

Faculty of Law

Towards the CMS Agreement Concerning Conservation of Sea Turtles of the Mediterranean

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Table of Contents

Abbreviations.....	iv
1. Chapter I – Introduction	1
1.1. Introduction	1
1.1.2. Current conservation status.....	2
1.1.3. Sea turtles, why care?	2
1.1.3. Sea turtles in the Mediterranean – the legal perspective.....	3
1.2. The objective of the thesis	4
1.3. Legal sources and method	5
1.4. Structure of the thesis	5
2. Chapter II - What makes sea turtle endangered?	7
2.1. Introduction	7
2.2. Direct take for consumption and trade	8
2.3. Collision with boats.....	8
2.4. Incidental capture (bycatch)	8
2.5. Nesting sites destruction.....	9
2.6. Marine habitat destruction - mainly pollution	9
3. Chapter III - Overview of the current international regulatory instruments	11
3.1. Introduction	11
3.2. Global Environmental Agreements	11
3.2.1. LOSC	11
3.2.2. CITES	16
3.2.3. CBD	17
3.2.4. CMS	18

3.3. Regional Environmental Agreements.....	19
3.3.1. The Bern Convention.....	19
3.3.2. The Barcelona Convention and the SPA/BD Protocol	20
3.3.3. The African Convention	21
3.4. Fisheries management and conservation instrument	22
3.4.1. FAO Code of Conduct for Responsible Fishing	22
3.4.2. FAO Compliance Agreement	22
3.4.3. GFMC	23
3.4.4. ICCAT.....	23
3.5. EU supranational measures	24
3.5.1. The Habitats Directive	24
4. Chapter IV – Gaps of the current legal framework, and need for a new instrument .	27
4.1. Identified gaps	27
4.1.1. Fragmentation and blurriness of the current international legal framework.....	27
4.1.2. Separation and lack of coordination among conservational and fisheries regulations	27
4.1.3. Lack of enforcement	28
4.1.4. Lack of inter-governmental communication.....	28
4.2. Acknowledgement of a need for new instrument	28
4.3. Prospects for initiative of the Mediterranean States to conclude the MST Agreement	30
4.3.1. The IAC example	30
4.3.2. MST conservation chance – sea turtles based tourism	31
4.3.3. Conclusion	32
5. Chapter V – CMS: the right tool for sea turtles conservation.....	34
5.1. Overview of the CMS.....	34
5.1.1. Appendix I species and direct conservation obligation	34

5.1.2. Appendix II species and Agreements	35
5.1.3. MOUs.....	36
5.1.4. Action Plans	37
5.2. CMS special attention towards sea turtles	37
5.2.1. Atlantic Turtles MOU	37
5.2.2. IOSEA MOU	38
5.2.3. Special actions	39
6. Chapter VI - The development of the MST Agreement under the CMS framework..	41
6.1. Proposal for MST Agreement - waiting for CMS approval: Future Plan Concept and Criteria for new Agreements:	41
6.2. Conservation priority of sea turtles	42
6.3. Serving a specific existing COP mandate.....	43
6.4. Clear and specific defined purpose.....	43
6.5. Absence of better remedies outside the CMS system.....	44
6.5.1. Self-standing legally binding treaty	45
6.5.2. World Heritage Species concept	45
6.5.3. FAO IPOA - Sea Turtles.....	46
6.5.4. Barcelona Protocol framework: SPAMIs and Revised Action Plan.....	47
6.6. Absence of better remedies inside the CMS system.....	50
6.7. Extending an existing agreement?.....	52
6.7.1. Geographic extension of Sea Turtle MOUs.....	52
6.7.2. Taxonomic extension of ACCOBAMS	53
6.8. Arrangements for monitoring, evaluation and reporting of implementation.....	54
7. Chapter VII- Conclusions.....	57
Bibliography	59

Abbreviations

ABNJ Areas Beyond National Jurisdiction

AP Action Plan

ARCHELON The Sea Turtle Protection Society of Greece

CBD Convention on Biological Diversity

CFP The Common Fisheries Policy

CITES Convention in International Trade In Endangered Species of Wild Flora and Fauna

CMP Conservation and Management Plan

CMS Convention on the Conservation of Migratory Species of Wild Animals

COFI Committee on Fisheries

COP Conference of Parties

EC European Community

EEZ Exclusive Economic Zone

EU European Union

FAO Food and Agriculture Organization

FSA Fish Stock Agreement

GFMC General Fisheries Commission for the Mediterranean

IAC The Inter-American Convention for the Protection and Conservation of Sea Turtles

ICCAT International Convention for the Conservation of Atlantic Tunas

ICJ International Court of Justice

IOSEA Memorandum of understanding on the conservation and management of Marine Turtles and their habitats of the Indian ocean and South-East Asia

LOSC Law of the Sea Convention

MEDDASET The Mediterranean Association to Save the Sea Turtles

MOU Memorandum of Understanding

MST Mediterranean Sea Turtles

NGO Non-Governmental Organization

NMPZ National Marine Park Zakynthos

PCA Permanent Court of Arbitration

RFMO Regional Fisheries Management Organization

SBSTTA (CBD's) Subsidiary Body on Scientific, Technical and Technological Advice

SPA Specially Protected Area

SPA/BD Protocol

SPAMI Specially Protected Areas of Mediterranean Importance

SPMS Strategic Plan for Migratory Species

UNSECO United Nations Educational, Scientific and Cultural Organi

1. Chapter I – Introduction

1.1. Introduction

Sea turtles challenge international law regime throughout their lifecycle. They nest and hatch on beaches, the terrestrial area under the coastal state sovereignty. After hatching, young turtles depart from the nesting site following the moonlight reflection on the sea.¹ They swim across the seas, crossing vast distances in migrating between nesting, feeding, and wintering grounds, traversing different legal regimes recognized by the international law.²

Every few years, females will return to the same nesting site where they were born to lay their eggs.³ This type of the behavior hails for the high level of protection of nesting beaches. If a sea turtle is disturbed when nesting (e.g. noise or lighting on the beach) or the nesting beach is devoured (e.g. by coastal degradation, erosion, coastal armoring), the sea turtle will dispense its eggs offshore where they do not have a chance of hatching. Nesting beaches are under increased human pressure, especially in the Mediterranean, due to heightened level of tourism and coastal development.⁴

Two species of sea turtles nest in the Mediterranean - the loggerhead, *Caretta caretta* and the green turtle, *Chelonia mydas*. A third species, the leatherback *Dermochelys coriacea*, is observed throughout the region all year round. Two other species, the Hawksbill sea turtle, *Eretmochelys imbricata* and the Kemp's Ridley sea turtle, *Lepidochelys kempii*, are only occasionally present.⁵ The geographical scope of the Mediterranean means: "...waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the

¹ Sea turtles are "phototactic," meaning that they are attracted to light. They are guided by the brightest light, which is usually moonlight reflecting on the sea. More about sea turtles, see Spotila 2004.

² Wold, 2002 p.14.

³ This behavior is explained by sea turtle reliance on the imprinted memory of its birthplace magnetic field coordinates, see Spotila 2004.

⁴ See WWF Report, 1999. And Aston Center Report, 2012.

⁵ FAO Report, 2004.

east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses.”⁶, and relevant coasts of riparian states.

1.1.2. Current conservation status

The IUCN Red List provides a system to determine the risk of extinction of animals based upon global evaluation. The main purpose of the Red List is to catalogue and highlight those animals that are facing a higher risk of global extinction. The IUCN lists *Dermochelys coriacea* as “vulnerable”, *Chelonia mydas* as “endangered”, *Eretmochelys imbricata* and *Lepidochelys kempii*, as “critically endangered”, which is the highest degree of risk of extinction.⁷ *Caretta caretta* overall conservation status is listed as “vulnerable”. The Mediterranean subpopulation of *Caretta caretta* was last assessed and updated in August 2015 to a “least concern” conservation status.⁸ It is noted that “this “Least Concern” status should, however, be considered as entirely conservation-dependent, because the current population is the result of decades of intense conservation programs, especially at nesting sites and the cessation of these programs would be followed by a population decrease”⁹. Therefore, the least concern status in this case certainly does not mean that conservation measures are not needed, but the opposite. In addition to the IUCN Red List, a number of international agreements list sea turtles as species with the highest conservation priority that are in a need of special protection.¹⁰

1.1.3. Sea turtles, why care?

Sea turtles deserve protection as an integral part of an ecosystem. They play an important role in the oceanic ecosystems by maintaining healthy seagrass beds and coral reefs. Sea turtles provide keys habitats for other marine life, helping to balance marine food webs and facilitating nutrient cycling from water to land.¹¹ In addition to an ecosystem role, sea turtles have been praised as a “flagship species”¹². Awarding the “flagship” attribute to species is not based on biological or ecological, but purely social characteristic of a species. Their “charisma” and

⁶ Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, Barcelona 10 June 1995 (hereinafter Barcelona Convention). Article 1.

⁷ See <http://www.iucnredlist.org> for conservation status of species.

⁸ See <http://www.iucnredlist.org/details/83644804/0>.

⁹ Ibid.

¹⁰ See e.g. CITES Appendix I, The Bern Convention Appendix II, SPA/BD Protocol Annex II, Habitats Directive Annexes II and IV.

¹¹ Oceana Report, 2003 p.5.

¹² For more information about the term and its use relate to sea turtles, see Frazier, 2005.

ability to attract widespread attention of the community is an aspect that can extend the reach of protective measures aimed at sea turtle towards protecting Mediterranean seas on a wider scale.¹³ Adequate protection of sea turtles would conceivably mean that many of the destructive human behaviors (e.g. polluting the seas, unsustainable coastal development) could be mitigated. Thereby, improving sea turtle conservation status at the same time could mean improving the overall health of our seas – in this case: The Mediterranean.

1.1.3. Sea turtles in the Mediterranean – the legal perspective

In the Mediterranean, the legal framework to protect sea turtles already exists: many global or regional instruments are addressing at least one of threats that are endangering sea turtle survival.¹⁴ However, there is no single legal instrument in the Mediterranean that protects sea turtle comprehensively.

A variety of laws and lack of coordination among regulatory instruments create a complex situation at both national and international level. The need for the harmonization of legislation governing sea turtle conservation in the Mediterranean has been recognized.¹⁵ Due to their migratory and transboundary nature, conservation and protection should be addressed in a broad context, unlike presently, where none instrument addresses all threats. Given the broad scope and particularity of threats towards sea turtles, especially the unique need to protect their terrestrial habitat – nesting beaches, it is hard to expect that agreement whose sole objective is not a sea turtle conservation can comprehensively address sea turtle threats.

Agreements with the sole objective of sea turtle protection have been established in some regions. In the Americas and the Caribbean direct negotiation among concerned states led to the conclusion of the Inter-American Sea Turtle Convention (IAC)¹⁶. Also, two Memoranda of

¹³ E.g. IOSEA considers sea turtles as flagship species on which to base interventions aimed at protecting habitats of importance for a myriad of other marine species.

¹⁴ Detailed overview of the current international regulatory system is provided in Chapter III.

¹⁵ See e.g. FAO Guidelines, 2005 p.97.

¹⁶ The Inter-American Convention for the Protection and Conservation of Sea Turtles, Caracas, Venezuela 1. December 1996.

Understandings for sea turtles were concluded under the CMS framework: one for the Atlantic Turtles of Africa¹⁷ and other for the Indian Ocean and Southeast Asia (IOSEA)¹⁸.

CMS is the Convention whose objective is the protection of migratory species. The CMS is “implemented to a large extent through the various Agreements concluded under its auspices for species listed in its Appendix II”¹⁹. Conclusion of an Agreement has not been executed in the Mediterranean concerning sea turtles. The CMS Secretariat has so far contributed to the protection of the sea turtles in the Mediterranean by e.g. organizing Mediterranean Conferences on Marine Turtles²⁰, but no step has been taken towards concluding a framework Agreement.

1.2. The objective of the thesis

Set against the above introduced problems and in the context of fulfilling its objective, the thesis will first discuss the following sub-questions:

- What is the state of the current international instruments that regulate sea turtles conservation in the Mediterranean?
- What are gaps of the current legal framework, and is there a need for a new instrument?
- What are the prospects that governments in the Mediterranean will discuss concluding a new instrument concerning sea turtles conservation?
- What is the CMS role relating to sea turtles, as the most appropriate framework instrument for concluding the specific instrument concerning sea turtles?

The thesis will then turn to its main objective, which is to answer what is the potential of developing the Agreement concerning conservation of sea turtles of the Mediterranean under the CMS framework, and whether a new regulatory instrument would contribute towards improving or maintaining favorable conservation status of sea turtle species in the Mediterranean?

¹⁷ Memorandum of Understanding concerning Conservation Measures for Marine Turtles of the Atlantic Coast of Africa Abidjan, Ivory Coast 29. May 1999.

¹⁸ Memorandum of understanding on the conservation and management of Marine Turtles and their habitats of the Indian ocean and South-East Asia, Manila, Philippines 23. June 2001.

¹⁹ Hykle, 2002 p. 106.

²⁰ So far, five conferences were organized. Proceedings from first four Conferences available at <https://iucn-mtsg.org/regions/mediterranean/meetings/>. Announcement of the fifth Conference available at <http://www.medpan.org/documents/10180/0/programme+5th+Mediterranean+Conference+on+Marine+Turtles/052ab684-38fe-4d0a-82c4-d2369f9a03c9>.

Based on findings from discussions, the thesis will conclude on the need for a new CMS instrument concerning MST.

