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Marine Spatial Planning and the protection of biodiversity Beyond national jurisdiction (BBNJ) in the Mediterranean Sea

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Sommaire

0. Acronyms:

ACCOBAMS	Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area
BBNJ	Biological diversity in areas beyond national jurisdiction
CBD	Convention on Biological Diversity
EBSA	Ecologically or Biologically Significant Marine Areas
EC	European Commission
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EU	European Union
FAO	Food and Agriculture Organization
GEF	Global Environment Facility
GFCM	General Fisheries Commission for the Mediterranean and the Black Seas
HELCOM	Baltic Marine Environment Protection Commission
ICES	International Council for the Exploration of the Sea
ICZM	Integrated Coastal Zone Management
ILBI	International Legally-Binding Instrument
IMO	International Maritime Organization
IMP	Integrated Maritime Policy
IOC	Intergovernmental Oceanographic Commission of the UNESCO
MAP	Mediterranean Action Plan
MPA	Marine Protected Area
MSP	Marine Spatial Planning
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PAP/RAC	Priority Actions Programme/Regional Activity Centre
PSSA	Particularly Sensitive Sea Area
RAC/SPA	Regional Activity Centre for Special Protected Areas
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
RFMO	Regional Fisheries Management Organization
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice (under CBD)
SEA	Strategic Environmental Assessment
SPAMI	Specially Protected Area of Mediterranean Importance
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
VME	Vulnerable Marine Ecosystem

Introduction

This document does not aim to provide a comprehensive analysis of marine spatial planning (MSP), but to be used as an informative document to facilitate reflections on the following issue : is MSP a relevant management tool to enhance protection and sustainable use of the biological diversity in areas beyond national jurisdiction (BBNJ) of the Mediterranean Sea, considering the specific characteristics of this region ? If that is the case, how could or should it be developed?

Firstly the analysis will focus on the outlines of the MSP as concept; afterwards it will pursue an overview of the international recognition for MSP and related-initiatives worldwide; then, the question whether MSP is relevant to be developed in the Mediterranean high seas or not will be raised before eventually highlighting the means to aid answering this question under the existing regional frameworks.

1. A conceptual approach of marine spatial planning

1.1. Definitions

There is no single official definition of MSP, but several have been elaborated by official working groups and expert bodies, including under the UN umbrella. We have reported below two of them:

According to the UK Marine Spatial Planning Pilot Consortium report (2006),[1] MSP is « *an integrated, policy-based approach to the regulation, management and protection of the marine environment, including the allocation of space, that addresses the multiple, cumulative and potentially conflicting uses of the sea and thereby facilitates sustainable development*. »

The UNESCO's Intergovernmental Oceanographic Commission (IOC; 2009) defines MSP as *« a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic and social objectives that are usually specified through a political process.* »[2]

In both definitions, MSP is based on the allocation of marine space in order to achieve sustainable development, including the protection of marine biodiversity and the conservation of

[1] The MSPP Consortium has been created to research options for developing, implementing and managing MSP in UK coastal and offshore waters. The final report was submitted in February 2006 : http://www.abpmer.net/mspp/docs/finals/MSPFinal_report.pdf

[2] Ehler, Charles, and Fanny Douvere. Marine Spatial Planning: a step-by-step approach toward ecosystem-based management. Intergovernmental Oceanographic Commission and Man and the Biosphere Programme. IOC Manual and Guides No. 53, ICAM Dossier No. 6. Paris: UNESCO. 2009. This definition has been used by the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the Convention on Biological Diversity (CBD) in its Toolkit for MSP (UNEP/CBD/SBSTTA/20/6, 12 february 2016, Montreal, Canada).

marine resources, along with social and economic objectives, by overcoming the single-sector approach that focuses on a particular use of the sea. However, these two definitions differ at some points. The first one defines MSP as a policy, whereas the second describes it as a public process. As a policy, MSP allows to regulate maritime activities, but as a process, it starts from the analysis of spatial and temporal distribution of activities. Actually, the MSPP definition has been elaborated to apply it at the national level and it consequently appears stricter that the UNESCO-IOC one, which aims to provide a basic definition sufficiently wide to be agreed by everyone. These different perspectives highlight the fact that MSP can have many forms and binding degrees depending on the level of legal competence and on the step of the process.

1.2. Benefits

During the past decades, the sea had suffered from growing pressure from human activities. Given the fragmented nature of jurisdictional and administrative organisation of marine space and maritime activities, cumulative impacts of these uses has led to increasing conflict due to two types of incompatibilities: first, an incompatibility among activities in the same area resulting from overlapping (e.g. wind farm vs ship route); second, an incompatibility between human activities and the integrity of marine ecosystems and biodiversity.

MSP aims to address these maritime governance issues, by integrating the various interests into a rational management of the marine space. This rational management is determined according to a long-term perspective planning considering classical uses like fisheries, maritime transport, communications, offshore mining exploitation, marine recreation, along with new uses such as aquaculture and renewable energy. By doing so, MSP is expected not only to avoid or reduce conflicts among different uses in the sea, but also to facilitate new opportunities enabling a more efficient and sustainable use of the potential of the sea (notably through the « Blue economy »).[3]

According to the European Commission (EC), MSP fulfils four objectives[4] :

- Reducing conflict on access to maritime space.
- Reducing cumulative impact of maritime activities on the environment.
- Reducing coordination costs for public authorities.
- Improving certainty and predictability for private investments.

Concerning marine biodiversity, the interest of developing MSP relies on defining a consistent framework and common objectives between sectoral authorities, reducing conflicts among them and improving exchange and coordination. Allocating marine space in order to protect environment while taking into account economic and social concerns seems to be a valuable

[3] The Blue growth is an initiative developed by the European Union (EU) to harness the potential of coast and sea for jobs, value and sustainability, in both traditional (shipbuilding, transport, fisheries, tourism) and innovative sectors (mineral resources, renewable energy, biotechnology, aquaculture). EU Commission, « Blue Growth : opportunities for marine and maritime sustainable growth », Brussels, 13 September 2012, COM(2012)494 final.

[4] http://www.slideshare.net/BalticSCOPE/the-directive-on-Maritime-spatial-planning (Marie Colombier, DG MARE of the European Commission, slide 3/15). These four objectives are mentioned in the context of European MSP.

manner to improve coherence and thereby to enable the enforcement and effectivity of biodiversity-related measures.

1.3. Principles and methodology

According to Douvere (2010), five characteristics are essential to MSP[5] :

- Ecosystem-based approach:

The ecosystem-based approach is a « *strategy for integrated management of land, water, and living resources that promotes conservation and sustainable use in an equitable way. The ecosystem approach is based on the application of appropriate scientific methodologies focused on levels of biological organisation, which encompass the essential processes, functions and interactions among organisms and their environment* ».[6]

Douvere underlignes that MSP is based on the premise that the ocean is heterogeneous, some areas being more important than others (economically and socially as well as ecologically).[7] This spatial heterogeneity reflects ecosystems patterns and processes, the special value or importance of their elements, the current or potential threats on them and where conflicts are occurring. The ecosystem-based approach thus constitutes the basic analysis through which the space is allocated and it ultimately guides operational measures (e.g. delivering a permit, closing an area to fisheries…). It consequently implies a specific policy and objectives for each marine region or subregion, considering ecosystemic boundaries and relevant human activities within them.

