

**MARINE PROTECTED AREAS IN THE BALTIC SEA UNDER INTERNATIONAL,  
EUROPEAN UNION AND LITHUANIAN LAW****Doctoral Candidate student Skirmantė Klumbytė**

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**Summary.** In the last years domestic as well as international legislation has revealed a trend towards providing an increased protection to marine environment and establishment of various marine protected areas to serve this aim. However, such development instigates a discussion whether a coastal state has unlimited jurisdiction under international law to designate such areas in its territorial sea and exclusive economic zone. Compatibility of marine protected areas with the regime of the 1982 United Nations Convention on the Law of the Sea is analysed in part 2 of this paper.

Part 3 of this paper describes various types of marine protected areas that have been designated within the waters of the Baltic Sea: Special Area under MARPOL 73/78 Convention, Particularly Sensitive Sea Area under respective regulations of the International Maritime Organization, Baltic Sea Protected Areas under Convention on the Protection of the Marine Environment in the Baltic Sea Area, Special Protection Areas and Special Areas of Conservation under European Union directives as well as other areas established under Lithuanian national legislation. Legal regime associated with the status of each of the aforementioned areas and its effectiveness is also being reviewed.

At the end of this paper certain conclusions as regards the system of marine protected areas in the waters of the Baltic Sea and the scope of protective measures applicable in such areas are drawn.

**Keywords:** marine protected area, special area, particularly sensitive sea area (PSSA), special protection area, special area of conservation.

**INTRODUCTION**

As marine vulnerability varies from one particular area to another, “standard” levels of protection may prove inadequate in some regions while being sufficient in others. Factors such as the more or less enclosed character of a sea, vessel traffic intensity and the area’s environmental sensitivity are important when determining the necessary level of protection. The need for tailored regimes to ensure adequate protection in certain regions is satisfied by designation of marine protected areas in which stricter regulations apply than in other parts of the sea.

The Baltic Sea has exceptional geographical and oceanographic characteristics, which make its living resources very sensitive to changes in the environment. Its

fragile marine ecosystem is threatened by pressures related to the variety of human uses of its waters and the activities of the 85 million people living in the Baltic Sea drainage basin. The need for efficient protection of the marine ecosystem of the Baltic Sea was apprehended and establishment of marine protected areas within its waters as means of such protection was initiated at international level a long time ago. Taking this into account, the present paper is aimed at determining the scope of coastal states’ jurisdiction to designate marine protected areas in its internal waters, territorial sea and exclusive economic zone (“EEZ”), describing the system of marine protected areas already established within the waters of the Baltic Sea, examining effectiveness of legal regimes applicable in such areas and suggesting avenues for addressing current and future

challenges. The findings are made through analysis of international, European Union (“EU”) and Lithuanian legislation as well as application of comparative, systematic and analytic methods.

## **1. THE CONCEPT OF MARINE PROTECTED AREA**

In general, marine protected areas have been defined as “areas of intertidal or subtidal terrain together with their overlying waters and associated flora, fauna, historical and cultural features, which have been reserved to protect part or all of the enclosed environment” [1, 6]. Following this very general definition, marine protected areas for the purposes of this paper shall cover not only the marine protected areas within the scope of this definition *stricto sensu*, i.e. those encompassing the global system of protection, but also special pollution prevention areas whose scope is limited to preventing, controlling or reducing vessel-source pollution. Even though deleterious effects from vessels may be the primary reason for designation of such special pollution prevention areas, they usually serve a related object, for instance the protection of living resources.

## **2. JURISDICTION OF A COASTAL STATE TO DESIGNATE MARINE PROTECTED AREAS IN ITS INTERNAL WATERS, TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE**

Marine protected areas may only be designated subject to the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) [2].

Since neither the UNCLOS nor any other instrument of international law restrict sovereignty of a coastal state over its internal waters, it should be concluded that a coastal state is entitled in its internal waters to designate marine protected areas of any type and to legislate protective measures of any scope to be applicable in such areas.

Under Article 2 of the UNCLOS the sovereignty over the territorial sea is exercised by a coastal state subject to the convention and to other rules of international law. Review of relevant norms of the UNCLOS implies that the sovereignty of a coastal state over its territorial sea is only limited by the right of innocent passage through the territorial sea, which under Article 17 of the UNCLOS is extended to ships of all States, whether coastal or land-locked. Taking into consideration the aforementioned, it should be concluded that a coastal state is free to designate any marine protected areas in its territorial waters, however, legal regime applicable in such areas cannot interfere with the right of innocent passage. This conclusion is supported by reference to Article 211 (4) of the UNCLOS establishing that a coastal States may, in the exercise of its sovereignty within its territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage, however, such laws and

regulations cannot hamper innocent passage of foreign vessels.

