



# Book - Unit 9 - Regional Sea Agreements

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Course: Introductory Course to the International Legal Framework on Marine Biodiversity

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# 1. Introduction

The UNEP Regional Seas Programme (RSP) was established 1974 to address the accelerating degradation of the world's oceans and coastal areas through the sustainable management and use of the marine and coastal environment, by engaging neighbouring countries in comprehensive and specific actions to protect their shared marine environment.

Type of regional seas	Main feature	Regions concerned
<b>UNEP administered Regional Seas</b>	Secretariat, administration of the Trust Fund and financial and administrative services provided by UNEP.	East Asian Seas Mediterranean North-West Pacific Western, Central and Southern Africa Western Indian Ocean Wider Caribbean
<b>Associated Regional Seas</b>	Secretariat not provided by UNEP. Financial and budgetary services managed by the programme itself or hosting regional organisations. UNEP support was or is provided.	Black Sea North-East Pacific Pacific Red Sea and Gulf of Aden ROPME Sea South Asian Seas South-East Pacific
<b>Independent Regional Seas</b>	Regional framework not established under the auspices of UNEP. Invited to participate in regional seas coordination activities of UNEP through the global meetings of the Regional Seas.	Antarctic* Arctic Baltic Sea North-East Atlantic Caspian Sea

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\*CCAMLR is considered both a regional sea programme and a RFBs

Source: White Paper on Regional Ocean Governance, UNEP 2014

## Global Action Plans

Each of the UNEP regional seas programmes adopted a Global Action Plan to cooperate and address the degradation of their marine and coastal environments. All regions, except East Asian Seas, North-West Pacific and South Asian Seas regions, have adopted a framework conventions and protocols, which are legally-binding instruments, to support the parties in the achievement of their common objective.

Most of these agreements have provisions that relate more specifically to the protection and preservation of marine biodiversity and Parties have often adopted Protocols detailing obligations and measures to be taken for the conservation of marine living resources. Some of these are briefly discussed below for illustrative purposes.

## 2. Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)

The Convention for the Protection of the Marine Environment of the North-East Atlantic (“OSPAR Convention”), adopted on 22 September 1992, entered into force on 25 March 1998 and replaced the Oslo Convention of 1972 and the Paris Convention of 1974.

The OSPAR Convention consists of a Preamble, 34 Articles, five Annexes and three Appendices. Annexes I-III deal with pollution from various sources, Annex IV deals with the assessment of the quality of the marine environment and, most relevant for our purpose, Annex V concerns ‘the protection and conservation of the ecosystems and biological diversity of the maritime area,’ while Appendix 3 contains ‘criteria for identifying human activities for the purpose of Annex V.’ Annex V and Appendix 3 were adopted in 1998, and entered into force on 30 August 2000.

The Contracting Parties to the OSPAR Convention comprise of Belgium, Denmark, Germany, Finland, France, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland the United Kingdom and the European Commission, representing the European Union.

## Objective and geographical scope

The OSPAR Convention covers most of the North-East Atlantic and its adjacent seas (Article 1.a). This is a vast area of about 13.5 million km<sup>2</sup> which includes a diverse range of environmental conditions and different ecosystems.

OSPAR Contracting Parties are committed to taking all possible steps to prevent and eliminate pollution and taking the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected (Article 2.a).

## Strategy on Biological Diversity

The OSPAR Commission is, among other things, responsible for adopting such programmes and measures, gathering the relevant data on the impacts of human activities on ecosystems and biodiversity and implementing an ecosystem approach. The Strategy of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic 2010–2020 provides the OSPAR Commission further guidance on these tasks and sets actions. Presently, these tasks are mainly carried out by the Biodiversity Committee (BDC) in combination with the Environmental Impacts of Human Activities Committee (EIHA). The thematic Strategy on Biological Diversity and Ecosystems has four elements:

1. Species and habitats: assessments and development of measures to protect and conserve species and habitats included on the OSPAR List of Threatened and/or Declining Species and Habitats;
2. Marine protected areas: identification, establishment and management of an ecologically coherent, well managed OSPAR network of marine protected areas, including areas that occur beyond national jurisdiction;
3. Human activities: assessment and development of measures to mitigate pressure or harm of human activities on the marine environment;
4. Biodiversity monitoring and assessment: development and implementation of a set of biodiversity indicators to be applied at a regional or sub regional scale. This builds upon the experience gained from the pilot development and application of ecological quality objectives in the North Sea

## The OSPAR Commission

The OSPAR Commission manages the OSPAR Convention by facilitating cooperation between Contracting Parties to meet this core objective.