- Integrated-based policy:

Once the heterogeneity of marine ecosystem has been described, it has to be translated in a practical manner toward an integrated management.[8] MSP aims to achieve multiple objectives reflecting the expectations of various sectors. Integration provides a common framework to decision-making in order to overcome issues resulting from single-sector management. Bearing toward an integrated management, MSP facilitates cross-sectoral coordination and a better exchange of data and scientific information, making conflicts and compatibilities more visible in order to reduce them.

- Participation of stakeholders:

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[5] Douvere Fanny. 2010. Marine spatial planning: Concepts, current practice and linkages to other management approaches. Ghent University, Belgium, pp. 59 et seq.
[6] Convention on Biological Diversity. 2000. COP 5, Decision V/6 of the Conference of the Parties to the Convention on Biological Diversity, Nairobi, 15—26 May.
[7] Douvere, *op. cit.*, p. 4.
[8] *Ibid.*, p. 10-11.

Involving the relevant stakeholders in the MSP process can help achieving the multi-sectoral integration and the acceptance of the policy. In order to maximise value of their contribution, participation should occur at an early stage of the process. Moreover, engagement needs to be adapted to different cultural contexts.

- Adaptive process:

MSP is not a linear process. Management measures, costs and benefits and even objectives identified early in the early planning are likely to be modified later in the process. Flexibility is needed to adapt to changing circumstances as well as to evolution of knowledge, given that new information occur quickly in the field of marine environment. That is to highlight the importance of using the better available information thanks to communication of scientific knowledge and of experiences among jurisdictions and institutions.

The IOC-UNESCO Guide suggests ten relevant steps to the development of MSP as a management process[9]: 1. Identifying need and establishing authority; 2. Obtaining financial support; 3. Organizing the process through pre-planning; 4. Organizing stakeholder participation; 5. Defining and analyzing existing conditions; 6. Defining and analyzing future conditions; 7. Preparing and approving the marine spatial plan; 8. Implementing and enforcing the marine spatial plan; 9. Monitoring and evaluating performance of the marine spatial plan; 10. Adapting the marine spatial planning process.

- Future-orientation:

Aiming the reduction of conflicts and of the pressure on marine environment, MSP has to anticipate and prevent such conflicts before they become problem and be developed in view of a long-term perspective. At the same time, it should be based on future-oriented objectives expressing strategic choices for the sustainable development. Then MSP should not be limited to define and analyse existing conditions, but it also should reveal possible alternative scenarios in order to visualise future possibilities in a clear way and make well-grounded choices.[10] Two challenging issues in particular should be incorporated in MSP: the potential impacts of climate change[11] and the development of renewable energy in the sea that will require increasingly space allocation.

In addition to these five essential characteristics, other key elements of MSP are to be mentioned[12]:

[9] Ehler C. and Douvere F. 2009. Marine spatial planning: A step-by-step approach. Intergovernmental Oceanographic Commission and Man and the Biosphere Programme. IOC Manual and Guides. UNESCO, Paris

[10] Douvere, *op. cit.*, p. 106.

[11] One of the adverse impacts of the climate change is that i twill affect the distribution of living species and consequently influence locations and spaces needed for protection.

[12] See also the ten principles required for MSP practice according to the EU Commission's Roadmap (c.f. part 4.1).

- The need for a clear legal basis to get the plan enforceable and facilitate its implementation.

- A transboundary cooperation in order to manage adjacent areas considering their ecological and socioeconomic linkage. It implies a strong exchange between neighbours to adjust their policies and harmonize them where possible, while acknowledging their differences.

- A multi-level complementarity of the MSP process, including global, regional, subregional, national, subnational and local levels.

1.4. Connection with integrated coastal zone management

Considering interactions between land and sea, MSP should be consistent with terrestrial planning, and accordingly with coastal zones management. Yet, coastal zones should be considered apart from other maritime areas, especially with regard to the higher concentration of human presence and activities in coasts (biological resources, import/export of goods, mineral resources, energy…) and to the particular conditions of coastal ecosystems in the context of land-sea interaction. Thus, integrated coastal zones management (ICZM) has been developed as an instrument dedicated to deal with these specificities.

«*"Integrated coastal zone management" means 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*.»[13]

Aiming to be a bridge between land and sea in order to manage jointly terrestrial and maritime activities in coastal zones, ICZM's approach differs from MSP's one. First, MSP's geographic coverage is larger, since it covers all marine areas including coastal zones. Plus, even though both approaches are integrated-based, only MSP contains the temporal element of planning.

However, existing conditions in coastal zones and further offshore are linked given the interactions between marine and coastal ecosystems. As a consequence, MSP usually needs to be developed in accordance with ICZM regarding the ecosystemic approach, under a common holistic approach. As underlined by Douvere, «*a holistic approach relates to, or is concerned with, complete systems rather than with the details or parts that make up the whole. When applied to ocean and coastal management, a holistic approach refers to taking a broad overall perspective, both geographic and thematic*».[14]

[13] Protocol on Integrated coastal zones management in the Mediterranean (ICZM Protocol), art. 2 (f).
[14] Douvere, *op. cit.*, p. 105.

MSP and ICZM have the similar purpose of tackling the fragmented administration by the mean of integration. Yet the spatial planning approach is more able to define what integration implies because it is geographically more appropriate to the ecosystem-based approach (not being limited to the coastal zone) and it is oriented in a long-term perspective. Consequently, MSP can complete actions undertaken under ICZM, as well as ICZM can reinforce MSP in the specific context of highly concentrated activities in coastal zones. In other words, enhancing linkage between MSP and ICZM under a holistic approach might create synergy, making both more operational.[15]

2. Worldwide acknowledgement and perspectives

2.1. Early experiences

Early forms of MSP have been developed at a subnational level such as the Great Barrier Reef Marine Park in Australia (1975) and Florida Keys National Marine Sanctuary in the United States (1990). These MPAs zoning and management plan were initially focusing on nature conservation objectives. But since the 1990's with the emergence of the concept of sustainable development, management of marine areas evolved toward a multi-objectives policies. Many national experiences have led to various forms of MSP, such as Marine Functional Zoning in China, Eastern Scotian Shelf Integrated Management in Canada, United Kingdom's Marine and coastal access Act, MSP in Germany's North Sea EEZ, Integrated marine spatial policy in Netherland, among others. Despite their formal variety, these policies follow the same basic idea of allocating marine space to achieve planning objectives. However, they have not the same direction, administration, outcomes and legislative development. That is to remind us the empirical nature of MSP and its flexible definition and implementation considering a particular context.

