here. The benthic environment hosts deep-sea cold-water coral communities and deep-sea sponge aggregations, which are vital for biodiversity conservation and organic matter recycling. Tuna, swordfish, and sharks are commonly found in this area as well.

It is worth noting that, despite its significance, the area has not been formally considered a potential SPAMI based on the 2010 Study. Nevertheless, it should be acknowledged that ACCOBAMS has identified Sazani Island and the Karaburuni Peninsula as proposed CCHs (Common Cetacean Habitats), indicating their special importance for common dolphins and other cetacean species. Furthermore, a proposal submitted by MedReAct on behalf of the Adriatic Recovery Project to the GFCM (General Fisheries Commission for the Mediterranean) on March 31, 2018, aimed to protect Deep-Water Essential Fish Habitats and Sensitive Habitats in the South Adriatic from fishing impacts. The proposed FRA (Fisheries Restricted Area) is located in the Southern Adriatic area (GSA18) and includes the Otranto Channel. The area has been identified as follows: 1. A site with unique physical features that influence water circulation dynamics and exchange with the entire Mediterranean basin; (2) An important essential fish habitat for valuable species such as deep-water shrimps (e.g., *Aristeomorpha foliacea*), deepwater rose shrimp (*Parapeneus longirostris*), European hake (*Merluccius merluccius*), and blackmouth catshark (*Galeus melastomus*). (3) A key area for sea turtles, tuna, swordfish, sharks, and a significant migratory corridor for megafauna, including cetaceans. (4) An area containing vulnerable marine ecosystems that are susceptible to significant impacts from bottom trawling.

Although the GFCM has not yet confirmed the proposed area, a Resolution GFCM/44/2021/3 on a roadmap for the establishment of a fisheries restricted area in the southern Adriatic Sea (geographical sub area 18) was adopted. The resolution outlines the following action points:

1. The GFCM Secretariat, with the support of States parties, should initiate a pilot project in 2022 to study the biology and ecology of bamboo coral in the Adriatic Sea. This project should quantify the interactions between *isidella* (bamboo coral) and bottom-contact fisheries and determine their impact, within the framework of the Working Group on Vulnerable Marine Ecosystems, including a session on essential fish habitats.
2. The GFCM Secretariat, with the support of States parties, should provide assistance in 2023 for the implementation of the roadmap towards establishing a Fisheries Restricted Area in the southern Adriatic (geographical subarea 18), as outlined in paragraph 3.
3. States parties should take technical actions to progress towards compliance with Recommendation GFCM/43/2019/5, with the aim of establishing additional Fisheries Restricted Areas in the southern Adriatic. These actions include:
  - a) Investigating monitoring activities required to identify a possible FRA, such as fleet behaviors, impacts on the seabed, and onboard observers, in the southern part of geographical subarea 18.
  - b) Conducting an ad hoc socio-economic survey covering the fleets operating in the area.
  - c) Designing an ad hoc scientific survey to better define Vulnerable Marine Ecosystems (VMEs) for identifying a possible FRA.
  - d) Ensuring that a future proposal includes key components such as VMEs, Essential Fish Habitats (EFHs), spatial fishing fleet dynamics, and socio-economic impacts, as provided by the national administrations.
4. In 2023, based on the data collected under paragraph 3, States parties should jointly evaluate the possibility of establishing a Fisheries Restricted Area to protect relevant VMEs and EFHs. This evaluation should follow a bottom-up approach and involve relevant stakeholders.
5. In 2023, ahead of the SRC-AS meeting, the GFCM Secretariat should organize a workshop involving scientists and stakeholders to discuss the preparation of a Fisheries Restricted Area proposal and work towards achieving the objectives stated in paragraph 4.
6. In 2023, the Scientific Advisory Committee (SAC) should assess the potential Fisheries Restricted Area proposal in the southern Adriatic Sea, and the GFCM should examine the proposal at its annual session in 2023.

