



# **Governance of areas beyond national jurisdiction for biodiversity conservation and sustainable use**

Institutional arrangements and cross-sectoral cooperation in the Western Indian Ocean and South East Pacific



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## Institutional arrangements and cross-sectoral cooperation in the Western Indian Ocean and the South East Pacific

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### *Acknowledgements*

This publication has been prepared within the framework of the Global Environment Facility project entitled “Sustainable fisheries management and biodiversity conservation of deep-sea living marine resources and ecosystems in the Areas Beyond National Jurisdiction (ABNJ)” (referred to as the ‘ABNJ Deep Seas Project’) jointly implemented by the Food and Agriculture Organisation of United Nations (FAO) and United Nations Environment Programme (UN Environment). The authors are grateful to Frances Davis, Jerry Harrison, Sarah Morris, Alyson Pavitt, Rachel Scrimgeour and Alana Williamson from UNEP-WCMC for their support with the preparation of this document, and to the Global Environment Facility (GEF) who financed this work. For questions or comments on the study, please contact:

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### *Citation*

UNEP-WCMC (2017). Governance of areas beyond national jurisdiction for biodiversity conservation and sustainable use: Institutional arrangements and cross-sectoral cooperation in the Western Indian Ocean and the South East Pacific. Cambridge (UK): UN Environment World Conservation Monitoring Centre. 120 pp.

### *Graphics*

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## Executive Summary

With increasing levels of human activity occurring in Areas Beyond National Jurisdiction (ABNJ), collective efforts are required to ensure that resource use is sustainable and marine ecosystems are effectively protected in these vulnerable ocean regions. One potential mechanism used to enhance sustainable ocean management is area-based planning, which is the application of multi-sectoral spatial measures to rationalise and manage resource use within a defined geographical area.

Outside the jurisdiction of any single State government, sectoral area-based management tools can only be implemented in ABNJ under an appropriate intergovernmental authority or instrument. Some marine regions (such as the North East Atlantic) have already made progress with cross-sectoral area-based planning approaches in ABNJ under existing legal regimes and these initiatives can provide valuable case study examples. However, these case studies are also demonstrating that regions have very different governance systems and certain approaches may not be applicable in other regional contexts. It is therefore important to have a good understanding of the specific regional governance landscape – by which we mean the collection of authorities and legal instruments that regulate, manage and coordinate activities in ABNJ within a region – in order to assess opportunities for cross-sectoral area-based planning initiatives.

The study describes the governance landscape in ABNJ within the Western Indian Ocean and the South East Pacific with a view to understanding what progress has been made towards a collaborative and integrated cross-sectoral approach to area-based planning in ABNJ, and what potential challenges and opportunities exist when considering such an objective within these regions. The results of this study are designed to contribute to the UN Environment component of the GEF ABNJ Deep Seas Project,<sup>1</sup> which focuses on developing and testing area-based planning methodologies in ABNJ within the Western Indian Ocean and the South East Pacific. The study combined a desk-based review of legal instruments and institutional arrangements with interviews from representatives of global and regional institutions identified through the literature review and in close collaboration with partner organizations from the two regions.<sup>2</sup>

## Key findings

- Several global and regional sectoral institutions have the mandate to apply area-based management tools in ABNJ within the Western Indian Ocean and the South East Pacific. However, only in some cases have these institutions made use of their competencies within the regions.
- Compared with other regions, there are noticeable gaps in sectoral governance arrangements in the two regions. For example, no organization in either region has a clear mandate to designate Marine Protected Areas in ABNJ.
- While current levels of cross-sectoral cooperation are limited in both regions, there is interest in strengthening cooperation.
- It is widely acknowledged that regional institutions without a management mandate in ABNJ, such as the Nairobi Convention for the Western Indian Ocean or the Permanent Commission for the South Pacific (CPPS) for the South East Pacific, can have an important coordinating or advisory role in any regional area-based planning initiative.
- Key challenges facing the strengthening of cross-sectoral cooperation in ABNJ are:

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<sup>1</sup> *'Sustainable Fisheries Management and Biodiversity Conservation of Deep Sea Living Marine Resources and Ecosystems in the Areas Beyond National Jurisdiction'* GEF full-sized project, implemented jointly by the Food and Agriculture Organization (FAO) and UN Environment

<sup>2</sup> the Secretariats of the Nairobi Convention and the Permanent Commission for the South Pacific (CPPS)

- The different geographical coverages and the different membership compositions of intergovernmental institutions, can make it challenging to agree upon geographically-specific priorities;
- The limited capacity of institutions to engage in cross-sectoral collaborative activity;
- The limited understanding of ecological connectivity between areas within and beyond national jurisdiction; and
- The lack of appropriate domestic coordination leading to inconsistent national positions in global or regional governance forums.
- Concrete options to foster regional area-based planning are:
  - Create political awareness of issues relating to ABNJ and encourage the prioritization of regional cross-sectoral area-based planning within sectoral institutions;
  - Illustrate the limitations in reaching institutional mandates through a purely sectoral approach, and similarly, highlight the benefits to be gained from joining forces to tackle the management challenges faced in ABNJ.
  - Improve accessibility to a broad scientific knowledge base related to marine ecological connectivity across jurisdictional boundaries;
  - Strengthen scientific cooperation among the different stakeholders, in order to encourage more harmonized approaches of relevance for policy and decision-making in intergovernmental organizations;
  - Further develop national and regional ocean policies, and thereby inspire a more coordinated approach between the national representatives of different government departments who attend various global and regional intergovernmental meetings; and
  - Establish a cross-sectoral, multi-stakeholder task force or working group to provide a mechanism for strengthening cooperation.

Cross-sectoral area-based planning in ABNJ certainly faces a number of substantial challenges. This study demonstrates that despite the regionally-specific actors and issues, there is a widespread interest in strengthening mutually beneficial collaboration through broadened mandates, integrated working practices and the more widespread application of the ecosystem approach in order to tackle the management challenges faced in ABNJ.

## Résumé analytique

L'augmentation des activités humaines dans les zones au-delà de la juridiction nationale (ABNJ) requiert la mise en œuvre d'efforts collectifs pour garantir une utilisation durable des ressources et une protection efficace des écosystèmes marins de ces régions océaniques vulnérables. La planification localisée, à savoir l'application de mesures spatiales multisectorielles visant à rationaliser et à gérer l'utilisation des ressources au sein d'une zone géographique déterminée, est une démarche susceptible de contribuer à améliorer la gestion durable des océans.

En dehors de la juridiction de tout gouvernement national, seuls un instrument ou une autorité intergouvernementale appropriée sont en mesure de dicter la mise en œuvre des outils de gestion sectorielle localisée dans les ABNJ. Des progrès ont déjà été réalisés en matière de planification localisée et intersectorielle dans les ABNJ de certaines régions maritimes (comme l'Atlantique du Nord-Est) en vertu des régimes juridiques en vigueur. Ces initiatives, qui peuvent fournir de précieux exemples d'études de cas, montrent cependant que les systèmes de gouvernance varient d'une région à l'autre et qu'une même approche ne convient pas à tous les contextes régionaux. Il importe donc de bien comprendre le paysage de la gouvernance régionale spécifique – en d'autres termes, l'ensemble des autorités et des instruments juridiques qui réglementent, gèrent et coordonnent les activités dans les ABNJ d'une région donnée – afin d'évaluer les possibilités de lancer des initiatives de planification localisée intersectorielle.

L'étude décrit le paysage de la gouvernance dans les ABNJ de l'océan Indien occidental et du Pacifique du Sud-Est en vue d'appréhender, d'une part, les progrès accomplis pour y mettre en place une approche intersectorielle intégrée et collaborative de la planification localisée et, d'autre part, les possibilités et défis potentiels connexes. La composante environnementale des Nations Unies contribue avec cette étude au ABNJ Deep Seas Project<sup>3</sup> du Fonds pour l'environnement mondial (FEM) qui vise à élaborer et à tester des méthodologies de planification localisée dans les ABNJ de l'océan Indien occidental et du Pacifique du Sud-Est. Dans le cadre de l'étude, les instruments juridiques et les dispositifs institutionnels ont fait l'objet de recherches documentaires, et l'examen de la littérature existante, réalisés en étroite collaboration avec les organisations partenaires des deux régions<sup>4</sup>, a permis d'organiser des entretiens avec les représentants des institutions régionales et mondiales.