More recently, the emphasis on the ecosystem-based approach pushes to define management units on an appropriate ecological basis, not only political, and thereby to extend the geographical scope of MSP beyond national boundaries where they do not conform to ecological boundaries.[16] Indeed, since the early 2000's, MSP initiatives tend to develop a transboundary dimension, allowing to set up a common framework at a regional or subregional level.

2.2. International promotion

[15]That was part of conclusions of the ICZM High Level Forum on Communities Strategies for Integrated Coastal Zone Management in 2002 (Alicante, Spain) : «*emphasising the possibility to use spatial planning integrated with sea-use planning and marine resources management, at national, regional and local level as a way to apply a holistic and dynamic perspective in ICZM in order to create a common vision of the sustainable development in the coastal zone*. » http://databases.eucc-d.de/files/documents/00000626_ICZM_conclusionsforum.pdf

[16] For instance, the « large marine ecosystems » usually delimitate space across and beyond national jurisdictions : http://www.lme.noaa.gov/index.php?option=com_content&view=featured&Itemid=101

Ultimately, MSP has to be consistent with rights and obligations of the States according to the law of the sea. But the international law of the sea (United Nations Convention of the Law Of the Sea – UNCLOS) does not contain a provision expressly referring to MSP. In international law, the silence or absence of a formal rule is the expression of the will of the States to be free from any legal obligation. So MSP can be considered as a voluntary instrument that facilitates the implementation of other obligations, *inter alia* the duties to cooperate (UNCLOS, art. 197), to protect and preserve the marine environment (art. 192), to adopt necessary measures to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life (art. 194, para. 5) and to ensure the conservation of the living resources in the high seas (art. 117), while respecting the principle of freedom of the high seas.[17]

Article 123 of UNCLOS has been described by some observers as a potential legal basis for developing transboundary MSP within enclosed or semi-enclosed sea[18] :

« *States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:*
(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea ;
(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment ;
(c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area ;
(d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article. »

Despite the weakness of the obligation (by using the verb «should»), some regional sea organizations developed MSP in this spirit. An interesting example is the Baltic Marine Environment Protection Commission (HELCOM), which applies to the semi-enclosed Baltic Sea and bring together EU Member States and non-Member States like the Barcelona Convention for the Mediterranean Sea. After having settled a joint workshop on MSP with the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) and the International Council for the Exploration of the Sea (ICES),[19] HELCOM has developed a

[17] The high seas freedom applies to navigation, overflight, lay submarine cables and pipelines, construct artificial islands and other installations, fishing, scientific research. However these freedoms shall be exercised under the conditions laid down by the UNCLOS and with due regard for the interests of other States (art. 87).

[18] Frank Maes, « The international legal framework for marine spatial planning », *Marine Policy*, n°32, 2008, pp. 797-810, p. 799.

[19] HELCOM/VASAB, OSPAR and ICES. 2012. Report of the Joint HELCOM/VASAB, OSPAR and ICES Workshop on Multi-Disciplinary Case Studies of MSP (WKMCMSP), 2-4 November 2011, Lisbon, Portugal. Administrator. 41pp.

Regional Baltic MSP Roadmap for the period 2013-2020.[20] It also produced MSP related guidelines, data and survey. This Baltic case can be inspiring in order to develop regional MSP in the Mediterranean framework.

Some international forums contributed to promote MSP initiatives with a multi-level dimension. In 2009, in order to clarify how MSP can be implemented, the UNESCO's Intergovernmental Oceanographic Commission (IOC) published a comprehensive set of guidelines and implementation tools providing to decision-makers a concrete «step-by-step» approach of the process.[21] More recently, the UNESCO-IOC set up a Guide to evaluating MSP.[22] MSP is also encouraged by the International Waters Programme of the Global Environment Facility (GEF), which provides since 1995 funding to support projects introducing ecosystem-based management for large marine ecosystems.

MSP is mostly promoted by the environmental law, relying on several principles of the 1992 Rio's Declaration.[23] The CBD promotes MSP as an implementing tool of the ecosystem-based approach[24] in order to achieve the Aichi Biodiversity Targets. Since 1995, Jakarta's Mandate encouraged Parties to use an integrated marine and coastal area management through institutional, administrative and legal arrangements.[25] The CBD-COP also promoted the strategic environmental assessment (SEA) as a relevant cross-cutting instrument to address cumulative effects of human activities on biological diversity.[26] By establishing a formalized, systematic and comprehensive process of consequences of proposed policies, plans or programmes, this instrument is very valuable in the context of MSP.[27] In 2012, the eleventh meting of the CBD-COP convened an expert workshop to provide consolidated practical guidance and a toolkit for MSP,[28] which have provided results since September 2014.[29]

2.3. Marine spatial planning in the future international legally-binding instrument on biodiversity beyond national jurisdiction

[20] http://www.helcom.fi/Documents/HELCOM%20at%20work/Groups/MSP/Regional%20Baltic%20MSP%20Roadmap%202013-2020.pdf

[21] Ehler C. and Douvere F. 2009. Marine spatial planning : A step-by-step approach toward ecosystem-based management. IOC Manual and Guides No. 53, ICAM Dossier, No.6, Paris, UNESCO.

[22] Ehler, Charles ; A Guide to Evaluating Marine Spatial Plans, Paris, UNESCO, 2014. IOC Manuals and Guides, 70 ; ICAM Dossier 8.

[23] Notably, Principle 7 related to the ecosystemic approach, Principle 10 related to public participation, Principle 11 related to the effective environmental legislation, Principle 15 on the precautionary approach and Principle 17 on the environmental impact assessments.

[24] CBD-COP Decision XII/23, 17 October 2014, para. 17 et seq.

[25] CBD-COP Decision II/10, para. 2 and 3.

[26] CBD-COP Decision V/18, para. 2.

[27] Frank Maes, *op. cit.*, pp. 807-808.

[28] CBD-COP Decision XI/18, C.

[29] UNEP/CBD/SBSTTA/20/INF/6.

On June 2015, the United Nations General Assembly (UNGA) decided to elaborate an international legally-binding instrument (ILBI) under the UNCLOS in order to strengthen the conservation and sustainable use of the BBNJ.[30] A preparatory committee comprised of governments, intergovernmental organizations and non-governmental organizations was established and met for a first session in New-York from 28 March to 8 April 2016. The second session was held on 26 august-9 September 2016, to be followed by a third session scheduled from 27 March-7 April 2017. The negotiations addressed the topics identified by a working group (BBNJ Group) in 2011, namely marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including MPAs, environmental impact assessment and capacity-building and the transfer of marine technology.