1.3. Legal sources and method

Sources of international law are analyzed using the method identified in Article 38 of the Statute of the ICJ²¹ are used. Analyzed sources are ones related to sea turtle conservation, most of the which affect the Mediterranean region. Although, an outlook to sea turtle conservation regulation in other regions is also analyzed and used as a model.

The thesis explores hypothetical legal instrument, hence beside recognized sources of international law, the thesis must rely on various recommendations, guidelines and reports published by relevant bodies and organizations. Since the focus is on the development of new instrument under the CMS, heavy emphasis is placed on the relevant CMS Resolutions.

All legal sources are descriptively and analytically employed in order to answer the thesis questions. Parts of the thesis rely on comparative methodology, particularly when discussing developed instruments concerning sea turtles in other regions and compare them to the Mediterranean.

1.4. Structure of the thesis

As regards the structure, the thesis consists of seven chapters.

Chapter I introduces the problem of sea turtles conservation in the Mediterranean, and determine the objective of the thesis.

Chapter II explores what makes sea turtles endangered – what are the threats that negatively affect sea turtles conservation status.

Chapter III provides an overview of current international legal framework in relate to MST. It presents relevant provisions of global and regional environmental agreements, relevant fisheries instruments and take a look at EU supranational measures, namely the Habitats Directive.

²¹ Statute of the International Court of Justice, OS - 26 June 1945, EIF - 24 October 1945.

Chapter IV identifies the gaps of the current framework, and discusses the option of developing a new instrument to fill those gaps.

Chapter V provides an overview of the CMS, as a proposed framework for developing a new instrument.

Chapter VI discusses in depth the options of development of a new instrument concerning conservation of MST under the CMS auspices.

Chapter VII is the last chapter concluding the findings from the thesis.

2. Chapter II - What makes sea turtle endangered?

2.1. Introduction

Natural factors, like the evolutionary trend and natural predation affect sea turtle mortality throughout their lifecycle. Also, all species of sea turtles, more specifically their nesting habitats, are affected by the climate change. Nesting beaches are slowly disappearing with the sea level rise. Also, an increase in temperature determines the gender disproportion in hatchlings, hence create a significant threat to genetic diversity.²²

Nevertheless, sea turtles have been swimming the seas for over one hundred million years, and have changed very little ever since. This implies that sea turtles are extremely successfully adapted to their environment²³. Therefore, conservation efforts should not focus on suppressing natural threats that sea turtles already fight successfully for millions of years. Sea turtles started experiencing a sharp decline during last dozens of decades, the period since human activities started having increasing impacts on the environment, in many ways outcompeting natural processes. Hence, sea turtles need protection from the human impacts.

Negative human impacts on sea turtles derive from various sources. They can be direct or indirect. Also, they can affect the sea turtle species or their habitats. Sea turtle habitats are defined as “all those aquatic and terrestrial environments which sea turtles use at any stage of their life cycles”²⁴. That means - nesting, feeding, wintering areas, and migration routes. Virtually all waters of the Mediterranean are used by sea turtles at different stages of their lives. Also, parts of the Mediterranean coasts are identified as sea turtle nesting grounds. Therefore, all the Mediterranean waters and some coasts can be identified as sea turtle’s habitat.

Following anthropogenic threats are being identified as main causes of sea turtle mortality in the Mediterranean:

²² See Spotila, 2004.

²³ Jit, 2007 p. 20.

²⁴ Sea turtles habitat is defined in the IAC text, Article I (2).

2.2. Direct take for consumption and trade

Direct take includes taking sea turtles and their eggs, either for consumption or for the commercial trade. In the Mediterranean, increased level of sea turtle hunting occurred between the 1920s and 1970s, when sea turtles were targeted catch and sold to e.g. Egypt or the UK for consumption. Today, take of eggs and adult animals is not a major concern. It is successfully suppressed by international and national legislation in place.²⁵ Nevertheless, hunting and trading sea turtles on a small scale still exists in the Mediterranean²⁶, and would possibly be more widespread without legislation in place to prevent it.²⁷

2.3. Collision with boats

Unregulated navigation near nesting sites during the reproduction season when sea turtle's abundance is high will at best scare prospecting females away from the beach, and also can cause an injury and death of sea turtles.²⁸ Often, small speed boats and recreational vessels in the tourist areas navigate close to nesting beaches. Protection approach in that regard is taken in the case of the National Marine Park of Zakynthos (NMPZ)²⁹. The park authority established three zones within the marine park in regard to boat activities: A - zone where no activity is allowed, B – no anchoring zone and boat speed up to 6nm, and C – anchoring is allowed and allowed speed up to 6 nm.³⁰

2.4. Incidental capture (bycatch)

The bycatch is defined as the "total fishing mortality excluding that accounted directly by the retained catch of target species"³¹. Bottom trawl, surface longline and driftnet, along with coastal gillnet and entangling net fisheries have a large bycatch causing fishery-related

²⁵ CITES contributes significantly in suppressing trade related threats and building national legislation.

²⁶ There is an evidence of sea turtles being sold in Malta, Spain, Algeria and Morocco, even though legislation and enforcement of it exist in all these countries. See FAO Report 2004, p.38.

²⁷ IUCN Report, 2010 p.2.

²⁸ FAO Report, 2004 p. 36.

²⁹ The Presidential Decree on the establishment of the National Marine Park of Zakynthos was signed on the 1st of December 1999 by the President of Greek Republic (Gov. Gazette 906D, 22 December 1999). See <http://www.nmp-zak.org/>.

³⁰ Ibid.

³¹ OECD, 1997.

mortality. The Revised Action Plan³² acknowledged that catches by fishermen are the most serious threat to turtles at the sea.³³ FAO review from 2008 estimated over 150,000 captures (of sea turtles of all species, sizes and origin) within the Mediterranean Sea per year.³⁴

2.5. Nesting sites destruction

Nesting and hatching of sea turtles occur in their terrestrial habitats. Sea turtles are the most vulnerable on their nesting beaches. Adult sea turtles are easy prey to humans, and nesting is easily disturbed by external factors. Hatchlings can be distracted by artificial lightning, and driven away from the sea after hatching.³⁵ Nests and eggs are being destroyed by increased beach use and activities.

Increased urbanization of the coastline, human's presence, artificial lighting and noise negatively affect sea turtles nesting beaches across the Mediterranean. The Mediterranean Sea is the destination visited by millions of tourists during the summer, which overlaps with sea turtles nesting season. The result is disturbed nesting beaches when the sea turtles are the most sensitive to external factors.³⁶

2.6. Marine habitat destruction - mainly pollution

The Mediterranean is an enclosed sea. Organic and inorganic wastes, toxic effluents and other pollutants greatly affect the Mediterranean ecosystem. Pollution includes marine debris, oil and a variety of chemicals. Plastic debris, including discarded fishing nets, packing bands and plastic bags have been identified as the high factor of sea turtle mortality, and is an increasingly important problem.³⁷

³² UNEP MAP RAC/SPA, 2007. Action Plan for the conservation of mediterranean marine turtles. Ed. RAC/SPA, Tunis.

³³ Ibid, p. 9.

³⁴ IUCN Report, 2010 p.3.

³⁵ See Spotila, 2004.

³⁶ For more info, see IUCN Report, 2010.

³⁷ IUCN Report, 2010 p.32.

Sea turtles are regular or occasional visitors (depends on a species) of coral reefs. Destruction of coral reefs (in e.g. bottom trawling) has negative impact on sea turtles livelihood.³⁸

³⁸ Oceana Report, 2003 p. 7.

3. Chapter III - Overview of the current international regulatory instruments

3.1. Introduction

Given the wide array of threats, it does not come as a surprise that a large number of regulatory instruments may adhere to sea turtle conservation. Some authors claim that there are over 650 agreements relevant to sea turtle protection.³⁹ There have been listings and evaluation of international instruments concerning sea turtles conservation.⁴⁰ This chapter provides a short overview of international law relevant to sea turtles in the Mediterranean, necessary to grasp the picture of the current legal state of sea turtles in the Mediterranean. Note that following is not an exhaustive list.

The emphasis of this chapter is on global and regional international agreements expressly recognized by the Mediterranean states. Sea turtles are being addressed differently dependent on the objective of agreements. Some focus on conservation of marine turtles and their habitats, while others objective is governance of fisheries and address sea turtles as one of the ocean's resources.

General principles of the international law can also affect sea turtle management and conservation.⁴¹ They are not discussed in the thesis due to a space limitation.

3.2. Global Environmental Agreements

3.2.1. LOSC⁴²

The LOSC governs many aspects of the ocean uses, and not surprisingly, on a framework level many of its provisions relate to sea turtles. The LOSC provisions represent customary

³⁹ Zuardo, 2010 p. 318.

⁴⁰ Wold, 2002, Hykle, 2002, Zuardo, 2010, Bache and Frazier, 2006, IUCN Legislation Guidelines Annex I.

⁴¹ See Wold, 2002 for overview of General Principles in relate to sea turtles conservation.

⁴² United Nations Convention on the Law of the Sea (LOSC), Montego Bay, 10 December 1982.

international law to a very wide extent. In the context of the law of the sea, the distinction between treaty law and customary law is.⁴³

LOSC maritime zones and sea turtle as a living resource

The most important contribution of the LOSC relevant to sea turtle conservation and management is that the LOSC expresses unanimous agreement of States regarding the material and geographical scope of maritime zones of the oceans. The LOSC sets out rights and duties of States for conservation and management of all living resources for each maritime zone.

The coastal State exercise sovereignty in its territory, internal waters, territorial sea, and in the case of Archipelagic state its archipelagic waters .⁴⁴ Sovereignty in jurisprudence means the full right and power of a governing body to govern itself without any interference from outside sources or bodies.⁴⁵ Therefore, conservation and management measures in relation to all living resources are left upon coastal state's discretion.⁴⁶

The LOSC envisages establishment of the exclusive economic zone (EEZ).⁴⁷ In the EEZ, the coastal State has a "sovereign rights for exploring, exploiting, conserving and managing natural resources".⁴⁸ The coastal State must ensure that maintenance of living resources is not endangered by over-exploitation and that populations of species associated to or dependent on harvested species are maintained above levels at which their reproduction may become seriously threatened.⁴⁹ Hence, if the sea turtles are not hunted species (and as mentioned, hunting sea turtles is not a major threat in the Mediterranean, the bycatch is), "the lower standards" of conservation apply. Although, maintenance of sea turtles, the "lower standard", applies only if sea turtles are "associated or dependent on harvested species". However, the definition of what in fact makes species "associated or dependent" does not exist. Hence, even

⁴³ Lee, 2005 p.406.

⁴⁴ LOSC Article 2 (1).

⁴⁵ West's Encyclopedia of American Law, edition 2. s.v. "sovereignty." Retrieved September 9 2016 from <http://legal-dictionary.thefreedictionary.com/sovereignty>.

⁴⁶ However, the concept of permanent sovereignty over natural resources has its limitations. States have duty not to harm the interests of other States – known as State Responsibility. See discussion in Wold, 2002 p. 15-16.

⁴⁷ LOSC Article 55.

⁴⁸ LOSC Article 56.

⁴⁹ Ibid.

the lower threshold of protection is not a certain obligation when it comes to protecting sea turtles.

The maximum breadth of the EEZ is 200nm from the baselines from which the breadth of the territorial sea is measured.⁵⁰ The situation in the Mediterranean is somewhat specific when it comes to EEZ claims.⁵¹ Due to geopolitical reasons many Mediterranean states did not declare the full-fledged EEZ, but *sui generis* zones, or did not declare any zone beyond the territorial sea.⁵² This creates a complex situation, potentially leaving sea turtles without appropriate coastal state's protection authority in vast parts of the Mediterranean.

The high seas are all parts of the sea that are not included in the EEZ, the territorial sea or internal waters of a State.⁵³ These waters and resources in it are open to all States and the principle of freedom of fishing applies.⁵⁴ Freedom of fishing is not absolute, but subjected to general conservation and management rules, laid down by Articles 116-120.⁵⁵ All States are required to co-operate with each other to conserve and manage living marine resources on the high seas, including associated or dependent marine species.⁵⁶

On the high seas, flag states have exclusive jurisdiction over their vessels. Exceptions of the exclusive flag state jurisdiction are envisaged by the Convention.⁵⁷ Nothing in the Convention enable coastal states to enforce measures on the high seas that are needed to protect sea turtles. Hence, enforcement powers on the high seas do not adequately correlate with legislative powers that states have on the high seas.

Fish Stock Agreement

Chapter 17 of Agenda 21 noted that the LOSC framework for the conservation of living resources on the high seas has failed.⁵⁸ The Fish Stock Agreement (FSA)⁵⁹ has been concluded

⁵⁰ LOSC Article 57.

⁵¹ For detail about maritime claims in the Mediterranean see MRAG Report, 2013 p.45-83.

⁵² For example, in eastern Mediterranean Greece and Turkey have claimed only 6nm territorial sea, and no EEZ. See Ibid. p.45.

⁵³ LOSC Article 86.

⁵⁴ LOSC Article 87.

⁵⁵ LOSC Articles 116-120.

⁵⁶ LOSC Articles 118 and 119.

⁵⁷ Exceptions of the flag state jurisdiction on the high seas are listed in LOSC Articles 95, 99, 100.

⁵⁸ Agenda 21, Chapter 17, paragraph 17.45.

