

# MaPSIS 2017

## Maritime Spatial Planning, Ecosystem Approach & Supporting Information Systems

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### BOOK OF ABSTRACTS

*Maritime spatial planning is now.*

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### **P3 - SPATIAL COMPETENCES OF FISHERY IN CANARY ISLANDS AND THE ANGEL SHARK (*SQUATINA SQUATINA*)**

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In order to comply with the “DIRECTIVE 2014/89/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 establishing a framework for maritime spatial planning”, and its transposition into Spanish law, the administrations with competences in the planning of the maritime space will begin a process of definition, analysis and organization of the activities and uses. Fishing in the Canaries has divided its spatial competences in external waters (EW) which belong to the State (Law 3/2001) and internal waters (IW) that are Autonomic (Law 17/2003). Fishing can be developed by professional and recreational fishermen, but professionals can sell their catches and recreational cannot. On the other hand, sharks and rays constitute a group of organisms with a fundamental ecological role. The populations of the angel shark are in regression and in a very delicate situation worldwide, nevertheless, in the Canaries this scenario is not being followed yet (Ferretti et al., 2015). The purpose of this communication is to show, by the analysis of the regulations, the difficulty for a non-expert reader to know if he is committing an illegality if he catches this species. We have analyzed the current laws regarding to the capture of this species by professional and recreational fishermen in EW and IW. A non-expert reader can verify that for this species 3 up to regulations are applied (1 European and 2 national ones). The European Council Regulation (EU) 2017/127, among other things, prohibits the capture of this species to professional fishermen in Union waters. For recreational EW, this species is not on the list of species that are allowed to be fished by Royal Decree 347/2011 (and it also applies the European regulation as is specified in articles belonging to the national norms, Law 3/2001 and Royal Decree 347/2011). On the other hand, for the recreational fishing in IW it could be considered the application of what is known as "supplementary clause" (in Spanish, “cláusula supletoria”) in the state law (article 149.3 of the Spanish Constitution) which comes to indicate the validity of the state law due to a regulatory gap of the autonomic regulations (Garrido Mayol, 2003). However, this clause has been interpreted with limitations by the Constitutional (spanish) Court. Thus, not always is possible to consider the intervention of a state law towards an area of autonomous competency when it is not legislated by the Autonomous Community in the use of its competency (Requejo Rodríguez, 1996). In similar situation there are several species of sharks and rays in the Canary Islands (in prep.). In short, the understanding of the regulations is fundamental for a correct application by the administered. Situations like the one described can cause a serious impact by not being categorically clear in the regulations. Finally, the forthcoming transposition of the DIRECTIVE 2014/89/EU may be an opportunity to complement the existing harmonization between state and regional regulations on fisheries.

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Keywords: spatial law competences; professional and recreational fisheries; angel shark

# SPATIAL COMPETENCES OF FISHERY IN CANARY ISLANDS AND THE ANGEL SHARK (*Squatina squatina*)

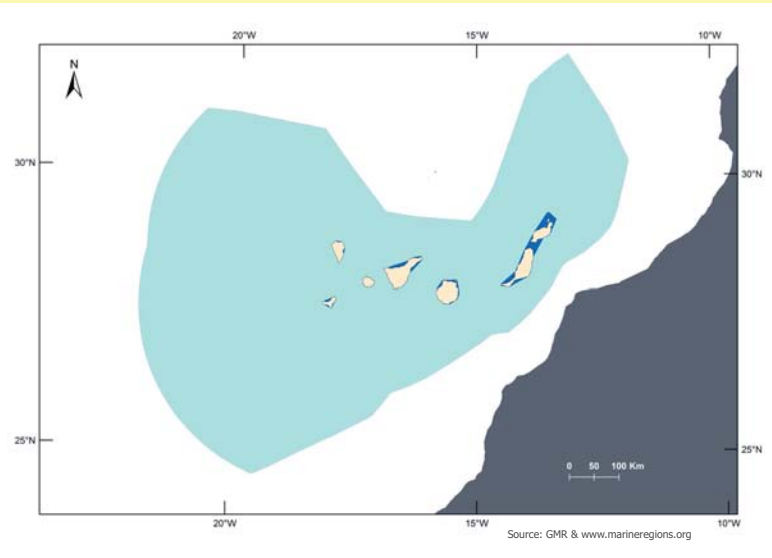
Bilbao Sieyro<sup>1\*</sup>, A., Pérez González<sup>1</sup>, Y., Lobo Rodrigo<sup>2</sup>, A., Rodríguez Bahamonde<sup>3</sup>, R., Castro Hernandez<sup>4</sup>, J.J., Couce Montero<sup>4</sup>, L. & Jiménez Alvarado<sup>5</sup>, D.

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Fotos: Pedro Sarmiento

## Spatial competences of Fishery



Autonomic Statal

## Fishermen of interest



Gillnets · Professional



Bottom longline · Professional

Foto: Cuqui Marrero Escudero



Particular · Recreational



Bussines · Recreational

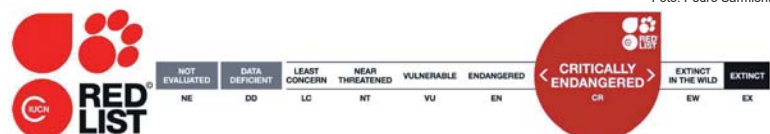
“Angel shark (*Squatina squatina*): locally extinct or extremely rare almost all of the remaining population is found around the Canary Islands” (Ferreti et al. 2015).



Foto: Pedro Sarmiento

CAPTURE POSSIBILITY	Statal waters	Autonomic waters
Professionals	X	X
Recreational	X	?

Three rules do not allowed in “angel shark” fishing [Council Regulation (EU) 2017/127 & 2 National, Law 3/2001+Royal Decree 347/2011]. But none of these rules are directly banned to recreational fishermen in autonomous water. Although, it should be considerate the application of the “supplementary clause” (in Spanish, known as, “cláusula supletoria”) appearing in the state law (article 149.3 of the Spanish Constitution) which indicates the state law due to a regulatory gap of the autonomous regulations (Garrido Mayol, 2003). But this clause has been interpreted with limitations by the Spanish Constitutional Court (e.g. TC Sentencia 61/1997). So not always is possible the State Law intervention into the autonomous competence area, when it is not legislated by the Autonomous Community (Requejo Rodríguez, 1996). The described situation can cause a serious impact because is not clear when a fish should be caught or not. In similar situation are the sharks and stingray’s species in Canary Islands (in press.)



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