

Current Legal Developments Spain



Spain and Marine Protected Areas: Recent Developments

Mariano J. Aznar

Professor of Public International Law, Dept. of Public Law, University Jaume I,
Castellón, Spain

maznar@uji.es

Abstract

Spain has just declared a new marine protected area in the Mediterranean. This follows a protective trend taken by Spanish authorities during the last decades and has permitted Spain to honour its international compromises under the Convention on Biological Diversity. It contributes to a framework of protected areas established under conventional regimes such as OSPAR, RAMSAR or EU Natura 2000. The new area protects a ‘cetacean corridor’ and will be inscribed in the list of Specially Protected Areas of Mediterranean Importance under the Barcelona Convention regional framework.

Keywords

Spain – marine protected areas (MPAs) – marine environment – Specially Protected Areas of Mediterranean Importance

Introduction

On 29 June 2018, Spain formally declared its most recent marine protected area (MPA) aiming to preserve the secular migration routes of cetaceans in the

0

1X

north-western part of the Mediterranean.¹ This decision follows a clear pattern in Spanish practice of trying to protect the particularly rich but threatened marine spaces surrounding Spain's territory. This extends to almost 6,000 km of coast shared between the Atlantic Ocean, the Mediterranean Sea, and two archipelagos (Balearic and Canary Islands, with two completely different ecosystems), and provides a *carrefour* for marine species and wild birds in their migratory patterns between Europe and Africa.

This note provides some details about recent Spanish practice on MPAs within international (both universal and regional), European Union (EU), and domestic legal frameworks. After identifying the main applicable rules, it notes the main features and significance of the recently declared protected area.

12

13

14

Legal Framework and Previous Practice

15

Spain is party to the main international agreements governing MPAs. As a member of the EU, it abides by its primary and secondary rules, all of them implemented at a domestic level along with self-promulgated rules by the Spanish Parliament. These instruments form an interconnected, multi-layered system. Along with several domestic administrative decisions, these create an organized network under the authority of two national agencies: the new Ministry on Ecological Transition (as established in 2018) and the Ministry of Agriculture, Fisheries and Food. The different legal instruments are as follows:

- 1) Under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO), two kinds of actions have been adopted. First, there is the declaration of two Biosphere Reserves under

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40X

41

42

43

¹ This article has been written within the R+D Project funded by Universitat Jaume I "Intereses de España y de la UE en el ámbito marítimo" (R + D Project UJI-B2017-71). Spanish cited legislation may be retrieved from the *Boletín Oficial del Estado* (BOE) at <<https://www.boe.es>>. All websites were last accessed 10 July 2018. See the information in Spanish at <<http://www.mapama.gob.es/en/prensa/ultimas-noticias/el-corredor-de-migración-de-cetáceos-del-mediterráneo-declarado-área-marina-protégida/tcm:38-455902>>. This article uses a broad definition of MPA as given by IUCN: 'A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values'. Domestic Spanish law defines MPA as 'designated natural spaces for the protection of ecosystems, communities or biological or geological elements of the marine environment, including the intertidal and subtidal areas, which due to their rarity, fragility, importance or uniqueness, deserve special protection'. Art. 33(1) of Law 42/2007, 13 December 2007, on Natural Heritage and Biodiversity (BOE No. 299, 14 December 2007).

- the UNESCO MaB programme:² the first protecting the entire Minorca Island in the Mediterranean and the second protecting the majority of the Canary Islands in the Atlantic, along with their respective coastal zones.³ The second action is the listing of Ibiza and its coastal zone as a mixed (natural and cultural) site with its coastal zone,⁴ under the World Heritage Convention⁵ lists of World Heritage sites.
- 2) Under the RAMSAR Convention,⁶ Spain has identified 28 coastal wetlands that include marine waters.⁷
 - 3) Under the OSPAR Convention (as amended),⁸ which is applicable to the Spanish Atlantic coastline down to the Strait of Gibraltar, Spain has declared 15 MPAS, covering 8,311 km² of territorial sea and 19,076 km² of the exclusive economic zone (EEZ).⁹
 - 4) Under the Barcelona Convention,¹⁰ which established the Mediterranean Action Plan (MAP) as a regional implementation of the Convention on Biological Diversity (CBD),¹¹ and its Protocol concerning Specially
-
- 2 See its basic information at <<http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/man-and-biosphere-programme>>.
 - 3 More information at <<http://rerb.oapn.es>>.
 - 4 See more information at <<http://whc.unesco.org/en/list/417>>.
 - 5 Convention for the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972, in force 17 December 1975) 1037 *UNTS* 151.
 - 6 Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 2 February 1971, in force 21 December 1975) 996 *UNTS* 245.
 - 7 See more information at <https://rsis.ramsar.org/ris-search/?f%5B%5D=regionCountry_en_ss%3ASpain&f%5B%5D=wetlandTypes_en_ss%3AMarine%20or%20coastal%20wetlands&pagetab=1>.
 - 8 Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, 22 September 1992, in force 25 March 1998) 2354 *UNTS* 67, consolidated text at <https://www.ospar.org/site/assets/files/1290/ospar_convention_e_updated_text_in_2007_no_revs.pdf>).
 - 9 See the 2016 Status Report on the OSPAR Network of Marine Protected Areas, available at <<https://www.ospar.org/documents?v=37521>>.
 - 10 Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona, 10 June 1995, in force 9 July 2004, text available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/7096/Consolidated_BC95_Eng.pdf?sequence=1&isAllowed=y>). This Convention replaces the previous Convention for the Protection of the Mediterranean against Pollution (adopted 16 February 1976, entered into force 12 February 1978) 1102 *UNTS* 27.
 - 11 Convention on Biological Diversity (Rio de Janeiro, 5 June 1992, in force 29 December 1993) 1760 *UNTS* 79, *BOE* no. 27, 1 February 1994.