Article 56 (1) (b) (iii) extends jurisdiction of a coastal state over protection and preservation of the marine environment within its EEZ. However, the same article establishes that such power must be exercised “as provided for in the relevant provisions of this Convention”. The relevant provisions are those in Part XII of the UNCLOS, on “Protection and Preservation of the Marine Environment”. Thus, the scope of the power extended by the UNCLOS to coastal states is only as broad as the provisions of Part XII allow it to be. Furthermore, marine protected areas, which are unilaterally designated by domestic legislation of a coastal state while exercising its jurisdiction provided in Part XII of the UNCLOS may not affect the freedoms of navigation, overflight and the laying of submarine cables of other states.

Measures affecting navigation in the marine protected areas outside the internal waters of the coastal states can only be introduced under Article 211(6) of UNCLOS or with the agreement of the IMO through a designation of a particularly sensitive sea area as described below.

The need for establishment of marine protected areas on the high seas, which has been actively promoted in recent years by various environmental organizations, is not relevant in case of the Baltic Sea since its whole body consists either of the territorial waters or the EEZs of the riparian states.

## **3. SPECIAL POLLUTION PREVENTION AREAS IN THE BALTIC SEA**

### **3.1. Special Areas under the MARPOL 73/78 Convention**

Special Areas designated under MARPOL 73/78 and its Annexes I, II and V are the oldest establishments intended to prevent pollution of the sea from discharges of ships. A Special Area is defined as “a sea area where for recognised technical reasons in relation to the oceanographic and ecological conditions and the particular character of its traffic, the adoption of special mandatory methods for the prevention of pollution by oil, noxious liquid substances, or garbage, as applicable, is required” [3, 164]. In these areas stricter regulations apply with regard to discharges from ships than in other parts of the sea.

The entire Baltic Sea is identified as: (i) the special area with strict controls on discharge of oily wastes; (ii) the special area with strict controls on tank washing and residue discharge procedures, as well as (iii) the special area with strict controls on disposal of garbage. Furthermore, after Annex VI enters into force on 19 May 2005, the Baltic Sea will also be treated as a “Sox Emission Control Area” with more stringent controls on sulphur emissions from ships.

However, worth noting is that discharge standards applicable in the special areas, for example under An-

nex I, have not changed recently whereas “regular” discharge standards have become increasingly stringent. The distinction between special areas and other regions thus fades gradually, thereby in fact undermining the need for a special areas concept [4, 431].

### 3.2. Particularly Sensitive Sea Areas (PSSAs)

The concept of PSSA was introduced in 1991 by the Resolution A.720(17) of the International Maritime Organization (“IMO”) containing the “Guidelines for the Designation of Special Areas and the Identification of Particularly Sensitive Areas”. Like MARPOL Special Areas, PSSAs are specifically shaped to address the problem of vessel source pollution. According to the Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas (“PSSA Guidelines”), which replaced earlier guidelines of 1991 and 1999, a “PSSA is an area that needs special protection through action by IMO because of its significance for recognised ecological, socio-economic, or scientific reasons and which may be vulnerable to damage by international shipping activities” [3, 163]. The PSSA is identified and the associated protective measures are adopted by the IMO upon a proposal of one or more coastal states. It is worthwhile indicating that the associated protective measures fall within the competence of IMO and the designation of a PSSA provides only for jurisdiction of the coastal state to implement the measures indicated by IMO for the respective area.

In the beginning of April 2004 the Marine Environment Protection Committee of IMO approved designation of the whole Baltic Sea, except for Russian territorial waters, a PSSA status [5], however, no associated protective measures were adopted. It has been suggested in various sources that the mere identification as PSSA has an intrinsic value since the ships masters, knowing that they navigate in a PSSA, take extra caution and thereby diminish the risk of pollution [4, 440]. Nevertheless, it should be concluded that a PSSA status is not effective unless some associated protective measures are added to it. Whilst only discharge standards are applicable in MARPOL Special Area, there is a great variety of protective measures in a PSSA:

- a) ships’ routeing measures under SOLAS 74 and the Ships’ Routeing Provisions;
- b) other measures such as compulsory pilotage, VTSs (vessel traffic services), SRSs (ship reporting systems) and other measures which could be considered to include special construction requirements, speed restrictions, prohibition of cargo transfer and control of ballast water discharges;
- c) buffer zones [4, 439].

