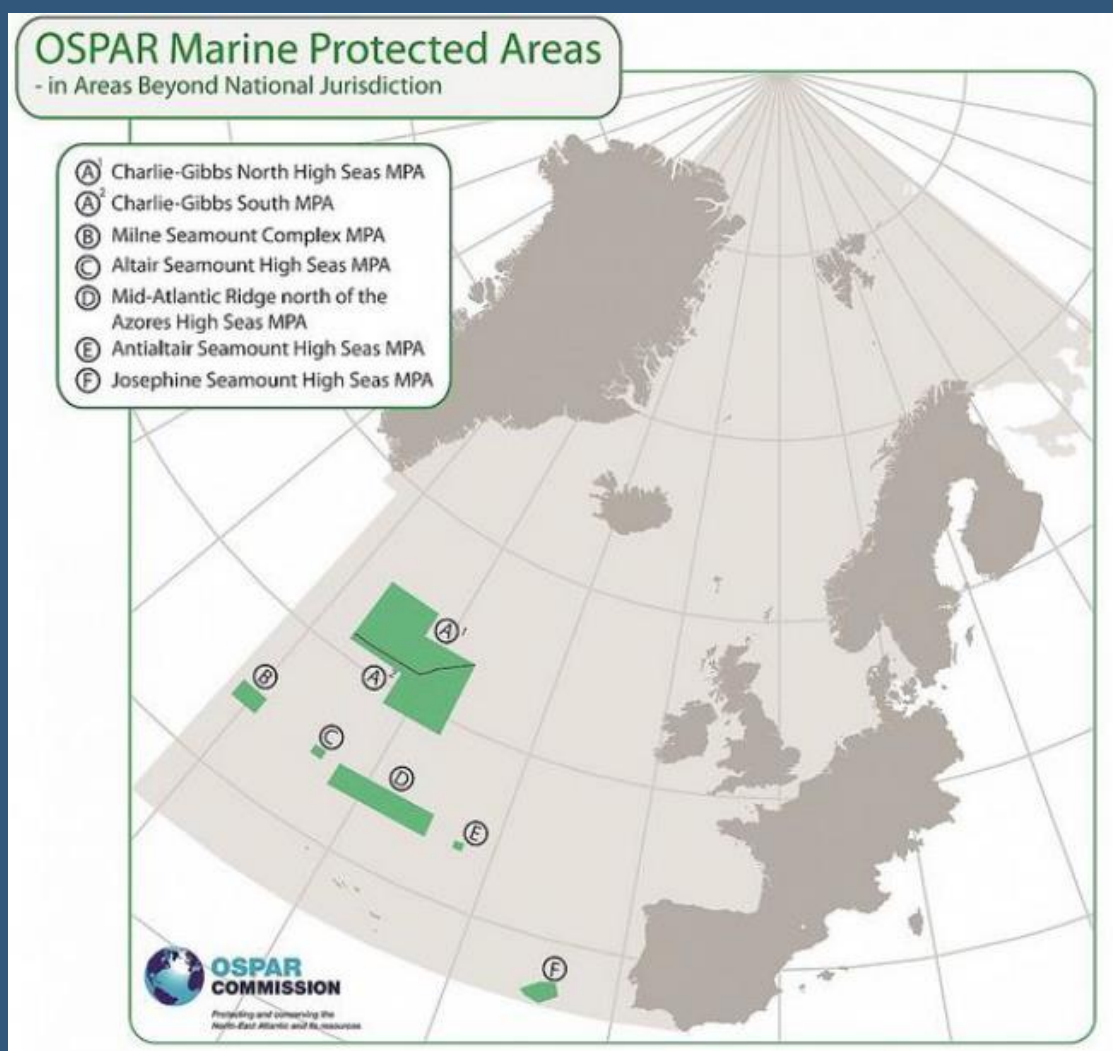


Regional Seas Application of Area-based Management Tools, including Marine Protected Areas – Case Studies

UN Environment Regional Seas Reports and Studies No. 214



CITATION: UNEP (2019): Regional Seas Application of Area-based Management Tools, including Marine Protected Areas – Case Studies