-IX
0
IX
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40X
41
42
43

Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol),¹² Spain has declared 9 SPAMIs,¹³ covering around 2,800 km².
5) Under the EU Natura 2000 Network,¹⁴ which is based on the Habitats Directive¹⁵ and the Birds Directive,¹⁶ Spain has designated 19 Sites of Community Importance (SIC), 28 Special Areas of Conservation (SAC) and 48 Special Protection Areas (SPA).¹⁷
6) Finally, under the Spanish Law on National Parks,¹⁸ three coastal/maritime parks have been declared (Doñana in Andalusia, Atlantic Islands of Galicia and the Cabrera Archipelago in the Balearic Islands). One maritime park is to be declared in the near future (protecting pelagic routes and endemic species in the *Mar de las Calmas*, southwest of El Hierro, a Canary island).

12 Adopted 10 June 1995, entered into force 12 December 1999, 2102 UNTS 203. This Protocol distinguishes between that SPAM and the ‘Specially Protected Areas of Mediterranean Importance’ (SPAMI) to be included in a “List”. Both try to safeguard ‘[r]epresentative ecosystems of adequate size to ensure their long-term viability and to maintain their biological diversity; habitats which are in danger of disappearing in their natural area of distribution in the Mediterranean or which have a reduced natural area of distribution as a consequence of their regression or on account of their intrinsically restricted area; [and/or] habitats critical to the survival, reproduction and recovery of endangered, threatened or endemic species of flora or fauna [...]’ (Art. 4(a–c)) or sites which ‘are of importance for conserving the components of biological diversity in the Mediterranean’ or which ‘contain ecosystems specific to the Mediterranean area or the habitats of endangered species’ (Art. 8(2)), respectively. The main three differences between them are: (a) the special international recognition of the SPAMI, (b) the possibility under Article 9 to establish a SPAMI in the high seas, and (c) the specific procedure foreseen for SPAMI in contrast with the discretionary power each State has to establish a SPA in its waters.

13 These are the Alboran Island, the Natural Park of Cabo de Gata-Níjar, the Sea Bottom of the Levante of Almería, the Maro-Cerro Gordo Cliffs, the Natural Park of Cap de Creus, the Medes Islands, the Mar Menor and Oriental Mediterranean zone of the Region of Murcia coast, the Columbretes Islands and the Archipelago of Cabrera National Park.

14 More information at <http://ec.europa.eu/environment/nature/natura2000/index_en.htm>.

15 EU Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (*Official Journal* L 206, 22 July 1992).

16 EU Council Directive 2009/147/CE of 30 November 2009 on the conservation of wild birds (*Official Journal* L 20, 26 January 2010).

17 More information at <<http://www.mapama.gob.es/en/costas/temas/proteccion-medio-marino/biodiversidad-marina/espacios-marinos-prottegidos/default.aspx>>.

18 Law 30/2014, 3 December, on National Parks (*BOE* no. 293, 4 December 2014).

The system of MPAS overlaps, so the same marine area may be at the same time governed by different rules.¹⁹ This is why Spain decided to create a coherent and integrated management system in 2011: the Network of Marine Protected Areas of Spain (*Red de Áreas Marinas Protegidas de España*, RAMPE).²⁰ This is a legally binding coordination mechanism, which sets forth governing rules and criteria for organizing the system of MPAS according to several criteria: representativeness, uniqueness or rarity, importance for threatened habitats or species, non-human perturbation, vulnerability, fragility, sensitivity, slow recovery of their habitats or species, level of resilience, contribution to connectivity among habitats and species, importance for the biological cycle, and its biological productivity.²¹

The New 'Cetacean Corridor' MPA

In line with the Government intention to complete Spain's MPA list, on 29 June 2018 Spain decided to declare a new, wide protected area covering the north-western part of the Mediterranean between the coasts of Catalonia, Valencian Community and Balearic Islands, as can be seen in Fig. 1.²² The legal basis of this decision is to be found not only in Spanish domestic legislation,²³ but also in an international agreement: namely Article 11(3)(c) and Article 3 of Annex 2 of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (ACCOBAMS).²⁴

¹⁹ Furthermore, in some cases, protected areas are more *coastal* than *marine*, properly speaking, although its protective regime expands to sea and ocean waters regardless.