Taking into consideration the broad scope of the available measures, which if applied unilaterally by a coastal state might be challenged by maritime states as restraining the freedom of navigation, states of the Baltic Sea drainage basin are urged to present to IMO specific proposals for additional protective measures to be

adopted within the Baltic Sea. If such measures are approved by the IMO and effectively applied, they might become the most effective means in ensuring maritime safety as well as improving marine protection in the Baltic Sea.

On the other hand, enforcement of such measures might be hampered by the fact that PSSAs are based on guidelines, which are not binding instruments of international law. It has to be acknowledged that, for this reason, some commentators are of the opinion that for the recognition of the concept of PSSA as a concept of international law of the sea, it should be included in the pre-existing relevant IMO Conventions or in new international instruments created ad hoc within the IMO [1, 38]. However, one might argue that PSSAs became a concept of international law through the practise of states within the IMO: there are currently seven designated PSSAs – the Great Barrier Reef, Australia (designated a PSSA in 1990); the Sabana-Camagüey Archipelago in Cuba (1997); Malpelo Island, Colombia (2002); the sea around the Florida Keys, United States (2002); the Wadden Sea, Denmark, Germany, Netherlands (2002); Paracas National Reserve, Peru (2003); and Western European Waters (2004). Furthermore, the Marine Environment Protection Committee (MEPC) has also approved in principle the following PSSAs (designation will be considered at future sessions of the MEPC): Torres Straits (Australia and Papua New Guinea), waters of the Canary Isles (Spain) and Galapagos Archipelago (Ecuador) [6].

### 3.3. Special Areas under Article 211 (6) of UNCLOS

UNCLOS envisages the establishment of special areas in the exclusive economic zones of coastal states when the conditions set out in Article 211 (6) (a) have been fulfilled. Designation of such areas fall within the competence of IMO – the coastal states are only given a power of initiative, i.e. they can put forward proposals to IMO for the designation of a certain special area. Following the designation of the area, a coastal state, with the co-operation of IMO, can adopt two different kinds of special measures:

- a) laws and regulations for the prevention, reduction and control of pollution from vessels implementing such rules and standards or navigational practices as are made, applicable, through the organisation, for special areas. It is generally considered that this provision of the UNCLOS refers to the regime of MARPOL Special Area;
- b) additional laws and regulations to those provided under MARPOL 73/78, which may relate to discharges or navigational practices but may not require foreign ships to observe design, construction, manning and equipment standards other than generally accepted international rules and standards.

No states have yet approached IMO for designation of special areas under the UNCLOS. Taking into con-

sideration that the whole Baltic Sea is already a Special Area under MARPOL 73/78 and that its designation as a PSSA was approved in 2004, there is in practise no reason to initiate designation of a special area under the UNCLOS. Only if IMO refuses to add to a PSSA status associated protective measures, the states might apply for designation of a special area under the UNCLOS and seek applicability of such measures on the basis of Article 211 (6) (c). However, it is doubtful whether IMO would give approval for designation of such area if it has already refused adoption of associated protective measures under the PSSA Guidelines.

#### 4. SYSTEM OF COASTAL AND MARINE BALTIC SEA PROTECTED AREAS

Article 15 of the Convention on the Protection of the Marine Environment in the Baltic Sea Area (“Helsinki Convention”) provides that “the Contracting Parties shall individually and jointly take all appropriate measures with respect to the Baltic Sea Area and its coastal ecosystems influenced by the Baltic Sea to conserve natural habitats and biological diversity and to protect ecological processes”. Referring to the aforementioned article, on 10 March 1994 the Baltic Marine Environment Protection Commission (“HELCOM”) adopted the Recommendation 15/5 urging the contracting parties to the Helsinki Convention to establish a system of Coastal and Marine Baltic Sea Protected Areas (“BSPA”) and to prepare management plans for each BSPA, which would consider all possible negatively affecting activities. The Recommendation 15/5 was thereafter supported by the Guidelines for Designating Marine and Coastal Baltic Sea Protected Areas (BSPAs) and Proposed Protection Categories as well as the Guidelines for Management of Baltic Sea Protected Areas (BSPAs) providing that the following activities should be regulated in such areas: (i) extraction of sand, stone and gravel, (ii) oil and gas exploration and exploitation of other natural resources like amber, (iii) dumping of solid waste and dredged spoils, (iv) constructions (including coastal defence measures and infrastructure), (v) waste water (from industry, municipalities and households) and other harmful emissions (emissions of nutrients and biodegradable organic substances, heavy metals and other hazardous substances such as pesticides, antifouling agents, chemicals and radioactive substances), (vi) aquaculture, (vii) transport of hazardous substances by ship through these areas, (viii) military activities, (ix) installation of wind-farms (including offshore wind-farms) as well as (x) laying of submarine cables [7].