## Principales conclusions

- Plusieurs institutions sectorielles régionales et mondiales disposent d'un mandat pour appliquer des outils de gestion localisée dans les ABNJ de l'océan Indien occidental et du Pacifique du Sud-Est. Cependant, elles ont rarement utilisé leurs compétences dans ces régions.
- La comparaison avec d'autres régions fait ressortir les lacunes importantes des mécanismes de gouvernance sectorielle dans ces deux régions. Ainsi, aucune organisation n'y a pour mandat clair de désigner des zones maritimes protégées dans les ABNJ.
- En dépit du faible niveau de coopération intersectorielle dans les deux régions, on constate une volonté de coopérer davantage.
- Il est largement reconnu que les institutions régionales dépourvues de mandat de gestion dans les ABNJ, comme la Convention de Nairobi pour l'océan Indien occidental ou la Commission permanente

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<sup>3</sup> « [Sustainable Fisheries Management and Biodiversity Conservation of Deep Sea Living Marine Resources and Ecosystems in the Areas Beyond National Jurisdiction](#) », projet de grande envergure du FEM, mis en œuvre conjointement avec l'Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO) et l'ONU pour l'environnement.

<sup>4</sup> Les secrétariats de la Convention de Nairobi et de la Commission permanente du Pacifique Sud (CPPS).



du Pacifique Sud (CPPS) pour le Pacifique du Sud-Est, peuvent jouer un rôle de conseil ou de coordination déterminant dans toute initiative de planification localisée.

- Les enjeux clés du renforcement de la coopération intersectorielle dans les ABNJ sont les suivants :
  - Difficulté de s'accorder sur les priorités spécifiquement géographiques compte tenu des différentes couvertures géographiques et de la composition variée des institutions intergouvernementales ;
  - Capacité limitée des institutions à participer aux activités de collaboration intersectorielle ;
  - Compréhension insuffisante de la connectivité écologique entre les zones au sein et au-delà de la juridiction nationale ;
  - Manque de coordination nationale adéquate et, par conséquent, incohérence des positions nationales dans les forums de gouvernance régionaux ou mondiaux.
- Options concrètes de promotion de la planification régionale localisée :
  - Sensibiliser les décideurs politiques aux questions relatives aux ABNJ et les encourager à donner la priorité à la planification intersectorielle régionale localisée au sein des institutions sectorielles ;
  - Illustrer les limitations d'une approche purement sectorielle pour aborder les mandats institutionnels, et de même, souligner les avantages d'une action commune pour relever les défis de gestion propres aux ABNJ ;
  - Améliorer l'accessibilité de la vaste base de connaissances scientifiques liées à la connectivité écologique en milieu marin de part et d'autre des frontières juridictionnelles ;
  - Renforcer la coopération scientifique entre les différentes parties prenantes afin d'encourager l'adoption d'approches plus harmonisées et pertinentes concernant l'élaboration de politiques et la prise de décisions au sein des organisations intergouvernementales ;
  - Développer davantage les politiques nationales et régionales relatives aux océans, et promouvoir ainsi une meilleure coordination entre les représentants nationaux des différents départements ministériels qui assistent aux réunions régionales ou mondiales intergouvernementales ;
  - Constituer un groupe ou une équipe de travail intersectoriel multipartite chargé d'établir un mécanisme de renforcement de la coopération.

Il est indéniable que la planification intersectorielle localisée dans les ABNJ est confrontée à un certain nombre de défis importants. Cette étude montre qu'en dépit de la nature régionale des acteurs et des difficultés rencontrées, il existe un intérêt certain pour renforcer la collaboration mutuellement bénéfique en étendant les mandats, en intégrant les pratiques de travail et en élargissant le champ d'application de l'approche écosystémique afin de relever les enjeux liés à la gestion dans les ABNJ.

## Resumen ejecutivo

El aumento de las actividades humanas realizadas en áreas situadas fuera de la jurisdicción nacional (AFJN), requiere de esfuerzos colectivos que aseguren que la utilización de los recursos se realiza de forma sostenible, y que los ecosistemas marinos en esas regiones oceánicas vulnerables estén protegidos de modo efectivo. La planificación basada en áreas, es decir la aplicación de medidas espaciales multisectoriales destinadas a la racionalización y la gestión de la utilización de los recursos dentro de un área geográfica determinada, es un mecanismo posible que se utiliza para fortalecer la ordenación sostenible de los océanos.

Por encontrarse fuera de la jurisdicción de un gobierno individual, las herramientas de gestión sectorial basadas en áreas en las AFJN solamente se pueden implementar si se realiza bajo la autoridad o instrumento de un ente intergubernamental. En algunas regiones marinas (como por ejemplo el Atlántico Nordeste), se observan progresos en cuanto a enfoques de planificación intersectorial basada en áreas en AFJN bajo el ámbito de regímenes legales existentes. Estas iniciativas pueden proporcionar valiosos ejemplos de casos de estudio. Sin embargo, estos casos de estudio también demuestran que las regiones tienen sistemas de gobernanza muy diferentes entre sí, y por lo tanto, ciertas perspectivas podrían no ser adecuadas para otros contextos regionales. Como consecuencia, es importante tener buen conocimiento del sistema de gobernanza regional de que se trate, es decir el grupo de autoridades e instrumentos legales que regulan, gestionan y coordinan actividades en las AFJN dentro de una región determinada, con el objeto de evaluar las oportunidades para iniciativas tendientes a la planificación intersectorial basada en áreas.

Con el fin de comprender los avances hacia una planificación intersectorial integral y colaborativa basada en áreas en AFJN, y qué retos y oportunidades se presentan para el logro de dicho objetivo dentro de ciertas regiones, este estudio describe el sistema de gobernanza para las AFJN dentro del Océano Índico Occidental y el Sudeste Pacífico. Los resultados de este informe buscan contribuir al componente de las Naciones Unidas Medio Ambiente del Proyecto GEF sobre Aguas Profundas en AFJN<sup>5</sup>, relativo al desarrollo y testeo de una metodología para planificación basada en áreas en AFJN en el Océano Índico Occidental y el Sudeste Pacífico. El estudio se basó en una investigación documental de instrumentos legales y arreglos institucionales y entrevistas a representantes de instituciones globales y regionales identificadas a través de la revisión bibliográfica, en estrecha colaboración con las organizaciones asociadas de las dos regiones<sup>6</sup>.

## Principales conclusiones

- Varias instituciones globales y regionales cuentan con un mandato para aplicar herramientas de gestión basada en áreas en las AFJN en el Océano Índico Occidental y el Sudeste Pacífico. Sin embargo, solo en ciertos casos dichas instituciones hicieron uso de sus competencias en cada una de las regiones.
- Al compararlas con otras regiones, en ambos casos se observan brechas evidentes en los arreglos de gobernanza sectoriales. Por ejemplo, ninguna organización en ninguna de las regiones cuenta con un mandato claro para el establecimiento de áreas marinas protegidas en las AFJN.

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<sup>5</sup> *'Sustainable Fisheries Management and Biodiversity Conservation of Deep Sea Living Marine Resources and Ecosystems in the Areas Beyond National Jurisdiction'* Proyecto GEF de gran envergadura, implementado en forma conjunta por la Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO) y Naciones Unidas Medio Ambiente

<sup>6</sup> Las secretarías del Convenio de Nairobi y la Comisión Permanente del Pacífico Sur (CPPS)

- Mientras que los niveles de cooperación intersectorial existentes en ambas regiones en la actualidad son limitados, hay interés para fortalecerlos.
- Es de amplio conocimiento que las instituciones regionales sin un mandato de gestión en las AFJN, tales como el Convenio de Nairobi para el Océano Índico Occidental y la Comisión Permanente del Pacífico Sur (CPPS) para el Sudeste Pacífico, pueden tener un rol de coordinación o asesoramiento fundamental con respecto a cualquier iniciativa regional para la planificación basada en áreas.
- Los principales retos identificados para el fortalecimiento de la cooperación intersectorial en AFJN son:
  - Las diferencias en cuanto a cobertura geográfica y membresía de las instituciones intergubernamentales pueden hacer difícil que se alcancen acuerdos sobre prioridades geográfico-específicas;
  - La limitada capacidad de las instituciones para involucrarse en actividades de colaboración intersectorial;
  - Los limitados conocimientos sobre la conectividad ecológica entre las áreas situadas dentro y fuera de la jurisdicción nacional; y
  - Las inconsistencias que la falta de una coordinación adecuada en el ámbito nacional genera en las posiciones nacionales en los foros de negociación globales o regionales.
- Algunas opciones específicas para promover la planificación basada en áreas son:
  - Crear conciencia política sobre temas relativos a las AFJN, y estimular la priorización de la planificación regional intersectorial basada en áreas dentro de las instituciones sectoriales;
  - Mostrar las limitaciones existentes para cumplir los mandatos institucionales mediante un enfoque puramente sectorial y, del mismo modo, resaltar los beneficios que se obtendrían de sumarse los esfuerzos para enfrentar los desafíos de la gestión en las AFJN;
  - Mejorar la accesibilidad a una amplia base de conocimiento científico relacionado con la conectividad ecológica entre distintas jurisdicciones;
  - Fortalecer la cooperación científica entre las distintas partes interesadas a fin de estimular enfoques más armonizados que sean relevantes para la formulación de políticas y la toma de decisiones en organizaciones intergubernamentales;
  - Avanzar en el desarrollo de políticas nacionales y regionales sobre los océanos y, por lo tanto, promover un enfoque más coordinado entre los representantes nacionales de los diversos organismos gubernamentales que participan de las distintas reuniones intergubernamentales globales y regionales; y
  - Establecer un grupo de trabajo o de tareas intersectorial con múltiples partes interesadas a fin de proponer un mecanismo para el fortalecimiento de la cooperación.

