

Spain and the Law of the Sea: 20 years under LOSC

Exclusive Economic Zone and Fisheries Zones

Antonio Pastor Palomar*

(A) THE INTERPLAY OF INTERNATIONAL, EUROPEAN AND NATIONAL LEGAL FRAMEWORKS. THE ESTABLISHMENT OF THE ZONES

Spain's practice is laid down in a threefold legal structure. Firstly, the 1982 Convention on the Law of the Sea (LOSC) provides the international legal framework within which all activities in the seas must be carried out, including the use of the exclusive economic zone (EEZ), the fishery protection zone (FZ) and any other *sui generis* zone, like the ecological protection zone (EPZ), or the marine reserves (MR). The EEZ is defined in Part V (Articles 55 to 75) of the LOSC as a zone extended no further than 200 miles from the baselines of the territorial sea (TS), where states exercise a number of sovereign rights and jurisdiction.¹ The EEZ is optional, so its existence depends upon an actual claim. It coexists with the regime of the Continental Shelf (CS), an *ipso iure* maritime zone which governs rights with respect to the seabed and the subsoil, and it may also concur with the contiguous zone (CZ). As it is well known, the customary law status of the EEZ and the FZ has been recognized by the International Court of Justice (ICJ).²

Secondly, Spain established in the Atlantic Ocean coasts a 200 nautical miles EEZ as defined in the LOSC, by way of the Law 15/1978, 20 February 1978.³ This national legislation stipulates that the Government has the right to extend the zone to other coasts of Spain. Following France's enactment of Decree 2012/1148, 12 October 2012, on a EEZ in the North-West Mediterranean shore,⁴ Spain

* Associate Professor of Public International Law, Universidad Rey Juan Carlos.

¹ UN Convention on the Law of the Sea, [1833 UNTS 3](#) (adopted 10 December 1982, entered into force 16 November 1994) (LOSC hereinafter), entered into force for Spain on 14 February 1997 ([BOE no. 39, 14 February 1997](#)). On this particular question, see J. Juste Ruiz, "La entrada en vigor del Convenio de Naciones Unidas sobre Derecho del Mar y los intereses españoles", *Anuario Argentino de Derecho Internacional* (1996-1997), 167-184; J.A. De Yturriaga Barberán, *Ámbitos de Jurisdicción en la Convención de Naciones Unidas sobre el Derecho del Mar. Una perspectiva española* (Ministerio de Asuntos Exteriores, Madrid, 1995); R. Riquelme Cortado, *España ante la Convención sobre el Derecho del Mar. Las declaraciones formuladas* (Editum, Murcia, 1990). On this question, see the contribution in this volume by Díez-Hochleitner on "[Maritime zones under sovereignty and navigation](#)".

² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, ICJ Reports (1982) 18, at 38; *Jan Mayen (Denmark v. Norway)*, ICJ Reports (1993) 38, at 59. See also, C. Hudson, "Fishery and Economic Zones as Customary International Law" 17 *San Diego Law Review* (1980), at 661-689.

³ Law 15/1978, 20 February 1978, on the Economic Zone ([BOE No. 46](#), 23 February 1978).

⁴ Décret no. 2012-1148, 12 octobre 2012, portant création d'une zone économique exclusive au large des côtes du territoire de la République en Méditerranée ([JORF no. 0240](#), 14 October 2012). A study of the French EEZ claim in V.I.

replied to the French unilateral act with the establishment of a EEZ along its Mediterranean coast by the Royal Decree 236/2013, 3 April 2013.⁵ In 2003 France had proclaimed a EPZ in the Mediterranean, a zone replaced by the 2012 EEZ, which partially overlapped with the Spanish FZ. In 1997 Spain had established a 37 miles FZ measured from the outer limit of the TS⁶ in a Mediterranean area between Cabo de Gata and the French border. In the FZ the state has sovereign rights for purposes of conservation of living marine resources and for the management and control of fishery activity. The FZ was enacted by Royal Decree 1315/1997, 1 August 1997.⁷ Furthermore, Spain exercised its international sovereign rights and jurisdiction by developing a network of ten MR as protected areas in the TS or the EEZ, which are focused on maintaining artisanal fisheries. Seven MR are placed in the Mediterranean Sea and three in the Canary Islands waters. The state government and the autonomous communities are the competent authorities for the management of MR.⁸