It should be emphasized that Kuršių Nerija National Park and Pajūris Regional Park were included in the list of the areas recommended to be established as the first step in development of the system of BSPAs, which was appended to the Recommendation 15/5. In order to determine whether the aforementioned recommendation was efficiently realized by the Government

of the Republic of Lithuania, it is necessary to look at the national level of implementation.

Under Lithuanian legislation Kuršių Nerija National Park and Pajūris Regional Park are land-based protected areas, which also cover certain portions of the Baltic Sea. The area of Kuršių Nerija National Park is 26,4 thousand hectares (land – 9,7 thousand hectares, area of Kuršių marios – 4,2 thousand hectares and area of Baltic Sea – 12,5 thousand hectares), the coordinates of its central point are 55°37'70" and 24°06'24" and it is located within Lithuanian internal waters and territorial sea. The area of Pajūris Regional Park is 5,7 thousand hectares (land – 2,7 thousand hectares and area of Baltic Sea – 3 thousand hectares), the coordinates of its central point are 55°48'84" and 24°06'28" and it is also located within Lithuanian internal waters and territorial sea.

Despite the fact that waters of the Baltic Sea constitute almost half of the territory of Kuršių Nerija National Park and Pajūris Regional Park, analysis of regulations, protection rules and general plans of these parks allows concluding that protection of terrestrial part of the parks is still the priority. The aforementioned documents do not establish concrete restrictions and prohibitions applicable in respect to activities carried out in the sea and only provide that in their territories:

- a) it is prohibited to arrange new pits of natural resources as well as new mining holes for extraction and prospecting of oil and gas;
- b) it is prohibited to extract natural resources;
- c) commercial, recreational and other activity may not undermine the purpose of the park, change its landscape, pollute the environment or destroy the ecological balance.
- d) it is prohibited to construct new buildings and equipment as well as pitch tents;
- e) human presence might be limited within the territory of the park [8 and 9].

The only protective measures directly aimed at preservation of the marine environment resulted from designation of Kuršių Nerija National Park the status of a Special Protected Area, which is described in section 3 below.

Taking into consideration the relevant provisions of the Recommendation 15/5 and corresponding HELCOM guidelines, it should be concluded that management documents of Kuršių Nerija National Park and Pajūris Regional Park do not meet the recommendations established by HELCOM.

The effective development of BSPAs system might be hindered by the fact that HELCOM recommendations and guidelines are not binding upon member states and their implementation depend exclusively on the good will of the contracting parties. Furthermore, measures taken in BSPAs within the realm of coastal states' jurisdiction as recognised in the UNCLOS are mandatory *erga omnes*, i.e. for all ships. If, however, such measures exceed the jurisdiction of the coastal state, they are binding only *inter partes*, i.e. for the states parties to the Helsinki Convention.

## 5. SPECIAL PROTECTIVE AREAS AND SPECIAL AREAS OF CONSERVATION UNDER EU LEGISLATION

EU nature conservation policy is based on two main pieces of legislation – the Birds Directive [10] and the Habitats Directive [11]. Under Article 4 of the Birds Directive the states are obliged to classify the most suitable territories in number and size as special protection areas (SPA) for the conservation of the species mentioned in Annex I to the Directive as well as regularly occurring migratory species. Article 3 of the Habitats Directive provides that each member state shall designate sites hosting the natural habitat types listed in Annex I to the Directive and habitats of the species listed in Annex II as special areas of conservation (SAC). SPAs and SACs may either be terrestrial or marine.