Sin dudas, la planificación intersectorial basada en áreas en las AFJN presenta una serie de desafíos. Este estudio muestra que a pesar de la especificidad de los actores y temas concernientes a cada región, hay un amplio interés en forjar lazos de cooperación que sean mutuamente beneficios mediante la existencia de mandatos más amplios, prácticas de trabajo integradas y la aplicación extendida del enfoque ecosistémico, para así enfrentar los retos a los que se enfrentan las AFJN.

## تنفيذي ملخص

مشتركة جهوداً بذل لزاماً بات الوطنية، الولاية خارج الواقعة المناطق في المنقذة البشرية الأذ شطة تزايد مع المناطق في البحرية البيئية للأذظمة والفعالة والجمالية مستدامة بطريقه المواردة لك دام استخ ل ضمان تُستعمل التي الم حتملة الآليات إحدى المناطق أساس على القائمة الخطط وتُعدّ الم محيطات في ل لخطر المعرضة وإدارة ل ترشيد القطاعات متعددة مكانية معايير تطبيق تعني وهي للمحيطات، الم مستدامة الإدارة ل تعزيز محددة جغرافية منطقة ضمن الم وارد استثمار

الإدارية الأدوات تطبيق الوطنية الولاية خارج الواقعة الم المناطق في يمكن لا منفردة، حكومة أية ولاية مناطق خارج البحرية الم مناطق غضب شهدت وقد. ملائم دولية معاهدة أو سلطة تحت إلا الم مناطق أساس على القائمة القطاعية والقائم القطاعات بين الم شترك التخطيط أساليب في تقديم بال فعل (الأط لمسي الم محيط شرق شمال مثل) الم ومن قائمة، شرعية أنظمة تحت الوطنية الولاية خارج الواقعة الم المناطق في وذلك الم مناطق، أساس على الم مناطق أن أيضاً تبين هذه الحالة دراسات أن إلا. الحالة دراسات تنفيذ مة في كأمثلة المبادرات هذه استخدام الإقليمي السياسات في الأساليب ب بعض تطبيق يتعدّد قدوب التالي لغاية، متباينة حكم لأنظمة تخضع مجموعة بذلك وتعني - بال تحديد إقليمي حكم كل لسمات معقّف هم إلى التوصل الم هم من، لذلك. الأخرى الولاية خارج الواقعة الم المناطق في الجارية الأذ شطة تنظيم على عمل التي القانونية والصكوك السلطات التخطيط المبادرات الم ممكنة الفرص تقديم به هدف وذلك وتنسيقها وإدارتها معينة منطقة في الوطنية الم مناطق أساس على والقائم القطاعات بين الم شترك

المحيط غرب منطقة التي ضمن الوطنية الولاية خارج الواقعة الم المناطق في القائم الحكم سمات الدراسة وتشرح متكامل تعاوني أسلوب تنفيذ في الحاصل التقدم مدى فهم أمل على، الهادئ المحيط شرق وجنوب الهندي الوطنية، الولاية خارج الواقعة الم المناطق في الم مناطق أساس على القائم ل التخطيط القطاعات بين وم شترك الم مناطق هذه ضمن الهدف هذا مثل تحقيق مسألة دراسة عند الم حتملة والفرص التحديدات فهم إلى بالإضافة ل لبيئة الم تحدة الأمم بجمعية الم تعلق الجزء في مساهمة بمتابعة ل تكون الدراسة هذه نتائج تصميم تم وقد GEF<sup>7</sup> الوطنية الولاية خارج الواقعة الم المناطق ضمن البحار بأعماق الخاص العالم الية البيئية مرفق مشروع في ضمن الم مناطق أساس على القائم التخطيط منهجيات واختبار وضع على يركز والذي، (ABNJ Deep Seas Project) ما الدراسة جمعت. الهادئ المحيط شرق وجنوب الهندي المحيط غرب في الوطنية الولاية خارج الواقعة الم المناطق عن ممثليين مع ومقابلات جهة، من المؤسسة والتراتيبات القانونية للصكوك الم كتيبة المراجعة بين وثيق تعاون إطار في ذلك وكل أخرى، جهة من هادئيات مراجعة خلال من تحديدها تم وإقليمية عالمية مؤسسات<sup>8</sup>. الم منطقة بين كالتامين الشريك الم نظمات مع

## الريسية لنتائج

- أساس على القائمة الإدارية الأدوات تطبيق لتبويض وإقليمية عالمية قطاعية مؤسسات عدة تتمتع المحيط شرق وجنوب الهندي المحيط غرب الوطنية ضمن الولاية خارج الواقعة الم المناطق في الم المناطق. الحالات بعض باستثناء، الم مناطق هذه ضمن مقدراتها من تستفدل الم مؤسسات هذه أن إلا. الهادئ

<sup>7</sup> [Sustainable Fisheries Management and Biodiversity Conservation of Deep Sea Living Marine Resources and Ecosystems in the Areas Beyond National Jurisdiction](#) مشروع

ل لبيئة الم تحدة الأمم وجمعية (FAO) الم تحدة للأمم والزراعة الأغذية منظمة

ل هادئ ل محيط جنوب الهادئ مة ولا لجنقن يرب جي شاق سر أهل<sup>8</sup>

- بين ما القطاعات الحكومية ترتبط في كبرى ثغرات دوجو يلاحظ المناطق، من غيرها مع وبها مقارنة لتحديد صريحاً تفويضاً المناطق من أي في منظمة أية تمتلك لا، مثال، سبيل على المناطق بين الوطنية الولاية خارج الواقعة المناطق في الحماية البحرية المناطق
- ، حالياً محدودة مستويات ضمن ي زال الين المناطق تكتل في القطاعات مختلف بين التعاون أن من بالرغم التعاون هذا يوثق اهتمامه يوجد أنه إلا
- الولاية خارج الواقعة المناطق في إداري بتفويض تتمتع لا التي الإقليمية المؤسسات أن المعروف من المحيط الجنوب الدائمة اللجنة أو، الهندي المحيط غرب المناطق بالنسبة يروبي ميثاق مثل الوطنية، الاستشارة أو التنسيق في هام بدور تحظى قد الهدى، المحيط شرق جنوب المناطق بالنسبة الهدى المناطق أساس على القائم المحلي التخطيط مبادأة في
- الواقعة المناطق في القطاعات بين ما التعاون يوثق وجه في توقف التي التحديات أهم يلي فيما ورد:  
 ○ المؤسسات تمتلكها التي العضوي أنواع واختلاف الجغرافية التغطية لاختلاف يمكن الجغرافية بالمناطق المختصة الأولويات على الاتفاق أمر يصعب أن الدولة،  
 ○ القطاعات بين ما التعاون في النشاط في المشاركة على المؤسسات قدرة محدودة  
 ○ وخارجها الوطنية الولاية ضمن الواقعة المناطق بين ام البيئي للارتباط الحدود الفهم  
 ○ الحكومية المتديات في الوطنية الواقعة واقع تباين إلى يؤد مما المناسب، المحلي التعاون قلة الإقليمية أو العالمية
- المناطق أساس على القائم الإقليمي التخطيط لتعزيز محددة خيارات يلي فيما ورد:  
 ○ الوطنية، الولاية خارج الواقعة بالمناطق المتعلقة القضايا ولح السياسي الوعي تنمية بين المشرق الإقليمي التخطيط القطاعية المؤسسات في الأولية إغناء على والتشجيع المناطق أساس على والقائم القطاعات  
 ○ قطاعية مقارنة اعتماد خلال منسية مؤسست فوضات إلى التوصل من تحذ التي القيود توضيح الإدارية يات للتحدّي للتصدي الجهود ضاف من المرتبة المانفع إبراز مماثل، نحو وعلى حته، الوطنية الولاية خارج الواقعة المناطق في القائمة  
 ○ بين ما البحري البيئي للارتباط خاصة واسعة معرفية علمية قاعدة إلى الوصول تسهيل القضايا الحدود طرفي  
 ○ أساليب اعتماد على هاتشجيع وذلك المعنية، الجهات مختلف بين العلمي التعاون تمتين القرارات واتخاذ بالسياسات يتعلق فيما الدولية المنظمات ضمن انسجاماً أكثر  
 ○ على التشجيع والتألي بالمحيطات، المتعلقة والإقليمية الوطنية السياسات تطوير ادة الحكومية لدوائر الوطنية بين أفصل بتنسيق تماز مقارنة بيني الإقليمية أو منها العالم، الدولية الاجتمعات مختلف في يشارك ونم الاختلاف