⁵⁹ United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, OS - 4 August 1995.

in the 1995 in order to fill some gaps pointed in Chapter 17. Although sea turtles are not specifically addressed in the FSA, the LOSC framework for the conservation of sea turtles has been improved by it. The FSA at first place applies to conservation of the straddling and highly migratory fish stocks on the high seas. However, by ensuring compatibility of required measures on the high seas and in the EEZ, conservation principles of the FSA extend into all maritime zones of jurisdiction.⁶⁰ The FSA Article 6 requires States to apply the precautionary approach to conservation and management of straddling and highly migratory fish stocks in their EEZs, taking into account uncertainties concerning the impact of fishing activities on non-target and associated and dependent species, such as marine turtles.⁶¹ Article 5 requires States to take measures to minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species.⁶² Compliance and enforcement provisions on the high seas are improved. The obligation of cooperation through RFMOs has been imposed in order to ensure compliance with such measures.⁶³

LOSC Part XII and sea turtle as a part of the environment

The LOSC Part XII is concerned with the protection of the marine environment. It deals with many aspects of pollution, all of which to some degree affect degradation of sea turtles marine habitats.⁶⁴ Articles 192 and 194 (5) impose an obligation on states “to protect and preserve the marine environment” and to “protect and reserve (...) habitat of depleted, threatened or endangered species”.⁶⁵

Although phrased in general terms, the provisions 192 and 194 (5) received the Court’s interpretation in recent South China Sea Award.⁶⁶ Although sea turtles protection was not at the center of this ruling, it has been touched upon by the Tribunal when assessing actions taken by the Chinese fishing vessels. The Tribunal considered it well established that the Article 192 does impose a duty on States.⁶⁷ The Article 192 extends to the prevention of harms that would

⁶⁰ FSA Article 7 (2).

⁶¹ FSA Article 6.

⁶² FSA Article 5.

⁶³ FSA Article 8 (3).

⁶⁴ LOSC Articles 194 and 207-212.

⁶⁵ LOSC Articles 192, 194 (5).

⁶⁶ *The Republic of Philippines v. The People’s Republic of China*, PCA case No 2013-19 *The South China Sea Arbitration Award*, 12 July 2016.

⁶⁷ *Ibid.* paragraph 941.

affect depleted, threatened, or endangered species indirectly through the destruction of their habitat.⁶⁸ The Tribunal thus considers “the harvesting of sea turtles, species threatened with extinction, to constitute a harm to the marine environment as such... The Tribunal therefore considers that a failure to take measures to prevent these practices would constitute a breach of Articles 192 and 194(5) of the Convention”.⁶⁹ In the South China Sea Award one can find a narrow interpretation of the general provisions that without a doubt can be understood as the legal obligation to protect sea turtles under the LOSC. However, the likelihood that a state would, in fact, litigate for the breach of LOSC Articles 192 and 194 (5) only for reason of sea turtle protection, does not seem probable. Nevertheless, the juridical inclusion of sea turtles in scope of the Article 192 and 194 (5) can only encourage states to promote and comply with sea turtles conservation measures.

Special conservation requirements of the LOSC

According to Article 123, states bordering enclosed or semi-enclosed seas, such as the Mediterranean, must cooperate in exercising their rights and duties, either directly or through an appropriate regional organization. They should coordinate in management, conservation, exploration and exploitation of the living resources of the sea, implementation of their rights and duties for protection and preservation of the marine environment and scientific research policies.⁷⁰

In Article 64 the Convention recognizes special conservation and management needs of highly migratory species⁷¹, thus list them in the Annex I of the Convention.⁷² However, sea turtles are not listed in the Annex I, hence do not benefit from the Article 64 cooperation requirement.

In Article 65 the LOSC prescribes possibility for stricter regulation for conservation of marine mammals.⁷³ Special status that marine mammals enjoy by the Convention is owned by the community interest in marine mammal’s conservation at the time of the LOSC negotiation. If the LOSC is to be negotiated today, the presumption is that sea turtles, given the increased interest in their conservation at the present time, would also enjoy similar benefits from the

⁶⁸ Ibid. paragraph 959.

⁶⁹ Ibid. paragraph 960.

⁷⁰ LOSC Article 123.

⁷¹ LOSC Article 64.

⁷² See LOSC Annex I.

⁷³ LOSC Article 65.

LOSC like marine mammals do (just like some other issues, e.g. climate change would probably be addressed by the Convention as well).⁷⁴

Many LOSC provisions can be interpreted as a grounding for sea turtle conservation. However, the Convention's ambiguity makes it difficult to actually implement the Convention's requirements. Also, the LOSC does not contain any provisions that could protect terrestrial nesting beaches.

3.2.2. CITES⁷⁵

CITES is an international agreement with the aim of ensuring that international trade in specimens of wild animals (and plants) does not threaten their survival.⁷⁶ Parties list species in one of the three appendices, based on the degree of the needed protection.⁷⁷ All seven species of sea turtles are listed in the Appendix I of CITES.⁷⁸ Appendix I includes species threatened with extinction, hence enjoy the highest degree of protection. For Appendix I species, Parties prohibit all trade for "primarily commercial purposes".⁷⁹ The term "primarily commercial purposes" has very broad interpretation and include "any transaction that is not wholly non-commercial."⁸⁰

Ranching is a process of "the rearing in a controlled environment of specimens taken from the wild".⁸¹ It is not envisaged in the CITES text, but has developed through a series of resolutions of the Parties. The CITES Parties have established special rules for evaluating turtle ranching proposals.⁸² So far, all proposals to ranch sea turtles for the purpose of international trade have been rejected.

CITES Party can take a reservation in regard to Appendix I species, so that international trade in that species can be pursued with CITES non-parties, or other Parties with the same reservation. When Japan ratified CITES in 1980, it placed reservations on hawksbill sea turtles,

⁷⁴ Opinion expressed by J. Frazier in personal email.

⁷⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington DC, 3. March 1979.

⁷⁶ CITES Preamble.

⁷⁷ CITES Article II.

⁷⁸ CITES Appendix I.

⁷⁹ CITES Article III.

⁸⁰ CITES, Resolution Conference 5.10.

⁸¹ CITES, Resolution Conference 11.16.

⁸² CITES, Resolution Conference 9.20.

exempting itself from the ban on their trade. After increased pressure from the international community, Japan withdrew its reservation in 1994.⁸³ CITES reservations on sea turtles are still maintained by some states.⁸⁴ None of the Mediterranean states have made any reservations in regard to sea turtles.

All conservation treaties leave regulation of international trade to CITES. CITES is compatible with other conventions relevant to sea turtle protection, as it only deals with one specific threat – the international trade. This is also the main shortcoming of CITES: while successfully fighting international trade, that is where its authority stops. CITES has no authority to regulate domestic trade, nor it has effect in minimizing illegal trade issues.⁸⁵ CITES is exclusively devoted to only one threat, and does not curb any other threats that affect sea turtles.

3.2.3. CBD⁸⁶

One of the main objectives of the CBD is the conservation of the biological diversity.⁸⁷ Article 2 of the Convention defines biological diversity,⁸⁸ and sea turtles and their habitats are unquestionably seen as a part of the biological diversity. CBD does not explicitly address the conservation of sea turtles, nor contains annexes of species to which it applies. Article 8 mandates that Parties carry out *in situ* conservation activities,⁸⁹ processes of protecting animal species in their natural habitat (e.g. establishment of protected areas, rehabilitation and restoration of degraded ecosystems). SPA/BD Protocol is the Mediterranean's main tool for implementing the CBD, as regards the *in situ* sustainable management of coastal and marine biodiversity.⁹⁰

⁸³ Bache and Fraizer, 2010 p. 334.

⁸⁴ Reservation entered by Parties, updated June 2015. Cuba: *Eretmochelys imbricata*, *Chelonia mydas*; St. Vincent and the Grenadines: *Eretmochelys imbricata*; and Suriname: *Chelonia mydas*, *Dermochelys coriacea*; available at <https://cites.org/eng/app/reserve.php>.

⁸⁵ Wold, 2002 p.30.

⁸⁶ Convention on Biological Diversity, Rio 5. June 1992.

⁸⁷ CBD Article 1.

⁸⁸ CBD Article 2.

⁸⁹ CBD Article 8.

⁹⁰ Information obtained at <http://www.rac-spa.org/protocol>.

CBD defines the ecosystem approach⁹¹, and calls upon its application, as appropriate, in protecting biodiversity. Hence, ecosystem approach should be applied in sea turtles conservation and management.

At the second COP meeting in 1995, the Ministerial meeting adopted the Jakarta Mandate⁹² The Jakarta Mandate recognizes that sectoral activities in the coastal zone (e.g. construction, tourism, fishing) can adversely affect biodiversity. Integrated Coastal Zone Management enforced by the Mandate means that all marine and coastal sector should be managed simultaneously and complementary, as changes of policy in one area reflects the other. Parties are recommended to establish or reinforce institutional, administrative and legislative arrangements for marine management and integrate such measures within national development plans. Parties are specifically recommended to establish marine and coastal protected areas to protect ecosystem processes and functions as well as particular species.⁹³

Implementation of specific components of the CBD is expected to be achieved through other more specialized instruments. The CBD's SBSTTA has recommended the CMS to be deemed a "lead partner" on migratory species conservation issues.⁹⁴ Also, COP 10 Decision X/2 adopted the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets⁹⁵, which to certain extent shape the new Strategic Plan for Migratory Species (the SPMS).

3.2.4. CMS⁹⁶

CMS is an important part of the international regulatory instrument in the Mediterranean. It is analyzed separately in Chapter V.

⁹¹ CBD COP Decision V/6 "The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way".

⁹² The Jakarta Ministerial Statement On The Implementation Of The Convention On Biological Diversity, Jakarta, Indonesia 14-15 November 1995.

⁹³ UNEP Guidelines, 2003 p.37.

⁹⁴ SBSTTA Recommendation VI/8.

⁹⁵ Strategic Plan for Biodiversity 2011-2020 and the Aichi Targets.

⁹⁶ Convention on the Conservation of Migratory Species of Wild Animals, Bonn 23. June 1979.

3.3. Regional Environmental Agreements

3.3.1. *The Bern Convention*⁹⁷

Bern Convention is an international legal instrument aimed to conserve endangered species of flora and fauna and their natural habitats, and encourage co-operation between states, covering most of the natural heritage of the European continent and extending to some Mediterranean States of Africa.⁹⁸ Parties list all sea turtle species found in the Mediterranean are in Appendix II of the Convention. Species listed in the Annex II of the Convention are of provided the maximal protection - a prohibition of deliberate capture, keeping and killing of individuals or deliberate damaging or destruction of breeding or resting sites, and obliges states to protect their habitats, both breeding beaches and wintering grounds.⁹⁹

The Convention has an innovative approach of holding States accountable for the implementation of provisions. Namely, the Standing Committee has a procedure of opening case files for breaches of the Convention. The decision to open a case file is often based on the information contained in reports submitted by NGOs, whom participate actively in the work of the Bern Convention and often are the prime movers of the protection and monitoring activities. MEDDASET¹⁰⁰ and ARCHELON¹⁰¹ are active NGOs in sea turtles conservation in the Mediterranean.

The Standing Committee of the Convention can make recommendations to Parties regarding what measures should be taken for the purposes of the Convention. Several recommendations were adopted naming specific actions for protection of sea turtle's nesting beaches.¹⁰² At its 34th meeting, in 2014, the Standing Committee adopted the "Recommendation to ensure the conservation of the *Caretta caretta* and of sand dunes and other coastal habitats in Southern Kyparissia Bay".¹⁰³ This shows the active and lasting approach of sea turtle conservation by the Convention.

⁹⁷ Convention on the Conservation of European Wildlife and Natural Habitats Bern, 19. September 1979 (Hereinafter the Bern Convention).

⁹⁸ Ibid. Article 1.

⁹⁹ Ibid. Article 6.

¹⁰⁰ <http://www.medasset.org>.

¹⁰¹ http://www.archelon.gr/index_eng.php.

¹⁰² <http://www.coe.int/en/web/bern-convention/turtles>.

¹⁰³ Recommendation No. 174 (2014) of the Standing Committee, adopted on 5 December 2014.

Protecting of nesting beaches has been, and remains the main focus of the Bern Convention. It is also its main shortcoming of the Convention. It does not address other threats with the same diligence. Also, the Convention has a limited geographic scope of action. It is in essence the “European treaty”: member states are mostly EU countries, with two exceptions in the Mediterranean: Morocco and Tunisia. This leaves a spatial gap in covering the whole spectrum of the MST habitats.

Bern Convention has been implemented by EU member States through Directive 92/43/EEC - Habitats Directive.¹⁰⁴

3.3.2. The Barcelona Convention¹⁰⁵ and the SPA/BD Protocol¹⁰⁶

Parties to the Barcelona Convention are required to: “take all appropriate measures to protect and preserve biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleted, threatened or endangered and their habitats, in the area to which this Convention applies”.¹⁰⁷ Based on this provision, a Protocol to the amended Convention has been concluded to provide a framework for protection of endangered species and their habitats in the Mediterranean – the SPA/BD Protocol. The Protocol envisages three main elements in order to ensure protection of the biological diversity in the Mediterranean: (i) the creation, protection and management of Specially Protected Areas (SPAs); (ii) the establishment of a list of Specially Protected Areas of Mediterranean Importance (SPAMIs); (iii) national measures for the protection and conservation of species.¹⁰⁸ Parties confirmed the commitment to the conservation of marine turtles by including all five species of sea turtle that appear in the Mediterranean in the List of Endangered and Threatened Species annexed to the SPA/BD Protocol.¹⁰⁹

As a part of implementing the SPA/BD Protocol, the Mediterranean states are working together to implement action plans to protect endangered species in the Mediterranean. Parties to the Barcelona Convention included among their priority targets for the period 1985-1995 the

¹⁰⁴ For the Habitats Directive see Chapter 3.5.1.