During the first session, an indicative list of issues was raised in order to «unwrap the package» of the BBNJ Group and to defragment the various elements and processes related to conservation and sustainable use of BBNJ.[31] One of the mentioned overall objectives was to «*enhance integration and create synergies, including at the regional level*» but without undermining the existing relevant legal instruments and frameworks. Ecosystem approach, adaptive management, involvement of relevant stakeholders and balance between right and obligations were among the guiding approaches and principles. Some participants underlined the need to distinguish sectoral area-based management tools (e.g. PSSA, VME) from cross-sectoral ones such as MPAs and MSP. But MSP was only sporadically mentioned as an area-based management tool to include in the material scope of the ILBI related-discussions.

The purpose of the second session consisted of identifying the issues that would require further in-depth discussion and those that could already form the basis of draft elements to be included in the recommendations to be provided to the UNGA. The working group on environmental impact assessments asked, as a possible issue to be further discussed, whether strategic environmental impact should be linked to MSP[32], while some participants called for defining MSP.[33] The session ended up creating a long list of issues that need further discussion, so the Chair encouraged the delegations to continue organizing side events and workshops in order to get a better understanding on these issues[34] and preparing the third session, where debates should be

[30] UNGA, Resolution 69/292, 19 June 2015.
[31] http://www.un.org/depts/los/biodiversity/prepcom_files/PrepCom_1_Chair's_Overview.pdf
[32] http://www.un.org/depts/los/biodiversity/prepcom_files/Prep_Com_II_Chair_overview_to_MS.pdf
[33] IISD Reporting Services, Earth Negotiations Bulletin, vol. 25 n°118, 12 September 2016, p. 5.
[34] The 13th meeting of the CBD-COP on 4-17 December 2016 in Cancun was expected to highlight the notion of MSP. Indeed in Decision XIII/9, the COP recognizes that MSP is a « participatory tool » supporting the achievement of the Aichi Biodiversity Targets in marine and coastal areas (targets 6 and 11) and the mainstreaming of biodiversity into public policies, and that « *long-term investment in the development of human and institutional capacity for marine spatial planning-related activities is essential for success* ». Parties and other relevant governments, organizations and stakeholders are invited to pursue and consolidate their exchanges to submit information on national, regional and subregional experiences and lessons learned in the application of MSP. This information will be compiled and synthetized by the CBD Executive Secretary for consideration by SBSTTA meeting on the 40th meeting of the COP.

focused on the issues identified as requiring further discussions. In December 2016, the Chair compiled and circulated the submission of proposal elements of a draft text of the ILBI.[35]

By establishing standards for environmental impact assessments, MPAs and marine technology transfer, this ILBI is expected to improve coherence to better support conservation and sustainable use of BBNJ, while preserving the rights and obligation guaranteed by the UNCLOS. This delicate balance can be achieved through strengthened cooperative mechanisms and a better coordination between national administrations, sectoral institutions, regional and global agreements, as well as a better understanding of the ecosystem and precautionary approaches. It consequently appears that MSP principles are significant in these negotiations, even though the notion of MSP as such has not so much been developed so far.

3. European Union's framework and initiatives

3.1. Framework

Since 2006, the European Commission has supported an Integrated Maritime Policy (IMP) for the EU in order to enhance capacity to use the strong potential of the sea (blue economy) and to face the sea-related challenges (globalisation and competitiveness, climate change, degradation of the marine environment, maritime safety and security, and energy security and sustainability). European MSP[36] has been developed in this context as a « *key-planning tool for sustainable decision-making*». It is one of the three main cross-sectoral tools of the IMP along with a network for maritime surveillance and a comprehensive and accessible source of data and information.[37]

In its Roadmap for Maritime Spatial Planning,[38] the Commission declared that MSP «*provides a framework for arbitrating between competing human activities and managing their impact on the marine environment. Its objective is to balance sectoral interests and achieve sustainable use of marine resources in line with the EU Sustainable Development Strategy*. » It also asserts that MSP has a transboundary dimension according to the ecosystem-based management (para. 2.2). Furthermore, this Roadmap set out ten key principles for MSP practice:

1) Using MSP according to area and type of activity
2) Defining objectives to guide MSP
3) Developing MSP in a transparent manner
4) Stakeholder participation
5) Coordination within Member States – Simplifying decision processes
6) Ensuring the legal effect a national MSP

[35] http://www.un.org/depts/los/biodiversity/prepcom_files/Prep_Com_webpage_views_submitted_by_delegations.pdf
[36] The terminology used in the EU is not «marine spatial planning» but «maritime spatial planning».
[37] « An Integrated Maritime Policy for the European Union», 10 October 2007, COM(2007)575 final, para. 3.2.
[38] COM (2008)791 final, 25 November 2008.

7) Cross-border cooperation and consultation
8) Incorporating monitoring and evaluation in the planning process
9) Achieving coherence between terrestrial and MSP – Relation with ICZM
10) A strong data and knowledge base

Workshops have been settled in the aftermath among Member States, regions, NGOs and industry. Participants have notably agreed on facts that «*the ecosystem must form the basis of, the overall framework for MSP*», and that «*effective cross-border MSP requires the development of a joint vision based on the exploration of common interests (e.g. offshore electricity grid, fisheries, shipping)*», as long as its implementation requires a regional approach that considers the specifics of each sea basin.[39]

Thereafter the Directive 2014/89/EU establishing a framework for maritime spatial planning (MSP Directive) was adopted on 23 July 2014. The text prescribes to Member States to:

- Set up maritime spatial plans which identify the spatial and temporal distribution of relevant existing and future activities and uses in their marine waters.
- Designate competent authorities for the implementation of the Directive.
- Ensure public participation with public information at an early stage and involvement of relevant stakeholders, authorities and public concerned.

The MSP Directive entered into force on September 2014. The period of transposition and designation of competent authorities has ended in September 2016. National plans in marine waters of Member States shall be established at the latest 2021.

Marine spatial plans must apply an ecosystem-based approach, contribute to the preservation and improvement of environment and promote the coexistence of relevant activities and uses of the sea and their sustainable development. They also have to take into account land-sea interactions, thereby justifying their linkages with ICZM. Moreover, MSP Directive provides cross-border cooperation at two levels: on the one hand, Member States sharing a regional or subregional marine area shall cooperate to ensure their MSP are consistent and coordinated; on the other hand, Member States should cooperate with third countries with regard to MSP, when possible.