○ آلية توفير هدف الم عنذية والجهات القطاعات مختلف بين تجمع عمل ف رقة أو وحدة تشكيل  
ال تعاون توثيق تضمن

خارج الواقعة الم مناطق في الم مناطق أساس على والقائم ،القطاعات بين الم شترك التخطيط أن في شك لا  
ماله والقضايا الم شارك بين أن من الرغم على بأنه الدراسة هذه تبين وك يرى باتتحد عدة يواجه ،الوطنية الولاية  
زيادة خلال من وذلك م تبادل ،منافع يجلب الذي التعاون ب توثيق واسعاً اهتماماً هنالك أن إلا إقليمي، طابع  
ب هدف البيئية المقاربة تطبيق وتوسيع العمل، في الم تكاملة والممارسات التفويض، مستويات  
الوطنية الولاية خارج الواقعة الم مناطق في القائمة الإدارية باتللتحد التصدي



## 执行摘要

随着国家管辖范围以外区域（ABNJ）内的人类活动不断增多，需要多方共同努力才能确保这些脆弱的海洋区域中的资源利用具有可持续性，使海洋生态系统得到有效保护。用于加强可持续海洋管理的一个可能机制是划区规划，即在一个确定的地理区域内应用多部门空间措施管理资源利用，并使之合理化。

在任何一个国家政府的管辖范围之外，部门的划区管理工具只能根据适当的政府间机构或文书在国家管辖范围以外区域内实施。在现行法律制度下，某些海洋区域（如东北大西洋）已在国家管辖范围以外区域的跨部门划区规划方法方面取得了进展，这些举措能够提供宝贵的案例研究实例。然而，这些案例研究也表明各区域的治理体系存在很大差异，某些方法在其他区域的环境中可能并不适用。因此，通过收集一个区域内有关监管、管理和协调的国家管辖范围以外区域活动的机构和法律文书的方式来充分了解具体的区域治理形势十分重要，借此可评估跨部门划区规划举措的机遇。

本研究描述了西印度洋和东南太平洋地区的国家管辖范围以外区域内的治理形势，目的在于理解在国家管辖范围以外区域内实现划区规划的综合跨部门协作方法取得的进展，以及在这些地区内考虑这一目标时存在哪些潜在的机遇和挑战。本研究的结果旨在为全球环境基金国家管辖范围以外区域深海项目的联合国环境部分作出贡献<sup>9</sup>，该项目的重点是在西印度洋和东南太平洋内的国家管辖范围以外区域开发和测试划区规划方法。就研究方法而言，本研究结合了文献研究和访谈，回顾了相关法律文书和制度安排，并对从文献回顾中确定的且与上述两个地区的伙伴组织进行密切合作的全球和区域机构代表进行了访谈<sup>10</sup>。

## 主要发现

- 几个全球和区域部门机构的任务是在西印度洋和东南太平洋的国家管辖范围以外区域内应用划区管理工具，但这些机构仅在某些情况下利用了它们在区域内的能力。
- 这两个地区的部门治理安排明显落后于其他地区。例如，两个地区中均没有任何一个组织在国家管辖范围以外区域内有指定海洋保护区的明确授权。
- 虽然目前两个地区的跨部门合作水平有限，但它们均有兴趣加强合作。
- 众所周知，在国家管辖范围以外区域内没有管理授权的地区机构（例如西印度洋内罗毕公约或东南太平洋的南太平洋常设委员会）可在任何区域性划区规划倡议中发挥重要的协调或咨询作用。
- 加强国家管辖范围以外区域内跨部门合作面临的主要挑战有：
  - 地区覆盖范围和政府间机构成员组成的差异会使就地区特定的优先事项取得一致意见变得具有挑战性；
  - 从事跨部门合作活动的机构能力有限；

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<sup>9</sup> [“国家管辖范围以外区域的可持续渔业管理和深海海洋生物资源及生态系统的生物多样性保护”](#)是全球环境基金的常规项目，由联合国粮食及农业组织（FAO）和联合国环境规划署共同实施。

<sup>10</sup> 《内罗毕公约》和南太平洋常设委员会秘书处（CPPS）

- 对国家管辖范围内外的区域之间的生态连通性的了解有限；以及
- 缺乏适当的国内协调，导致国家在全球或区域治理论坛上的立场不一致。
- 促进区域划区规划的具体选项有：
  - 树立与国家管辖范围以外区域有关问题的政治意识，并鼓励在部门机构内把区域的跨部门划区规划设为优先事项；
  - 说明通过纯粹的部门方式实现机构授权的局限性，强调合力应对国家管辖范围以外区域所面临的管理挑战带来的好处。
  - 提高与跨管辖边界的海洋生态连通性相关的广泛科学知识库的可获得性；
  - 加强不同利益相关方之间的科学合作，以鼓励在政府间组织中采取更加协调一致的政策制定和决策方式；
  - 进一步制定和完善国家和区域海洋政策，从而激励参加各种全球和区域政府间会议的不同政府部门的国家代表采取更加协调一致的做法；以及
  - 建立跨部门、多利益相关方的特别小组或工作组，提供加强合作的机制。

国家管辖范围以外区域内的跨部门划区规划当然面临一些重大挑战。本研究表明，尽管存在区域特有的行为者和问题，但人们对通过扩大授权、综合工作实践和更广泛地应用生态系统方式来加强互利合作以解决国家管辖范围以外区域面临的管理挑战存在广泛的兴趣。

## Резюме

С увеличением уровня человеческой деятельности, происходящей в районах за пределами национальной юрисдикции (ABNJ), необходимы коллективные усилия для обеспечения устойчивости использования ресурсов и эффективной защиты морских экосистем в этих уязвимых районах океана. Одним из потенциальных механизмов, используемых для укрепления устойчивого управления океанами, является планирование на основе районов, которое представляет применение многосекторальных пространственных мер для рационализации и управления использованием ресурсов в определенном географическом районе.

За пределами юрисдикции какого-либо правительства, секторальные инструменты управления конкретными районами могут быть реализованы только в ABNJ под соответствующим межправительственным органом или инструментом. Некоторые морские регионы (например, Северо-Восточная часть Атлантического океана) уже достигли прогресса с использованием межсекторальных подходов к планированию на основе районов в районах за пределами национальной юрисдикции в рамках существующих правовых режимов, и эти инициативы могут предоставить ценные примеры из примеров. Однако эти тематические исследования также демонстрируют, что регионы имеют очень разные системы управления, и некоторые подходы могут быть неприменимы в других региональных контекстах. Поэтому очень важно иметь хорошее представление о специфическом ландшафте регионального управления, под которым мы понимаем сбор органов и правовых инструментов, которые регулируют, управляют и координируют деятельность в районах за пределами национальной юрисдикции в пределах региона, - для оценки возможностей для межсекторальных инициатив планировании на основе районов.

Исследование описывает ландшафт управления в районах за пределами национальной юрисдикции в западной части Индийского океана и юго-восточной части Тихого океана, с целью понять, достигнутый прогресс в отношении совместного и интегрированного межсекторального подхода к планированию на основе районов в районах за пределами национальной юрисдикции, и потенциальные проблемы и возможности при рассмотрении такой задачи в этих регионах. Результаты этого исследования предназначены для внесения вклада в компонент Организации Объединенных Наций по окружающей среде глубоководного морского проекта ГЭФ<sup>11</sup>, в рамках которого основное внимание уделяется разработке и тестированию методик планирования на основе районов в районах за пределами национальной юрисдикции в западной части Индийского океана и в юго-восточной части Тихого океана. Исследование объединило кабинетный обзор правовых документов и институциональных механизмов с опросами представителей глобальных и региональных учреждений, выявленных в ходе обзора литературы, и в тесном сотрудничестве с организациями-партнерами из этих двух регионов<sup>12</sup>.