¹⁰⁵ Supra note 6.

¹⁰⁶ Protocol Concerning Specially Protected Areas and Biological Diversity of the Mediterranean, Barcelona 10 June 1995 (Hereinafter SPA/BD Protocol).

¹⁰⁷ Barcelona Convention Article 10.

¹⁰⁸ Ibid. Articles 4, 8, 11.

¹⁰⁹ SPA/BD Protocol Annex II List of Endangered or Threatened Species.

protection of Mediterranean marine turtles in Genoa Declaration in September 1985. The Action Plan for the Conservation of the Mediterranean Marine Turtles was adopted in 1989, and revised in 1999.¹¹⁰

More about Barcelona Convention mechanism in regard to sea turtle conservation is discussed in Chapter 6.5.4.

3.3.3. The African Convention¹¹¹

African Convention obliges Parties to “undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources”.¹¹² Parties recognized that “it is important and urgent to accord a special protection to those animal and plant species that are threatened with extinction, or which may become so, and to the habitat necessary to their survival. (...) species which are, or may be listed, according to the degree of protection that shall be given to them are placed in Class A or B of the Annex to this Convention”¹¹³ All marine turtles are listed as the Class A category, and must be strictly protected.¹¹⁴ Parties must prohibit hunting, killing, taking and collection of such species and confer special protection on habitats necessary to the survival of species threatened with extinction.¹¹⁵ Strict controls apply to trade in and transport of specimens and trophies of these species.¹¹⁶

Despite these provisions that can, in theory, protect sea turtles, this Convention is an instrument that does not significantly contribute to conservation of MST. African Convention has no institutional mechanism to oversee and review implementation or adopt policy recommendations.

¹¹⁰ UNEP MAP RAC/SPA, Action Plan for the Conservation of Mediterranean Marine Turtles. Ed. RAC/SPA, 1999.

¹¹¹ African Convention on the Conservation of nature and natural resources, Algeria on 15th September 1968.

¹¹² Ibid. Article II.

¹¹³ Ibid. Article VIII.

¹¹⁴ Ibid. List of Protected Species Annex I.

¹¹⁵ Ibid. Article VIII (a).

¹¹⁶ Ibid. Article IX.

3.4. Fisheries management and conservation instrument

3.4.1. FAO Code of Conduct for Responsible Fishing¹¹⁷

FAO Code is a voluntary instrument, and global in scope - directed towards members and non-member of FAO, fishing entities, sub-regional, regional and global organizations, and all persons concerned with the conservation of fishery resources ¹¹⁸ The Code sets out principles and standards to ensure effective conservation, management and development of living aquatic resources, with due respect for marine and coastal biodiversity. ¹¹⁹ It also provides a comprehensive basis for States to review and strengthen policy, legal and institutional measures for responsible fisheries. Relevant provisions of the Code can adhere to sea turtle protection in relate to prevent incidental capture of sea turtles during fishing operations.

Reports and material collected during meetings of the Expert Consultation on Interactions between Sea Turtles and Fisheries within an Ecosystem Context (Rome, 9–12 March 2004) and the Technical Consultation on Sea Turtles Conservation and Fisheries (Bangkok, 29 November to 2 December 2004), were crucial for the development of the FAO Guidelines to reduce sea turtle mortality in fishing operations.¹²⁰

3.4.2. FAO Compliance Agreement¹²¹

The Compliance Agreement establishes measures to promote the harmonized monitoring of fishing activities in international waters and to prevent reflagging of vessels as a way of avoiding compliance with measures applicable on the high seas. Parties must ensure that vessels flying their flag do not engage in any activity that undermines the effectiveness of international conservation and management measures, such as prohibited fishing practices as established by the RFMOs resolutions.¹²² Parties are also obliged to take enforcement measures. The Agreement improves the enforcement of sustainable fishing practices, that can also reduce bycatch in sea turtles.

¹¹⁷ FAO International Code of Conduct for Responsible Fishing, FAO Conference 1995.

¹¹⁸ Ibid. Article 1.1 and 1.2.

¹¹⁹ Ibid. Article 2.

¹²⁰ FAO Fisheries and Aquaculture Department. Guidelines to reduce sea turtle mortality in fishing operations 2005.

¹²¹ FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993.

¹²² Ibid. Article III.

3.4.3. GFCM¹²³

The GFCM was established by Agreement for the establishment of the General Fisheries Commission, under the provisions of Article XIV of the FAO Constitution.¹²⁴ Area of application of the agreement encompasses all waters of the Mediterranean.¹²⁵ The GFCM initially started its activities as a Council in 1952, when the Agreement for its establishment came into force, and became a Commission in 1997.¹²⁶

“The objective of the Agreement is to ensure the conservation and sustainable use, at the biological, social, economic and environmental level, of living marine resources, as well as the sustainable development of aquaculture in the area of application.”¹²⁷ The GFCM has the power to formulate and recommend appropriate measures for this purpose, *inter alia*, to regulate fishing methods and fishing gear.¹²⁸

Relevant for sea turtle conservation is the GFCM Recommendation GFCM/35/2011/.¹²⁹ In the Recommendation, the GFCM recognizes that there is a need to implement measures to mitigate adverse effects that certain types of fishing gear can bring upon sea turtles, and adopts measures that Parties should undertake in order to achieve this objective.¹³⁰

3.4.4. ICCAT¹³¹

The second RFMO in the Mediterranean is the ICCAT Commission, established under the Article III of the International Convention for the Conservation of Atlantic Tunas (ICCAT).¹³² The ICCAT Commission has jurisdiction regarding fisheries of tuna and tuna-like fishes in the Convention Area, which covers the Mediterranean as a connected sea to the Atlantic Ocean.¹³³ It has the power to adopt resolutions that are binding on its Parties.¹³⁴

¹²³ Agreement for the Establishment of the General Fisheries Commission for the Mediterranean 24 September 1949.

¹²⁴ Ibid. Preamble.

¹²⁵ Ibid. Article 3

¹²⁶ <http://www.fao.org/gfcm/background/legal-framework/en>.

¹²⁷ Supra Note 123, Article 2.

¹²⁸ Ibid. Article 5.

¹²⁹ Recommendation GFCM/35/2011/4 on the incidental bycatch of sea turtles in fisheries in the GFCM Competence Area.

¹³⁰ Ibid.

¹³¹ International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966.

¹³² Ibid. Article III.

¹³³ Ibid. Article I.

¹³⁴ List of contracting Parties to the ICCAT, available at <https://www.iccat.int/en/contracting.htm>.

The ICCAT addresses conservation and management of sea turtles in two of its decisions.

Resolution by ICCAT on sea turtles from 2003 notes the need to protect sea turtles from the incidental catch in fisheries in the Convention area, and supports the conservation of sea turtles through a holistic approach.¹³⁵ Recommendation by ICCAT on the by-catch of Sea Turtles replaces the 03-11 Resolution, and elaborates in more details on the measures needed to prevent the by-catch in sea turtles.¹³⁶

3.5. EU supranational measures

EU Member States are under the obligation to implement legal instruments that are adopted by the EC institutions. EU Regulations and Decisions become automatically binding on Member states, while Directives (like the Habitat Directive) must be “transposed” by the Member States into their national legislation within the certain period of time.¹³⁷

The European Community is a Party (as separate entity from its Member States) to the Barcelona Convention, CBD, CMS, and the Bern Convention, and a signatory to the Mediterranean Action Plan. The EC is also a party to RFMOs in the Mediterranean - the GFCM and ICCAT.

3.5.1. The Habitats Directive¹³⁸

The Habitats Directive is a legislation derived under the EC obligation under the Bern Convention and general interest in the protection and improvement of environmental quality, including the “conservation of natural habitats and of wild fauna and flora”¹³⁹ The Directive applies to marine habitats and species in territorial waters, and also extends into the EEZ, if a member state exerts sovereign rights in the EEZ.¹⁴⁰

¹³⁵ 03-11 Resolution on Sea Turtles by ICCAT, 19 December 2003.

¹³⁶ 10-09 Recommendation by ICCAT on the by-catch of Sea Turtles.

¹³⁷ Communication from the Commission Implementing Community Environmental Law COM (96) 500 Final, Brussels, 22.10.1996.

¹³⁸ Council Directive 92 /43 /EEC on the conservation of natural habitats and of wild fauna and flora, Brussels 21 May 1992.

¹³⁹ Ibid. Preamble.

¹⁴⁰ The position upheld by the UK High Court in the Case Greenpeace II, The Queen v. The Secretary of State for Trade and Industry ex parte Greenpeace Limited, QB (Nov. 5, 1999).

All five species of sea turtles occurring in the Mediterranean are listed in Annex IV. Annex IV is reserved for animal species of Community interest in need of strict protection.¹⁴¹ This means that Member States must strictly protect these species prohibiting: (i) deliberate capture, killing, disturbance, destruction or taking of eggs from the wild; (ii) deterioration or destruction of breeding sites or resting places; and (iii) possession, transport and associated activities.¹⁴²

Two of the species, which are also the most abundant in the Mediterranean, *Caretta caretta* and *Chelonia Midas* are also listed in Annex II. Annex II is reserved for animal species of Community interest whose conservation requires the designation of special areas of conservation.¹⁴³ This means that those species would benefit from the mandatory habitat conservation requirements. Member States must propose Special Areas of Conservation (SACs) that contribute significantly to maintenance at or restoration to a favorable conservation status of Annex II species.¹⁴⁴

The Directive sets that “a coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000”.¹⁴⁵ The objective of Natura 2000 is to enable Annex II species habitats “the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favorable conservation status in their natural range.”¹⁴⁶

The first National Park for the protection of sea turtles established under the Natura 2000 network is the National Marine Park Zakynthos.¹⁴⁷ Zakynthos beaches are the most important nesting habitat of the loggerhead sea turtles in the Mediterranean.

In 2002, the Commission brought a case in front of the ECJ against Greece for breaching the Article 12(1) of the Directive.¹⁴⁸ The court ruled in the Commission’s favor that Greece did not take all required measures to prevent the disturbance of turtles during their breeding period, and

¹⁴¹ Supra note 142, Annex IV.

¹⁴² Ibid. Article 12.

¹⁴³ Ibid. Annex II.

¹⁴⁴ Ibid. Article 6.

¹⁴⁵ Ibid. Article 3.

¹⁴⁶ Ibid.

¹⁴⁷ Supra note 29.

¹⁴⁸ Case note, Case C-103/00 *European Commission v. Greece*, ECJ 2002, <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN>

had engaged in activities leading to the deterioration or destruction of breeding sites.¹⁴⁹ However, this decision did not change the actual situation of the sea turtle conservation in Zakynthos. The non-compliance with the Court's decision continues to this day.¹⁵⁰

The Directive seems to be the most effective existing framework for sea turtle protection.¹⁵¹ Still, Article 6 (4) allows exemption from the Natura 2000 network for projects that must be carried out for "imperative reasons of overriding public interest".¹⁵² The initial process of site designation under the Natura 2000 does not take into account social or economic factors, while exempting a site does take these factors into account. Hence, for the reason of overriding economic benefits, a site can be exempt from the Natura 2000 network (e.g. economic interest of building a hotel economic benefit can override the conservation need of sea turtle nesting beaches nearby).

¹⁴⁹ Commission of the European Communities v. Hellenic Republic, Judgment of the Court, Case No. C-103/00, 6, par. 34, 38. (Ct. of Just. of the European Union, Sixth Chamber, Jan. 30, 2002, available at <http://curia.europa.eu/jurisp/cgi-bin/lform.pl?lang=EN; select List Case Number, select C-103/00, select Submit, select C-103/00 Judgment>).

¹⁵⁰ Information obtained during a visit to Zakynthos Rescue Center.

¹⁵¹ Opinion expressed in Zuardo 2010.

¹⁵² Habitats Directive, *supra* note 142, Article 6 (4).

4. Chapter IV – Gaps of the current legal framework, and need for a new instrument

4.1. Identified gaps

Evaluating gaps and shortcomings based on a short overview from the Chapter 3 is rather difficult to rely upon. Taking into consideration views expressed by other authors and relevant reports, the following gaps can be identified:

4.1.1. Fragmentation and blurriness of the current international legal framework

Sea turtles need protection from various sources of threats: direct exploitation, trade, habitat destruction, etc., direct or indirect threats (whether protecting a species or their habitat). Legal instruments from various sources, and with various objectives are relevant for sea turtle protection and conservation. International regulation in place is fragmented. Each convention, in accordance with its own objectives, provides a certain level of protection to sea turtles. But none comprehensively. There are many overlaps, but very little coordination among instruments. All of this contribute to a blurry picture of the framework in place.

4.1.2. Separation and lack of coordination among conservational and fisheries regulations

Separation of regulatory instruments on those with conservational and exploitation interests lead to the development of regulatory instruments with two different overall objectives: (i) protection of species, habitats and ecosystems; and (ii) management and conservation of fish stocks and other marine biological resources. Divided interests in protection of living resources are reflected when it comes to sea turtle conservation. Although, modern conservational treaties tend to address the problem of bycatch and modern fisheries instruments address the effects of fishing activity on the whole ecosystem (not just on commercially valuable target species), the implementation of the ecosystem approach is still relatively weak and uncoordinated.¹⁵³ This has been acknowledged in the Action Plan for Mediterranean marine turtles and CMS Resolution 6.2 - by emphasizing the need to initiate systematic dialogue and coordination of bio-diversity related treaties with the regional fisheries organizations.¹⁵⁴

¹⁵³ Legislation Guidelines p.55.