3.2. Initiatives and implementation tools

The MSP Directive Implementation Support Strategy facilitates to achieve the requirement for Member States to organise the use of the best available data and share information. It aims to gather information on best practices, and provides an expertise and technical assistance with priorities to cross-sectoral and cross-border cooperation. As a result to this action, the MSP Platform provides a detailed database on six marine regions: North Sea, Baltic Sea, Black Sea, Atlantic Ocean, East Mediterranean and West Mediterranean. For each sea basin, focal points

[39] COM (2010)771 final, 17 December 2010, para. 3.1, 3.8 and 5.1.

have been established to answer Member States, NGOs and industries questions at short notice and to advise on the use of EU financial instruments to implement the MSP Directive. This mechanism also produces technical studies to reduce knowledge gap. The website of MSP Platform introduces «*an information and communication gateway funded by the EU Directorate General for Maritime Affairs and Fisheries (DG MARE) to share knowledge et experiences on MSP. The website contains, for each coastal Member State, the contact point of Competent Authority and database on legislation, existing plans and projects related to MSP*».[40]

EU funded pilot projects have been carried out to help Member States implementing MSP Directive's requirements. In the Mediterranean basin, ADRIPLAN was a cross-border project developed in the Adriatic-Ionian region from January 2013 to January 2015 in order to achieve the EU Strategy for the Adriatic and Ionian Region (EUSAIR).[41] It aimed to deliver a commonly-agreed approach among the concerned countries and provided guidelines to implement in a harmonised way the EU legislative framework on marine and maritime issues according to the ecosystem-based approach. ADRIPLAN set up a methodology structured in several phases from pre-planning to outputs, including cross-cutting issues such as stakeholders' participation and monitoring of the planning process.[42] This project gives a concrete illustration of how MSP can be developed in a transboundary dimension from a consistent subregional level.

4. The need for marine spatial planning in the Mediterranean high seas

4.1. Justification

Two major governance gaps have been identified within the Mediterranean region: first, the lack of integrated-approach policies and, second, the large proportion of waters located beyond the national jurisdiction or in areas of which boundaries have not been delimitated yet.[43]

Indeed, the intense use of waters and marine resources in the Mediterranean Sea leads to an increasing pressure on the environment, as well as a high competition for the control of marine space, which can be sometimes reflected in territorial disputes. In that context, the conclusion of international agreements for maritime boundaries delimitation can be difficult to consider. As a

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[40] http://www.msp-platform.eu/

[41] EUSAIR is based on four pillars: Blue Growth, 2) Connecting the Region with transport and energy networks, 3) Environmental quality, 4) Sustainable tourism. MSP and ICZM are recognized as needed tools to ensure the sustainable development and coordinate actions and activities at sea in the context of third pillar.

[42] http://www.msp-platform.eu/practices/adriplan-methodology

[43] «*First: in most Mediterranean States, each sectoral policy is pursued by its own administration, just as each international agreement is performed within its own set of rules, rendering an overview of the cumulative impact of maritime activities, including at basin level, a difficult objective to attain. Second: the large proportion of marine space made up of high seas makes it difficult for coastal States to plan, organise and regulate activities that directly affect their territorial seas and coasts. The combination of these two elements gives rise to a situation where policies and activities tend to develop in isolation from each other and without proper coordination among all areas of activity impacting on the sea as well as all local, national, regional and international actors.* »
EU Commission, COM(2009)466, final, 11 September 2009, para. 3.

consequence, there are only few EEZs in the Mediterranean but a large proportion of high seas and the current boundaries are not expected to be modified in the short and middle term, although it would be beneficial for MSP to be applied in areas under national law with clear rights and duties.

Some regional initiatives and organisations have progressively extended their activities to areas beyond national jurisdiction. Concerning the lack of integrated-approach policies, it partly results from the complexity of the regional cooperation with diverse involved institutions with different mandates and prerogatives including the Barcelona Convention related to the protection of the marine environment, the GFCM related to the fishing sector, the IMO related to the navigation regulation, CMS/ACCOBAMS related to migratory species (i.e. cetaceans), MPA managers such as and Pelagos Sanctuary, the EU developing own policies, etc. Regional cooperation still needs further coordination among these various instruments.
As emphasised by Rochette et al (2014) [44], the development of regional initiatives for the protection of the environment is a cornerstone of international environmental policies. With regard to marine and coastal issues, this regionalisation has mainly been taking place through regional seas programmes and Regional Fisheries Management Organisations. In the Mediterranean region, smooth cooperation exists since long among UNEP/MAP and GFCM, reflected in the MoU signed on May 2012, aimed to embrace all the potential contributions by the MAP System, as a further progression from a previous one (2008) between SPA/RAC and GFCM. That MoU includes the integrated maritime policy within its areas of cooperation, with a special emphasis on marine and coastal spatial planning. Such cooperation is in line with UNGA annual resolutions regarding enhanced cooperation between RSCs and RFMOs [45]. Also SDG14 *"Conserve and sustainably use the oceans, seas and marine resources for sustainable development"* is supported this way[46].)

Although the Barcelona system is likely to be an important platform for integrated policies as a comprehensive and adaptive framework for the environmental protection of the Mediterranean Sea as a whole, it is still based on sectoral Protocols. The only exception to the single-sector approach is the ICZM Protocol, but covering coastal zones only.

The ICZM Protocol delimitates the seaward of the coastal zone to the limit of the territorial sea of Parties.[47] In other words, the integrated-approach is contained within the territorial sea, up to 12 nm from the baselines and for some cases in the Mediterranean just 6 nm, while applying an

[44]Julien Rochette, Sebastian Unger, Dorothée Herr, David Johnson, Takehiro Nakamura, Tim Packeiser, Alexander Proelss, Martin Visbeck, Andrew Wright, Daniel Cebrian, «The regional approach to the Conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction», *Marine Policy Special Issue, Regional Approach* Vol 49, Nov 2014, pp 109-117.
[45] See para 145 of UNGA resolution A/RES/70/75 on sustainable fisheries encouraging RFMOs to strengthen integration, coordination and with RSCs
[46] UNGA Resolution A/RES/70/226
[47] ICZM Protocol, art. 3, para. 1(a).

ecosystem-based approach implies in most cases to protect valuable resources in the open sea,[48] including areas beyond limits of the territorial sea and frequently further offshore, reaching ABNJ. Considering that there are only few EEZs in the Mediterranean, the high seas areas delimitation may occur right beyond the territorial sea or the contiguous zone limits, as the case may be. Setting up MSP under a consistent regional framework with ICZM can foster complementarities and creates synergies facilitating coastal countries to implement the ICZM Protocol's requirements. It also would be a way to facilitate the implementation of MSP Directive's obligations for the Mediterranean EU Member States. Ultimately, it can benefit to all Mediterranean countries by reducing conflicts among maritime activities and developing a more sustainable use of the sea.

But, since both area-coverage approaches (coastal and open sea ones) would be compatible and complementary, developing MSP also beyond the coast according to an ecosystem-based approach would be a wise forward-looking way to improve the integrated approach among maritime policies in the Mediterranean Sea, before activities become even more extended, intensive and complex, without a compatibilizing mechanism in place.