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<sup>11</sup> «Устойчивое управление рыбным хозяйством и сохранение биоразнообразия глубоководных живых морских ресурсов и экосистем в районах за пределами национальной юрисдикции» Полномасштабный проект ГЭФ, осуществляемый совместно Продовольственной и сельскохозяйственной организацией (ФАО) и Организацией Объединенных Наций по окружающей среде

<sup>12</sup> Секретариаты Найробийской конвенции и Постоянной комиссии для южной части Тихого океана (КППС)

## Ключевые результаты

- Несколько глобальных и региональных секторальных учреждений имеют мандат на применение инструментов управления на базе районов в районах за пределами национальной юрисдикции в западной части Индийского океана и в юго-восточной части Тихого океана. Однако только в некоторых случаях эти учреждения использовали свои компетенции в регионах.
- По сравнению с другими регионами, имеются заметные пробелы в механизмах секторального управления в двух регионах. Например, ни одна организация в любом регионе не имеет четкого мандата для обозначения морских охраняемых районов в районах за пределами национальной юрисдикции.
- Несмотря на то, что в настоящее время уровень межсекторального сотрудничества ограничен в обоих регионах, существует заинтересованность в укреплении сотрудничества.
- Широко признается, что региональные учреждения, не имеющие мандата управления в районах за пределами национальной юрисдикции, такие как Найробийская конвенция для западной части Индийского океана или Постоянной комиссии по южной части Тихого океана (КППС), могут играть важную координационную или консультативную роль в любой региональной инициативе по планированию на основе районов.
- Ключевыми проблемами, стоящими перед укреплением межсекторального сотрудничества в ABNJ, являются:
  - различные географические покрытия и различные членские составы межправительственных учреждений могут затруднить согласование географически конкретных приоритетов;
  - ограниченный потенциал учреждений для осуществления межсекторальной совместной деятельности;
  - ограниченное понимание экологической связности между районами в пределах национальной юрисдикции и за ее пределами; а также
  - отсутствие надлежащей внутренней координации, приводящей к непоследовательным национальным позициям в глобальных или региональных форумах управления.
- Конкретные варианты для содействия региональному планированию на основе районов:
  - Создать политическую осведомленность о проблемах, связанных с районами за пределами национальной юрисдикции, и содействовать установлению приоритетов регионального межсекторального планирования на основе районов в отраслевых институтах;
  - Продемонстрировать ограничения в достижении институциональных мандатов с помощью секторального подхода, а также подчеркнуть преимущества, которые могут быть получены от объединения усилий для решения проблем управления, с которыми сталкиваются районы за пределами национальной юрисдикции.
  - Улучшить доступ к широкой научной базе знаний, связанной с морской экологической связностью в разных юрисдикционных границах;
  - укреплять научное сотрудничество между различными заинтересованными сторонами в целях поощрения более согласованных подходов, имеющих актуальное значение для политики и принятия решений в межправительственных организациях;
  - Развить национальную и региональную политику в отношении океана и тем самым стимулировать более скоординированный подход между национальными

- представителями различных правительственных ведомств, которые посещают различные глобальные и региональные межправительственные совещания; а также
- Создать межсекторальную, многостороннюю целевую группу или рабочую группу для создания механизма для укрепления сотрудничества.

Межсекторальное планирование на основе районов в районах за пределами национальной юрисдикции, безусловно, сталкивается с рядом серьезных проблем. Это исследование демонстрирует, что, несмотря на региональные факторы и проблемы, широко распространен интерес к укреплению взаимовыгодного сотрудничества посредством расширенных мандатов, интегрированных рабочих практик и более широкого применения экосистемного подхода для решения проблем управления, стоящих перед районами за пределами национальной юрисдикции.

## List of acronyms and abbreviations

2050 AIM Strategy	African Integrated Maritime Strategy 2050
ABNJ	Areas Beyond National Jurisdiction
ABP	Area-based Planning
ACAP	Agreement on the Conservation of Albatrosses and Petrels
ACCOBAMS	Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area
ALDFG	Abandoned lost and discarded fishing gears
AMCEN	African Ministerial Conference on Environment
APEI	Areas of Particular Environmental Interest
APM	Associated protective measures
ASCOBANS	Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic and North Seas
AU	African Union
BBNJ	Biodiversity of areas Beyond National Jurisdiction (see 'BBNJ Working Group')
BBNJ Working Group	<i>Ad Hoc</i> Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine BBNJ
BPA	Benthic Protected Area
CBD	Convention on Biological Diversity
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CCZ	Clarion-Clipperton Fracture Zone
CCZ-EMP	CCZ- Environmental Management Plan
CGFZ	Charlie-Gibbs Fracture Zone
CI	Conservation International
CIIFEN	International Research Centre on El Niño
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLCS	Commission on the Limits of the Continental Shelf
CMM	Conservation and Management Measure
CMP	Conservation Management Plan
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CNCP	Cooperating non-Contracting Party
COFI	FAO Committee on Fisheries
COMESA	Common Market for East and Southern Africa
Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
COP	Conference of the Parties
CORDIO	Coastal Oceans Research and Development – Indian Ocean
CPPS	Permanent Commission for the South Pacific
DOALOS	UN Division for Ocean Affairs and the Law of the Sea
EAC	East Africa Community
EBSA	Ecological or Biologically Significant Area
ECLAC	UN Economic Commission for Latin America and the Caribbean
EEZ	Exclusive Economic Zone
EMP	Environmental Management Plan
ENSO	El Niño-Southern Oscillation
ERFEN	El Niño Regional Research Program
ESA-IO	Eastern and Southern Africa – Indian Ocean
FAO	Food and Agriculture Organization of the United Nations
Galapagos Agreement	Framework Agreement for the Conservation of Living Marine Resources in the High Seas of the Southeast Pacific
GEF	Global Environment Facility
IASS	Institute for Advanced Sustainability Studies
IATTC	Inter-American Tropical Tuna Commission
ICPC	International Cable Protection Committee
IDCP	International Dolphin Conservation Program
IDDRI	Institute for Sustainable Development and International Relations
IGAD	Inter-Governmental Authority on Development
IGOs	Intergovernmental organizations
IMO	International Maritime Organization
IOC	Indian Ocean Commission
IOC-UNESCO	Intergovernmental Oceanographic Commission of UNESCO



IOSEA Marine Turtle MOU	MoU on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South East Asia
IOTC	Indian Ocean Tuna Commission
IPTP	Indo-Pacific Tuna Development and Management Programme
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
IUU	Illegal, Unreported, and Unregulated (fisheries)
IWC	International Whaling Commission
Lima Convention	Convention on the Protection of the Marine and Coastal Areas of the Southeast Pacific
LMEs	Large Marine Ecosystems
MARPOL	International Convention for the Prevention of Pollution from Ships
MCS	Monitoring, control and surveillance
MEA	Multilateral Environmental Agreement
MEPC	Marine Environment Protection Committee
MoU	Memorandum of Understanding
MPA	Marine Protected Area
MPA Guidelines	Technical guidelines, including the Technical Guidelines on MPAs as a Fisheries Management Tool
MSY	Maximum Sustainable Yield
Nairobi Convention	Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment
NEAFC	North East Atlantic Fisheries Commission
NEPAD	New Partnership for Africa's Development
NGOs	Non-governmental organization
NPFC	North Pacific Fisheries Commission
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
OSPESCA	Fisheries and Aquaculture Sector Organization of the Central American Isthmus
PSSA	Particularly Sensitive Sea Area
RFB	Regional fishery body
RFMO/A	Regional Fisheries Management Organization/ Agreement
RSC	Regional Sea Convention
RSN	Regional Fishery Body Secretariats Network
RSP	Regional Seas Programmes
SADC	Southern African Development Community
SEAFO	South East Atlantic Fisheries Organization
SEP	South East Pacific
SIODFA	Southern Indian Ocean Deep-sea Fishers' Association
SIOFA	South East Pacific and the South Indian Ocean Fisheries Agreement
SPAMI	Specially Protected Areas of Mediterranean Importance
SPC-OFP	Secretariat of the Pacific Community Oceanic-Fisheries Program
SPREP	Secretariat of the Pacific Regional Environment Programme
SPRFMO	South Pacific Regional Fisheries Management Organization
SWIOFC	Southwest Indian Ocean Fisheries Commission
TNC	The Nature Conservancy
ToR	Terms of Reference
UN	United Nations
UNCLOS	UN Convention on the Law of the Sea
UNDP	UN Development Programme
UNEP	United Nations Environment Programme (now called UN Environment)
UNEP-WCMC	UN Environment World Conservation Monitoring Centre
UNESCO	UN Educational, Scientific and Cultural Organization
UNGA	General Assembly of the United Nations
VME	Vulnerable Marine Ecosystem
VMS	Vessel Monitoring System
WCPFC	Western and Central Pacific Fisheries Commission
WCS	Wildlife Conservation Society
WECAFC	Western Central Atlantic Fishery Commission
WIO	Western Indian Ocean
WIO-C	Consortium for the Conservation of Coastal and Marine Ecosystems in the WIO
WIOMSA	Western Indian Ocean Marine Science Association
WMO	World Meteorological Organization
WWF	World Wide Fund for Nature