The Republic of Lithuania with the help of Danish Government has made a considerable progress in implementing the Habitats Directive and the Birds Directive. On 8 April 2004 Kuršių Nerija National Park including its marine part was designated as the SPA [12]. Since migratory and wintering seabirds gather in the waters of Kuršių Nerija National Park, the Regulations of the Areas of Special Importance for Habitats and Birds prohibit in these waters to: (i) fish using standing nets whose eyes are of 50 millimetres and bigger; (ii) perform seabed works and sink priming; (iii) hunt seabirds; (iv) introduce new species of hydrobionts; (v) navigate by sailing boats and motor boats during certain months of the year and etc. [13]. It could be argued whether the last prohibition does not hamper the right of innocent passage through the territorial sea, however, since such prohibition is limited to one particular marine area located in the proximity of the coast, it could hardly be considered of significant interference to international navigation [1, 43].

No other Lithuanian marine territory was either assigned the status of SPA or identified as potential SAC in Lithuanian list of the areas of special importance for habitats that was presented to European Commission. However, in the beginning of the year 2003 establishment of a new maritime reserve – Baltic Sea Maritime Reserve – was initiated by the Director of the State Service for Protected Areas under the Ministry of Environment in the territorial waters of the Republic of Lithuania [14]. This reserve is intended to border Pajūris Regional Park and to cover the sea area of at least 13 thousand hectares. Establishment of this reserve was conditioned by the need to confer a status of SPA to this part of the Baltic Sea.

It is worthwhile mentioning that establishment of the Baltic Sea Maritime Reserve as well as any other new marine protected areas in the waters adjacent to the territory of the Republic of Latvia might be hindered by the fact that delimitation of the maritime boundaries has not been finished yet. Up to now Lithuanian territorial sea, exclusive economic zone and continental shelf has been only delimited from the waters of Russian Federation. Agreement between the Republic of Lithuania and

the Republic of Latvia on Delimitation of the Territorial Sea, Exclusive Economic Zone and Continental Shelf in the Baltic Sea was signed on July 9, 1999 [15]. Seimas (Parliament) of the Republic of Lithuania ratified the aforementioned agreement on October 28, 1999 [16]. However, the agreement has not been ratified by the Saeima of the Republic of Latvia, therefore, it has not yet entered into force.

One of the problematic issues related to the Birds Directive and the Habitats Directive is the scope of their application to the exclusive economic zone of littoral member states. In the case *R v Secretary of State for Trade and Industry ex parte Greenpeace Ltd* it has been held recently that the Habitats Directive applies to UK's continental shelf and to the superjacent waters up to 200 nautical miles offshore [17, 75]. It is notable that the judgement does not discuss international maritime law at any length. The judgement concentrates on the geographical scope of the Habitats Directive, rather than on any power in international law that the directive is "biting on" [17, 48]. As it has been stated above, jurisdiction of a coastal state related to preservation of marine environment in its EEZ should be exercised in accordance to Part XII of the UNCLOS, which potentially limits such jurisdiction. For example, (a) the duty to protect wildlife covers ecosystems and habitats, but not species directly, (b) there is a strong emphasis on anti-pollution measures and (c) there is suggestion that protective measures may only be appropriate in response to threats from human activities, rather than also being appropriate irrespective of such threats. However, it has been argued by the authors that an analysis of regional conventions and protocols suggests that evolving state practise has tended to: (a) require the protection of species directly, (b) require protective measures in a general sense rather than merely anti-pollution measures, (c) require the establishment of protected areas; and require establishment of such areas irrespective of threats from human activities [17, 76]. Therefore, it is reasonable to assume that Part XII and hence the jurisdiction to protect and preserve the marine environment should be interpreted in accordance with such evolution.

## 6. MARINE PROTECTED AREAS UNDER LITHUANIAN LEGISLATION

Any coastal state is entitled unilaterally to designate marine protected areas on the basis of its jurisdiction in different maritime zones.

At national level the efforts of the Republic of Lithuania to safeguard the unique ecosystem of the Baltic Sea are embodied in the Law on Protection of the Marine Environment of the Republic of Lithuania [18]. Article 52 of the aforementioned law provides that in order to preserve the complexes and species valuable or characteristic for the seacoast and spots of birds' migration, wintering and gathering as well as fish spawning, protected areas may be established in accordance to the procedure set for in the Law on Protected Areas of the Republic of Lithuania.

