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CONCEPT NOTE FOR A STUDY ON LEGAL AND INSTITUTIONAL ISSUES RELATED TO THE SETTING UP AND MANAGEMENT OF SPAMIS LOCATED WHOLLY OR PARTIALLY IN MEDITERRANEAN AREAS BEYOND NATIONAL JURISDICTION

I. Context

The creation of SPAMIs in areas beyond national jurisdiction (ABNJ) aims at protecting new kinds of habitats as well as enhancing cooperation via protecting and managing resources. The MAP programmes of work 2010-2011 and 2010-2014 has highlighted as a priority the identification of potential SPAMIs and their establishment in sites identified as of conservation interest in ABNJ. UNEP/MAP work will also contribute to the work carried out under UNEP for the development of a representative network of MPAs, and will permit governance to be improved for the conservation and valorization of marine biodiversity, thus enhancing the implementing of the Barcelona Convention Protocol on Specially Protected Areas and Biological Diversity in the Mediterranean and other regional and global legal instruments as appropriate.

II. Rationale and aims

Establishment and management of SPAMIs is a real challenge, in particular if they are situated partly or wholly in areas beyond jurisdiction.

As such, at its last Meeting held in Rabat (Morocco, 5-6 May 2010), the Bureau of the Contracting Parties to the Barcelona Convention and its Protocols highlighted the need to develop "an appropriate approach based on the relevant international frame on issues related to the necessary institutional legal setups with regard to the management of SPAMIs beyond national jurisdiction as well as the necessary linkages with the other UN relevant processes and agencies for this purpose".

As a follow-up to the Bureau recommendation, the RAC SPA has prepared the present concept note for discussion by the Extraordinary Meeting of RAC SPA Focal Points with a view to proposing and agreeing on undertaking a study on the basis of which the approach should be developed.

The proposed study will be analysing the legal rules contained in the various international and regional conventions and regimes concerned with setting up and management of Marine Protected Areas beyond national jurisdiction, as well as the rules that aim to protect marine biodiversity on the high seas and that can be applied to the Mediterranean Sea. Subsequent developments will be devoted to the various actors for implementing the rules that apply to areas beyond national jurisdiction in order to help towards better governance of the Mediterranean.

The study will review the international and regional legal frameworks that are of relevance for the setting up and management of SPAMIs in areas beyond national jurisdiction with the view to identifying and making proposals for ensuring best use of existing legal and institutional mechanisms, as appropriate and best synergies.

III. Working methodology

The suggested methodology for this work will reflect the following elements:

1. Listing the legal provisions in the various international and regional conventions on Marine Protected Areas (MPAs) beyond national jurisdiction and that apply to the Mediterranean Sea, plus the provisions that can help protect biological diversity in the high seas. A preliminary work has been already carried out by RAC SPA in this direction.
2. Making a comparative analysis of the various provisions that deal with issues related to MPAs in the high seas, such as protection of biodiversity, fishing, pollution, marine scientific research (in the form of a table that shows the various provisions specific to each aspect) with a view to demonstrating their added value and identify any possibilities for interaction, as appropriate. It will also include the analysis of the institutional framework for managing Marine Protected Areas in the high seas and the various actors in this process
3. Development of an appropriate approach concerning the necessary institutional and legal setups with regard to the establishment and management of SPAMIs beyond national jurisdiction

1- *First stage: listing the legal provisions dealing with MPAs in the high seas*

A glance at global international legal instruments (hard and soft law) would enable to see that there is no international legal framework that is specific to Marine Protected Areas and that could as a result apply to the areas beyond national jurisdiction. The absence of any specific framework would lead to list all the legal provisions concerned with the protection of biological diversity in areas beyond national jurisdiction, or that help protect and preserve it.

Analysis of the regional framework specific to the Mediterranean appears more appropriate to the Mediterranean context because of the existence of legal tools that are specific to Marine Protected Areas – the Protocol on Specially Protected Areas and Biological Diversity in the Mediterranean. Other legal instruments such as ACCOBAMS Agreement (Agreement on the Conservation of Cetaceans of the Black Sea, the Mediterranean and the Contiguous Atlantic Area), the General Fisheries Commission for the Mediterranean (GFCM) regulations concerning fishing restriction areas help conserve species in the high seas.

The entire Barcelona Convention system will be also analysed along with each of its Protocols to grasp the interconnection between the provisions deriving from each Protocol which could be used for the purpose of establishing and managing SPAMIs in areas beyond national jurisdiction. The following Protocols will be analysed consecutively: the *Protocol for the Protection of the Mediterranean Sea Against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Sea-bed and its Sub-soil*, the *Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft* as amended in 1995, the *Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea* adopted in 2002.

Each stage will appear as a detailed report, presenting the various conventions and their application in the high seas plus annexes containing lists of the ratification of each agreement or convention by the Mediterranean states.

2- Second stage: analysis of the provisions regarding MPAs in the open sea

The second stage consists of an analysis of the various provisions listed in the first stage according to the degree of their application in the high seas. Alongside the more general provisions appear others that are specific to the Mediterranean.

They will be classified according to whether the regulations apply to natural biological resources or to a type of activity (fishing or navigation); in this respect, we can make a distinction between:

- legal instruments concerning the protection of marine biodiversity in the high seas;
- legal instruments concerning the protection of the marine environment against pollution in the high seas;
- legal instruments concerning fishing.

3- Third stage: development of an appropriate approach concerning the necessary institutional and legal setups with regard to the establishment and management of SPAMIs beyond national jurisdiction.

Based on the results and outcomes of the first and second stages, the Coordinating Unit and the RAC/SPA, in consultation with the Bureau of the Contracting Parties will elaborate a draft approach concerning the institutional and legal setups required for the establishment and management of SPAMIs in ABNJ. The draft approach will also include the necessary linkages with the other UN relevant processes and agencies. The draft approach will be first reviewed by the Tenth Meeting of NFPs for SPA, submitted to MAP focal points meeting and the Contracting Parties meeting in 2011.

The Extraordinary meeting of NFPs of SPAs (Istanbul, 1 June 2010) will be invited to review the proposed Concept Note and provide its guidance as appropriate.