²⁰ Created by Law 42/2007 (*supra* n. 3), developed by Law 41/2010, 29 December 2010, of protection of the marine environment (*BOE* no. 317, 30 December 2010) and by Royal Decree 1599/2011, 4 November 2011, establishing the criteria for integration of the marine protected areas with the Network of Marine Protected Areas of Spain (*BOE* no. 294, 7 December 2011).

²¹ Art 5(1) Royal Decree 1599/2011.

²² Royal Decree 699/2018, 29 June 2018, declaring the Mediterranean Marine Cetacean Migration Corridor a Protected Marine Area, approving a preventive protection regime and proposing its inclusion in the List of Specially Protected Areas of Importance for the Mediterranean (SPAMI List) under the Convention from Barcelona (*BOE* no. 158, 30 June 2018).

²³ Art. 33 of Law 42/2007; and Art. 27(1) of Law 41/2010.

²⁴ Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (Monaco, 23 November 1996, in force 1 June 2001) 2183 *UNTS* 303. Art. 11(3)(c) says: '[...] Parties shall apply, within the limits of their sovereignty and/or jurisdiction and in accordance with their international obligations, the conservation, research and management measures prescribed in Annex 2 to this Agreement, which shall

-IX
0
IX
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40X
41
42
43



FIGURE 1

The creation of this area, nicknamed ‘Cetaceans Corridor’, has a threefold purpose. First, it will facilitate the protection of some endangered species through the creation of a marine corridor vital for the survival of cetaceans in the Western Mediterranean.²⁵ This corridor is a continuous strip of marine

address the following matters: habitat protection’. Art. 3 of this Annex says: ‘Parties shall endeavour to establish and manage specially protected areas for cetaceans corresponding to the areas which serve as habitats of cetaceans and/or which provide important food resources for them. Such specially protected areas should be established within the framework of the Regional Seas Conventions (OSPAR, Barcelona and Bucharest Conventions), or within the framework of other appropriate instruments’.

25 The species particularly protected are cetaceans with migratory patterns, like the common rorqual or finback (*Balaenoptera physalus*), and without these patterns like the bottle-nosed dolphins (*Tursiops truncatus*), the striped dolphins (*Stenella coeruleoalba*), the common dolphin (*Delphinus delphis*), the long-finned pilot whale (*Globicephala melas*), the grey dolphin (*Grampus griseus*), the sperm whale (*Physeter macrocephalus*) and the Cuvier’s beaked whale (*Ziphius cavirostris*), as well as the loggerhead turtle (*Caretta caretta*), some types of sharks and marine birds. All these species were previously catalogued as endangered species within the Spanish Catalogue of Endangered Species, regulated by Royal Decree 139/2011, of 4 February, for the development of the List of Wild Species in Special Protection Regime and the Spanish Catalog of Endangered Species (BOE no. 46, 23 February 2011). They are also included within the list of endangered or threatened species as provided by the Annex II to the SPA/BD Protocol and, in the case of cetaceans, in Annex 2 of ACCOBAMS.

waters extending to 46,385 km², averaging 85 km in width, and including its soil, subsoil and natural resources. It is a hot spot of global biodiversity. The main purpose of the MPA is to protect the rich diversity of species of cetaceans and sea turtles that use the area as a migratory passage to their breeding and feeding areas in the north of the Mediterranean. It also aims to protect these and other important species from the adverse effects that are associated with submarine noise.

Second, it establishes a new preventive protection regime for the area in order to ensure that there is no decline in the conservation status of marine fauna, including the prohibition on using active systems for underground geological research, by means of probes, compressed air, controlled explosions, or underground drilling. It also prohibits any type of extractive hydrocarbon activity, except those related to research or exploitation permits in force.²⁶

Finally, it proposes the 'Cetaceans Corridor' as a new SPAMI under the 1995 SPA/BD Protocol to the Barcelona Convention and, accordingly, to approve a management plan.²⁷ Under Article 9 of this Protocol, the proposal for inclusion in the List of SPAMIs is submitted by the Party concerned if the area is situated in a zone that is delimited and over which it exercises sovereignty or jurisdiction. However, jurisdiction over part of the declared area is still under discussion between Spain and France.²⁸

²⁶ This area contained a previous fracking gas project with off-shore platform, approved by the Socialist Government in 2008 and abandoned in 2017, not without a bitter social and scientific contestation still active against the aftermath of the project and its financial consequences. See a factsheet by the Spanish Government at <<http://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2017/20170504-castor.aspx>> and more information at <<http://thecorner.eu/spain-economy/the-castor-project-spaniards-are-paying-for-the-failure-of-this-gas-storage-installation/69669/>>.