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SERIES: **Regional Seas Reports and Studies 214**

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- Case Studies -

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United Nations Environment Programme

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List of Acronyms:

ABNJ	Area beyond National Jurisdiction
BAT	best available techniques
BEP	best environmental practices
EEZ	Exclusive Economic Zone
EPZ	Ecological Protection Zone
FRA	Fisheries Restricted Area
GFCM	General Fisheries Commission for the Mediterranean
IMO	International Maritime Organization
MAP	Mediterranean Action Plan
MARPOL	
MoU	Memorandum of Understanding
MPA	Marine Protected Areas
NEAFC	North-East Atlantic Fisheries Commission
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PSSA	Particularly Sensitive Sea Area
SPA	Specially Protected Area
SPA/BD Protocol	Protocol concerning Specially Protected Areas and Biological Diversity
SPAMI	Specially Protected Area of Mediterranean Importance
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Seas
UNEP	United Nations Environment Programme

Introduction

UNEP was established as the result of the United Nations Conference on Human Development in 1972 in Stockholm. The Conference recommended that Governments take early action to adopt “effective national measures for the control of all significant sources of marine pollution, including land-based sources, and concert and co-ordinate their actions regionally and where appropriate on a wider international basis” (Recommendation 92). The subsequent meetings of the UNEP Governing Council repeatedly endorsed the regional approach and requested the development of regional action plans for the parts of the ocean where such plans do not yet exist. This was the origin of the UNEP Regional Seas Programme.

Starting from the pollution abatement, the Regional Seas Programme evolved in the last four decades to cover regular monitoring and assessment, land-based and sea-based sources of pollution, Specially Protected Areas and biodiversity, oil spill contingency/recovery plans, coastal habitat management, Integrated Coastal Zone Management, marine litter, and legal and institutional frameworks.

To date, the UNEP Regional Seas Programme, under UNEP’s coordination, covers 18 regions with more than 146 countries participating in 18 Regional Seas Conventions and Action Plans. Among them, 14 regional seas programmes were established under the auspices of UNEP. These are the Black Sea; Wider Caribbean; East Asian Seas; East Africa; South Asian Seas; ROPME Sea Area ; Mediterranean; North-East Pacific; Northwest Pacific; Red Sea and Gulf of Aden; South-East Pacific; Pacific; West, Central and Southern Africa; and Caspian. Seven of these programmes are directly administered by UNEP . The regional seas programme functions through an accompanying Action Plan. In most cases, the Action Plan is underpinned with a legal framework in the form of a regional seas convention and associated protocols on specific issues. Four partner programmes, for the Antarctic, Arctic, Baltic Sea, and North-East Atlantic Regions, respectively, are also members of the Regional Seas Programme and participate in global exchange of lessons and information.

Many of the regional seas conventions and action plans include articles or action items in relation to the conservation and protection of globally or regionally important biological diversity or ecosystems. Some conventions have legally binding protocols on specially protected areas and/or marine biodiversity. The current report include two case studies, OSPAR Commission and the Mediterranean Action Plan, to show how they identify areas for protection, how they agree on the network of marine protected areas and how they develop management plans or programmes.

International Maritime Organization, respectively, function as governance frameworks for deep seabed mining and maritime transport. On the marine environment, regional seas conventions and action plans cover mainly the areas within national jurisdiction, with very little coverage in the areas beyond national jurisdiction. Out of 18 regional seas programmes under the coordination of the United Nations Environment Programme, four clearly covers high seas as part, or entirety, of their geographic coverages. Based on the UN Environment Assembly Resolution 2/10 in which the Assembly encouraged “the contracting parties to existing regional seas conventions to consider the possibility of increasing the regional coverage of those instruments in accordance with international law”, three regional seas conventions started their processes of considering adjacent seas in the Areas.

The United Nations General Assembly decided in 2017 (resolution 72/249) to organize four sessions of the Intergovernmental Conference to elaborate the text of an international legally binding instrument under the United Nations Convention on the Law of the Seas on the

conservation and sustainable use of marine biological diversity of the Areas. It was further decided that negotiations shall address the topics identified in the package agreed in 2011, namely, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology. The present document aims at providing, for the benefits of the negotiation during the intergovernmental conference, practical information on how the selected regional seas conventions that cover areas beyond national jurisdiction identify, assess, designate and develop management programmes for, areas for applying their area-based management tools, including marine protected areas.