Karklė Maritime Reserve is the only territory in the Republic of Lithuania established exclusively for protection of marine environment, namely for preservation of unique marine complex distinguished for its immense biological diversity as well as sea biotopes with communities of mussels and places of spawning. It is situated within the territory of Pajūris Regional Park and covers the sea area stretching from the mouth of Rėkynė streamlet to the southern border of Palanga city as well as a small strip of the coast adjacent to this sea area. The western border of the reserve is 2,5 kilometres away into the Baltic Sea while its area is 1017 hectares. Karklė Maritime Reserve is located within Lithuanian internal waters and territorial sea.

Karklė Maritime Reserve being the only protected area, which was established exclusively for preservation of marine ecosystem, unfortunately does not have any management plan. The only protective measures that are specifically applicable in this reserve are established in the Order of the Ministry of Environmental Protection No. 162 "On Amateur and Trade Fishing in the Protected Areas" which provides that [20]:

- (a) amateur fishing is completely prohibited within the territory of the maritime reserve;
- (b) during the periods from April 1<sup>st</sup> to 30<sup>th</sup> and from October 1<sup>st</sup> to 31<sup>st</sup> it is prohibited to use upright fishnets in the 22<sup>nd</sup> maritime fishing bar of the reserve while during rest of the time only 5 traditionally fishing enterprises might be allowed to fish within the aforementioned area.

However, it is doubtful whether the aforementioned order is still legally enforceable taking into consideration that the legislative jurisdiction for conservation and management of fisheries has been transferred by the individual member states to the EU.

The rest of the protective measures (prohibitions) applicable in Karklė maritime reserve are established in the Law on Protected Areas of the Republic of Lithuania. These prohibitions are equally binding in all reserves irrespective of the purpose of their establishment, thus are of an abstract nature. In the light of the aforementioned it should be concluded that Karklė Maritime Reserve does not enjoy effective protection. Nothing remains but to hope that recent approval of the rules for drafting of management plans of the reserves [21] will lead to preparation and implementation of the management plan for Karklė Maritime Reserve.

In addition to Karklė Maritime Reserve, only two more protected areas in the Republic of Lithuania cover certain portions of the Baltic Sea – Kuršių Nerija National Park and Pajūris Regional Park. Regime of management and administration of these areas was reviewed in part 4 of this Article. The Law on Protection of the Marine Environment of the Republic of Lithuania extends certain protective regime for two more territories – the belt of sea and the zone of coast. However, since these territories do not fall within the definition of Lithuanian protected areas, they will not be examined in this paper.

## CONCLUSIONS

1. Marine protected areas may only be designated within the scope of coastal states' jurisdiction as it has been recognised in the UNCLOS, i.e. designation cannot affect internationally lawful uses of the sea, unless the coastal state designating the area has relevant jurisdiction to adopt mandatory measures.

2. Designation of marine protected areas cannot hamper the right of innocent passage through territorial sea and the freedom of navigation in the EEZ unless it was introduced under Article 211(6) of the UNCLOS or under the evolving customary concept of a PSSA.

3. Baltic Sea enjoys the status of a Special Area under MARPOL 73/78 and its Annexes I, II, and V. Its designation as a PSSA was approved in April 2004. However, such approval is not effective unless some associated protective measures are added to the status of a PSSA.

4. System of BSPAs under the Helsinki Convention did not turn out to be effective due to the non-binding character of HELCOM recommendations and guidelines. Implementation of such documents rests exclusively within the good will of the contracting parties.

5. The progress that has been achieved in protecting the marine environment by means of designating marine protected areas is mainly due to the legally binding character of EU Habitats and Birds Directives.

6. The Republic of Lithuania has 3 protected areas that cover certain parts of the Baltic Sea, however, these areas still lack efficient management for the marine environment. In order to improve protection of the marine ecosystem competent institutions of the Republic of Lithuania should execute management plans for these areas that would comply with HELCOM Guidelines for Management of Baltic Sea Protected Areas (BSPAs).

7. It is worthwhile mentioning that marine parts of Lithuanian protected areas referred to in this paper are all situated in the internal waters and the territorial sea of the Republic of Lithuania. Therefore, scientific research and monitoring of the waters of Lithuanian exclusive economic zone in the Baltic Sea should be promoted in order to spur initiatives for establishment of marine protected areas in this zone as well.

