

# Current advances on Biodiversity Beyond National Jurisdiction (BBNJ) conservation and management: situation in the Mediterranean region



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# Context

- UNCLOS is considered as the relevant framework ruling the activities in the sea, including areas beyond national jurisdiction (ABNJ). However, it does not contain specific provisions related to the preservation and sustainable use of **marine biodiversity** in such areas
- The need for the above legal provisions also concerns the right to scientific research and the sharing of information stemming therefrom
- The Convention on Biological Diversity (CBD) provides more specific rules to protect biodiversity, but its legal field does not cover the ABNJ
- Consequently, the international community has been engaged in discussion on the strengthening of such protection framework. On November 2004, The General assembly of the United Nations established a BBNJ working group to examine the question (**Resolution 59/24**).

# Context

- The BBNJ Group has worked on issues such as institutional coordination, and the following four main axes: area-based management tools including marine protected areas (**MPA**), environmental impact assessment (**EIA**), scientific research and marine genetic resources (**MGR**), **capacity** building & marine technology transfer
- On its fourth meeting (May 31-June 3, 2011) the working group made recommendations on the above, as well as on the legal process to undertake, including the **possibility of an international legally-binding instrument (ILBI)**
- Added to the above, States agreed in the Rio+20 Conference (June 20-22, 2012), to **look into the question of BBNJ on the basis of the BBNJ Group work**

# Context

- Based in the results of the BBNJ working group, the General Assembly adopted the **Resolution 69/292 (June 19, 2015)** under the UNCLOS, on “Development of an international legally-binding instrument under the United Nations Convention on Law of Sea on the conservation and sustainable use of marine biological diversity of ABNJ”
- It calls upon UN Members to convene a two-year round of consultations through a Preparatory commission (Prepcom) to reach agreement on common elements that should represent the foundation of a **future legally binding instrument to the UNCLOS « without undermining existing instruments and frameworks »**
- This agreement is expected to be negotiated in the remit of a diplomatic conference as of 2018. is difficult to foresee how much the process will last due to the complexity of the issues being addressed.

# Actions / Results: Prepcom I

- The first Prepcom session met on March 28- April 8, 2016 being the major challenge defragmenting and harmonizing the various elements and processes related to conservation and sustainable use of the BBNJ
- That included: how the voluntary tools related to spatial management, such as the **EBSAs** under the CBD and the **VME** under the FAO Guidelines, could be both integrated in the same ILBI, the **interference risk with** the work of the regional fisheries management organizations (**RFMOs**), and the necessity claimed by NGOs to further **integrate the biodiversity in the fishing sector**
- The UNEP called attention to its global work by relevant **RS Conventions**, the **CMS** and hazardous chemicals' **treaties**
- Delegations also agreed on a roadmap on the structure of the Prepcom 2

# Actions / Results: Prepcom 2

- The Prepcom 2, held on August 26 - September 9, 2016 aimed to «**park common ground**» on the **four elements** of the 2011's package (**MGR**, area-based management tools -including **MPAs**-, **EIAs** and **capacity** building & marine technology transfer) and on **cross-cutting ILBI issues**, such as the scope, relationship with other instruments, and its guiding principles.
- In the discussion on the **appropriate type of MPA**, differentiated management approaches were considered as realistic options **to ensure an universal ILBI**
- Concerning the question of **creating temporary MPAs**, IUCN and the CBD argued that **MPA** is a specific **tool** to meet the need **for long-term conservation** measures.
- **RFMOs** informed on their regular activities **benefitting BBNJ** and on the UN General Assembly **resolution 61/105 on bottom fishing as an example**

# Challenges / Perspectives

- The way in which oceans **governance** can be improved **without undermining** the **existing** instruments and frameworks
- **Vertical versus horizontal approaches :**
  - **top-down approach** mandating necessary changes at the regional and sectoral but risking to interfere with the mandate of sectoral or regional bodies on topics already regulated.
  - **horizontal approach** setting minimum standard for sectoral and regional management, rather than detailing specific modifications or restrictions
- **Monitoring:** convergence around the creation under ILBI of a scientific body. Different feasibility options considered, including the possibility of expanding the mandate of the International Seabed Authority.
- **Prepcom 3** planned in the course of next year (date still to be confirmed)
- Experts note that, in case the **Agreement** is not reached **in 2018**, it should be **by 2022** (the UNCLOS 40th Anniversary).