Case study on the Northeast Atlantic: OSPAR Commission

The OSPAR Convention, which entered into force on 25 March 1998, established the OSPAR Commission and has 16 contracting parties. General obligations under the OSPAR Convention are set out in Article 2 and include the taking of all possible steps to prevent and eliminate pollution and necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected. Overall, the work of the OSPAR Commission is guided by the ecosystem approach to an integrated management of human activities in the maritime area. This approach is supported by the general obligation of the Contracting Parties to apply:

- the precautionary principle;
- the polluter pays principle;
- Best available techniques (BAT) and best environmental practices (BEP), including clean technology.

OSPAR has a wide mandate when it comes to identifying and assessing specific areas within the OSPAR Maritime Area in need of protection. The role of OSPAR is based on the ecosystem approach and on its mandate for setting in place an integrated process for the protection of marine areas in ABNJ having regard to human activities and their cumulative impacts. This includes the assessment of the status of the environment, the identification of features in need for protection, as well as the establishment of objectives and monitoring measures.

In general, the Contracting Parties to the OSPAR Convention have the obligation to protect the marine environment including in ABNJ.

For OSPAR purposes, the term Marine Protected Area (MPA) is defined in [Recommendation 2003/3](#) implementing [Annex V of OSPAR](#) as “an area within the maritime area for which protective, conservation, restorative or precautionary measures, consistent with international law have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment”.

This Recommendation defines the MPA Network as including sites within national jurisdiction and “any ... area in the maritime area outside the jurisdiction of the Contracting Parties which has been included as a component of the network by the OSPAR Commission”. It expressly envisages that the Network will include sites beyond national jurisdiction.

What information and data does OSPAR collate?

The OSPAR network of MPAs is extended through nominations by Contracting Parties of new MPAs within national jurisdiction and through OSPAR Decisions on the establishment of MPAs in the area beyond national jurisdiction. OSPAR agreed guidelines for the identification and selection of

Marine Protected Areas in the OSPAR Maritime Area ([OSPAR Agreement 2003-17](#)¹) to steer the process of including new MPAs. The agreement outlines the internal OSPAR process to be followed, as well as the scientific criteria to be used in developing nomination *proforma*. The criteria considered and for which data are gathered in a site nomination *proforma* are ecological criteria: 1) threatened or declining species and habitats/biotopes, 2) Important species and habitats/biotopes, 3) ecological significance, 4) high natural biological diversity, 5) representativity, 6) sensitivity, 7) naturalness (Appendix 1) and practical considerations; 1) size, 2) potential for restoration, 3) degree of acceptance, 4) potential for success of management measures, 5) potential damage to the area by human activities, 6) scientific value (Appendix 2).

In order to evaluate whether all of the listed criteria are fulfilled and the proposed site considered appropriate to be included in the OSPAR network of MPAs, a variety of environmental data and other information needs to be collected.

If the proposed site is within national jurisdiction then the nomination *proforma* considerations are completed nationally within the concerned Contracting Party. If a new proposed site is located in an area beyond national jurisdiction, then the nomination *proforma* is prepared as a concerted effort by all OSPAR Contracting Parties. The process of preparing a site nomination *proforma* for a proposed new MPA in the area beyond national jurisdiction may require continuous work for a few consecutive years. Information is needed on physical parameters of the proposed site, such as bathymetry, seafloor features and on pelagic features, as well as ecological information, such as the species occurring in the area and how they use the area. This type of information usually becomes available from remote sensing studies and international research projects. Information collated to evaluate the criteria on practical considerations stems from communication with organisations outside OSPAR. This information can be collated, e.g, through information exchange and dialogue through the collective arrangement (see below for further details).

For each MPA in the OSPAR network, the relevant Contracting Party is to develop a management plan, taking into account that competence to adopt some management measures may lie with “*another authority or international organisation*”.