Thirdly, Spain is bound as a member of the European Union (EU) to abide by the rules of the *Common Fisheries Policy* (CFP) based on the management of European fishing fleets and the conservation of fish stocks.⁹ Therefore, the EU rules on the establishment of a system for fisheries control¹⁰ were implemented by the Law 3/2001, 26 March 2001, on State Marine Fisheries,¹¹ and by the Royal Decree 176/2003, 14 February 2003, regulating control and inspection functions of the fishing activities.¹² Also, the access of the Spanish fishing fleet to waters in third countries is set out in the

Gutiérrez Castillo, “La Zona Económica Exclusiva Francesa en el Mediterráneo: Causas y Consecuencias de su Creación”, in *The contribution of the United Nations Convention on the Law of the Sea to Good Governance of the Oceans and Seas*, Papers of the International Association of the Law of the Sea, vol. II (Editoriale Scientifica, Napoli, 2014), at 811-830.

⁵ Royal Decree 236/2013, 5 April 2013, establishing the Spanish Exclusive Economic Zone in the North-West Mediterranean ([BOE No. 92](#), 17 April 2013).

⁶ The breadth of Spain’s territorial sea up to a limit not exceeding 12 miles was determined by Law 10/1977, 4 January 1977, on the TS ([BOE no. 374](#), 8 January 1977).

⁷ Royal Decree 1315/1997, 1 August 1997, establishing a Fisheries Protection Zone in the Mediterranean ([BOE No. 204](#), 26 August 1997), amended by Royal Decree 431/2000, 31 March 2000 ([BOE No. 79](#), 1 April 2000). See notably, D. Blázquez Peinado, “El Real Decreto 1315/1997, de 1 de agosto, por el que se establece una zona de protección pesquera en el Mar Mediterráneo”, 49 *Revista Española de Derecho Internacional* (1997), at 334-338; and, A. Pastor Palomar, “La Nueva Zona de Protección Pesquera de España en el Mar Mediterráneo”, 1 *Studia Carande* (1997), at 87-98; also, V. Gutiérrez Castillo & E.M. Vázquez Gómez, “La zone de protection établie par l’Espagne”, 13 *Collection Espaces et Ressources Maritimes* (1999-2000), at 207-232.

⁸ The MR of Spain are the following: Masía Blanca (Tarragona), Levante de Mallorca-Cala Ratjada (Mallorca), Islas Columbretes (Castellón), Isla de Tabarca (Alicante), Cabo de Palos-Islas Hormigas (Murcia), Cabo de Gata-Níjar (Almería), Isla de Alborán, Isla Graciosa-Islotes del Norte de Lanzarote (Canarias), Isla de la Palma (Canarias), Punta de la Restinga-El Hierro (Canarias). For details, see Ministerio de Agricultura, Alimentación y Medio Ambiente, [Spain’s Network of Marine Reserves. More than 30 years protecting our seas](#) (Publicaciones Oficiales, BOE, 2015).

⁹ On these questions, see the contributions in this volume by Casado Ragión on “[Fisheries](#)” and by Pons Rafols on “[IUU fishing](#)”.

¹⁰ Council Regulation 3760/92, establishing a Community system for fisheries and aquaculture [OJ 1992 L 389/1](#); Council Regulation 2847/93, establishing a control system applicable to the common fisheries policy [OJ 1993 L 261/1](#)

¹¹ Law 3/2001, of 20 March, on State Marine Fisheries ([BOE No. 75](#), 28 March 2001), amended by Law 33/2014, of 26 December ([BOE No. 313](#), 27 December 2014). It must be taken into account the exclusive competence of the State in sea fisheries, according to Art. 149(1)(19) of Spain’s Constitution (CE).

¹² Royal Decree 176/2003, 14 February 2003, regulating control and inspection functions of the fishing activities ([BOE no. 50](#), 27 February 2003).