¹⁵⁴ See CMS Resolution 6.2 Point 7, and Revised Action Plan supra note p. 110.

4.1.3. Lack of enforcement

Most of the Mediterranean States have established national law relating to sea turtles protection. However, due to governance problems and issues surrounding political will for conservation and law enforcement, these laws are being only sporadically enforced. Especially, the issue is the enforcement is big in non-European Mediterranean countries, due to unstable economic and political situation.

4.1.4. Lack of inter-governmental communication

Similar to other regions, the Mediterranean also struggles with weak inter-governmental cooperation. While cooperation and communication among conservationists are on an admirable level (there is an active sea turtle conservation community in the Mediterranean¹⁵⁵), the same is not the case with the governmental communication.

4.2. Acknowledgement of a need for new instrument

The development of the MST instrument, as the starting point of this thesis, has not been proposed by any Mediterranean government. But, the need for the new instrument for sea turtles protection in the Mediterranean has been noted by relevant organizations.

FAO calls for harmonization of laws and policies:

*“(...) a large variety of laws and lack of harmony may create complex situations at the national and international levels. Therefore, there is a need for the harmonization of legislation governing sea turtle conservation. (...) International cooperation at the regional and global levels is essential for creating a broad policy framework to shape and coordinate national measures.”*¹⁵⁶

UNEP's expressed the position that:

“Mediterranean marine turtle conservation would benefit from improving links between all competent bodies and concerned sectors, including conservation oriented treaties, fisheries and tourism sectors. The Bern Convention, Barcelona Protocol and CMS each have elements that

¹⁵⁵ Personal email with D. Hykle, July 2016.

¹⁵⁶ FAO Guideleines 2005, p.97.

could be better knitted together, possibly through an agreed joint work programme or memorandum of understanding for marine turtles.”¹⁵⁷

MTSG Global Strategy for the Conservation of Marine Turtle calls for the promotion of international regional agreements for marine turtles under the CMS.¹⁵⁸

Revised Action Plan reads that: “The implementation of the Action Plan may be carried out, in cooperation with other bodies concerned, through establishing MoUs, as necessary.”¹⁵⁹

Barcelona, Bern, CMS have shown the initiative and interest in protecting MST. Their Secretariats organized and funded the Mediterranean Conferences on Marine Turtles since 2001.

Douglas Hykle, the Secretary of the CMS at the time of writing the following paragraph, noted:

“Given the comprehensive geographic and thematic coverage of the Bern Convention within Europe, CMS' complementary role in relation to marine turtles may be thought of in terms of reinforcing existing norms, collaborating and providing support where needed, and providing the link between regional and global initiatives.”¹⁶⁰

Interpreting above-mentioned findings, the conclusion is that a new instrument in the region is desired and beneficial for sea turtles conservation. The CMS Secretariat can undertake the analysis and itself and identify the most appropriate solutions to enhance species conservation. E.g. the Secretariat analyzed gaps regarding elephant conservation in Central Africa¹⁶¹ prior to considering the development of a new CMS instrument. Like for the sea turtles in the Mediterranean, a number of existing instruments are applicable towards the African elephants,. The gap analysis was, and can be employed as the first step in deciding whether the new instrument is, in fact, needed.

¹⁵⁷ UNEP Legislation Guidelines p.55.

¹⁵⁸ IUCN (The World Conservation Union), A Global Strategy for the Conservation of Marine Turtles, IUCN, Washington, D.C. 1-24 (1995), p. 16.

¹⁵⁹ Revised Action Plan, p. 15.

¹⁶⁰ Hykle 2002, p.114.

¹⁶¹ CMS COP 10, Agenda Item 16, Analyzing Gaps and Options for Enchasing Elephant Conservation in Central Africa.

4.3. Prospects for initiative of the Mediterranean States to conclude the MST Agreement

Some notion of developing a more formal agreement under the CMS relating to MST dates back to the 1990s.¹⁶² It always had to take account of other agreements operating in the region, notably the Bern Convention and a Protocol under the Barcelona Convention. Inevitably, competition arises between various conservation instruments (and NGOs) and no one wishes to devolve authority to another body, which probably explain why no Agreement has yet been concluded under the CMS auspices.¹⁶³ The best that could be managed so far by the CMS was a tripartite coordination in the organization of the Mediterranean sea turtle symposia.

The form of the MST Agreement is, in essence, the international treaty. The treaty making process is more political than a legal question, hence it is out of scope of this thesis. But in short terms, States enter treaties in order to obtain gains from cooperation that the given treaty would provide.¹⁶⁴ Answering what is the prospect for initiative of the Mediterranean States to conclude MST Agreement, means answering what gain would Mediterranean States have from restoring and maintaining sea turtles favorable conservation status.

It has been noted that in order to conclude an international agreement, it takes an initiative of one or few concerned governments to “spin the wheel” of negotiation for its conclusion. Usually, the economic interest is the best incentive to make governments interested to spin that wheel.

4.3.1. The IAC¹⁶⁵ example

The IAC was drafted as a response to the US state department certification process and Public law 101-162. Section 609 of the legislation required all nations to use to use turtle excluder devices (TEDs)¹⁶⁶ on their shrimp vessels if they want to export shrimps to the U.S. It is a wide spread belief that the whole purpose of Section 609 was to lessen foreign competition on the U.S. shrimpers. Shrimp exported from countries not certified by the U.S. State Department

¹⁶² Personal email with J. Frazier. August 2016.

¹⁶³ *Ibid.*

¹⁶⁴ Miles and Posner, 2008 p. 2.

¹⁶⁵ *Supra* note 16.

¹⁶⁶ TEDs are hard metal grids or soft webbing panels that can be placed in shrimp nets. Shrimp slip through the bars of the device and are retained in the net, while sea turtles and other large animals strike the rods and are guided outward through a trapdoor. Correctly employed, TEDs can decrease marine turtle fatality by 97% percent.

were subjected to an embargo. In order to avoid sanctions, Caribbean and Atlantic nations of South America began work developing the Inter-American Convention for the Protection and Conservation of Sea Turtles. Under the IAC, each state is responsible for enforcement of TED regulations within its borders.

The IAC served as an appropriate international tool the U.S. economic interests. It is important to notice that the IAC is a conservation oriented treaty whose main objective is the conservation of sea turtles.¹⁶⁷ But, the conservation was not a reason why the IAC saw a light of a day. If there was no US incentive to develop a treaty to promote its economic interests, it is doubtful whether the IAC would ever be developed, hence leaving sea turtles in the region without adequate legislative protection. The IAC is a perfect example of how one interested government can initiate international treaty making process, and how conservation efforts are enhanced by economic incentives.

4.3.2. MST conservation chance – sea turtles based tourism

Tourism is, one of the few industries that can provide economic incentives for the preservation of the environment. Tourism is currently the first foreign currency source in the Mediterranean region.¹⁶⁸ E. g. tourism in Greece contributes for 7% to the country's GDP and directly or indirectly employs 10% of the country.¹⁶⁹ Sea turtles abundance in the region can influence number of visitors to the tourist site, as concluded in the WWF research on economic aspect of the sea turtle conservation.¹⁷⁰ The research can be of use to raise awareness and concerns of governments when deciding the importance of sea turtle sustainability.

Nature oriented tourism is growing at the faster rate (grow rate of 10-30% per year) than the overall tourism growth (growth of 4% per year).¹⁷¹ Especially sea turtles oriented tourism has shown a great potential for growth.¹⁷² The use of sea turtles as touristic attractions, observing them in nesting and offshore sites, has gained popularity throughout the world. Hence, it is

¹⁶⁷ See IAC Preamble.

¹⁶⁸ Impact of tourism development on marine turtle nesting, 2000 p. 17.

¹⁶⁹ Ibid. p. 18.

¹⁷⁰ Troeng and Drews, 2004.

¹⁷¹ *Ibid.* p.20.

¹⁷² *E.g., at Tortuguero, tourism visitation increased at a rate of 16% per year between 1988 and 2002. At Turtle Islands Park, Sabah tourism visitation increased 13% per year between 1988 and 2002. In Oman, the number of visitors grew with 20% per year between 1991 and 1996. In Rantau Abang, national tourism grew with 15% and international tourism with 9% per year between 1989 and 1994. Ibid.*

clear that sea turtle use in the eco-tourism context can generate revenue and create jobs. It is also a sustainable way of using sea turtles.

Evidently, threats to sea turtles must be reduced in order to avoid negative economic consequences. Research shows that tourism will be affected if sea turtles abundance falls under certain levels.¹⁷³

Such economic incentives add value to sea turtles, and are likely to act as a driving force in governments decisions whether to conserve sea turtles. The significance of sea turtles in the cultural and social lives of many coastal people has been widely recognized.¹⁷⁴ Coastal communities, together with various NGOs can put a significant pressure on their governments to act to conserve sea turtles.

4.3.3. Conclusion

The eco-tourism based conservation illustrate one approach to a problem how to make governments interested to act. Tourism is adding new threats to sea turtle survival by endangering their nesting beaches. It is unlikely stopping development of such a powerful industry. The best option is to try to recruit tourism development in a sustainable way. The gross revenue that sea turtles can generate needs to be evaluated and documented in order to be employed as a motivation for governments. For example, CMS can coordinate that research as phase of a gap evaluation analyses. Based on the estimated gross revenue, governments will take a lead position if it is in their economic interest to do so.

Taking a leading role in developing MST MOU is also one of the CMS requirements for developing new Agreements under its auspices.¹⁷⁵ Active participation by governments means investment of their time and resources. The most probable way to develop an interest for government investment is employing the sea turtle eco-tourism economic value.

¹⁷³ Tisdell & Wilson (2001) suggested that atleast 200 marine turtle females per year were needed to maintain tourism at current levels at Mon Repos, Australia. The threshold concept is consistent with observations at Rantau Abang, Malaysia where tourism declined rapidly once leatherback nesting fell below 100 nests per year Similarly, at Playa Grande, Costa Rica tourist visits declined during seasons when annual nesting fell below 100 females. Ibid.

¹⁷⁴ WWF Report 1999, p. 16.

¹⁷⁵ Annex to CMS Resolution 11.12. criterion (ix).

5. Chapter V – CMS: the right tool for sea turtles conservation

5.1. Overview of the CMS

CMS¹⁷⁶ is a multilateral environmental agreement concluded with a goal to ensure conservation and sustainable use of migratory animals and their habitats. CMS defines migratory species as “*the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries*”¹⁷⁷.

CMS lists all sea turtle species found in the Mediterranean in its Appendices I and II.¹⁷⁸ Listing species in each Appendence provide different conservation measures. By being listed in Appendix I sea turtles enjoy conservation protection directly by the relevant CMS provisions.¹⁷⁹ On the other hand, by listing species in Appendix II, CMS encourages states to conclude Agreements for their protection, instead of prescribing minimum conservation standards.¹⁸⁰

5.1.1. Appendix I species and direct conservation obligation

Appendix I of the Convention lists migratory species that are endangered.¹⁸¹ The term “endangered” has being interpreted as meaning “facing a very high risk of extinction in the wild in the near future”¹⁸². The term “endangered” defined by CMS and by the IUCN Red List Criteria does not necessarily always match, but they are in close correspondence. CMS Resolution 11.33. provides a guideline how the two correspond.¹⁸³

Parties that are Range States¹⁸⁴ to a migratory species listed in Appendix I shall endeavor to strictly protect them by: prohibiting taking of such species, with very restricted scope for exceptions¹⁸⁵; conserving and where appropriate restoring their habitats; preventing, removing

¹⁷⁶ Supra note 96.

¹⁷⁷ CMS Article I (1).

¹⁷⁸ See CMS Appendix I and Appendix II for sea turtles listings. CMS allows listing of species in both Appendences. Article IV (2).

¹⁷⁹ CMS Article III contains conservation measure relevant to Appendix I species.

¹⁸⁰ CMS Article IV

¹⁸¹ CMS Art III (1).

¹⁸² CMS Resolution 5.3., confirmed in 11.33.

¹⁸³ CMS Resolution 11.33.

¹⁸⁴ “Range State” is defined in CMS Article I (h).

¹⁸⁵ CMS Article III (5).

or mitigating obstacles to their migration and controlling other factors that might endanger them.¹⁸⁶

5.1.2. Appendix II species and Agreements

CMS Appendix II lists species that have (i) unfavorable conservation status¹⁸⁷ and that require international agreements for their conservation and management, (ii) as well as those that have a conservation status which would significantly benefit from the international cooperation that could be achieved by an international agreement.¹⁸⁸ CMS acts as a framework convention in respect to Appendix II species. Instead of prescribing minimum standards for their protection, the CMS encourages conclusion of Agreements for conservation and management of those species. Agreements are open for both Parties and non-Parties to the Convention.¹⁸⁹

The Convention differentiate between two types of Agreements:

Article IV (3) AGREEMENTS

Article IV (3) AGREEMENTS¹⁹⁰ are *sesnu stricto* Agreements reserved for Appendix II species, where these would benefit from concluding an Agreement. States shall endeavor to conclude AGREEMENTS where these would benefit the species.¹⁹¹

The term “shall endeavor” is being used throughout the CMS provisions, and the meaning requires clarification. Some authors read the term as a strict obligation, therefore States would be obliged to conclude AGREEMENTS for Appendix II species, and also obliged to provide immediate protection for Appendix I species (as the term shall endeavor is used for Appendix I species protection as well¹⁹²). Given the number of Appendix II species, that would mean that CMS predicts conclusion of hundreds of AGREEMENTS, which is highly unlikely. For the juridical interpretation of the term “shall endeavor”, R. Caddell points out to a case *Australia v. Tasmania*¹⁹³ in front the Australian High Court. The term was held to carry an obligatory

¹⁸⁶ Supra note 178.