OSPAR manages the collectively designated MPAs in the ABNJ by developing OSPAR Recommendations outlining the measures and actions to be taken, either separately or collectively, by Contracting Parties to OSPAR. The measures and actions included in the respective Recommendations are developed based on the information collated in the nomination *proforma* (see section below on regulatory authority for further details).

How does OSPAR assess the connectivity of the MPA network?

The OSPAR mandate to assess the OSPAR Maritime Area includes a regular activity of assessing the ecological coherence of the OSPAR MPA network and whether the network is well managed. When assessing the ecological coherence of the OSPAR network of MPAs a number of criteria are applied; A) geographical distribution of OSPAR MPAs, B) coverage of OSPAR MPAs across biogeographic regions, C) representation and replication of marine habitats and species within OSPAR MPAs. A [biennial status report](#) is published to present the assessment results². The findings of the status report may identify the need for further enhancement of the OSPAR MPA network in a particular OSPAR Region for a particular feature (e.g. a species group) which is not adequately

¹ <https://www.ospar.org/documents?d=32398>

² <https://www.ospar.org/documents?v=37521>

represented in the network. Such a finding may trigger the process for identifying and designating a new MPA to the network.

What regulatory authority in ABNJ?

In accordance with UNCLOS Article 87, there are general obligations to protect and preserve the marine environment. Competence is conferred upon the individual States, however, co-operation between States, globally and regionally, with a view to achieve such protection, is encouraged (cf. Article 197). OSPAR Commission is a successful example of regional co-operation in this regard. For instance, the OSPAR Contracting Parties may decide to adopt a measure for their nationals not to engage in the laying of sub-marine cables within the relevant MPA in ABNJ. Such a measure will however not apply to other UNCLOS State Parties who are not Contracting Parties to OSPAR, and thus will be able to continue to exercise the freedom of laying of sub-marine cables and pipelines, irrespective of the OSPAR measure.

The OSPAR Convention allows for the regulation of all relevant activities under the authority of its Contracting Parties. OSPAR can only bind its own Contracting Parties to actions in ABNJ and relies on cooperation and coordination with other governments and bodies to achieve its aims with regard to protective and conservation measures in designated Marine Protected Areas.

OSPAR does not have competence for fisheries management and issues of concern related to fishing activities are brought to the attention of the relevant fisheries management body which in the case of the North-East Atlantic Fisheries Commission (NEAFC). The same applies to shipping related matters where the preferred methodology is to work through the competent body, the International Maritime Organisation (IMO).

Annex V to the OSPAR Convention foresees that Contracting Parties take the necessary measures to protect and conserve the ecosystems and biological diversity of the maritime area, and co-operate in adopting programmes and measures. The OSPAR Commission is under a duty to draw up programmes and measures for the control of the human activities identified by the application of the *criteria* in [Appendix 3 of the Convention](#). In fulfilling that duty, the OSPAR Commission, *inter alia* “develop means, consistent with international law, for instituting protective, conservation, restorative or precautionary measures related to specific areas or sites or related to particular species or habitats”.

The [collective arrangement](#) adopted in 2014 by OSPAR and by NEAFC recognises internationally accepted principles and aims at involving international organisations competent for the management of human activities in the North-East Atlantic, including in ABNJ. OSPAR and NEAFC embrace respective objectives to protect the marine environment in the same geographic area, which comprise the protection of vulnerable marine ecosystems through fisheries measures and the conservation of biodiversity via Marine Protected Areas, respectively. However, while both organisations share, to some extent, common objectives, they do not have overlapping mandates as their competence scope differ.

In 2014 they agreed on a collective arrangement as to establish a different and wider scope of cooperation and coordination, seeking to involve other regional and international organisations by promoting inter-sectoral and interregional dialogue. Thus, it differs significantly from the bilateral [Memorandum of Understanding \(MoU\)](#) agreed between OSPAR and NEAFC in 2008. The collective arrangement aims at a participation of all competent organisations and bodies in order to ensure a multilateral dialogue and collaborative work in the future.