Royal Decree 1549/2004, 25 June 2004.¹³ EU law lays down general provisions concerning the authorisation of fishing in the waters of a third country under a fisheries bilateral and multilateral agreements, like the procedure and responsibilities of the Commission and Member states for the authorisation of fishing activities of EU fishing vessels.¹⁴ In effect, Member states have been empowered within the framework of the CFP to adopt conservation and management measures.¹⁵ Finally, Spain must comply with the EU *environmental legislation* and with environmental international treaties concerning maritime areas, and so the state has the capacity to establish in the sea environmental or ecological zones¹⁶.

(B) THE CONCEPT OF THE MARITIME ZONES AND THE NATURE OF THEIR RESOURCES

(I) Notion of the zones

Spain's EEZ is defined in Article 1 of the Law 15/1978 on the Economic Zone as "a belt of sea to be called the EEZ, which shall extend from the outer limit of the Spanish territorial sea for a distance of 200 nautical miles from the base lines used to measure the breadth of the territorial sea, the Spanish state shall have sovereign rights for the purposes of exploring and exploiting the natural resources of the seabed, subsoil thereof and its superjacent waters". Clearly, this definition stresses the measurement of the area and the special authority of the coastal state for certain economic purposes, as it is the case in Article 55 of the LOSC. Consistently, Article 8(1) of the Law 27/1992, 24 November 1992, on state ports and the merchant marine, as amended, provides that Spain exercises sovereignty, sovereign rights or jurisdiction in the internal waters, the TS, the CZ and the EEZ.¹⁷

The EEZ of Spain is established in the Atlantic coasts and the Cantabrian sea, including mainland and islands, as well as in the North-West Mediterranean "from the outer limit of the TS to a point of geographical coordinates and heading towards the East using the equidistant line with the coastal states, drew in accordance with international law, up to the maritime border with France".¹⁸ It is important to underline the commitment of Spain with general international law as it is shown in Article 2 of the Royal Decree 236/2013, providing that "these limits of the EEZ could be modified in

¹³ Royal Decree 1549/2004, 25 June 2004, regulating access of the Spanish fleet to waters in third countries, in accordance the EU agreements ([BOE no. 163](#), 7 July 2004).

¹⁴ Council Regulation 1006/2008, concerning authorizations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulation 2847/93 and Regulation 1627/94, and repealing Regulation 3317/94, [OJ 2008 L 286/33](#).

¹⁵ Regulation of the European Parliament and of the Council 1380/2013, on the Common Fisheries Policy, [OJ 2013 L354/22](#). See, R. Casado Raigón, "Nuevas tendencias en materia de conservación y gestión de los recursos marinos vivos", in J. M. Sobrino Heredia, *Mares y océanos en un mundo en cambio: Tendencias jurídicas, actores y factores* (Tirant lo Blanch, Valencia, 2007), 73-98, at 79-87.

¹⁶ See, R. Casado Raigón (ed), *Europe and the Sea. Fisheries, Navigation and Marine Environment* (Bruylant, Brussels, 2005).

¹⁷ Law 27/1992, 24 November 1992, on State ports and the Merchant Marine, as amended by the Royal Legislative Decree 2/2011, 5 September 2011, which approves the revised text of the Law 27/1992 ([BOE no. 253](#), 20 October 2011).

¹⁸ Art. 1 of the Royal Decree 236/2013, 5 April 2013, establishing the Spanish Exclusive Economic Zone in the North-West Mediterranean ([BOE No. 92](#), 17 April 2013).

case of conclusion of boundary agreements with the neighbouring coastal states, based on Article 74 of the LOSC". In fact, in a *Note Verbale* of 23 October 2012, sent through diplomatic channels after the 2012 enactment of the French EEZ, Spain reacted to the establishment of the French EEZ by stating that the state's right to set a EEZ cannot be exercised in a unilateral manner but in accordance with Article 74 of the LOSC, "in order to achieve an equitable solution". For Spain "a line that is equidistant from the baselines from which the breadth of the territorial sea is measured would be the most just and equitable solution, and would be subject to modification only in the case of special or particular circumstances", therefore the French EEZ, which has boundaries that extent far beyond the equidistant line, "contravene Article 74 of the LOSC".¹⁹ Evidently, Spain reacted in such a way to avoid the international acquiescence.