¹⁸⁷ Favorable conservation status of species is described in CMS Article I (1) (c).

¹⁸⁸ CMS Article IV.

¹⁸⁹ Caddell, 2005 p.115.

¹⁹⁰ Capitalization is intentional and it signifies Article IV (3) Agreements. Capitalization is included in newer version of CMS text.

¹⁹¹ CMS Article IV (3).

¹⁹² Art. II (3) (b) (c).

¹⁹³ *Australia v. Tasmania* (1983) 158 C.L.R. 1.

weight towards parties.¹⁹⁴ Prof. Caddell also points out that this interpretation is not binding for CMS Parties.¹⁹⁵

Parties shall endeavor to conclude AGREEMENTS only where these would benefit the species.¹⁹⁶ Hence, the strength of obligation may increase with increased likelihood of benefit of the species. In the MST example, with the higher proof of benefit that sea turtles would have from the AGREEMENT conclusion, the term “shall endeavor” can be read with higher stringency.

CMS Article V lists a lengthy guideline procedure that should be incorporated when concluding Article IV (3) AGREEMENTS.¹⁹⁷

Article IV (4) agreements

Article IV (4) agreements can be concluded with the higher level of leniency. States are encouraged to conclude Article IV (4) agreements for any population or any geographical subpopulation of any species.¹⁹⁸ Except for being more flexible in the scope of covered species, the concluding procedure is also more flexible - States are not bound by the Article V guidelines and may be more flexible when determining the terms of agreement. IV (4) agreements offer more flexibility, therefore are more attractive option for States.

5.1.3. MOUs

The Agreements may vary from legally binding treaties to a less formal instruments - known as Memorandum of Understanding. MOUs are instruments that carry lesser legal obligation (some even, like the IOSEA MOU have a non-legally binding effect¹⁹⁹). The MOU concept is based on the Resolution 2.6 adopted at the 2nd COP meeting, not originally envisaged by the Convention text. The first MOU is the MOU Concerning Conservation Measure for Siberian Crane is adopted in 1993.²⁰⁰ It served as a model for making both existing MOUs concerning sea turtle conservation. Resolution 2.6 recommends the use of non-binding instruments, such

¹⁹⁴ Ibid.

¹⁹⁵ Caddell, 2005 p. 118.

¹⁹⁶ CMS Article IV (3).

¹⁹⁷ See CMS Article V.

¹⁹⁸ Interpreting CMS Article IV (4), conclusion is that species included in agreements does not have to be listed in Appendix II, nor even migratory.

¹⁹⁹ Caddell, 2005 p. 120.

²⁰⁰ For Siberian Crane MOU see <http://www.cms.int/en/legalinstrument/siberian-crane>.

as the COP Resolutions and Memoranda of Understanding, as potential first steps towards the conclusion of AGREEMENTS under the Convention.²⁰¹

MOUs can be concluded in a form of both types of Agreements. As of now, all MOUs are concluded in the form of Article IV (4).²⁰² This is quite logical choice, as the whole idea behind MOUs is to make a “more loose” Agreements, and non existence of strict guidelines for concluding Article IV (4) agreements is more suitable.

5.1.4. Action Plans

AP and CMP can be appended to both Agreements and MOUs. They contain the more specific conservation and management measures. Also, AP and CMP are intended as “live documents”. They are reviewed and adjusted over time to reflect the best conservation and management practices in regard to the listed species. E.g. IOSEA is predominantly framework MOU whose main strengths lay in the appended CMP consistant of 24 conservation and management programs with 105 specific turtle conservation activities.²⁰³

5.2. CMS special attention towards sea turtles

CMS paid specific attention towards sea turtles by concluding two MOUs for their conservation, and also by taking specific actions to help their conservation.

5.2.1. Atlantic Turtles MOU²⁰⁴

The Atlantic Turtles MOU entered into force in July 1999. The MOU covers coastal areas of 26 countries, extending from coasts of Morocco to South Africa. In May 2002, Range States concluded the comprehensive Conservation Plan known as the “Nairobi Declaration”. The Conservation Plan has five broad objectives, each of which is composed of specific programmes and under which are listed total of 22 programmes and 65 activities. Nairobi Declaration drew attention to the problem of marine turtle by-catch in industrial fishing operations and emphasized the importance of involving local communities in the development

²⁰¹ CMS Resolution 2.6.

²⁰² List of MOUs available at <http://www.cms.int/en/cms-instruments/mou>.

²⁰³ Hykle, 2002 p. 108.

²⁰⁴ Supra note 17. All information is obtained at <http://www.cms.int/atlantic-turtles>.

and implementation of conservation activities. It advises linkage with other conventions, intergovernmental bodies and NGOs.

The Atlantic Turtles MOU and its Conservation Plan, at least in theory, look promising. However, the Atlantic Turtles MOU has become dormant after the first couple of years of its conclusion. In recent years this agreement does not receive sufficient institutional support from the CMS Secretariat. Seems that when governments have limited resources, and in times of high political and economic instability in the region, adequate implementation of conservation efforts is hardly achieved. Also, the African Turtle MOU does not have its own Secretariat (which is again due to lack of financial support from governments) which makes the monitoring and implementation of the Conservation Plan unlikely.

5.2.2. IOSEA MOU²⁰⁵

IOSEA MOU and the associated CMP entered into force on 1 September 2001. The IOSEA MOU applies to the waters and coastal States of the Indian Ocean and South-East Asia and adjacent seas, extending eastwards to the Torres Strait. The agreement area covers 44 Range States. The IOSEA Secretariat was established in April 2003, which is an important improvement comparing to the African Turtle MOU. The Secretariat is supported through voluntary funding from Parties. Its purpose is to coordinate activities under the IOSEA MOU.

The CMP is the central feature of the IOSEA MOU. It is essentially a framework agreement that enforces its framework objectives through detailed CMP. Focus of the CMP is on reducing threats, conserving critical habitat, exchanging scientific data, increasing public awareness and participation, promoting regional cooperation, and seeking resources for implementation.

The IOSEA Secretariat has developed an innovative online system for countries to report the progress in the CMP implementation (IOSEA online tools are e.g. the Projects Database, Satellite Tracking Metadatabase, Bibliography Resource). IOSEA Parties have used the CMP as a template for their own national strategies and for reporting on their sea turtle conservation activities.

²⁰⁵ Supra note 18., All information is obtained at <http://www.ioseaturtles.org>.

5.2.3. Special actions

Besides providing direct protection for sea turtles as Appendix I species, or protection through conclusion of MOUs concerning sea turtles, the CMS bodies promoted special actions to contribute towards protection of sea turtles species.

CMS Secretariat played a leading role in promoting regional cooperation and building capacity in order to protect sea turtles. The Secretariat is the Convention's coordinating body. Its functions are set out in Article IX of the Convention.²⁰⁶ The Secretariat *inter alia* develops and promotes Agreements, services meetings, supports and supervises research and conservation projects and co-operates with governments and partner organizations.²⁰⁷ The Secretariat has co-sponsored a number of workshops in collaboration with the IUCN²⁰⁸. Workshops were useful sites for exchange of views and information among government officials and specialist in the field, and often can serve as an opportunity for initial steps towards regional cooperation. CMS has also funded project activities and regional capacity building and trainings. Projects were administered by the Convention Secretariat, addressing various management problems and gaps in existing knowledge.²⁰⁹ The CMS also funded education and awareness material development.²¹⁰

The Conference of the Parties (COP) is the decision making body of the CMS, that gathers approximately every third year. COP decisions are made by the qualified majority of the present and voting parties. The COP reviews the implementation of the Convention, and thought decisions expressed in form of resolutions and recommendations sets agenda for future initiatives. COP's functions are set out in Article XII of the Convention.²¹¹ COP has paid specific attention to sea turtles. In Resolution 6.2 reaffirmed Parties' obligation to reduce the incidental capture of migratory species, calling for strengthened bycatch mitigation measures

²⁰⁶ CMS Article IX.

²⁰⁷ Ibid.

²⁰⁸ Workshops have been held so far in South Africa (1995), India (1997), UAE (2000), Viet Nam (2001), see Hykle, 2002.

²⁰⁹ Examples of CMS-sponsored projects are: Project in Sri Lanka assessing bycatch and fisheries interaction involving Olive Ridely turtles; Migration and genetics of Indo-Pacific marine turtles; Using satellite telemetry to determine post-nesting migratory corridors and foraging grounds of green turtles nesting at Poliao, Guinea Bissau, see Hykle, 2002.

²¹⁰ Biogeography and Conservation of Marine Turtles of the Atlantic Coast of Africa; Research and Management Techniques for the Conservation of Sea Turtles, see Hykle. 2002.

²¹¹ CMS Article XII.

and made particular reference to marine turtles.²¹² In the 2002 COP Recommendation 7.2 was essentially critical of the lack of implementation of the previous 1999 resolution. It referred to bycatch as ‘one of the major causes of mortality to marine migratory species’ and made recommendations to Parties to take action.

²¹² CMS Resolution 6.2.

6. Chapter VI - The development of the MST Agreement under the CMS framework

6.1. Proposal for MST Agreement - waiting for CMS approval: Future Plan Concept and Criteria for new Agreements:

This chapter will focus narrowly on the principal research question of the thesis - whether the MST Agreement would contribute towards improving or maintaining favorable conservation status of sea turtle species in the Mediterranean.

The congestion of treaties is often cited as an acute problem in the environmental law.²¹³ This is especially true in the Mediterranean region in regard to sea turtles.²¹⁴ Duplicated provisions and reporting obligation do not benefit, but weaken the regulation in place. CMS family have no intention of adding another Agreement to the sea of instruments if there is no need for one. Therefore, the involvement of the CMS in conservation and management of sea turtle species in the Mediterranean cannot be assumed, but is subjected to a careful considerations of CMS Parties.

With Resolution 9.13 and Addendum to it, the Parties launched an intersessional process to explore the possibilities of strengthening the CMS family network.²¹⁵ Parties established an ad hoc Working Group (WG) to draft a proposal for future shape of the CMS until the next COP meeting. The Future Structure and Strategies of the CMS and CMS Family was adopted in Bergen COP meeting in 2011.²¹⁶ In addition, Resolution 10.16 contained a list of consideration that must be addressed when making any new proposals for the Agreements.

It was at the last COP, in Quito in 2014, that Parties definitely took driver seat in the further development of CMS. New Agreements under the CMS, like the potential MST Agreement, now have to follow clearly defined criteria in order to be established. Taking into account the

²¹³ Caddell defines treaty congestion as “the situation that arises when a significant number of international and regional bodies are responsible for controlling a broadly similar set of activities, all of which produce a considerable volume of regulatory measures and some of which overlap or even conflict with each other”. Caddell 2005, p. 148.

²¹⁴ Conclusion is based on the review from Chapter 3. Also, presence of EU supranational measures adhere to congestion, see Caddell ,2005 p. 148.

²¹⁵ See CMS Resolution 9.13 and CMS Resolution 9.13 Addendum.

²¹⁶ CMS Resolution 10.9.

consideration from the Resolution 10.16, the Criteria for Assessing Proposals for a new Agreements have been established by the Resolution 11.12.²¹⁷ Parties established 14 criteria that must be applied when developing and evaluating proposals for future Agreements. It is acknowledged that the term “Agreements” is used to refer to AGREEMENTS, agreements and Memorandums of Understanding as the context may require.²¹⁸ The criteria can be applied with some flexibility. Some criteria are absolute and have to be fulfilled in order for establishment of new Agreements (e.g. criterion on clear purpose and criterion on prospects for leadership²¹⁹), while some can be used in more relative manner (e.g. when deciding among two proposals).²²⁰ Generally, the more objective, transparent and detailed the proposal is, the more likely it is to be accepted.

Testing a proposal against established criteria should ensure that CMS future Agreements do not just adhere to the congestion of regulations, but actually serve the purpose of its conclusion. Testing the MST Agreement against all criteria is not possible for the reason of space limitation of the thesis. Several criterions are chosen to test whether the MST Agreement would contribute towards improving or maintaining favorable conservation status of sea turtle species in the Mediterranean.

6.2. Conservation priority of sea turtles

Conservation priority is determined based on severity of conservation needs of sea turtles. The criterion points out the degree of species endangerment or unfavorable conservation status as defined under the Convention. Sea turtles are listed in Appendences I and II of the Convention, which confirms their high conservation priority.²²¹ In addition, the IUCN Red List assessment²²² can be used to confirm sea turtles troublesome conservation status in the Mediterranean and prove decline of species population.

²¹⁷ CMS Annex to Resolution 11.12.

²¹⁸ CMS Resolution 11.12. second paragraph.

²¹⁹ Prospect of leadership, although an important criterion, will not be discussed in this Chapter. Discussion and conclusion in Chapter IV answer the question of leadership sufficiently for the purpose of the thesis.

²²⁰ Supra note 220.

²²¹ Supra note 181.

²²² Supra note 7.

Hence, sea turtles conservation priority is high, and makes eligible the conclusion of the MST Agreement.