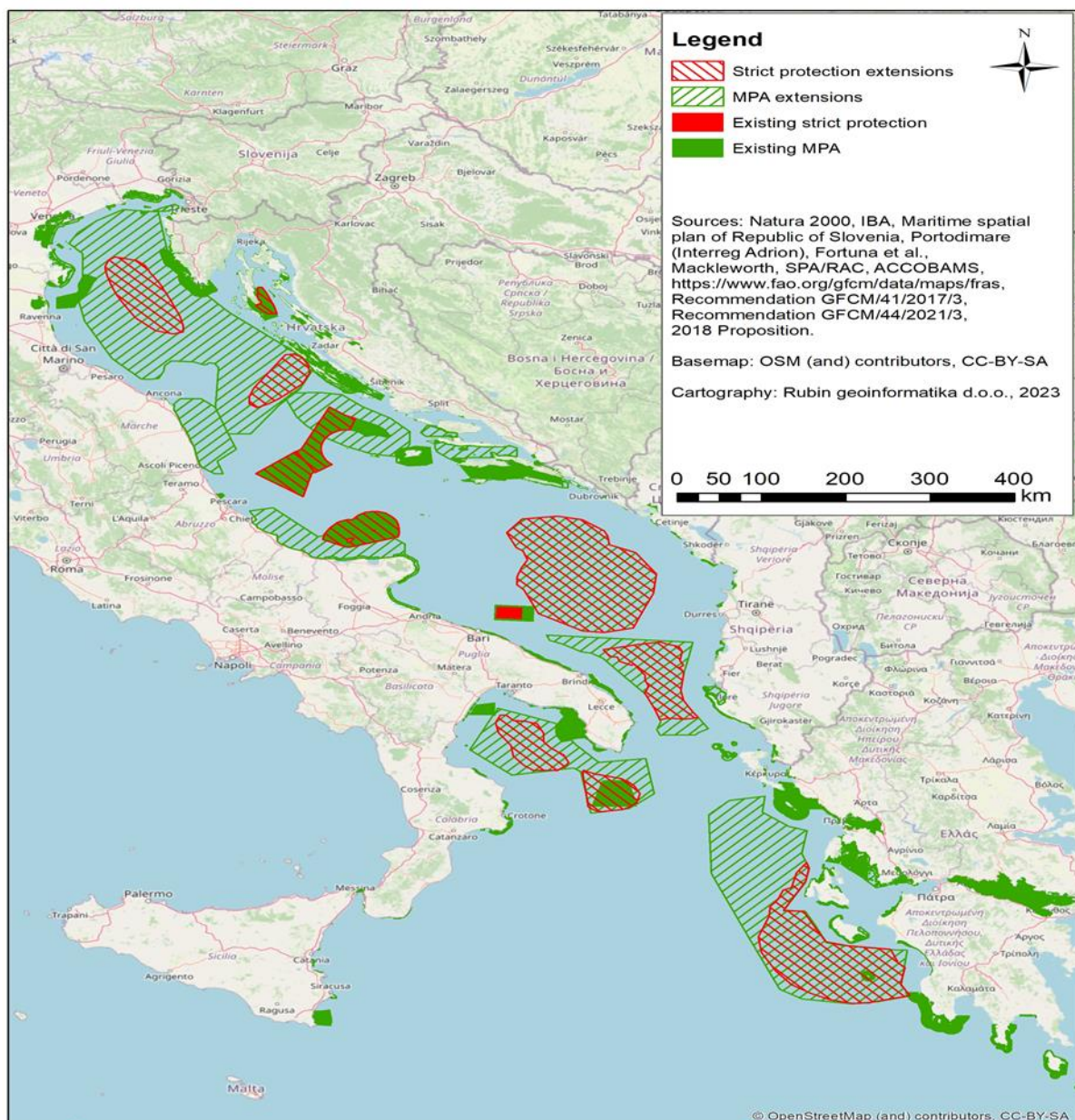
Additionally, it is worth mentioning that the Otranto Channel was considered a potential PSSA (Particularly Sensitive Sea Area) in the 2007-2011 draft PSSA proposal, aligned with the ADRIREP reporting system's limits.

## 8. CONCLUSIONS

The Biodiversity Strategy sets the objective of establishing a truly coherent Trans-European Nature Network, to legally protect at least 30% of the land, including inland waters, and 30% of the sea in the EU, of which at least one third (10% of land and 10% of sea) to be under strict protection.

The following graphic illustrations show the existing marine protection areas and possible extensions within the region that would meet the objectives. The proposed illustration defines MPA areas that would be extended more than 24% from the existing 10% to 34%. With respect to strict protection part the area would be extended to more than 12%, from the existing 0,5%.

The proposed scenario is built on the analysis of the legal framework already in place and EU projects that have been produced on the topic and presented above. Areas of strict protection were mostly identified beyond 12 NM. Such an arrangement would require close, comprehensive as well as operational cooperation on the regional level as part of the EU policy.



## **ANNEXES**

ANNEX 1: Annotated format for the presentation reports for the areas proposed for inclusion in the SPAMI List

ANNEX 2: Format for the Periodic Review of SPAMIs

ANNEX 3: Standard form for the submission of proposals for FRAs in the Mediterranean and the Black Sea



