

“Marine Protected Areas within and beyond national jurisdiction”

This year’s XXII Sea Conference on “Conservation and Management Strategies: the role of Sicily” will also address the conservation of Biodiversity and the role of Marine Protected Areas. As is well known, the interests of the international community are increasingly focused on the preservation of biodiversity in **areas located beyond national jurisdictions (ABNJ)**, in part through the creation of a network of marine protected areas.

The position of the European Union on the preservation of biodiversity in areas beyond national jurisdictions

The European Union has expressed its belief that the international community should come to an agreement on a cooperative program consistent with Part XIV of the United Nations Convention on the Law of the Sea that would address the development and transfer of marine technology to be applied at the regional level. The General Assembly of the United Nations, having decided in 2004 to form a committee to study the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, appears to have initiated a process of great importance. Furthermore, the EU has taken steps to implement the United Nation’s resolutions on sustainable fishing in relation to deep sea fishing equipment in vulnerable marine ecosystems in the ABNJ by adopting Regulation 734/2008/CE of 15 July 2008, which concerns the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of deep sea fishing equipment.

The RAC/SPA project for the identification of SPAMI in areas of the Mediterranean Sea beyond national jurisdiction

In order to form an ecological network representative of the marine protected areas in the Mediterranean that is in line with the provisions of the Barcelona Convention’s Protocol concerning specially protected areas and biological diversity in the Mediterranean (SPA/BD Protocol) and, in particular, in compliance with the provisions for Specially Protected Areas of Mediterranean Importance (**SPAMI**), even in high seas areas, the RAC/SPA (Regional Activity Centre responsible for the BIO SPA protocol on protected areas and biodiversity) is implementing a project, funded by the European Commission DG Environment, which aims to identify SPAMI in areas of the Mediterranean Sea beyond national jurisdiction. The project is divided into two phases. The first, completed during the period 2008-2009, included an overview of available scientific data useful for the identification of priority conservation areas on the high seas, which may include areas potentially attributable to the SPAMI list. The second phase, begun in 2010, aims to (i) assign a scientific and feasibility priority, where possible, to the areas identified on the basis of the SPAMI criteria, to (ii) complete any valuation gaps, and to (iii) prepare the short list of priority ABNJ conservation areas attributable to the SPAMI list.

Terminology

Please note the following terminology used in this document for this subject matter:



Legal terminology - *Areas beyond national jurisdiction* and *high seas*, the latter understood as international waters, or rather those marine areas not under the control of an individual State. In international waters, all vessels are subject to the exclusive power of the State under whose flag they are sailing. In such areas, protection can only be secured through the actions of each State in respect to its own vessels, or through international cooperation (bilateral or multilateral agreements);

Scientific terminology - *Open seas*, including *deep seas* – this terminology does not enter into discussion of legal matters concerning the delimitation of sea boundaries and respective areas subject or not subject to sovereignty or national jurisdiction.

Agreement for the creation of a sanctuary for marine mammals in the Mediterranean

A precedent for such a sanctuary in the Mediterranean is represented by the Sanctuary for Marine Mammals, established by the 1999 agreement between Italy, France and the Principality of Monaco, which in 2001 joined the SPAMI list. Article 3 of the agreement states that it consists "*of maritime areas situated in the inland waters and territorial seas of the French Republic, the Italian Republic and the Principality of Monaco, as well as portions of adjacent high seas.*" Jurisdictions are specified in Article 14, with the particular assumption that "*for the areas of the Sanctuary located in waters that fall under its sovereignty or jurisdiction, each Partner State of the Agreement shall have jurisdiction to enforce its own regulations. In the other areas of the Sanctuary, each Partner State shall have jurisdiction to enforce the regulations of the Agreement on vessels sailing under its flag as well as, within the limits permitted by the rules of international law, on vessels sailing under the flag of other States*".

In this case, the *pacta tertiis* principle of international law is applied according to which the rights and obligations arising from treaties apply only to the contracting Parties. The other States will be affected only if they have given their prior consent or where required by international law.

Initial results of the RAC/SPA project

Priority conservation areas from which to select candidate sites for possible inclusion in the SPAMI list have been identified in marine areas for which there were a sufficient number of available data, regarding almost exclusively certain species, fishing activities, and the presence of some migratory species (birds). As of the time of writing, the following 13 areas have been identified, which cover 527,300 square kilometres or approximately 21% of the surface of the Mediterranean:

1 *Alborán Seamounts*

2 *Southern Balearic*

3 *Gulf of Lions shelf and slope*



4 Central Tyrrhenian

5 Northern Strait of Sicily (including Adventure and nearby banks)

6 Southern Strait of Sicily

7 Northern and Central Adriatic

8 Santa Maria di Leuca

9 Northeastern Ionian

10 Thracian Sea

11 Northeastern Levantine Sea and Rhodes Gyre

12 Eratosthenes Seamount

13 Nile Delta Region

Of these areas:

- 4 directly concern Italy being that its coasts overlook the areas (No. 4-Central Tyrrhenian, No. 5-Northern Strait of Sicily, No. 7-the Northern and Central Adriatic and No. 8-Santa Maria di Leuca);
- A further 2 could concern Italy because of their location in marine areas bordering the territorial sea, or the continental platform, or the Italian Ecological Protection Area (No. 6-Southern Strait of Sicily and No. 9-Northeastern Ionian).

It's important to remember, in fact, that Article 9 paragraph 2 of the SPA/BD Protocol, which also applies to high seas, provides that proposals for the inclusion of an area in the SPAMI list be presented "(a) by the Party concerned, if the area is situated in a zone already delimited, over which it exercises sovereignty or jurisdiction; (b) by two or more neighbouring Parties concerned if the area is situated, partly or wholly, on the high sea; (c) by the neighbouring Parties concerned in areas where the limits of national sovereignty or jurisdiction have not yet been defined".

In conclusion:

- In order to register an area on the SPAMI list, that area must have previously been established as a protected area and, as such, have a legal status, a management plan and the means for its implementation. Therefore, unless and until we completely and definitively establish a specially protected area, with the agreement of the Parties concerned, that area cannot be included in the list in question;
- We recognize the need to gather more technical and scientific information in relation to the above areas



that might be of interest to Italy, in order to assess their characteristics, vulnerabilities and critical areas that could motivate the Italian interest to establish them as specially protected areas of Mediterranean importance to be included in the SPAMI list, in the light of the experience gained from the Sanctuary for Marine Mammals;

- Finally, we should note the need for Italy to adopt a proactive approach at international roundtables, in particular meetings of the UNGA-UNDOALOS (*United Nations Office of Legal Affairs and its Division for Ocean Affairs and the Law of the Sea*), as a natural place to assert Italy's commitment to ensuring the development of laws that further our interests.

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