6.3. Serving a specific existing COP mandate

Serving a specific existing COP mandate means that the proposal for the MST Agreement should respond to relevant objectives expressed in CMS strategies and other decisions of the Parties (e.g. Resolutions). The Strategic Plan for Migratory Species 2015 – 2023 was adopted at the 11th COP.²²³ Objectives of the SPMS are expressed through five overall Goals and 16 sixteen specific Targets. Reference can be made to SPMS Target 9 that mandates the “International and regional action and cooperation between States for the conservation and effective management of migratory species”.²²⁴ Also, SPMS Target 10 mandates that “critical habitats and sites for migratory species are identified and included in area-based conservation measures”²²⁵ and further refer to Aichi Target 11 that requires “that at least 17 % of terrestrial and inland water, and 10% of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved...”.²²⁶

Reference to Aichi Targets needs to be clarified. The Strategic Plan for Biodiversity and the Aichi Biodiversity Targets are used as a framework when developing the SPMS.²²⁷ Hence, when defining the specific mandate of the MST Agreement, broader scope of the mandate encompasses also Aichi Targets. Also, activities listed in Annex 3 of the Resolution 10.9. can be taken into account.²²⁸

6.4. Clear and specific defined purpose

Proposals should specify intended conservation outcomes.²²⁹ Purpose of the new Agreement is defined and closely related to its objective, but also should show how is the Agreement supposed reach its objective. Article V mandates that “the object of each AGREEMENT shall

²²³ CMS Resolution 11.2.

²²⁴ Ibid Target 9.

²²⁵ Ibid. Target 10.

²²⁶ Supra note 95, Target 11.

²²⁷ Supra note 225 1.1. (1).

²²⁸ See CMS resolution 10.9. Annex 3.

²²⁹ Annex to CMS Resolution 11.12, criterion (iii).

be to restore species concerned favorable conservation status, or to maintain it in such a status. Resolution 11.12 mandates that (any) Agreement proposals should have regard to CMS Article V.²³⁰

Hence, the objective of the MST Agreement should be to restore sea turtles in the Mediterranean favorable conservation status, or to maintain them in such a status. Purpose of the MST Agreement should be to use the international cooperation obtained through it in reaching the objective.

Concluded from discussions in this thesis, sea turtles are intended to benefit from international cooperation under the MST Agreement by: (i) harmonization and linkage of current instruments relevant to sea turtle conservation; (ii) expanding the functional conservation elements from conventions and parts of the Mediterranean where it is functioning to the parts where it is not functioning; (iii) relying on the existing elements of sea turtle conservation where possible, instead of including new ones, in order to prevent the further congestion of the regulations; (iv) relying on previous experiences of the CMS sea turtles Agreements.

6.5. Absence of better remedies outside the CMS system

“Proposals should compare the option of a CMS Agreement with alternative options outside the Convention’s mechanisms, and explain why a CMS Agreement is the best method of meeting the defined conservation need.”²³¹

CMS at the outset appears as the best option to develop an instrument to conserve sea turtles. The Convention is specialized in protecting migratory species. It has a long experience in the field, and already established cooperation with relevant international organizations and other regulatory instruments. It offers States legal platform for negotiation processes and provides an institutional framework adapted to special needs of transboundary conservation. Also, CMS framework has already served as a playground for developing MOUs concerning sea turtles in other regions of the world. Those instruments can be a valuable model for developing their Mediterranean counterpart.

²³⁰ Ibid.

²³¹ Ibid. criterion (iv).

Nevertheless, there are other ways, outside the CMS mechanism, that can be employed in conserving MST. What follows is a brief look upon some alternative options of meeting conservation needs of MST.

6.5.1. Self-standing legally binding treaty

At the outset, it seems the most logical that the best way to protect sea turtles is to conclude self-standing legally binding instrument. From international law point of view, that instrument would carry the highest level of obligation upon Parties.

The emergence of the IAC²³² illustrates an example of states concluding freestanding instruments for sole purpose of sea turtle conservation, without associating it with the CMS framework. The approach might be understandable as the IAC region at the time of its conclusion, and even today, had a very limited representation in CMS. This independent approach would be absurd in the Mediterranean context, with most of coastal states as the CMS parties, and non-parties could also join the MST Agreement.

In the Mediterranean, self-standing treaty does not seem as the best option. The instrument risks the further congestion of international legal measures related to MST, without actually making any progress in their conservation. Multiplying legal obligation from various sources does not mean increasing the strength of the obligation, but can lead to a confusing legal order. MST need “a spin” of existing rules, not a new, isolated source of (duplicated, triplicated) regulations. Also, self-standing legally binding treaties are expensive and take long time to conclude. Financial burden that self-standing instrument would carry along can be a price that is too high for Mediterranean states to pay to conserve species like sea turtles, that do not have direct economic value.

6.5.2. World Heritage Species concept

The concept of World Heritage Species (WHS concept) is intended as a self-standing agreement, protocol²³³ to the World Heritage Convention.²³⁴ Whereas the WHC protects cultural and natural sites of "outstanding universal value" to humankind, the WHS Protocol

²³² Supra Note 16.

²³³ Self-standing agreement and protocol are not oxymoronic terms. Protocols are, in essence, international agreements that's adopt institutional mechanism of a 'parent' agreement. See Wold, 2008.

²³⁴ Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972.

would protect species of outstanding universal value to humankind.²³⁵ Even though shortcomings of current international environmental agreements to protect species are recognized, UNEP and UNESCO²³⁶ have showed little enthusiasm for negotiation of the new Protocol. Probably because of the lack of political will to conclude it.

In regard of using the concept in the MST context, prof. Wold argues that *“if nesting habitat is the main threat, then perhaps a CMS MoU or a regional treaty is the answer. If there are a number of threats to sea turtles in the Mediterranean region and there is no political will for a new treaty, then perhaps the World Heritage Species idea is the best strategy.”*²³⁷

However, as of now, existing environmental agreements like CITES, CMS, CBD, nor even WHC, have the mandate to incorporate WHS concept. Also, even if the WHS concept is developed, sea turtles would have to be recognized as a species of “outstanding value to humankind” in order to enjoy the protection. Criteria for designation of WHS have not been adopted.²³⁸

6.5.3. FAO IPOA - Sea Turtles

FAO have drafted a number of soft law instruments regulating fisheries. These instruments include FAO Code of Conduct, and four International Plans of Action (IPOAs).²³⁹ In March 2005, at the 26th Session of the Committee on Fisheries (COFI), FAO adopted Guidelines to Reduce Sea Turtle Mortality in Fishing Operations²⁴⁰. However, COFI has refused to support another IPOA on the subject of sea turtles, justifying its decision that it will not support new IPOAs before there was better compliance with existing ones (IPOAs).²⁴¹

COFI recognized reasons behind unsuccessful implementation of FAO IPOAs:

²³⁵ Wold, 2008 p.339.

²³⁶ UNESCO is also the Secretariat of the WHC.

²³⁷ Wold's opinion obtain from a personal email.

²³⁸ Although Wold have proposed criteria for designating species. See Wold, 2008 p. 371.

²³⁹ Four FAO IPOAs are: (i) IEPOA-Sharks; (ii) IPOA-Capacity; (iii) IPOA-IUU; (iv) IPOA-Seabirds, see Lugten, 2006 p.162.

²⁴⁰ Supra note 120.

²⁴¹ Lugten 2006, p. 155.

1. A lack of political will to support implementation; 2. Fisheries not being assigned a high national priority because of their small economic contribution; 3. The fisheries sector being poorly organized.²⁴²

These constraints are primarily driven by economics. Sea turtles have an even smaller economic value than fisheries do, and therefore they are unlikely to be assigned a high national priority. Without an economic priority status, there will be a lack of political will by nation states to address the plight of sea turtles. Thus, a “fisheries perspective” conservation attempt through developing a potential IPOA-Sea Turtles as the outset does not look promising. It is undermined by the same constraints that hinder national action on the existing FAO IPOAs.

6.5.4. Barcelona Protocol framework: SPAMIs and Revised Action Plan

The Barcelona Convention is the only agreement to whom all Mediterranean nations are signatories. The significance of its mechanism as far as sea turtles are concerned is two folded:

(i) The Action Plan for the Conservation of the Mediterranean Marine Turtles

The Revised Action Plan takes a holistic approach to protect MST populations, and sets out mutually reinforcing objectives and priorities. Three main objectives of the Action Plan are: (i) protection, conservation and, where possible, enhancement of marine turtle populations in the Mediterranean, with special priority accorded to *Chelonia mydas* where appropriate; (ii) appropriate protection, conservation and management of marine turtle habitats including nesting, feeding, and wintering areas and migration routes; (iii) improvement of the scientific knowledge by research and monitoring.²⁴³ Also, an important feature of the Revised Action Plan is its emphasis on addressing interactions of marine turtles with Mediterranean fisheries.

The revised Action Plan acknowledges that actions are required at both national and regional level in order ensure conservation objectives. With emphasis on the need for adoption of the necessary legal measures, Contracting parties take *inter alia* following actions: (i) those Contracting Parties which have not yet extended legal protection to marine turtles do so as soon as possible, bearing in mind the existing international agreements; (ii) each Contracting Party

²⁴² FAO, Committee on Fisheries COFI/2003/3, paragraph 84.

²⁴³ Ibid. Point 7.

should be encouraged to draw up and enforce the legislation necessary for creating, protecting, conserving and managing protected areas for marine turtles.²⁴⁴

For the purpose of supporting Contracting Parties of the Revised Action Plan to design their national legislation, the document “Guidelines to design legislations and regulations to the conservation and management of marine turtles populations and their habitats” was published in 2003.²⁴⁵ Also, prepared under the RAC/SPA is the document “Guidelines for setting up and management of specially protected area for marine turtles in the Mediterranean”²⁴⁶.

The Revised Action Plan has all the elements to provide successful conservation for MST. Whether it will operate successfully under the Barcelona framework alone, is dependent of the desire of Parties to conserve sea turtles.

(ii) SPAMI Network

Pursuant to Article 8 of the Protocol, Parties to the Barcelona Convention established the list of SPAMIs in order to promote cooperation in the management and conservation of natural areas and the protection of threatened species and their habitats.

“An integral component of spatial and ecosystem management is the concept of the marine protected area (MPA)”.²⁴⁷ MPA is defined as an “*area within or adjacent to the marine environment, together with its overlaying waters and associated flora, fauna and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings*”.²⁴⁸ Parties to CBD included the goal of protecting 10% of the world's ecological regions by 2020.²⁴⁹ One of the challenges in relate to that goal is the establishment of MPAs on the high seas or in ABNJ. While no rule of law is explicitly prohibiting, usually there is no legal basis for establishment of MPAs in the ABNJ.²⁵⁰ So far, the designation of MPAs on the high seas has taken place under the auspices of regional seas

²⁴⁴ Ibid. Annex Recommended Actions on the Regional and Sub-Regional Levels.

²⁴⁵ IUCN Legislation Guidelines, 2001.

²⁴⁶ Available at http://www.rac-spa.org/sites/default/files/doc_turtles/g_l_manag_mpa_turtles_en_fr.pdf.

²⁴⁷ Scott 2012, p. 850.

²⁴⁸ CBD Secretariat, Report of the Ad Hoc Technical Expert Group on Marine and Coastal Protected Areas (13 February 2003) para. 30.

²⁴⁹ Supra note 228.

²⁵⁰ Scott 2012, p. 851.

organizations, but the coverage is currently limited to only four areas: the Southern Ocean; the North East Atlantic; the Mediterranean; and the central Pacific.²⁵¹

In the Mediterranean, the legal basis for establishment of the high seas MPA is provided in provisions of the SPA/BD Protocol. SPAMIs may be established in areas situated partly or wholly on the high sea.²⁵² Annex I to protocol contains common criteria for choice of areas that could be included in SPAMI list.²⁵³ Since the 19th meeting of the Contracting Parties to the Barcelona Convention, the SPAMI List includes 34 sites, one of which also encompasses an area on the high seas.²⁵⁴ In 2002, France, Italy and Monaco agreed to establish an international sanctuary for Mediterranean marine mammals - the Pelagos Sanctuary. The Parties to the Barcelona Convention adopted the decision to include the Sanctuary in SPAMIs list.

The hesitation of the Mediterranean states to claim the full-fledged EEZ of 200nm (as provided in the LOSC) has deprived the Mediterranean of an effective conservation and management tool. In some parts, the high seas begin as close as 12nm from the shores, and coastal states are left without real conservation and management powers in the Mediterranean sea. Migratory species need to be conserved throughout their range. Sea turtles, like cetaceans and other migratory species, would also benefit from protection on the high seas. Current MPAs protecting sea turtles are mostly aimed towards nesting sites protection measures. Establishment of Pelagos Sanctuary under the SPAMI network proves that there is a legal basis for the establishment of MPA on the high seas in relate to sea turtles in the Mediterranean. Sea turtles would benefit the most out of the coherent MPA network throughout the Mediterranean. SPAMIs network can provide a legal basis for establishment of MPA in both areas within and beyond national jurisdiction.

At some point, all Mediterranean States may establish EEZs stretching 200 nm from their shores, leaving only pockets of high seas in the Mediterranean. In that case, the problem of conservation measures on the high seas will be less prone, and coastal states would have conservation and management powers over the virtually whole Mediterranean sea. In that scenario, potential CMS Agreement concerning conservation of MST will be more

²⁵¹ Ibid. p. 854.

²⁵² SPA/BD Protocol, Article 9 (1) (b).

²⁵³ SPA/BD Protocol Annex I: Common Criteria for the Choice of Protected Marine and Coastal Areas That Could Be Included in the SPAMI List.

²⁵⁴ Updated SPAMIs map available at <http://www.rac-spa.org/spami>.

comprehensive and without a need to seek outer mechanism of protecting sea turtles and their habitats in ABNJ.