Besides, there is international practice on the regime of islands and rocks, namely the entitlement to maritime zones as it is governed in Article 121 of the LOSC. Spain's opposition with respect to the entitlement of rocks to generate a EEZ is clearly expressed in relation to the Portuguese Wild Islands (Islas Salvajes).²⁰ For instance, Spain addressed the Note 186 FP/ot, 5 July 2013, to the UN Secretary General, protesting against the Portuguese submission to the Commission on the Limits of the Continental Shelf of information on the limits of the CS beyond 200 nautical miles from the baselines of the TS.²¹ Further insular formations present this kind of entitlement problems in various pending delimitations between Spain and Morocco in the Mediterranean Sea (Isla de Perejil, Isla de Alborán, Islas Alhucemas, Islas Chafarinas), and in the Atlantic Ocean (Islas Canarias).²²

The concept of EEZ is not necessarily the same as that of FZ. Certainly, the establishment of 200 miles zones has important implications for fisheries because most of the Part V LOSC provisions relate to living marine resources and to fishing.²³ The coastal state enjoys wide discretionary powers regarding the conservation and exploitation of living resources in the EEZ, although the LOSC takes into account several species whose biological characteristics and migration patterns require special considerations: highly migratory species (Article 64), marine mammals (Article 65), anadromous stocks (Article 66), and catadromous species (Article 67). The establishment in 1997 of Spain's FZ in the Mediterranean was due to the non-existence of a EEZ at that time. It can be stated that resources belonged to anyone who could catch them. Spain's resource conservation policy was restricted to the

¹⁹ [Note Verbale no. 31661](#), 23 October 2012, from the Ministry of Foreign Affairs and Cooperation of Spain addressed to the Embassy of the Republic of France in Madrid.

²⁰ For details, see A. Pastor Palomar, *Delimitación Marítima entre Estados. Formaciones Insulares y Bajíos* (Tirant Lo Blanch, Valencia, 2017), at 84. Also, E. Orihuela Calatayud, *España y la Delimitación de sus Espacios Marítimos* (Universidad de Murcia, 1989), at 202; and J.M. Lacleta Muñoz, "Las Fronteras de España en el Mar", 34 *Real Instituto Elcano*, DT, (2004), at 16.

²¹ On these questions, see the contribution in this volume by de Faramiñán on the "[Continental shelf and its extension](#)".

²² On 14 December 2014 Spain submitted to the UN Commission on the limits of the Continental Shelf the Western limits of the Islas Canarias's CS beyond 200 nautical miles, which caused the replies from Morocco (Notes of 10 March 2015 and 31 July 2015) and Portugal (Note of 1 April 2015). See the documentation [here](#). See also the contribution in this volume by Orihuela Calatayud on "[Pending delimitations](#)".

²³ See J. Carroz, "Fishery Zones and Limits", in II *Encyclopaedia of Public International Law* (Max Planck Institute, 1995), at 397-400; J.P. Quéneudec, "Les Rapports entre Zone de Pêche et Zone Économique Exclusive", 38 *German Yearbook of International Law* (1989), at 138-155; J.A. De Yturriaga Barberán, *The International Regime of Fisheries. From UNCLOS 1982 to the Presential Sea* (Martinus Nijhoff Publishers, The Hague, 1997) at 1-344.

12 miles of the TS, without prejudice to the applicable European Union law. So, the FZ was meant to ensure a sustainable utilization of the fisheries resources and to hinder an uncontrolled exploitation of fish species like the red tuna. An improvement in stocks of red tuna was expected with this measure. The declaration of a FZ does not affect other rights conferred upon the coastal state in the EEZ.

France protested against the limits of Spain's FZ in the Mediterranean Sea facing the French coasts. It considered that "the delimitation resulting from the line joining the points specified in the Spanish communication (to the UN Secretariat) cannot be invoked against it. The French government recalls on this occasion that under international public law, the delimitation of a boundary must take place by agreement. Moreover, in this specific case of a maritime boundary, such delimitation must result in an equitable solution, thus ruling out in this instance use of the equidistance line employed by the Spanish side".²⁴ Evidently, the same statement as regards the need of a bilateral agreement in such a situation could apply for the French unilateral establishment of the EEZ in the Mediterranean.²⁵

(2) EEZ and FZ resources as public property and natural heritage

Art. 132(2) of the Spanish Constitution [CE] understands the EEZ and the CS resources as goods or assets of the state's public property.²⁶ Moreover, art 3 of Law 22/1988 on Coasts specifies that these resources are under the state's public terrestrial-maritime property,²⁷ and Article 5 of Law 33/2003 on Assets of Government Bodies provides that this type of assets must be aimed at a public service or at a general use, they are inalienable and cannot be subject to any statute of limitations, like seizure.²⁸ The Law 42/2007, 13 December 2007, on natural heritage and biodiversity includes in the category of natural heritage and natural protected zones (Article 28) the waters under Spain sovereignty and jurisdiction.²⁹ Obviously, all this is in conformity with Articles 55 and 56 of LOSC as well as with customary international law.