8. In order to ensure smooth establishment and effective management of any new marine protected areas in the waters adjacent to the territory of the Republic of Latvia as well as in Lithuanian exclusive economic zone delimitation of Lithuanian maritime borders should be finalized.

## LITERATURA

1. **Ed. Tullio Scovazzi.** Marine Specially Protected Areas: the General Aspects and the Mediterranean Regional System. – Hague: Kluwer Law International, 1999.
2. **Convention** on the Law of the Sea // Official Gazette „Valstybės žinios“. 2003. No. 107-4786.
3. **Lagoni R.** Marine Protected Areas in the Exclusive Economic Zone // International Marine Environmental Law: Institutions, Implementation and Innovations. – Hague: Kluwer Law International, 2003.

4. **Molenaar E. J.** Coastal State Jurisdiction over Vessel-Sourced Pollution. – Hague: Kluwer Law International, 1998.
5. **Marine Environment Protection Committee (MEPC)**, 51st session: 29 March to 2 April 2004, [http://www.imo.org/Newsroom/mainframe.asp?topic\\_id=109&doc\\_id=3156](http://www.imo.org/Newsroom/mainframe.asp?topic_id=109&doc_id=3156).
6. [http://www.imo.org/Environment/mainframe.asp?topic\\_id=760](http://www.imo.org/Environment/mainframe.asp?topic_id=760)
7. <http://www.helcom.fi/guidelines/guidelines.htm>
8. **Resolution** of the Government of the Republic of Lithuania No. 308 „On Approval of Regulations of Kuršių Nerija National Park“, *Official Gazette* „Valstybės žinios“, 1999, No. 27–766.
9. **Resolution** of the Government of the Republic of Lithuania No. 490 „On Approval of Regulations of Regional Parks“ // *Official Gazette* „Valstybės žinios“. 1999. No. 39–1227.
10. **Council Directive 79/409/EEC** of 2 April 1979 on the conservation of wild birds, [http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en\\_1979L0409\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en_1979L0409_do_001.pdf)
11. **Council Directive 92/43/EEC** of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, [http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en\\_1992L0043\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992L0043_do_001.pdf)
12. **Resolution** No. 399 of the Government of the Republic of Lithuania „On Approval of the List of Lithuanian Protected Areas or their Parts Covering the Territories of Special Importance for Birds and Establishment of the Boundaries of the Territories of Special Importance for Birds“ // *Official Gazette* „Valstybės žinios“. 2004. No. 55–1889
13. **Resolution** No. 276 of the Government of the Republic of Lithuania „On Approval of Common Regulations of the Areas of Special Importance for Habitats and Birds“ // *Official Gazette* „Valstybės žinios“. 2004. No. 41–1335.
14. [http://vst.lt/wt\\_vst/customfiles/lt/Isakymas5.doc](http://vst.lt/wt_vst/customfiles/lt/Isakymas5.doc)
15. **Agreement** between the Republic of Lithuania and the Republic of Latvia on Delimitation of the Territorial Sea, Exclusive Economic Zone and Continental Shelf in the Baltic Sea // *Official Gazette* „Valstybės žinios“. 1999. No. 100–2893.
16. **Law** on Ratification of the Agreement between the Republic of Lithuania and the Republic of Latvia on Delimitation of the Territorial Sea, Exclusive Economic Zone and Continental Shelf in the Baltic Sea, *Official Gazette* „Valstybės žinios“. 1999. No. 100–2887.
17. **Owen D.** The Application of the Wild Birds Directive Beyond Territorial Sea of European Community Member States // *Journal of Environmental Law*. Vol. 13. No. 1. 2001.
18. **Law** on Protection of the Marine Environment of the Republic of Lithuania // *Official Gazette* „Valstybės žinios“. 1997. No. 108–2731; 2002. No. 73–3092.
19. **Resolution** of the Government of the Republic of Lithuania No. 232 „On Approval of Borders of Pajūris (Karkle) Regional Park, its Zones and Protectional Zones“ // *Official Gazette* „Valstybės žinios“. 1997. No. 25–577.
20. **Order** of the Ministry of Environmental Protection of the Republic of Lithuania No. 162 „On Amateur and Trade Fishing in the Protected Areas“ // *Official Gazette* „Valstybės žinios“. 1997. No. 85–2147.
21. **Order** of the Minister of Environment of the Republic of Lithuania No. 656 „On Approval of the Rules for Drafting of Management Plans of State Parks, Biosphere Strict Reserves and Reserves“ // *Official Gazette* „Valstybės žinios“. 2003. No. 4–150; 2004. No. 105–3903.