6.6. Absence of better remedies inside the CMS system

The proposal for the MST Agreement should explore all options available under the CMS and explain why a CMS Agreement is the best method for sea turtle conservation in the Mediterranean.²⁵⁵ Available CMS tools are explained in the Chapter 5.1. Range States of the MST (therefore all Mediterranean coastal States) are to determine the nature of the MST Agreement. The nature of the MST Agreement means deciding which form of the Agreement is the most appropriate for the given purpose.

Article V (2) requires AGREEMENT to cover the whole range of migratory species concerned.²⁵⁶ Hence, the AGREEMENT form does not seem eligible for covering the Mediterranean sub-populations of sea turtles species.

International agreements, in general, tend to avoid stringent requirements to increase membership. CMS is an example where instead of prescribing stringent measures in the main Convention's text, the CMS delegates more stringent requirements to be developed under subsidiary Agreements. In the same fashion, when Parties need to attract signatories to an Agreement, they may "mellow down" the stringency of prescribed measures by concluding the Agreement in less binding form instead – the MOU.

MOUs instruments do not create stringent legal obligations upon states, but nevertheless can be very effective conservation tools. MOUs have several advantages over legally binding Agreements: (i) negotiation process is faster - they can be agreed with ministerial approval, and do not need to go through ratification process;²⁵⁷ (ii) signatures can be secured immediately upon the conclusion of the MOU, or later during gatherings of the concerned countries.²⁵⁸ Since not all the Mediterranean States approach the sea turtle conservation issue with the same

²⁵⁵ Supra note 231, criterion (v).

²⁵⁶ CMS Article V (2).

²⁵⁷ Hykle, 2002 p.117.

²⁵⁸ Ibid.

diligence, the situation where the accession to the MOU can be obtained in later phases can significantly improve chances of the initial conclusion of MST MOU.

The MST MOU should have unanimous membership of the Mediterranean States in order to achieve its intended outcome. At the outset of its conclusion, membership of States whose territories host important sea turtle nesting beaches (e.g. Greece, Turkey, Cyprus) and whose economic interests (by employment of sea turtle eco-tourism value) are in question, may be more reluctant to conclude the MST MOU. Governments of some States in the Mediterranean (especially developing States in Africa and Middle East) may not find the financial incentive to protect sea turtles for “future tourism development interests”, and conservation interests are trumped by more pressing issues and civil unrests in those countries. MOU instrument can create a scenery where all Mediterranean states can gradually adhere towards sea turtles conservation, by accessing the MST MOU at the appropriate time.

Regulation provided by some stringent agreements in place (like the Habitats Directive) should be considered. The mechanism of the MST MOU should not negatively affect those regulations, but rather attempt to expand their existing successful mechanisms throughout the Mediterranean region.

MOUs (and Agreements) are often based on Action or Conservation and Management. The Mediterranean countries adopted the Revised Action Plan for the Conservation of Mediterranean Marine Turtle.²⁵⁹ The CMS already has a history of sharing Action Plans with other instruments,²⁶⁰ and there is a history of cooperation of Barcelona and CMS Secretariat on sea turtles issues. Therefore, it is possible to have the CMS relying on or synergizing with the existing Revised Action Plan in developing MST MOU.

MOUs normally do not provide for any direct financial obligations on its members, demonstrating the *rationale* behind it – the common will of governments to address the conservation. If the MST MOU does not provide for strict financial obligations on Parties, it may live up to a destiny of being underfunded and stay dormant, e.g. like the Atlantic Turtles MOU. However, funding from the EU and active NGOs in the Mediterranean should be

²⁵⁹ Supra note 110.

²⁶⁰ Elephant Gaps Analysis, 2011 p. 42.

organized in a way to provide equally and consistent use of existing financial infrastructure aimed at sea turtles conservation.

While It is advisable that MST Agreement proceed in a form of a legally binding AGREEMENT,²⁶¹ developing the MST MOU seems to be the most adequate option. At the beginning. The flexibility of the MOU improves chances for its initial development, and creates a scenery where MOU's provision, with time, may become legally binding and grow into a proper CMS AGREEMENT.

6.7. Extending an existing agreement?

MST MOU should demonstrate “compelling reasons why a solution cannot be found by taxonomically or geographically extending an existing Agreement, taking into account the risk of loss of efficiency of the existing Agreement.”²⁶²

Agreements should cover more than one species whenever possible.²⁶³ CMS advises extending the scope of existing Agreements/ MOUs, taxonomically or geographically, rather than developing new ones.

6.7.1. Geographic extension of Sea Turtle MOUs

Geographic extension means extending existing CMS Agreement from other geographical region that covers same species and extending its geographical scope to those species in the concerned region.

Until now, two Agreements - MOUs concerning sea turtles have been concluded under the CMS. Thinking in the direction of extending geographic coverage of the existing sea turtle Agreements, the options appear to: (i) synergize existing sea turtle's MOUs and create an Agreement concerning sea turtles with almost global coverage (like IWC²⁶⁴); or (ii) extending one of MOUs concerning sea turtles into the Mediterranean region.

Problems regarding both options are: first, increasing number of Parties to any Agreement (including MOU) necessary mean stretching the stringency of its regulations, which is not

²⁶¹ CMS Resolution 2.6.

²⁶² Annex to CMS Resolution 11.16, criterion (vi).

²⁶³ CMS Article V (3).

²⁶⁴ International Convention for the Regulation of Whaling Washington, 2nd December, 1946.

beneficial for conservation needs of the species; and second, every region has specific characteristics and agreements concluded in one region are often tailored to answer those needs. What might be appropriate in one region may be incompatible with the overriding interests of countries in another.²⁶⁵

Development of ACCOBAMS²⁶⁶ is an example of not using the same type of agreement from one region and extending its geographical scope. Instead of extending geographical coverage of ASCOBANS²⁶⁷, the ACCOBAMS, in fact, evolved on its Baltic counterpart previous experiences. This approach led to a creation of better drafted and far more perspective instrument concerning conservation of cetaceans in the Mediterranean and Black Sea. Similar can be used in developing the MST MOU.

The conclusion is that extending the scope of existing MOUs concerning sea turtles does not seem as a viable option. Rather, learning from the experiences of existing MOUs concerning sea turtles should be used as a foundation for creating a new, improved instrument that will benefit the conservation efforts of MST.

6.7.2. Taxonomic extension of ACCOBAMS

Taxonomic extension means using the instrument that already exists in the region and extending its taxonomic coverage to concerned species.

The only notable CMS Agreement in the Mediterranean region is ACCOBAMS. The ACCOBAMS is a cooperative tool for the conservation of marine biodiversity in the Mediterranean and Black Seas.²⁶⁸ Its purpose is to reduce threats to cetaceans in Mediterranean and Black Sea waters and improve the knowledge of these animals.²⁶⁹

While cetaceans and sea turtles share some similarities in a way international law regulate their conservation, there are also many differences among two species. In fact, sea turtles diverge from all marine migratory species in their nesting habits – being the only marine species that nest on land, which requires unique regulation. Due to unique biological needs, sea turtles

²⁶⁵ Hykle, 2002 p.117.

²⁶⁶ Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area Monaco, 24 November 1996.

²⁶⁷ Agreement on the Conservation of Small Cetaceans in the Baltic, North East Atlantic, Irish and North Seas New York, 17 March 1992.

²⁶⁸ Supra note 268. Article II.

²⁶⁹ Ibid.

would benefit the most from the exclusive instrument tailored accordingly to their needs. Conclusion is that taxonomic extension of ACCOBAMS to sea turtle conservation at the outset does not seem as an appropriate option.

However, synergizing already established MST MOU with ACCOBAMS may be more feasible option. For example, Dugong MOU²⁷⁰ at the first meeting of signatories, suggested exploring the option of synergizing with the IOSEA MOU in order to maximize conservation outcomes for these species.²⁷¹ In relate to that, the CMS Secretariat has conducted the investigation on shared conservation synergies of dugongs and marine turtles, and “*supported the need for more dialogue between marine turtle and dugong researchers, managers and interested parties to further explore the opportunities to address conservation and management issues shared by these species*”.²⁷² In similar fashion, while taxonomic extension of ACCOBAMS does not seem appropriate, collaboration between ACCOBAMS and MST MOU (if concluded) should be further explored.

6.8. Arrangements for monitoring, evaluation and reporting of implementation

The MST MOU should provide “*description of how monitoring, evaluation and reporting will operate in relation to the Agreement concerned*”²⁷³.

MST MOU would need to show the interest for development monitoring programmes and the exchange of information among Parties. Methods, such as beach surveys and monitoring of nesting beaches, especially long term monitoring, tagging (keeping in mind the provisions of the RAC/SPA tagging guidelines) should be employed.²⁷⁴ The fact is that sea turtle species have to be protected on land - the sovereign territory of the coastal states, leaves such measures dependent on respective countries decisions. Setting up protected areas is a usual approach in the Mediterranean region. Mediterranean coasts are affected by development of tourism, and

²⁷⁰ Memorandum of Understanding on the Conservation and Management of Dugongs and their Habitats throughout their Range Abu Dhabi 31 October 2007.

²⁷¹ Alliances, Synergies and Complementary Activities. First Official Signatory States Meeting of Dugong MOU Abu Dhabi, United Arab Emirates, 4–6 October 2010

²⁷² Report of the Shared Dugong and Turtle Conservation Synergies Workshop Goa, India 26 April 2010.

²⁷³ Annex to CMS Resolution 11.12. criterion (xiv).

²⁷⁴ Revised Action Plan, paragraph 25.

Protected Areas should aim to safeguard that: (i) there is no tourist or other developments in the protected area; and (ii) a human interference with turtles reproduction is avoided.²⁷⁵

It is desirable that the management authority is the same as the law enforcement authority, or that they are closely connected. Law needs to be enforced directly by wardens/rangers of the national management authority and not delegated to volunteers working in turtle conservation projects.

Some measure need to be implemented throughout the year (like spatial planning aspects of the protection of the area from physical development), while most measures are seasonal activities (e.g. nests protection, hatchling safe emerging). This may cause employment problems, unless the management authorities are occupied in other duties the rest of the year. Hence, connecting monitoring programs under the wider management authority is preferable in order to secure professional monitoring and evaluation activities.

Involvement of local communities in sea turtle conservation is crucial. In order to Improve information base of coastal communities, MST MOU should advocate informing and involving local people in the decision-making process, and monitoring and reporting activities. More specifically, actions should be taken to:

- facilitate education programs in the community
- facilitate training programs for community members
- identify task force to monitor, evaluate and make recommendations.²⁷⁶

Lastly, public awareness is very important in sea turtle conservation (as in any conservation). Public awareness by itself cannot guarantee conservation, but it goes a long way in creating the scenery for making the right political decisions (or at least making wrong decisions difficult). Raising public awareness is critical when dealing with powerful development actors and economic forces that can influence decision makers.²⁷⁷

²⁷⁵ Ibid.

²⁷⁶ MSTG, 1995 p.15.

²⁷⁷ Ibid p.12.

The best methods for monitoring of implementation of conservation measures are described above. It is difficult expecting that proposed monitoring can be established from the very beginning of the new sea turtles. However, this should not prevent its creation. It is best to take whatever steps can realistically be taken immediately and enforce them adequately, while eventually creating the right momentum for proposed monitoring arrangements. One can expect that conservation efforts in the future, especially given the raised concern regarding sea turtles lately, will be approached with higher diligence, hence making monitoring easier.

7. Chapter VII- Conclusions

The main objective of this thesis is to answer whether the new CMS Agreement concerning conservation sea turtles in the Mediterranean would improve their conservation status. Findings of the thesis are not definitive, as they are build up on many variables, each of whom can be interpreted or approached in different light, hence changing the final conclusions.

Thesis sought to identify the current international legal framework concerning sea turtles in the Mediterranean. Among numerous international, the most relevant are taken into account. The conclusion of the author, supported by many relevant organizations findings, is that current legal framework concerning MST conservation has many shortcomings and gaps (identified in Chapter 4.1.).

Relevant authorities acknowledged the need for a new instrument concerning MST conservation, and identified what should be its purpose – in short, harmonization of existing regulation. More or less ambiguous references are made towards CMS framework as a recommended platform for building this new instrument.

So far, Mediterranean states did not take any initiative to conclude a new instrument. The thesis, courageously, proposed an approach to “awake” governments – by drawing attention to sea turtles economic value as a tourist attraction. The conclusion of this thesis is that the economic is the most probable incentive that can make governments moving towards developing a new MST agreement. However, it is noted that this is only one of the approaches to raise governments interest in sea turtles conservation. Why governments enter treaties is a political question not discussed in detail in this thesis, and one may come to a different conclusion.

At the end, the thesis approached careful consideration of developing new instrument under the CMS auspices. Emphasis is placed on testing the proposed new instrument against criteria established by the CMS. Final conclusion is that CMS framework provides a best fitted framework for development of a new agreement for MST conservation, in the form of MOU – MST MOU.

Laws and accords, (whether they are international, national, local) are made by people. The behavior of people is related to a variety of issues, many of which are dependent on what is a trend at the time. As trends and interests change, so does a human behaviors change. The modern trend of carrying sea turtles conservation is raising. This will most likely, sooner or

later, lead to a creation of a new legal instrument in the Mediterranean. Based on finding of this thesis, the most appropriate one is the MST MOU under the CMS. Still, if concluded, it is not to expect that MST MOU will instantly change the conservation status of MST. Its creation should be seen as a natural step following trends towards sea turtle better future, and increased human care for the environment. With the raise of sea turtles conservation awareness, the MST MOU can develop towards more stringent agreement.

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