4.2. MSP as a management tool to reinforce a representative MPAs network

The relation between MPAs and MSP is two-way: MPAs are part of the MSP process of marine space allocation and management according to a future oriented plan, while MSP can be an efficient tool to enforce MPAs management. Spatial measures already exist in the Mediterranean high seas, such as fisheries closures and trawl ban under GFCM, SPAMIs under Barcelona Convention, PSSAs under IMO or specific international agreements. However, these measures vary in levels of protection provided and the number of activities they address. The criteria used to select areas also appear to vary widely.[49] Plus, management assessments and monitoring of existing measures are rare, making difficult to judge their effectivity, whereas biodiversity beyond national jurisdiction needs higher level of protection. One of the reasons of this lack of effectiveness is that management plans of MPAs are focused on nature conservation on a single-sector basis, with only a little consideration of other policies and uses that may be conflicting. By contrast, MSP is developed on a multi-objectives basis, taking into account relevant policies and uses considering the particularity of the concerned area. In that respect, applying MSP principles through an adaptive process would be a way to enhance the implementation of spatial protection according to the idea that an efficient spatial management approach has to balance the needs of other sectors to access the high seas.[50]

[48] Plan Bleu «Mediterranean Strategy for Sustainable Development 2016-2025» (MSSD) mentions MSP as a regulatory mechanism to prevent and control unsustainable open ocean resource exploitation (objective 1 «Ensuring sustainable development in marine and coastal areas», strategic direction 1.2).
[49] J. Ardron and al., «Marine spatial planning in the high seas», *Marine Policy*, n°32, 2008, p. 833.
[50] *Ibid.*, p. 836.

A study dedicated to the potential of MSP in the Mediterranean Sea has been realized on behalf of the European Commission[51] and published in 2011.[52] It concluded that MSP was needed in areas with high competition between maritime activities and environment and those where the development of new activities is expected. This situation mostly concerns coastal zones, but also further offshore areas that are of high value to the marine environment, such as nursery and spawning areas that must be incorporated in a cross-border network of MPAs in order to protect endangered species and/or increase biodiversity. More general MSP can be applied to more extensive areas in the high seas, wherein «*a detailed form of MSP should only be applied when other options are not effective, since it requires relatively strong management and control efforts and decrease the flexibility of sea usage*».[53] The study indicated that «*currently, competition between maritime activities further offshore in the Mediterranean Sea is not a significant issue, so MSP based on general objectives is likely to suffice in the near future. However, given that the use of the maritime space is likely to increase in the longer run also in further offshore areas, consideration should be given to plan for this evolution ahead by putting the necessary mechanism in place.*»[54] MSP, as a future-oriented instrument, should address not only current competition issues in MPAs beyond national jurisdiction, but also ones that might occur with a prospective view.

5. Means to develop marine spatial planning in the high seas at the regional level

The international nature of high seas areas implies a cross-border cooperation.[55] Yet, although certain countries have created inter-ministerial committees or responsible entities to coordinate sectoral approaches of ministries on MSP issues, significant differences still exist in government structures among the Mediterranean countries. That makes necessary a vertical coordination through regional instruments. Ultimately, the coordination of a comprehensive MSP in the high seas would require specific international agreements, maybe on the model of the Pelagos Sanctuary Agreement, to be fully effective. Such agreements should be based on common MSP principles and methodology. Despite the absence of a regional instrument dedicated to MSP, the existing framework contains some relevant legal provisions and cooperative mechanisms that enable institutional arrangements in order to enhance the cross-sectoral coordination and to develop a common knowledge basis and guidelines promoting the development of MSP.

[51] Policy Research Corporation, « Exploring the potential of Maritime Spatial Planning in the Mediterranean Sea », study for the attention of European Commission, February 2011, Brussels, p. 92.

[52] According to a detailed methodology, this study identified areas in the region that have the most potential for applying MSP, namely the northern Adriatic Sea, the Alboran Sea, the area surrounding Malta and the Western Mediterranean Sea. For each of these areas, information was provided on stakeholders, institutional and legal framework, data collection and cross-border cooperation.

[53] Policy Research Corporation, « Exploring the potential of Maritime Spatial Planning in the Mediterranean Sea », study for the attention of European Commission, February 2011, Brussels, p. 92.

[54] *Ibid.*

[55] Beyond their national jurisdiction, States do not exercise *ratione loci* anymore but only *ratione materiae* on their nationals. Consequently, MSP can be effective in areas beyond national jurisdiction only if all States having their nationals using these areas cooperate to control their nationals on a common agreed basis.

5.1. Developing synergy between integrated coastal zone management and maritime activities further offshore in order to protect the marine environment

Linkages between MSP and ICZM relies on the ecosystem-based approach, which is applied by both.[56] The ecosystem-based approach leads to take into account a complex set of biodiversity interactions among coastal zones/territorial seas and further offshore, including high seas areas. It also implies to consider the cumulative impact of coastal activities on the marine environment beyond coastal zones, and vice-versa the cumulative impact of activities extending beyond coastal zones on these zones. As a result, the ecosystem-based approach implies to coordinate under a common holistic approach ICZM with the spatial management of maritime activities further offshore. ICZM authorities should then collaborate as appropriate with those competent to manage maritime activities where ICZM Protocol is not applied, including areas beyond national jurisdiction, in order to promote a coherence of MSP at the regional level.

In that line, Regional Activities Centres of the ICZM Protocol (PAP/RAC) and the SPA/BD Protocol (RAC/SPA) may support the Parties through collaborative work on the following legal basis:

According to the SPA/BD Protocol :

- « *The Parties shall adopt strategies, plans and programmes for the conservation of biological diversity and the sustainable use of marine and coastal biological resources and shall integrate them into their relevant sectoral and intersectoral policies* » (art. 3, para. 4).
- « *The Parties shall, directly or with the assistance of the Centre or international organizations concerned, establish cooperation programmes to coordinate the establishment, conservation, planning and management of specially protected areas, as well as the selection, management and conservation of protected species. There shall be regular exchanges of information concerning the characteristics of protected areas and species, the experience acquired and the problems encountered* » (art. 21, para. 1).

Under the ICZM Protocol:

- «*Cross-sectorally organized institutional coordination of the various administrative services and regional and local authorities competent in coastal zones shall be required*» (art.6, (e)).
- The Parties shall «*ensure institutional coordination, where necessary through appropriate bodies or mechanisms, in order to avoid sectoral approaches and facilitate comprehensive approach*» (art. 7, para. 1, (a)).
- « *The Parties undertake to cooperate for the promotion of sustainable development and integrated management of coastal zones, taking into account the Mediterranean Strategy*

[56] The ICZM Protocol prescribes the ecosystem-based approach to ensure the sustainable development of coastal zones (art. 6, (c)).

for Sustainable Development and complementing it where necessary. To this end, the Parties shall define, with the assistance of the Centre, a ***common regional framework*** *for integrated coastal zone management in the Mediterranean to be implemented by means of appropriate regional action plans and other operational instruments, as well as through their national strategies*» (art. 17).