(C) SPAIN'S AUTHORITY AS THE COASTAL STATE

In the general international law, the coastal state sovereignty does not extend to the EEZ/FZ, unlike for the territorial sea. In the EEZ the coastal state exercises specific rights over the activities set out in the Article 56 of the LOSC, whether they are carried out by nationals or by foreigners. *Exclusivity* means that only Spain authorities may exercise rights with an economic purpose in the EEZ and, consequently, that other states need Spain's authorization to act in the zone. The coastal state

²⁴ The French protest can be found in 38 LoS Bull. (1998), at 54.

²⁵ Before the establishment of the EEZ, France had already set up the EPZ in the Mediterranean with the Law 2002-346, 15 April 2003, and Decree 2004-33, 8 January 2004 ([JORE no.116 April 2004 and no.10 January 2004](#)).

²⁶ Art. 132(2) CE reads as follows: "Assets under the state's public property shall be those established by law and shall, in any case, include the foreshore beaches, territorial waters and the natural resources of the exclusive economic zone and the continental shelf" (official translation into English by the Cortes Generales).

²⁷ Law 22/1988, 22 July 1988, on Coasts ([BOE No.181](#), 29 July 1988), as amended by the Law 2/2013, 29 May 2013, on the Protection and Sustainable Use of the Seashore ([BOE no.129](#), 30 May 2013).

²⁸ Law 33/2003, on Assets of Government Bodies ([BOE No.264](#), 4 November 2003).

²⁹ Law 42/2007, 13 December 2007, on Natural Heritage and Biodiversity ([BOE no.299](#), 14 December 2007).

authority can be exercised over the development of marine resources as well as over other economic exploitation and exploration of the zones (energy, artificial islands, installations and structures for economic purposes, scientific research), and over the preservation of the marine environment, including the adoption of sanctions. Obviously, the LOSC regime assigns rights and responsibilities to the coastal state. The regime of innocent passage is inapplicable in the EEZ, but there exist the freedoms of navigation, overflight, cable-laying and pipeline-laying.³⁰

The Law 14/2014, of 24 May 2014 on Maritime Navigation complies with the LOSC—including the subsequent practice—and governs the legal situations and relations arising from navigation in offshore sea waters.³¹ Art. 24(3) states that “the Government shall ensure that when foreign ships exercise their rights and fulfil their duties in the exclusive economic zone they duly take into account the rights of the Spanish State and fulfil the provisions of this Law and those of the fishing legislation, that comply with EU and international Law”. The scientific research activities from foreign ships within the EEZ, or any other Spanish maritime area, is subject to authorisation further to Article 25. Spain has the international right to regulate, authorize and conduct marine research in the EEZ. The state consent is granted for peaceful purposes and to increase scientific knowledge. This is also regulated in the Royal Decree 799/1981, 27 February 1981, on the rules applicable to marine scientific research in areas under Spanish jurisdiction.³² The national legislation, though previous to the entry into force of the LOSC, is considered to be consistent with the regime set out in its Part XIII, Articles 238 to 265, and with the international customary law.³³ As for maritime traffic systems, Article 30.3 stipulates that they shall be mandatory when located in internal waters or in the territorial sea and “in the event of approval by the International Maritime Organisation, within the exclusive economic zone”. It is worth mentioning the Royal Decree 210/2004, of 6 February 2004, establishing a monitoring and information system on maritime traffic because it provides the ship reporting of accidents concerning safety at sea.³⁴ The right to pursue and inspect (Articles 48-49) shall be exercised