As article 4 of Annex V states, where the OSPAR Commission considers that action is desirable in relation to the management of fisheries or maritime transport, the OSPAR Commission shall draw that question to the attention of the authority or international body competent for that question. Where the OSPAR Commission has, for instance, through Quality Status Reports (“QSRs”) drawn up pursuant to Annex IV, identified threats posed by these activities to marine ecosystems and marine biodiversity, it can commit its own Contracting Parties to address these threats, but otherwise needs to bring them to the attention of the international and regional agreements dealing specifically with such questions. The 2010 QSR highlighted that despite efforts made to improve management, fishing pressure continues to have a considerable impact on marine ecosystems and many problems remain.

Annex V builds on the general obligation in article 2(a) of the OSPAR Convention to protect and conserve the ecosystems and the biological diversity in the OSPAR maritime area. It provides also a solid basis for implementing the 1992 Convention on Biological Diversity (CBD) and its Jakarta Mandate at the regional level. OSPAR Contracting parties are required, inter alia, to take the necessary measures in this regard to restore adversely affected marine areas and cooperate in adopting programmes and measures for the control of the human activities identified by the application of the criteria in Appendix 3.

### 3. Protocol concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region (SPAW Protocol) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention)

The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (“Cartagena Convention”), establishes a broadly oriented framework for cooperation on the protection and development of the marine environment of the Wider Caribbean Region. The Preamble to the Cartagena Convention identifies “the protection of the ecosystems of the marine environment of the wider Caribbean region” as one of its principal objectives and recognizes the need to strive for sustainable development.

In furtherance of these objectives, article 10 requires parties to “individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species, in the Convention area.” This wording is clearly inspired by article 194(5) of UNCLOS. Article 10 of the Cartagena Convention complements these provisions by stating, “To this end, the Contracting Parties shall endeavour to establish protected areas.” However, the activities that would need to be regulated in these protected areas are not indicated. Although the primary focus of the Cartagena Convention is pollution, nothing in the Convention prevents the parties from imposing restrictions on harvesting of marine living resources in these protected areas.

Evidence of a focus that is broader than pollution is the Protocol concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region (“SPAW Protocol”). The SPAW Protocol was adopted on 18 January 1990, and entered into force on 18 June 2000. While article 3(1) of the SPAW Protocol essentially repeats the obligation articulated under article 10 of the Cartagena Convention, article 5(2) contains a long list of activities that should, where appropriate, be regulated. This list includes vessel-source pollution, dumping, navigation, fishing, introducing non- indigenous species, tourism, and “any other measure aimed at conserving, protecting or restoring natural processes, ecosystems or populations for which the protected areas were established.”

## 4. The Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea Against Pollution

It was adopted in June 2002 and entered into force in June 2011 with the purpose to maintain the Black Sea ecosystem, including wetlands, in the good ecological state and its landscape in the favourable conditions, to protect, to preserve and to sustainably manage the biological and landscape diversity of the Black Sea in order to enrich the biological resources. It is intended to serve as a legal instrument for developing, harmonising and enforcing necessary environmental policies, strategies and measures in preserving, protecting and sustainably managing nature, historical, cultural and aesthetic resources and heritage of the Black Sea states for present and future generations.