## 1. Introduction

Over 60% of our ocean area lies beyond national jurisdictions, typically more than 200 nautical miles from a coastline. Commonly referred to as Areas Beyond National Jurisdiction (ABNJ), this immense and distant expanse of ocean and its seabed habitat has been referred to as Earth's 'last great wilderness' (Ramirez-Llodra *et al.*, 2011). Ocean areas beyond national jurisdiction contain the majority of deep sea, defined as being below the continental shelf break (approximately 200m deep; Gage & Tyler 1991). The deep sea environment is predominantly characterised by extreme temperatures and complete darkness. Despite such seemingly inhospitable conditions, deep sea areas are very varied, structurally complex and contain a huge diversity of living and non-living resources that support human wellbeing.

The wealth of living and non-living resources in ABNJ remained relatively untouched until recent decades, when technological advances enabled fishing and fossil fuel extraction to operate at depths as great as 2,000m (Watson and Morato, 2013). Activities that were previously logistically and economically prohibitive, such as deep sea mining and cable laying, are now increasingly feasible. The expansion of human activities in ABNJ has raised concerns about the sustainability of these activities and their effects on the vulnerable ecosystems found in ABNJ, particularly those found in the deep sea.

As is the case within national jurisdictions, human activities occurring in ABNJ are generally regulated by sector, through authorities with relevant mandates. Most sectors have adopted some form of area-based planning to manage their activities, and the impacts of their activities, on the surrounding environment. **Area-based planning involves the use of specific spatial measures to manage resource use, and typically defines where multiple activities are, or are not, permitted to occur through the use of area-based management tools.** These area-based management tools, such as shipping traffic separation zones, mining licence areas or protected areas, are the specific management measures employed by the sector itself.

Within both Exclusive Economic Zones (EEZs) and ABNJ, a wide range of area-based management tools have been applied to deliver sustainable resource use and improved biodiversity conservation. **Within national jurisdictions, area-based planning is becoming increasingly cross-sectoral** through the use of management frameworks such as marine spatial planning or integrated coastal zone management, where the activities of multiple sectors are spatially planned in concert in order to reduce sectoral conflicts and better mitigate the cumulative impacts.

In ABNJ, it has been argued that the sector-based regulation of activities leaves legal and geographical gaps in the management provided by sectoral authorities (Gjerde *et al.* 2008). Significantly, **there is no overarching mechanism to integrate ABNJ sectoral management measures into a single framework** to ensure that important or vulnerable deep sea biodiversity is comprehensively protected (Gjerde *et al.*, 2013). As a result, there have been calls for strengthened protection measures and enhanced sustainability measures, which have led some to suggest that **enhancing the cross-sectoral nature of area-based planning in ABNJ could be the solution** (Ardrón *et al.*, 2008). However, transferring cross-sectoral area-based planning approaches from national jurisdictions to ABNJ is extremely challenging, primarily due to the very different legal frameworks that exist within and beyond national jurisdictions. This issue is exacerbated by a paucity of data from ABNJ, the vast geographical coverage of ABNJ, and the fact that activities occurring in ABNJ can affect stakeholders from disparate and distant countries.

Despite these challenges, some regions have made progress towards greater cross-sectoral area-based planning in ABNJ. One example is the North East Atlantic, where some of the institutional

authorities for individual sectors have entered into a ‘collective arrangement’ to share information and are therefore beginning to tackle some of the perceived gaps in sustainable resource use and comprehensive biodiversity protection. Regional examples such as the North East Atlantic are valuable case studies for sharing a growing wealth of knowledge and experience. However, these case studies are also demonstrating that regions have very different governance characteristics and certain regional approaches may not be applicable in other contexts.

In order to explore how cross-sectoral area-based planning in ABNJ might be implemented in any specific region, we must consider the collection of competent authorities and legal instruments within the region that regulate and manage activities. Without the jurisdiction of any single State government, area-based management tools can only be implemented in ABNJ under an appropriate authority or instrument mandate or remit. Therefore, **the governance landscape is highly relevant to understanding which area-based management tools could be applied in any given region**. Once the area-based management toolbox is clear, it is possible then to consider how the application of such area-based management tools might be done collectively across sectors in order to improve biodiversity conservation and sustainable resource use.

### Scope of the work: Aim and objectives

This study is part of a larger GEF-funded project entitled ‘*Sustainable Fisheries Management and Biodiversity Conservation of Deep Sea Living Marine Resources and Ecosystems in the Areas Beyond National Jurisdiction*’,<sup>13</sup> implemented jointly by the Food and Agriculture Organization (FAO) and UN Environment. The results of this study are designed to contribute directly to the UN Environment component of the project, which focuses on developing and testing area-based planning methodologies in two pilot areas, the Western Indian Ocean and the South East Pacific.

The **aim of this study** is to describe the governance landscapes in ABNJ in the Western Indian Ocean and South East Pacific with a view to understanding what progress has been made towards a more integrated, cross-sectoral approach to area-based planning in ABNJ.

**The first objective** of the study is to present an overview of the institutional authorities and legal instruments that relate to biodiversity conservation and sustainable use of natural resources in ABNJ globally, as well as in the two regions. The study will particularly focus on investigating the progress made, and the challenges faced, by the different institutions and legal instruments in achieving their mandate in relation to ABNJ. The scope of the study covers all institutions and instruments with a mandate related to ABNJ, but particular focus is placed upon those authorities with a mandate for management of resources in ABNJ and therefore the implementing agencies for area-based management tools.

**The second objective** is to describe the existing mechanisms for cooperation between these institutions and instruments, and then to explore the scope for future cross-sectoral cooperation, as well as the challenges and opportunities involved in greater cross-sectoral cooperation.

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<sup>13</sup> <http://www.thegef.org/project/abnj-sustainable-fisheries-management-and-biodiversity-conservation-deep-sea-living-marine>

## Methodology

Throughout the study, the project team worked in close collaboration with partner organizations from the two regions, the Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment (Nairobi Convention) and the Permanent Commission for the South Pacific (CPPS), both represented by their Secretariats.

Key steps in this study involved:

1. a desk-based review of:
  - a. legal instruments and institutional arrangements;
  - b. scientific and grey literature; and
  - c. other sources of information, such as publicly available material, including websites, of global and regional organizations related to biodiversity conservation and sustainable resource use in ABNJ;
2. a review of the scope of the legal instruments, mandates and powers of institutions (as identified in step 1), with regard to ABNJ;
3. Interviews with representatives of selected global and regional institutions, identified through the desk-based review and in consultation with the Secretariats of CPPS and the Nairobi Convention.

Considerable legal analysis and desk-based research has already been undertaken with respect to the current mechanisms in place to manage biodiversity and marine resources in ABNJ globally, as well as in the two regions. This study builds upon available information and brings in new perspectives through practitioners' views on the governance mechanisms of ABNJ, particularly the associated challenges and opportunities at both global and regional levels. The study also takes into account the most recent developments in both regions.

The insights gained through the interviews form a key part of this study. The objective of the interviews was to assess the successes, barriers and challenges of the identified institutions and instruments in achieving their objectives (emphasizing those that relate to area-based planning), and the extent to which they cooperate with sectors other than their own.

The individual institutional interviewees were identified following prior engagement with the respective institution, or upon advice from appropriate individuals or organization heads. The list of interviewees is provided in Annex 2. In addition to selecting institutional representatives, we also invited experts, business associations and academics from the two regions to be interviewed for the purpose of this study, or to act as reviewers. Interviewees were asked to validate and review their input.