The foremost objective of the collective arrangement is to facilitate cooperation and coordination on area-based management between legally competent authorities, promoting the exchange of information on each other's activities in designated areas, also taking into consideration all conservation and management measures in the North-East Atlantic. In addition to keeping under review a joint record of areas subject to specific measures and mutually informing of any modification of existing measures or of any new measures or decisions, the competent authorities have an opportunity to discuss subjects of common interest and concern.



Case Study on the Mediterranean – Mediterranean Action Plan and the Barcelona Convention

The Mediterranean is characterized by its long history of willingness to adopt sustainability principles: it was the first region to adopt an Action Plan – the Mediterranean Action Plan (MAP) – in 1975 under the United Nations Environment Programme Regional Seas Programme, followed by the adoption of the Convention for the Protection of the Mediterranean Sea against Pollution in 1976, which was amended in 1995 by the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention).

Under the Barcelona Convention, seven Protocols have been adopted addressing various aspects of the protection of the Mediterranean. One of the Protocols is the Protocol concerning Specially Protected Areas and Biological Diversity (SPA/BD Protocol), which was adopted in 1995, replacing the 1982 Protocol concerning Mediterranean Specially Protected Areas. The Barcelona Convention and its Protocols are the major regional legally binding agreements in the Mediterranean applicable to all Mediterranean coastal states and the European Union.

The UNEP/MAP-Barcelona Convention has a wide mandate when it comes to identifying, assessing and managing specific areas in need of biodiversity protection within the Mediterranean Sea Area, which encompasses areas beyond national jurisdiction. This mandate derives from the Barcelona Convention and the SPA/BD Protocol.

Barcelona Convention

The Mediterranean Sea Area is the area covered by the Barcelona Convention, defined in its Article 1(1) as follows: “For the purposes of this Convention, the Mediterranean Sea Area shall mean the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses”.

General obligations of the Barcelona Convention are set out in Article 4(1), and include taking all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute towards its sustainable development. A further elaboration of these obligations is found in 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”.

SPA/BD Protocol

Article 2(1) of the SPA/BD Protocol states: “The area to which this Protocol applies shall be the area of the Mediterranean Sea as delimited in Article 1 of the Convention. 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”.

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)).

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 Protocol provides for the establishment of Specially Protected Areas (SPAs) and Specially Protected Areas of Mediterranean Importance (SPAMIs). Only SPAMIs can be established on the high seas, as Article 9.1(b) expressly stipulates: “SPAMIs may be established (...) in (...) (b) zones partly or wholly on the high seas”.

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 at the scientific, aesthetic, cultural or educational levels (Article 8(2)).

Under this Protocol, the Pelagos Sanctuary, one out of 36 Specially Protected Areas of Mediterranean Importance (SPAMIs), when it was established, included in its areas, the High Seas. After the creation of the EEZ for France and the Ecological Protection Zones (EPZ) for Italy, the Pelagos Sanctuary still includes a very small area beyond national jurisdiction located off Monegasque coasts (2,5 km wide) and limited by the Corsicans waters.

Criteria

Annex I to the SPA/BD Protocol establishes Common Criteria for the Choice of Protected Marine and Coastal areas that Could be Included in the SPAMI List. All areas eligible for inclusion in the SPAMIs List must be awarded a legal status guaranteeing their effective long-term protection (Section C.1) and must have a management body (Section D.6), a management plan (Section D.7) and a monitoring programme (Section D.8).

In more detail, the following criteria should be used in evaluating the Mediterranean interest of an area: “uniqueness”, “natural representativeness”, “diversity”, “naturalness”, “presence of habitats that are critical to endangered, threatened or endemic species”, and “cultural representativeness” (Section B.2). This adds to a number of factors to be also considered as favourable for the inclusion of the site in the SPAMI List (Section B.3).

Designation process

The procedure for establishing SPAMIs is established in Article 9 of the Protocol, providing that the proposal for inclusion is submitted by two or more neighbouring Parties concerned if the area is situated, partly or wholly, on the high seas, and by the neighbouring Parties concerned in areas where the limits of national sovereignty or jurisdiction have not yet been defined.