MSP is to be develop under the ICZM common regional framework, but only in its geographical coverage.[57] However, this framework might develop a specific linkage with a programme or strategy supported through the RAC/SPA in order to coordinate MSP within the coastal zones and protection measures of marine biodiversity further offshore, including BBNJ. Such collaboration could aim to the exchange of information, the setting up of a common database on marine ecosystems and on interactions among biodiversity within and beyond coasts, the identification of vulnerable areas where conflict exists or may occur between maritime activities and marine environment, and how it could be reduced or avoided. Having regard to PAP/RAC and RAC/SPA respective mandates, such collaboration would not pool together the ICZM regional framework and the eventual RAC/SPA supported programme/strategy. But nothing prevents from their data sharing and communication in order to articulate their work and to develop synergies through compatible and complementary orientations and priorities, assisted by other RACs and their Coordinating Unit. That would be a start enabling condition to address MSP in areas beyond national jurisdiction under the Barcelona system.

5.2. Enhancing the dialogue with the fishing sector

According to article 16 of the GFCM:
«1. *The Commission shall cooperate with other international organizations and institutions in matters of mutual interests.*
2. The Commission shall seek to make suitable arrangements consultation, cooperation and collaboration with other relevant organizations and institutions, including entering into memoranda of understanding and partnership agreements.»

The fishing sector has an essential interest in resilience and productivity of the marine ecosystems.[58] It is called to cooperate with environmentalists and MPAs managers in order to develop a comprehensive MPAs network, ecologically coherent, restoring and ensuring the good health of the biodiversity within the Mediterranean and thereby a rational and sustainable fishing. This cooperation concerns in the first place coordination between measures related to MPAs management and spatial and temporal regulation used by the RFMOs, such as spawning closures and seasonal closures.

[57] UNEP/MAP-PAP/RAC Report on « Paving the Roas to Marine Spatial Planning in the Mediterranean », Athens, December 2015.

[58] Fish catches are declining since 1988 despite the technologic progress, whereas benefits would exceed coasts in cases of protection of 10 to 30% of marine and coastal areas on the basis of the application of various criteria according to the WWF : http://awsassets.wwfffr.panda.org/downloads/rapport_goc___amp___4_juin_2015.pdf

During the past few years, several multi-sectoral workshops and meetings involved regional fisheries bodies and regional seas organisations.[59] In 2012, GFCM and UNEP/MAP signed a memorandum of understanding to cooperate on diverse topics. This cooperation opportunity should be boosted to the best possible degree, especially since GFCM's project related activities focus on the establishment of VME areas and on management plans for deep seas fisheries.[60] Indeed it is crucial to develop an integrated-management between fisheries and biodiversity sector on the basis of the ecosystem-based approach, in particular in areas beyond national jurisdiction where there are data-poor situation and difficulty to ensure compliance and monitoring of the legal obligations. In that context, fishing and biodiversity sectors should develop coordination through a flexible and progressive MSP, along with other cross-sectoral instruments such as a common approach of the precautionary principle and of the SEA. The need for a regional integrated process based on MSP, integrating SEA, EIA and ecosystem approach principles has been recognized by the Plan Bleu Mediterranean Strategy, in order to effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans.[61]

Fishers should be associated to the spatial zoning. For instance, they can help to identify areas of low bycatch, as well as they are usually aware of low and high bycatch. Plus, incentives and deterrents linked to the spatial zoning should be discussed. Indeed some observers lament the fact that the existing codes of conduct, such as the FAO Code of Conduct for responsible fisheries (1995), are not linked to fishing privileges or subsidies, and they underlined the need to link this codes to permissions regarding high seas activities and to funding provided to support such activities (whether operated by a vessel flagged under the laws of the nation, or by a private citizen or public corporation, including the beneficial owners of vessels).[62] Some also suggest, lying on the precautionary principle, to reverse MPA criteria's approach according to which if an area is known to not reflect the criteria for a MPA, then it is a possible fishing area. Furthermore, the technology invested by high seas fishers to locate and catch fish, such as satellite imaging, sea surface temperature, advanced sonar, weather faxes, and floating GPS beacons, could also be used to identify areas that should be protected, to communicate among fishers and other users, and to provide monitoring on high seas activities.[63] These ideas could be discussed within a collaborative work among fishing sector and BBNJ management.

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[59] Recently, the Sustainable Ocean Initiative Global Dialogue with Regional Seas Organizations and Regional Fisheries Bodies on Accelerating Progress Towards the Aichi Biodiversity Targets and relevant Sustainable Development Goals was held under the CBD in Seoul on 26-29 September, in order to exchange experience and discuss on specific tools and guidelines in order to enhance science-based, cross-sectoral and ecosystem-based approaches for addressing biodiversity and fisheries issues. See the « Seoul Outcome » document : https://www.cbd.int/doc/meetings/mar/soiom-2016-01/official/soiom-2016-01-outcome-en.pdf

[60] ABNJ Deep Seas Project (2016) Record of the meeting of the deep sea fisheries secretariats contact group, 12 July 2016, Rome, Italy. ABNJ_DSP-2016-Doc-03 (SCG meeting). Rome, FAO, para. 9.

[61] UNEP/MAP (2016). Mediterranean Strategy for Sustainable Development 2016-2025. Valbonne. Plan Bleu, Regional Activity Centre, p. 29.

[62] J. Ardron and al., *op. cit.*, p. 838.

[63] *Ibid.*

Yet, the integrated-based approach of fisheries activities implies a common management from different administrative authorities. Consequently, institutional arrangements should be strengthened toward a common strategy among regional instruments in order to clarify theorical and operational objectives, along with the role of each partner into a dynamic and adaptive framework. Emphasis should be placed on communication mechanisms addressing the lack and the variability of data, as well as new methodologies for spatial and temporal management of fisheries, including aquaculture under the ecosystem-based approach.

5.3. Cooperation with the shipping sector

The Mediterranean Sea constitutes an essential crossing point for international trade routes. The intense activity of the maritime traffic causes various environmental issues, such as pollution by oil, atmospheric pollution, offshore submersion of wastes and other chemical substances and the introduction in the environment of invasive species through ballast water aboard ships, not to mention the accident risks. IMO provides a set of rules and instruments related to the protection of marine environment, including spatial measures (PSSAs with associated protective measures). A concerted action with other sectors is necessary to conciliate shipping regulation and routeing system[64] with other uses of marine space and resources in order to limit adverse impacts on marine ecosystems. A specificity about navigation is that freedom principle applies to this field not just in the high seas, but also in EEZ (with the only required condition to due notice).[65] Consequently IMO's regulations coverage includes EEZs.