## Structure of the report

**Section 2** presents the global governance framework as it relates to ABNJ and the key global intergovernmental institutions and instruments with a mandate related to ABNJ, focusing in particular on area-based planning measures as well as intra and cross-sectoral cooperation.

**Section 3** and **Section 4** outline the governance framework as it relates to ABNJ in the Western Indian Ocean and the South East Pacific, respectively. The two sections follow the same basic structure:

- A general overview of the regional governance framework
- A detailed description of institutions and legal instruments according to their significance in any regional initiative to develop area-based planning. Information provided includes:

- the mandate of the institution or scope of the legal instrument;
- key achievements and challenges in achieving the institution's objectives;
- the current level of intra- and inter-sectoral cooperation; and
- the institution's ability to further advance cooperation, in particular for the purpose of area-based planning.
- Concluding remarks

**Section 5** presents the final conclusions, which summarize the identified challenges and opportunities with respect to the relevant institutions and instruments, and mechanisms for cooperation at the global and regional level.

Additional information supporting the study is provided in the following annexes:

- [Annex 1](#): Institutional arrangements (Global, Western Indian Ocean and South East Pacific);
- [Annex 2](#): The list of interviewees
- [Annex 3](#): Chronology of key events
- [Annex 4](#): Additional information on DOALOS involvement in global processes

## 2. The Framework: Global instruments and institutions for biodiversity conservation and sustainable use in Areas Beyond National Jurisdiction (ABNJ)

Within this chapter, **Section 2.1** introduces the **overarching global governance of ABNJ**, which includes a definition of ABNJ and the main legal instruments and institutions regulating ABNJ activities. **Section 2.2** presents a **sector-by-sector description of the global ABNJ instruments**, including shipping, fishing, mining, and marine environmental protection. Generally, each sectoral description introduces the regulatory authority/ies for that sector and the associated legal instruments, before describing the area-based management tools used by that sector, and then the existing or potential levels of cooperation, both within that sector and cross-sectorally. **Section 2.3** presents **concluding remarks** on the chapter.

### 2.1 Introduction to the global governance of ABNJ

The international legal regime for marine ABNJ is made up of a number of global and regional legal instruments, both binding and non-binding. The **United Nations Convention on the Law of the Sea (UNCLOS)** entered into force in 1982,<sup>14</sup> catalysed by the Third United Nations Conference on the Law of the Sea and the 1970 United Nations General Assembly resolution recognising “that the problems of ocean space are closely interrelated and need to be considered as a whole”. UNCLOS is generally considered to be at the heart of any attempt to create and enforce a global ocean governance system (including ABNJ), with the **General Assembly of the United Nations (UNGA)** being the only universal platform through which ABNJ biodiversity as a whole can be discussed, including with respect to regional governance (Druel *et al.*, 2013).

UNCLOS was designed to serve as a unifying framework for a growing number of more detailed international agreements that address one or more particular ocean uses, such as shipping, mining or fishing. Often referred to as the “constitution for the oceans”, the zones it defines and the principles, rights and obligations it specifies provide the basic framework and starting point for many of these more detailed agreements. Furthermore, many of the UNCLOS provisions are today considered to reflect customary international law, which applies to all states (Kimball, 2005), even if they are not among the 168 signatories to UNCLOS, and refers to a general and consistent practice of states following from a sense of legal obligation. This means that non-UNCLOS signatories (e.g. Colombia, Peru, Turkey, United States, Venezuela) are generally complying with UNCLOS provisions. Nonetheless, the regulatory management tools that would be required for effective cross-sectoral area-based planning are highly unlikely to emerge via customary international law.

The UNCLOS provisions are complemented by two **implementing agreements**:

- **The 1994 Agreement relating to the implementation of Part XI (‘the Area’)** was adopted to elaborate on Part XI of UNCLOS in order to facilitate universal participation in the Convention. After the adoption of the 1994 Part XI Agreement, any State that becomes party to UNCLOS also becomes party to that Agreement, but no party may be bound by the 1994 Agreement unless it is already bound by UNCLOS.
- The 1995 Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (‘**UN Fish Stocks Agreement**’) sets out principles for the conservation and management of straddling and migratory fish stocks in the ‘high seas’, including the need to

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<sup>14</sup> United Nations General Assembly resolution 37/66



follow the precautionary approach and apply the best available scientific information. Being a party to UNCLOS is not a requirement for becoming a Party to the UN Fish Stocks Agreement.

In addition to **binding agreements** such as UNCLOS, the Convention's two implementing agreements or the International Convention for the Prevention of Pollution from Ships (MARPOL), a range of **non-binding instruments** are also highly relevant to ocean governance and thus governance of ABNJ. These include the **resolutions adopted by UNGA** on oceans and the law of the sea, accompanied by a specific resolution on sustainable fisheries, as well as guidelines adopted by the FAO.

### What are areas beyond national jurisdiction?

Before describing areas beyond national jurisdiction (ABNJ), it is worth noting what constitutes **national jurisdiction** under UNCLOS with regard to the sea. National jurisdiction includes internal waters,<sup>15</sup> the territorial sea,<sup>16</sup> archipelagic waters of an archipelagic State,<sup>17</sup> the continental shelf,<sup>18</sup> and the 200 nautical mile Exclusive Economic Zone (EEZ).<sup>19</sup> Where the continental shelf extends beyond the 200 nautical mile EEZ limit, States may submit extended continental shelf claims to the **Commission on the Limits of the Continental Shelf (CLCS)** established under UNCLOS.<sup>20</sup> Figure 1. presents these maritime zones and their jurisdictional boundaries.

UNCLOS does not provide a definition of the term ABNJ itself. Instead, UNCLOS describes areas beyond the limits of national jurisdictions as including the water column, called 'the high seas',<sup>21</sup> and the seabed, termed 'the Area'.<sup>22</sup> The Area is defined as '...the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction'.<sup>23</sup> The high seas refers to all areas outside of national jurisdiction. Where the continental shelf extends beyond 200 nautical miles, it is possible for the seabed to be under national jurisdiction while the water column above it is part of the high seas.

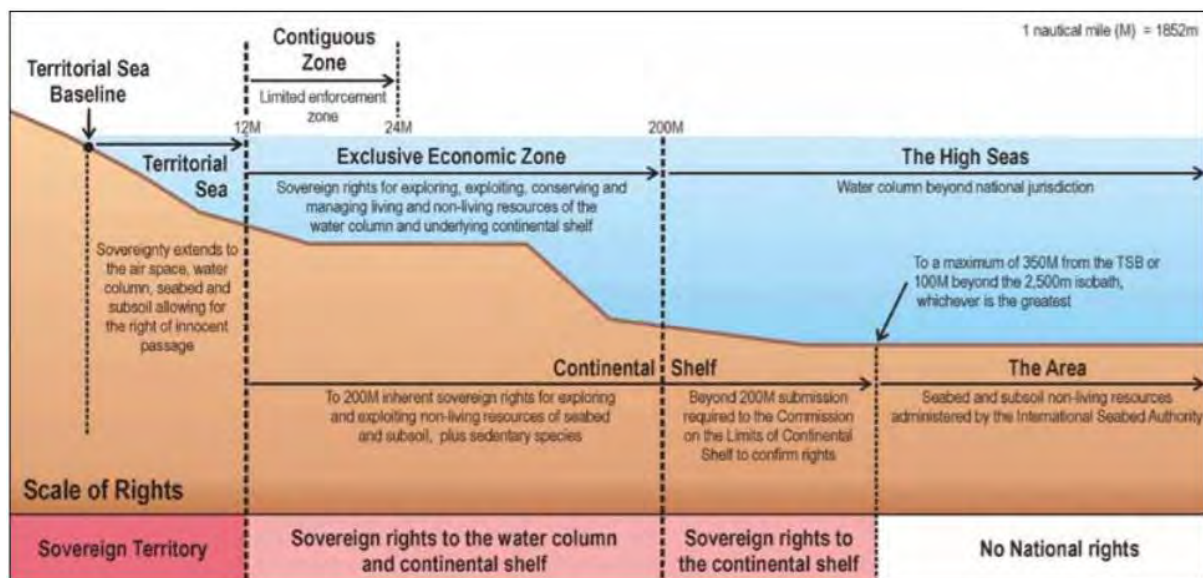


Figure 1. Diagram of maritime zones and jurisdictional boundaries. (Source: Geoscience Australia)

<sup>15</sup> 'internal' waters on the landward side, Article 8 UNCLOS

<sup>16</sup> up to a limit not exceeding 12 nautical miles (M) from the territorial sea baseline, Article 2 UNCLOS

<sup>17</sup> Article 49 UNCLOS

<sup>18</sup> Part VI UNCLOS

<sup>19</sup> 200 M from the territorial sea baseline and adjacent to the 12 M territorial sea, Part V UNCLOS

<sup>20</sup> Article 76 UNCLOS

<sup>21</sup> Part VII UNCLOS, Article 86

<sup>22</sup> Part XI UNCLOS and Article 1

<sup>23</sup> Article 1(1) UNCLOS

### General principles applicable in ABNJ

UNCLOS as a framework convention includes provisions addressing **a number of different maritime activities**, including shipping, mining, fishing, laying of cables and pipelines, marine scientific research and marine environmental protection. Under the conditions established by UNCLOS and other rules of international law, all coastal and land-locked States can exercise the **freedom of the high seas**,<sup>24</sup> which comprise, *inter alia*:

1. The freedom of navigation;
2. The freedom of overflight;
3. The freedom to lay submarine cables and pipelines;
4. The freedom to construct artificial islands and other installations permitted under international law;
5. The freedom of fishing; and
6. The freedom of scientific research.