The Protocol lists measures to be adopted by the Parties identify threaten species and ecosystems and to restore and rehabilitate, protect and manage areas of particular biological or landscape value and details a procedure in Annex 1 for the establishment of protected areas. It pays especial attention to the introduction of alien invasive species and reminds Parties of the obligation of undertake an Environmental Impact Assessment prior to the approval of projects and activities that could significantly affect species and their habitats, protected areas, particularly sensitive marine areas, and landscapes in accordance with the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context.

## 5. Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA and Biodiversity Protocol) to the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention)

The Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean adopted in 1995 and entered into force in 1999 replaced the Protocol concerning Mediterranean Specially Protected Areas, which had been adopted in 1982 and entered into force in 1986. The Annexes to the Protocol were adopted in 1996, while Annexes II and III were amended in 1999.

The Protocol sets principles, measures and concrete and coordinated actions at the national, and regional levels for the conservation of the Mediterranean marine and coastal biodiversity and its implementation is guided by the Strategic Action Plan for the conservation of marine and coastal biodiversity in the Mediterranean (SAP BIO) adopted by the Contracting Parties in 2003. The SAP BIO recommends practices for the sustainable use of the Mediterranean Sea such as promoting sector-based policies, procedures and techniques, particularly in the fishing, tourism, agriculture and forestry sectors, strengthening international cooperation while encouraging public participation and increasing its awareness about maintaining biodiversity.

The Specially Protected Areas Regional Activity Centre (SPA/RAC) based in Tunis, Tunisia provides assistance to Mediterranean countries in the implementation of their commitments under the SPA/BD Protocol, especially in regard to developing and promoting Specially Protected Areas (SPAs) and reducing the loss of marine and coastal biodiversity.

## 6. Protocol concerning the conservation of biological diversity and the establishment of network of protected areas in the Red Sea and Gulf of Aden

The Protocol concerning the conservation of biological diversity and the establishment of network of protected areas in the Red Sea and Gulf of Aden was adopted in 2005 and it is not yet in force.

Its objectives are the conservation, protection and restoration of the health and integrity of the ecosystems and biological diversity in the PERSGA region and the safeguard of threatened species, critical habitats, sites of particular importance, as well as representative types of coastal and marine ecosystems, their biodiversity and their sustainable use and management, to ensure long-term viability and diversity.

The Protocol recommends Parties to take national and regional measures to protect, conserve and manage their natural biological diversity with particular emphasis on threatened species and areas that are unique, highly sensitive or regionally representative. It notably stresses the establishment of protected areas and other sea-uses management tools such as integrated coastal zone management and environmental impact assessment.

Unlike other Regional Seas Agreement, the Protocol specifically addresses fisheries. Contracting Parties shall endeavour to maintain sustainable fisheries and sustainable populations of other harvested species, inter alia, by adopting as appropriate regional and national fisheries policies and plans, protecting critical life cycle stages of key fishery species including shrimps, and safeguarding the habitats of threatened species and species of economic/cultural importance, including limiting the impacts of human activities to these species and pursuing regional conservation actions for migratory species.

Lastly, the Protocol mirrors the CBD by addressing not only conservation and sustainable use of biological diversity but also access to genetic resources. Article 18 contains the main obligation of the CBD in regards to ABS, such as prior informed consent and mutually agreed terms. Nonetheless, it is worthy highlighting that there is no explicit mention of the sharing of benefit arising for the utilization of genetic resources.

## 7. Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention)

The Nairobi Convention was adopted in June 1985 and entered into force in May 1996. It was amended in March 2010 and renamed Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean, when it will be in force, the Amended Nairobi Convention will replace the original convention (Article 22).

The Protocol was adopted in June 1985 and entered into force in May 1996 urges Contracting Parties to take the appropriate measures to “maintain essential ecological processes and life support systems, to preserve genetic diversity, and to ensure the sustainable utilization of harvested natural resources under their jurisdiction”.

The Protocol envisages the possibility of establishing marine protected areas in areas within national jurisdiction and regulating fisheries. It lists in its four Annexes wild fauna and flora of ecological importance in the Convention area. Annex II comprises endangered fauna species that the Contracting Parties should strictly safeguard from any adverse impact.