At the regional level, the implementation of IMO environment-related regulations in the Mediterranean is supported by the Prevention and Emergency Protocol. This Protocol sets provisions related not only to the reaction of the Parties in the event of accident (for instance the notification procedure and having an emergency plan), but also to the prevention against pollution incident through the diffusion and the exchange of information, the environmental assessment related to the risks resulting from the use of seaways, and more generally, the requirement to implement international regulations to prevent, reduce and control marine pollution from ships:

«*The Parties shall cooperate:*

a) to implement international regulations to prevent, reduce and control pollution of the marine environment from ships; and

b) to take all necessary measures in cases of pollution incidents.» (art. 3, para. 1)

«Pollution incident» covers the notion of «related interests», meaning «*the interests of a coastal Sate directly affected or threatened and concerning, among others* […] *the conservation of biological diversity and the sustainable use of marine and coastal biological resources*»
(art. 1, (b) and (d)).

[64] The international routeing system of navigation relies on the IMO Resolution A.572(14) adopted on 20 november 1985.

[65] UNCLOS, art. 60.

Thus, an inter-sectoral collaboration toward a MSP process should involve, at the regional level, an enhanced communication within UNEP/MAP between REMPEC and other RACs. A collaborative work between REMPEC and RAC/SPA could consist to exchange information and draft joint statements for consideration of the Parties concerning common issues, such as the ship routeing and the possible need for new PSSAs, considering the conservation of biological diversity and the sustainable use of the sea. Eventually, these common statements should be brought forward with cooperation between UNEP/MAP and IMO in order to having adopted the required measures of protection (including spatial measures in the high seas areas), and to discuss on the question of spatial management. This process might be initiated on the basis of an institutional arrangement defining common future-oriented objectives.

5.4. Promoting a common vision of cross-cutting issues among the Mediterranean instruments

The purpose of the previously described inter-institutional arrangements is to adapt and prepare the regional framework to develop MSP, but these arrangements do not constitute MSP in themselves. Indeed as it was exposed before, MSP is defined by specific criteria. The plan must be guided by a multi-objective approach, be the result of the participation of relevant stakeholders and ensure monitoring mechanisms all along the process. Regional bodies and instruments have only a support role in the MSP process to sovereign countries, by focussing on sea use identification and potential conflicts, gathering scientific information, developing guidelines to implementation. Connecting this support to European initiatives and mechanisms would be a way to strengthen it.

Mediterranean institutions need to develop a coherent use of tools addressing cross-cutting issues in order to achieve this MSP-adapted regional framework. For instance, developing a common methodology of EIA, more specifically SEA, between fisheries and MPA managers could greatly enhance understanding between sectors. Moreover, participative mechanisms should be incorporated to improve transparency and stakeholders' engagement in policy-making, compliance and monitoring. In the high seas, interested parties and actors in public participation are likely to be industries using these areas and NGOs having a purpose related to these areas. Involving populations of concerned coastal States is an open question, but at least public awareness on sea-related issues should be emphasised. At the same time, developing a common understanding of these cross-sectoral tools implies capacity building and transfer of technology, along with a better communication of knowledge through a transparent and clear database.

The cross-sectoral coordination should be extended to the offshore oil sector, which it is expected to require more marine space with increased risks for the future.[66] Yet, institutional arrangements among the existing regional instruments are not sufficient to address all uses of the sea, such as

[66] A governance framework has been established for the offshore oil sector with the adoption of the Mediterranean Offshore Action Plan in the framework of the Offshore Protocol (UNEP(DEPI)/MED IG.22/28) : https://wedocs.unep.org/rest/bitstreams/8381/retrieve

renewable marine energy. They are only part of the process of MSP, which ultimately requires political will from coastal States to establish a regional authority with a clear mandate overcoming the existing sectoral bodies and agencies in order to conduct consistently the planning process, including in the high seas areas, as long as appropriate to achieve the needed objectives.

6. Summary and conclusion

- There is no official definition of MSP so far, but the IOC-UNESCO provided a basic and flexible definition that tends to become a reference (notably used by the CBD).
- The main benefits of MSP it to address sea-use competition, to reduce conflict between human activities and the integrity of marine ecosystems and to increase the potential of sea for jobs, value and sustainability in both traditional and innovative sectors.
- MSP relies on essential characteristics: ecosystem-based approach, integrated-based policy, stakeholders participation, adaptation and future-orientation. It also implies a transboundary dimension and a multi-level development (regional, subregional, national and subnational) according to the ecosystem-based approach, given that ecological boundaries do not always conform with political boundaries.
- At the global level, MSP initiatives are supported by the CBD as area-based management tool implementing the ecosystem-based approach, and projects can be funded from the EU Commission and the GEF.
- Under the EU, the MSP Directive entered into force, prescribing to Member States to elaborate marine spatial plans by 2021 and fostering transboundary cooperation where appropriate, including with third States, in order to guarantee coherence and efficiency of the plans. Such cooperation appears to be necessary among coastal countries of the Mediterranean.
- Developing a framework for MSP covering the whole Mediterranean is a prospective process to anticipate future and improve the sustainable sea-use.
- In the Mediterranean Sea, MSP has been supported to be applied under the ICZM Protocol. MSP is useful to ICZM but limiting the spatial coverage to coastal zones may not be sufficient to achieve its objectives considering the ecosystem-based approach. It consequently should be convenient to extend it further offshore where and when appropriate, while being developed together with ICZM in synergy under a holistic approach. That leads to distinguish three levels for MSP: within coastal zones, beyond coastal zones and within national jurisdiction (within contiguous zone and EEZ) and beyond national jurisdiction.
- Given the large proportion of high seas in the Mediterranean and the growing activities in these areas, the question arises at the means to consider MSP in areas beyond national jurisdiction. Although MSP is easier to be developed within the national jurisdiction, the following points argue that initiatives related to MSP can also be undertaken in areas beyond national jurisdiction.

- Article 123 of UNCLOS can provide a legal basis for MSP in the Mediterranean, including the high seas areas, as long as it is exercised respectfully to conditions of the law of the sea.
- At the regional level, no legal provision expressly refers to MSP. However, certain provisions prescribe a coordinated action among the relevant institutional instruments.
- Despite the absence of a Mediterranean instrument dedicated to MSP, the existing instruments can assume an important role to adapt the regional framework in order to develop MSP and to support cooperation among coastal states in that process.
- Inter-institutional arrangements should first be enhanced to enable better coherence among sectoral activities in areas beyond national jurisdiction.
- Relevant institutions should put emphasis on convergence of their understanding on the cross-cutting issues by pulling the disparate information together and working on a more consistent approach of tools such as EIA, SEA and of criteria to identify sensible areas and conflicts, whether they exist or they might occur.
- MSP is an adaptive process on the basis of experience. It relies on discussion on issues among stakeholders and decision-makers, and workshops in order to elaborate a roadmap and to adjust it progressively.
- A possibly relevant case to compare with would be the regional sea organization of the Baltic Sea, HELCOM, which applies to a semi-enclosed sea and bring together under a common regional framework EU Member States and non-Member States. HELCOM is developing a MSP process.
- Furthermore, the future ILBI is expected to bring new rules on activities affecting the BBNJ. The current negotiations should be watched carefully as well as they might provide new elements related to area-based management tools, EIA/SEA and capacity building/technology transfer.