# Mediterranean Perspectives

- Mediterranean legal instruments that address issues of relevance to the ongoing consultation process in NY, that is fisheries, pollution and conservation of marine biodiversity in ABNJ, may assist countries in bringing about informed views to the UNGA
- UNEP/MAP Barcelona Convention is one of the few RSCs which has a specific mandate to agree on and apply management measures for ABNJ through SPAMI and offshore pollution control (ASP/BD Protocol, Prevention and Emergency Protocol and Offshore Protocol)
- The GFCM is one of those RFMOs empowered to adopt legally binding recommendations to manage Mediterranean and Black Sea fisheries
- Synergy through a Joint Cooperation Strategy, both Bodies' Secretariats, with ACCOBAMS, IUCN and cooperation with MedPAN, may provide a mechanism to better deal with Mediterranean BBNJ conservation and sustainable use



# Mediterranean Perspectives

The Joint Cooperation Strategy is intended to:

- strengthen collaboration, focusing on addressing the issues of common interest related to the adoption of spatial based management and conservation measures
- better harmonise their activities regarding, notably, marine spatial management
- benefiting from their existing structures, bilateral Memoranda and work, performed in a cooperative and inclusive manner
- Facilitate that future declaration of spatial based management and conservation measures will benefit from a solid synergy, notably in the open seas, including deep seas

# Mediterranean Perspectives

Legal Basis for the «Joint Strategy on Spatial-based Protection and Management Measures for Marine Biodiversity among the Secretariats of ACCOBAMS, GFCM, IUCN-Med, UNEP-MAP through SPA/RAC and in collaboration with MedPAN» :

## ACCOBAMS :

- « *Secretariat to liaise and facilitate cooperation between Parties and non-Party Range States and international and national bodies whose activities are directly or indirectly relevant to the conservation of cetaceans in the Agreement area* » (Article IV, 2.b) »

## GFCM :

- « The Commission shall cooperate with other international organizations and institutions in matters of mutual interests. » (Article 16 of the GFCM Agreement) »

# Mediterranean Perspectives

## UNEP/MAP Framework :

- « *The Parties shall, directly or with the assistance of the Center 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.*» (SPA-BD Protocol, Article 21, para. 1). »
- In order to coordinate the implementation of the Protocol, the Organization shall receive the support of the Center. One of the functions of the Center (RAC/SPA) is «*developing cooperative programmes pursuant to Article 21 of this Protocol*» (article 25, para. 1, a) »
- MAP/Civil Society cooperation and partnership (16th meeting of the COP, Decision IG.19/6): « enhancing cooperation with NGOs» (concerning Strategy NGO component )

# Global Perspectives: RSCs and RFMOs

## Cooperation between RSCs and RFMOs against the background of UNGA related processes

A global universal governance structure could better support the implementation of:

### **SDG14 “Conserve and sustainably use the oceans, seas and marine resources for sustainable development” - A/RES/70/226**

- Common key targets for RSCs and RFMOs addressing common challenges: pollution (14.1), habitats, ecosystems, MPAs (14.2, 14.5), ocean acidification (14.3), fisheries, including overfishing, IUU, destructive fishing practices (14.2, 14.6, 14.7b), knowledge and technology transfer, small scale fisheries, implementation of legal obligations (14.7a, 14.7b and 14.7c)

### **Rio +20: “The Future We Want” - A/RES/66/288**

- Oceans and Seas related follow-up actions relating to common challenges (paras 158-177)

### **UNGA ongoing work on oceans**

- Regular Process for Global Reporting and Assessment of the State of the Marine Environment, consultations on occasion of the ICP, etc.

### **UNGA annual resolutions**

- Enhanced cooperation between RSCs and RFMOs (see para 145 of resolution A/RES/70/75 on sustainable fisheries encouraging RFMOs to strengthen integration, coordination and with RSCs)

# Thank you - Merci

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