³⁰ For details, see L.I. Sánchez Rodríguez, *La Zona Exclusiva de Pesca en el Nuevo Derecho del Mar* (Universidad de Oviedo, 1977); B. Conforti (ed.), *La Zona Económica Exclusiva* (Giuffrè, Milano, 1983); S. Oda, “Exclusive Economic Zone”, in *Encyclopaedia of Public International Law* (Max Planck Institute, 1989), at 305-312; R.J. Dupuy & D. Vignes, *A Handbook on the New Law of the Sea*, (Martinus Nijhoff Publishers, Dordrecht, 1991), at 278; F. Orrego Vicuña, *La Zona Económica Exclusiva: Régimen y Naturaleza Jurídica en el Derecho Internacional* (Editorial Jurídica de Chile, Santiago de Chile, 1991); R. Carnerero Castilla, *El Régimen Jurídico de la Navegación por la Zona Económica Exclusiva* (Universidad Complutense, Madrid, 1999); E. Franckx & P. Gautier (eds.), *La Zone Économique Exclusive et la Convention des Nations Unies sur le Droit de la Mer 1982-2000: Un Premier Bilan de la Pratique des États* (Bruylant, Bruxelles, 2003); G. Andreone, “The Exclusive Economic Zone”, in D.R. Rothwell, A.G. Oude et al. (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, Oxford, 2015), at 159-180.

³¹ Law 14/2014, 24 May 2014, on Maritime Navigation ([BOE No. 180](#), of 25 July 2014), en English version available [here](#).

³² Royal Decree 799/1981, of 27 February, concerning the Rules Applicable to Marine Scientific Research Activities in Areas under Spanish Jurisdiction ([BOE No. 110](#), 8 May 1981). For details, see, E. Conde Pérez, *La investigación científica marina. Régimen jurídico* (Marcial Pons, Madrid, 1998). M. Pérez González, “La investigación científica marina y el nuevo Derecho del mar desde la perspectiva española”, *Anuario de Derecho Marítimo* 5 (1986), at 45-96.

³³ On the national legislation, see the contribution in this volume by Conde Pérez on “[Marine scientific research](#)”.

³⁴ Royal Decree 210/2004, 6 February 2004, establishing a monitoring and information system on maritime traffic, transposing EP and Council Directive 2002/59/EC (OJ 2002 L 208/10) ([BOE No. 39](#), 14 February 2004), amended by Royal Decree 1593/2010, 26 November 2010, transposing EP and Council Directive 2009/17/EC (OJ 2009 L 131/101) ([BOE No. 289](#), 30 November 2010), and Royal Decree 201/2012, 23 January 2012, transposing Commission Directive 2011/15/EU (OJ 2011 L 49/33) ([BOE No. 30](#), 4 February 2012)

in conformity with the Articles 110 and 111 of the LOSC, as well as with other applicable treaties. Additionally, further to Article 374(2) of the Law 14/2014, the State shall acquire the ownership of ships or goods that, once three years have elapsed since the shipwreck or sinking, “are located in the EEZ or in the high seas and are owned by Spaniards”. The LOSC does not have any specific provision in Articles 149 and 303 on underwater cultural heritage in the EEZ and the CS, but Article 383(1) sets out that “the authorisation of activities related to underwater cultural heritage in the EEZ and on the CS shall be governed by the terms set forth in the Convention on Protection of the Underwater Cultural Heritage of 2 November 2001 and other treaties to which Spain is a party”.³⁵

The EEZ regime stipulated in the LOSC is considered to have negative impact on powerful fishing fleets like Spain's. Consequently, upon signature and ratification of the LOSC Spain made a declaration on fishing with the following wording: “Articles 69 and 70 of the Convention mean that access to fisheries in the EEZ of third states by the fleets of developed landlocked or geographically disadvantaged states shall depend on whether the relevant coastal states have previously granted access to the fleets of states which habitually fish in the relevant EEZ”. At Spain's proposal, paragraph 3 of Article 62 of the LOSC, provides that the coastal State should take into account, in giving access to the EEZ, the need to minimize economic dislocation in States whose nationals have habitually fished in the zone. In the same vein, the Spanish declaration adds that “Articles 56, 61 and 62 of the Convention do not allow of an interpretation whereby the rights of the coastal state to determine permissible catches, its capacity for exploitation and the allocation of surpluses to other States may be considered discretionary”.³⁶ These declarations have been characterized as “voluntarist” by De Yturriaga, because “it is evident that the coastal State has full latitude to fix the allowable catch and its fishing capacity, and distribute the surplus as it considers convenient for its interests”.³⁷