²⁷ The area proposed for inclusion in the SPAMI List corresponds to that same area but with the exception of the marine area of the SPAMI of the Columbretes Islands, which already enjoys that figure of protection.

²⁸ The northern part of the MPA approximates to the area between Spain and France where the limits of national sovereignty or jurisdiction have not yet been defined (see figure 1). In 1997, Spain deposited with the UN Secretary-General a list of geographical coordinates of points for the drawing of the limits of its Fisheries Protection Zone in the Mediterranean Sea under Royal Decree 1315/1997, 1st August 1997 (see *Law of the Sea Bulletin* No. 37, at 80), which was protested by France in 1988 (see *Law of the Sea Bulletin* No. 38, at 54). In 2003, France adopted a similar zone – called 'Ecological Protection Zone' and with similarities to the previous Spanish declared fisheries protection zone – and in 2012 it established the French EEZ in the Mediterranean. Both decisions were protested by Spain (see its protestation about the latter in its *Note verbale* No. 31661 of 23 October 2012, at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn94_2013_esp_e.pdf>), which also declared an EEZ in that zone by Royal Decree 236/2013, of April 5, establishing the

0

IX

It is expected that Spain will provide the Regional Activity Center for Specially Protected Areas (RAC/SPA) established under the Barcelona Convention with all the information, including the area’s geographical location, its physical and ecological characteristics, its legal status, its management plans and the means for their implementation, as well as a statement justifying its Mediterranean importance.

7

8

9

Conclusion

10

In October 2010, the tenth meeting of the Conference of the Parties of the CBD, held at Aichi, Japan, adopted a revised and updated Strategic Plan for Biodiversity for the 2011–2020 period.²⁹ It included the so-called Aichi Biodiversity Targets. Target No. 11 expressly states that

11

12

13

14

15

[b]y 2020, at least 17 per cent of terrestrial and inland water areas, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.

16

17

18

19

20

21

22

23

Following its recent decision, Spain has extended that coverage of protected areas to approximately 13% of its marine spaces, thus honouring the compromise adopted under Aichi Target No. 11 before the deadline. Spain’s other national targets include a range of more demanding actions, which remain to be evaluated. These commitments include: knowing the state of conservation

24

25

26

27

28

29

Exclusive Economic Zone of Spain in the North-Western Mediterranean (*BOE* no. 92, 17 April 2013). The conflicting point between the two states in the north-western corner of the Mediterranean still is which criterion to use for delimiting their respective EEZ: an agreement based on equidistance, defended by Spain but geographically disadvantageous for France, which prefers to advance a solution based on an agreement achieving an equitable solution. See on these questions T Scovazzi, ‘The Mediterranean and Black Sea Maritime Boundaries’, in DA Colson and RW Smith (eds.), *International Maritime Boundaries* (Brill, Leiden, 2014) 321–328 [doi: 10.1163/IMBO-Book-8_1]; and JM de Fariñán Gilbert and VL Gutiérrez Castillo, ‘Una nueva zona jurisdiccional en el mediterráneo: la zona de protección ecológica francesa’ (2004) 8 *Revista Electrónica de Estudios Internacionales* (available online at <<http://www.reei.org/index.php/revista/num8/notas/una-nueva-zona-jurisdiccional-mediterraneo-zona-proteccion-ecologica-francesa>>).

30

31

32

33

34

35

36

37

38

39

²⁹ COP 10 Decision X/2, available at <<https://www.cbd.int/decision/cop/?id=12268>>.

40X

41

42

43

of marine biodiversity in Spanish waters; establishing monitoring programs for marine biodiversity; establishing integrated planning for the marine environment so as to reduce the impact of human activities on biodiversity; establishing Marine Protected Areas and Natura 2000 areas in the marine environment and ensuring their consistent management; providing for the protection of marine habitats and species; and protecting and preserving the public maritime-terrestrial domain.³⁰ Spain's main challenge remains ensuring a consistent, coherent and long-standing policy to address current and future threats to the preservation of the marine areas surrounding (but closely interacting with) Spain's continental and insular land spaces.

³⁰ See the different national targets at <https://www.cbd.int/nbsap/targets/default.shtml>.