For proposing an area situated, partly or wholly, on the high sea or in areas where the limits of national sovereignty or jurisdiction have not yet been defined, the neighbouring 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. The Parties concerned provide a joint presentation report, whose format was adopted in 2001 by the Contracting Parties to the Barcelona Convention, 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. After the consideration of the proposals by the technical bodies of the MAP system, the decision to include the proposed area in the SPAMI List is taken by the Meeting of the Contracting Parties of the Barcelona Convention and its Protocols.

Implementation

In accordance with Article 8 (3) of the SPA/BD Protocol, all the Parties agree "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". Moreover, in accordance with the provisions of the Article 9(5), all the Parties undertake to observe the rules laid down in the proposal for the protection and conservation of the area. These provisions make the protection, planning and management measures adopted for the SPAMI binding on all the Parties to the SPA/BD Protocol.

Within this framework, the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols are of key relevance. The Procedures establish a Compliance Committee, the objective of which is to facilitate and promote compliance with the obligations under the Barcelona Convention and its Protocols.

Other Barcelona Convention Protocols

In addition to the SPA/BD Protocol, other Barcelona Convention Protocols are also of relevance, as within their scope they include provisions which address the protection of areas established under the SPA/BD Protocol.

Of particular relevance is the Protocol concerning Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil adopted in 1994 and entered into force in 2011. Under Article 21 of the Protocol, Contracting Parties are called to take special measures to prevent, abate, combat and control offshore pollution in the areas defined under the SPA/BD Protocol. This translates into: firstly, special restrictions or conditions when granting authorizations for such areas when it comes to environmental impact assessments and monitoring, removal of installations and prohibition of any discharge, and secondly intensified exchange of information among operators, the competent authorities, Parties and the Organization regarding matters which may affect such areas.

The Pelagos Sanctuary

The Pelagos Sanctuary for Mediterranean Marine Mammals was established under a Tripartite Agreement signed in 1999 by France, Italy and Monaco and included in 2001 in the SPAMI List. The Agreement provides the legal and institutional framework for France, Italy and Monaco to jointly develop coordinated measures to protect cetaceans and their habitats from all sources of disturbance ranging from pollution to accidental capture.

The Pelagos Sanctuary covers the Tyrrhenian-Corsican-Provençal Basin, including the coastal waters and pelagic domain of the area, has a surface of 87.500 km² and is characterised by extremely rich pelagic life, marked by the presence of pelagic mammals.

The management plan of the Pelagos Sanctuary was in place since 2004 and its implementation rests on the Tripartite Steering Committee, a joint management body made up by France, Italy and Monaco. A review of the Pelagos Sanctuary has been recently conducted within the framework of the Procedure for the Revision of the Areas included in the SPAMI List. In line with this procedure, a Technical Advisory Commission has assessed for the Pelagos Sanctuary the degree of conformity with the Common Criteria set in Annex I to the SPA/BD Protocol, concluding that the “Pelagos Sanctuary still fulfils the criteria, which are mandatory for the inclusion of an area in the SPAMI List, and with the relevant criteria defined in the SPA/BD Protocol”, and recommending that “cooperation and harmonization (...) might be enhanced”.

The Barcelona Convention, the General Fisheries Commission for the Mediterranean (GFCM) and other governance organizations in the Mediterranean, each of them emphasizes cross-sectoral collaboration as an integral part of achieving the goals of the region, in particular the Aichi Targets and Sustainable Development Goal 14.

With GFCM, a MOU is in place, being of particular note the identification of Fisheries Restricted Areas (FRA). With the International Maritime Organization (IMO), a MOU is also in place. Work to identify Special Areas and a Particularly Sensitive Sea Area (PSSA) under MARPOL is of particular relevance. These are specific examples of how cross-sectoral collaboration in the Mediterranean has been successful in implementing aligned and joint area-based planning measures both within EEZs and the High Seas.

In a broad context, a Joint Cooperation Strategy is under development to strengthen the collaboration by five regional organisations in the Mediterranean in order to address issues of common interest relating to the adoption of area-based management and conservation measures. This cooperation will include facilitating the collection and exchanging of information to identify priority areas for management.



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