As for the fisheries national regulation, it is necessary to take account of the Royal Decree 1797/1999, 26 November 1999, on the monitoring of fishing operations by vessels of third countries in waters under Spanish sovereignty or jurisdiction, which shall operate in conformity with the agreements of the EU with third states concluded within the CFP.³⁸ The system is based on the granting of licences and fishing permits, their control and inspection, as well as on rules regarding landing transshipments and marketing. Spain is empowered to verify compliance of vessels with the recommendations and other measures of protection of the fishing resources adopted by the regional fisheries organisations. In addition, the above-mentioned Law 3/2001, 26 March 2001, on State Marine Fisheries lays down the norms concerning offences and penalties.³⁹

³⁵ On Spain's practice relating to the protection of underwater cultural heritage, see the contribution in this volume by Carrera Hernández on [“Protecting Underwater Cultural Heritage”](#).

³⁶ Division for Ocean Affairs and the Law of the Sea (DOALOS), *Declarations made upon signature, ratification, accession or succession or anytime thereafter*, as of 29 October 2013, [Spain](#).

³⁷ On these questions, see the contributions de Yturriaga Barberán on [“Spain at UNCLOS”](#) and by Casado Ración on [“Fisheries”](#).

³⁸ Royal Decree 1797/1999, 26 November 1999, on the Monitoring of Fishing Operations by Vessels of Third Countries in Waters under Spanish Sovereignty or Jurisdiction ([BOE No. 301](#), 17 December 1999).

³⁹ Title V, Arts. 89-114, Law 3/2001, of 20 March, on State Marine Fisheries ([BOE No. 75](#), 28 March 2001).

The Law 42/2007 on Natural Heritage and Biodiversity means the transposition of the EU directives on conservation of habitats and certain species. Art 5 lays down the duty of all public powers to secure the conservation and rational management of natural heritage. And the General Administration of the State is the competent authority for the EEZ's natural heritage (Article 6). Spain implemented within this context the national legislation to carry out the EU Natura 2000. This is a network of protected areas in the waters of the EU member states, aiming at ensuring the long-term survival of Europe's rare and most threatened species and habitats, listed under both the Birds Directive and the Habitats Directive.⁴⁰ According to Article 42 of the Law 42/2007, Natura 2000 is made up of Sites of Community Importance (SCI-LIC), which can be transformed into Special Areas of Conservation (SAC-ZEC), as well as of Special Protection Areas for Birds (SPAB-ZEPA). The LIC can be proposed by Spain and later be approved by the EU Commission in a TS, a EEZ or a CS (Article 43(2)). As a consequence, Spain's Administration shall declare a SAC-ZED in the area constituting a SCI-LIC (Article 43(3)). Similarly, the General Administration and the Autonomous Communities can declare the SPAB-ZEPA in the maritime zones of Spain (Article 44), without the need of a previous authorization of the EU Commission, which shall be informed after the declaration of an area (Article 45). As of September 2017, Spain has declared and brought into Natura 2000 a total of 40 areas.

There are also nine Specially Protected Areas of Mediterranean Importance (SPAMI-ZEPIM)⁴¹ as a result of Spain's consent to be bound by the Barcelona Convention for the protection of the Mediterranean Sea against pollution, 10 June 1995,⁴² by the Convention on the biological diversity, 5 June 1992,⁴³ and the Protocol concerning specially protected areas and biological diversity in the Mediterranean, 10 June 1995.⁴⁴ These areas envisage to promote cooperation in the management and conservation of natural areas and to ensure the safeguard of biological diversity. They can be established in the marine zones subject to sovereignty or jurisdiction of the Parties to the Protocol and in areas situated partly or wholly on the high sea (France, Italy and Monaco set the Pelagos Sanctuary for marine mammals on the high sea).⁴⁵

Finally, the Royal Decree 394/2007, of 31 March 2007, on measures (including the detention of the vessel and the adoption of disciplinary proceedings) dealing with ships in transit that perform polluting discharges in Spanish waters, is applicable to the EEZ.⁴⁶

⁴⁰ European Parliament and Council Directive 2009/147, on the Conservation of Wild Birds, [OJ 2010 L 20/7](#); and Council Directive 92/43, on the conservation of natural habitats and of wild fauna and flora, [OJ 1992 L 206/7](#).

