



ADVANCING THE QUALITY OF GOVERNANCE BEYOND NATIONAL BOUNDARIES:
CHALLENGES AND SOLUTIONS FOR THE HIGH SEAS AND INTERNATIONAL SEABED AREA

**WORKSHOP IN THE STREAM ON ENHANCING DIVERSITY AND QUALITY OF
GOVERNANCE OF PAs**

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Panel 2: Lessons Learned from Regional Experiences

2) *Straddling NE Atlantic legal framework*: Marta Chantal Ribeiro, CIIMAR, University of Porto, Portugal, mchantal@direito.up.pt

Abstract

Portugal is in the forefront of the establishment of marine protected areas (MPAs) in the continental shelf beyond 200 nautical miles. In order to protect vulnerable deep-sea ecosystems located in the outer continental shelf, Portugal has shown the political will to implement the complex legal system applicable in the North-East Atlantic, namely:

- One hydrothermal vent field (Rainbow) and four areas of seamounts (Altair, Antialtair, Mid-Atlantic Ridge North of Azores and Josephine) are integrated, as national MPAs, into the OSPAR Network of MPAs¹. One site, Rainbow, is in the process to be included in the Natura 2000 network (EU).
- Rainbow is classified as Marine Natural Reserve under domestic law. Similarly, Altair, Antialtair and Mid-Atlantic Ridge North of Azores are classified as Areas for the Management of Habitats and Species.
- Rainbow, Altair, Antialtair and Mid-Atlantic Ridge North of Azores have management plans approved by the Portuguese authorities. The management plans are completed by measures applicable also in the water column (that is, High Seas) approved in the context of EU and NEAFC (ban of bottom trawling and fishing closures). Josephine is

¹ The Portuguese MPAs of Altair, Antialtair, Mid-Atlantic Ridge North of Azores and Josephine are complemented by four High Seas MPAs, approved by the OSPAR Commission in 2010, in order to protect the water column superjacent to the Portuguese continental shelf.

covered by a national regulation only. The regulation bans the use of bottom destructive nets by vessels flying the Portuguese flag.

To these achievements, several international and EU instruments have been articulated, such as the United Nations Convention on the Law of the Sea (UNCLOS), the Annex V of OSPAR Convention and related Recommendation 2003/3, the Natura 2000 Network directives, the Marine Strategy Framework Directive, the Regulation on the Common Fisheries Policy and the Convention on the Future Multilateral Cooperation in North-East Atlantic Fisheries (NEAFC). This set of provisions provides one of the most² developed frameworks in the world in what concerns the protection of marine biodiversity through multilateral cooperation both in areas under national jurisdiction and in areas beyond national jurisdiction:

- Establishment of a shared-governance, in particular regarding the water column superjacent to the outer continental shelf.
- Binding force of the provisions applicable to the Natura 2000 Network. EU Member-States can be sued when they infringe the EU law (action for non-compliance). Compulsory jurisdiction of the ECJ.
- The EU, OSPAR and NEAFC legal systems complement each other under a learn-by-doing process.
- The diverse powers that coastal States (e.g., Portugal) can exercise on the outer continental shelf compensate the current weak environmental mandate of the international community.
- Customary nature of the UNCLOS provisions related to the outer continental shelf (Art. 76 and 77 in particular bind all States).

The system, however, is far from being efficient, in particular due to the characteristics of the Law of the Sea and of the International Law:

- Different understanding of the freedoms of the sea by States.
- In principle, EU law is applicable to Member States and its citizens only. Similarly, NEAFC measures are binding only for Contracting Parties. OSPAR Recommendation 2003/3 has non-binding nature.
- The surveillance and enforcement system is complex and weak (e.g., IUU fisheries).
- Scattered system of dispute settlement.
- Uncoordinated actions and, eventually, lack of openness to dialogue and to understand all the implications of the legal systems.
- Eventually, weak environmental awareness and weak political will of the parties involved.

Following the Portuguese experience regarding the protection of deep-sea ecosystems located in the outer continental shelf, few recommendations must be highlighted for a global implementing agreement applicable in ABNJ:

² See also the Barcelona Convention system: Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, of 1995, in particular the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean. See also the regime of the General Fisheries Commission for the Mediterranean.

- In the areas of the outer continental shelves, principle of decisive participation of the coastal States in all measures or decisions (scientific or legal) related to the superjacent water column that can affect the ecosystems and biodiversity of the continental shelf.
- In the areas of the outer continental shelves, principle of prior consultation, by the coastal State, of the international management body regarding the authorization of activities in the continental shelf that can affect the ecological balance of the water column.
- Encourage States to apply, as minimum standards, measures established by ISA and environmental principles (e.g., precautionary principle, ecosystem approach and EIA) set by the global implementing agreement in all areas under national jurisdiction³.
- In general, ideally, principle of compensation for damage caused by human activities, including fisheries, to the marine biodiversity.
- In general, ideally, strengthened system of surveillance and enforcement.
- In general, ideally, compulsory system of dispute settlement.

Biography:

Marta Chantal Ribeiro has a PhD in Law of the Sea and is professor at the Faculty of Law of University of Porto. She coordinates the *Marine Environmental Law Research Group*, of the *Interdisciplinary Centre of Marine and Environmental Research*, University of Porto. She is involved in several European projects related with MPAs, fisheries and shipping. She is Author of several articles and books on the MPAs' subject.

³ UNCLOS is insufficient also for the protection of areas under national jurisdiction and there are geographical areas with no regional instruments. See, for instance, Kristina Gjerde, "Challenges to Protecting the Marine Environment beyond National Jurisdiction", *The International Journal of Marine and Coastal Law*, 27 (2012) 839–847.