## SAUGOMOS BALTIJOS JŪROS TERITORIJOS TARPTAUTINĖJE, EUROPOS SAJUNGOS, LIETUVOS RESPUBLIKOS TEISĖJE

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### S a n t r a u k a

Steigiant saugomas teritorijas jūroje siekiama užtikrinti pažeidžiamiausių jūros regionų apsaugą. Nors saugomų jūros teritorijų reikšmė didelė, pakrantės valstybių teisė steigti tokias teritorijas neribojama. Saugomos jūros teritorijos pakrantės valstybei priklausančioje ir išskirtinėje ekonominėje zonoje gali būti steigiamos tik laikantis 1982 m. Jungtinių Tautų Jūrų teisės konvencijos nuostatų, t. y. nepažeidžiant kitų valstybių teisių šiose jūrų erdvėse. Pakrantės valstybės vienašališkai nustatytas saugomos teritorijos apsaugos režimas negali riboti taikaus plaukimo teisės teritorinėje jūroje, o išskirtinėje ekonominėje zonoje – laivybos ir skridimo, taip pat povandeninių kabelių ir vamzdynų klojimo laisvių. Apsaugos priemonės, ribojančios laivybą saugomojoje teritorijoje, gali būti taikomos tik remiantis 1982 m. Jungtinių Tautų Jūrų teisės konvencijos 211 straipsnio 6 dalimi arba Tarptautinei jūrų teisės organizacijai pripažinus tokią teritoriją ypač jautria jūros teritorija.

Dėl ypatingų geografinių savybių ir didelių laivybos srautų Baltijos jūrai buvo suteiktas specialios teritorijos statusas pagal MARPOL 73/78 konvencijos I, II ir V priedus. Dėl šio statuso Baltijos jūrai taikomi griežtesni atliekų išmetimo standartai nei kituose regionuose. 2004 m. balandį Tarptautinė jūrų organizacija pritarė siūlymui, kad visai Baltijos jūrai, išskyrus Rusijos Federacijos vandenį, būtų suteiktas ypač jautrios jūros teritorijos statusas. Tokį statusą visame pasaulyje turi tik 7 saugomos teritorijos. Bet ypač jautrios jūros teritorijos statuso pripažinimas nesukelia jokių teisinių pasekmių, kol nepatvirtintos apsaugos priemonės. Todėl Baltijos jūros regiono valstybės turėtų kreiptis į Tarptautinę jūrų organizaciją su pasiūlymais dėl tokių apsaugos priemonių taikymo.

1992 m. Helsinkio konvencijos dėl Baltijos jūros baseino jūrinės aplinkos apsaugos inicijuota saugomų teritorijų Baltijos jūroje sistema iki šiol tinkamai neįgyvendinta. Valstybių narių pasyvumą šioje srityje galbūt lėmė tai, kad Helsinkio komisijos rekomendacijos ir gairės, susijusios su saugomų teritorijų Baltijos jūroje steigimu, nepivaldomos valstybėms narėms ir gali būti įgyvendinamos tik jų gera valia. O valstybėms narėms privalomos Tarybos direktyvos – 79/409/EEB dėl laukinių paukščių išsaugojimo ir 92/43/EEB dėl natūralių buveinių ir laukinės faunos bei floros apsaugos – leido sukurti NATURA 2000 saugomų teritorijų tinklą, apimančią ir saugomas teritorijas Baltijos jūroje.

Lietuvos Respublikoje įkurtos trys saugomos teritorijos, apimančios ir dalį Baltijos jūros – Kuršių Nerijos nacionalinis parkas, Pajūrio regioninis parkas ir Karklės talasologinis draustinis. Šių saugomų teritorijų nuostatų, apsaugos reglamentų ir generalinių schemų analizė leidžia teigti, kad prioritetas skiriamas žemyninėms minėtų teritorijų dalims. Siekiant užtikrinti tinkamą saugomų teritorijų jūrinių dalių administravimą reikia patvirtinti tokių teritorijų tvarkymo planus, atitinkančius Helsinkio komisijos rekomendacijas.

**Pagrindinės sąvokos:** saugoma teritorija jūroje, speciali teritorija, ypač jautri jūros teritorija, speciali saugoma teritorija, speciali konservacinė teritorija.