⁴¹ Isla de Alborán, Fondos Marinos del Levante Almeriense, Cabo de Gata-Níjar, Acanilados de Maro-Cerro Gordo, Islas Medes, Cabo de Creus, Islas Columbretes, Mar Menor, y Archipiélago de Cabrera.

⁴² Barcelona Convention of 16 February 1976 ([BOE no. 44, 21 February 1978](#)) as amended on 10 June 1995 ([BOE no. 173, 19 July 2004](#)).

⁴³ Convention on the Biological Diversity, 5 June 1992 ([BOE no. 27, 1 February 1994](#)).

⁴⁴ Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean, 10 June 1995 ([BOE no. 302, 18 December 1999](#)).

⁴⁵ See, the Regional Activity Center for Specially Protected Areas information on SPAMIs, available at <http://www.rac-spa.org/spami>

⁴⁶ Royal Decree 394/2007, 31 March 2007, on Measures Dealing with Ships in Transit that Perform Polluting Discharges in Spanish Waters, transposing EP and Council Directive 2005/35/EC (OJ 2005 L 255/11) ([BOE No. 81, 4 April 2007](#)).

(D) DELIMITATION

Notwithstanding, it can be pointed out now that the stability of maritime boundaries is important for economic activity.⁴⁷ Thus, the future settlement of the pending maritime boundaries, such as the one between Spain and France in the Gulf of Lion (North-West Mediterranean), can have a significant impact on the economic decisions of States and commercial actors. In effect, energy, fishing and other businesses would like to know which state exercises sovereignty or jurisdiction in the relevant area. In conclusion, being aware of the technical and political difficulties underlying Spain's pending delimitations, it can be maintained that their settlement would seem in principle desirable on economic grounds.

(E) SETTLEMENT OF DISPUTES

Upon signature and ratification of the LOSC Spain declared that, "without prejudice to the provisions of Article 297 regarding the settlement of disputes, Articles 56, 61, and 62 of the Convention preclude considering as discretionary the powers of the coastal state to determine the allowable catch, its harvesting capacity and the allocation of surpluses to other states".⁴⁸

In addition, Spain made declarations after the expression of consent to be bound by the LOSC (deposited on 19 July 2002), on the means for the settlement of disputes concerning the interpretation or application of the Convention. Therefore, pursuant to Article 287(1), Spain chose the International Tribunal for the Law of the Sea and the International Court of Justice. And pursuant to the provisions of Article 298(1)(a), which allows for the exclusion of some disputes from these procedures, Spain "does not accept the procedures provided for in part XV, section 2, with respect to the settlement of disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles".⁴⁹ As a consequence, the LOSC cannot be the legal basis for submitting Spain's delimitation disputes to arbitral or judicial procedures.

The EU has not yet chosen the means for the settlement of disputes, pursuant to Article 287 of the LOSC, and in accordance with Council Decision 98/392.⁵⁰

(F) CONCLUSIONS

Spain's social and economic structures are highly dependent on the sea. Therefore, she needs an equitable and precise international regime. As a powerful fishing nation, she accepted the zonal

⁴⁷ On these questions, see the contributions in this volume by Gutiérrez on "[Delimited maritime zones](#)" and by Orihuela Calatayud on "[Pending delimitations](#)".

⁴⁸ The Spanish declarations made upon signature and ratification of the LOSC are available at [here](#).

⁴⁹ *Ibid.*

⁵⁰ Council Decision 98/392 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof [OJ 1998 L 179/1](#).

approach with respect to the EEZ. But it can be stated that Spain is one of the States that least benefited from the new legal regime set out in the LOSC.

With the establishment of a EEZ, a FZ, and other related zones, Spain acquired control and authority over maritime economic resources, living or mineral. National priorities could be put forward in accordance with Spain's international and European obligations. However, some practices and precedents of bilateral negotiations for the purposes of delimitation with the neighbouring states are still required in order to complete the body of rules governing these maritime zones.