The associated conditions include a general obligation of states **to protect and preserve the marine environment**<sup>25</sup> and **to cooperate on a global and regional basis**, either directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with UNCLOS, for the protection and preservation of the marine environment.<sup>26</sup> When exercising their high seas freedoms, UNCLOS also requires states to have **due regard for the interest of other States**, as well as rights under UNCLOS with respect to activities in the Area.<sup>27</sup> Seabed mining is not a freedom of the high seas, as it relates to the extraction of resources from the Area, which is declared under UNCLOS as the **common heritage of mankind**.<sup>28</sup>

To maintain **public order in ABNJ**, vessels on the high seas are bound by **flag State**<sup>29</sup> jurisdiction, which involves adherence to the national legislation of the State to which the vessel is registered as well as international or regional conventions to which that state is party to. Although UNCLOS requires a 'genuine link' between ship and state, in practice, vessels may fly '**flags of convenience**', where the vessel is registered to a State other than that of its owners. Some countries maintain 'open registries', allowing vessel owners to pick the State flag with the lowest level of regulation and enforcement. To address this issue with regard to fishing vessels, the *FAO Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas* (the '**Compliance Agreement**') entered into force in 2003. This agreement elaborates the 'genuine link' issue between state and ship established by UNCLOS by setting out precise responsibilities of the flag state and providing oversight and monitoring powers to FAO and fisheries organizations. However, the number of Parties to the Compliance Agreement is still small, and countries most associated with 'flags of convenience' are not Parties to this agreement.

The principle of flag state jurisdiction is complemented by provisions on **port and coastal state enforcement**.<sup>30</sup> Port states have the right to prescribe national rules and standards as a condition for entry of all vessels into their ports, internal waters and offshore terminals, and can also enforce

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<sup>24</sup> Article 87 UNCLOS

<sup>25</sup> Article 192 UNCLOS, and included in Part XII on Protection and Preservation of the Marine Environment

<sup>26</sup> Article 197 UNCLOS

<sup>27</sup> Article 87.2 UNCLOS

<sup>28</sup> Article 136 UNCLOS

<sup>29</sup> Article 91-92 UNCLOS

<sup>30</sup> Article 218 and 220 UNCLOS

applicable international rules and standards against a vessel in case of any illegal operational discharge in internal waters, the territorial sea, EEZs of third States or on the high seas.<sup>31</sup>

With regard to the obligations of flag and coastal states in relation to **fisheries management**, the **2015 ITLOS Advisory Opinion** on Coastal and Flag State Duties to Ensure Sustainable Fisheries Management should also be highlighted. In this Opinion, a due diligence standard was adopted for flag state responsibility with regard to Illegal, Unreported, and Unregulated (IUU) Fishing in coastal states' EEZs.<sup>32</sup> In addition, the Port State Measures Agreement entered into force in June 2016 to combat illegal fishing. It requires foreign vessels to submit to inspections at any port of call and for port states to share information on violations.

#### *United Nations General Assembly and the Division for Ocean Affairs and the Law of the Sea*

In accordance with its resolutions on oceans and the law of the sea,<sup>33</sup> the United Nations General Assembly (UNGA) is the competent global institution to undertake the annual consideration, review and evaluation of the implementation of UNCLOS and other related developments.<sup>34</sup>

The **Division for Ocean Affairs and the Law of the Sea (DOALOS)** within the UN Office of Legal Affairs is the Secretariat of UNCLOS and the UN Fish Stocks Agreement, and also services various processes under UNGA. Through a range of activities, such as providing States and intergovernmental organizations with legal and technical services, DOALOS promotes a better understanding and wider acceptance of UNCLOS and its implementing Agreements, as well as their uniform and consistent application and effective implementation.<sup>35</sup>

DOALOS also supports a number of additional processes that are highly relevant to collaborative governance of ABNJ. DOALOS is the designated **focal point for UN-Oceans**, the ocean-related 'inter-agency mechanism that seeks to enhance the coordination, coherence and effectiveness of competent organizations of the UN system and the International Seabed Authority (ISA)'.<sup>36</sup> UN-Oceans has developed an inventory of the mandates and activities of member organizations with the aim of strengthening cooperation by identifying potential for synergies and further cooperation.

Regarding the discharge of responsibilities under relevant General Assembly resolutions, the UNCLOS and the 1995 UN Fish Stocks Agreement, DOALOS services, *inter alia*, the following processes:

1. **Meeting of States Parties** to UNCLOS;
2. **Sessions of the Commission on the Limits of the Continental Shelf (CLCS)**;
3. **Informal Consultations** of State Parties to the 1995 UN Fish Stocks Agreement;
4. **Review Conference** on the 1995 UN Fish Stocks Agreement;
5. **Informal Consultative Process on Oceans and the Law of the Sea (ICP)**;
6. **The Preparatory Committee for Biodiversity Beyond National Jurisdictions (BBNJ)**; and
7. **Regular Process** for Global Reporting and Assessment of the State of the Marine Environment, Including Socioeconomic Aspects (World Ocean Assessment).

The list provides an overview of the breadth of DOALOS' involvement in global processes related to ocean governance. More information on DOALOS can be found in [Annex 4](#).

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<sup>31</sup> Article 218.1 UNCLOS

<sup>32</sup> ITLOS Case No. 21, Advisory Opinion of April 2, 2015

<sup>33</sup> in particular, resolutions 49/28 and 52/26

<sup>34</sup> UN. Oceans and the Law of the Sea in the General Assembly of the United Nations - General Assembly resolutions and decisions. [http://www.un.org/depts/los/general\\_assembly/general\\_assembly\\_resolutions.htm](http://www.un.org/depts/los/general_assembly/general_assembly_resolutions.htm) [Accessed: 20 July 2016]

<sup>35</sup> UN Division for Ocean Affairs and the Law of the Sea. [http://legal.un.org/ola/div\\_doalos.aspx?section=doalos](http://legal.un.org/ola/div_doalos.aspx?section=doalos) [Accessed: 20 July 2016]

<sup>36</sup> UN Oceans. <http://www.unoceans.org/> [Accessed: 26 August 2016]

In carrying out its functions, DOALOS **cooperates with various organizations** both within and outside the UN system, including UN Environment, Convention on Biological Diversity (CBD), Intergovernmental Oceanographic Commission of UNESCO (IOC-UNESCO), FAO, International Maritime Organization (IMO) and other organizations at the regional and global levels that have a relevant mandate. Such cooperation is realised through review of parliamentary documents, participation in meetings of the governing bodies of both global and regional organizations, participation in expert meetings, as well as the development of capacity-building programmes.

While UNCLOS does not contain clauses of exclusivity, many other conventions and agreements that cover similar fields state that they do not override the implications and content of UNCLOS. Some of these legal documents are being presented below, being integral to the governance of ABNJ. The **relation of UNCLOS to other conventions and international agreements** is also addressed in Article 311 UNCLOS, which *inter alia*, stipulates the requirements for State Parties to be able to conclude agreements modifying or suspending the operation of provisions of the Convention.

### Current global developments related to the conservation and sustainable use of biodiversity beyond national jurisdiction

Over the last decade, questions have been raised by some researchers and practitioners as to whether the current legal framework effectively safeguards **marine BBNJ**. Therefore, in 2004, the UNGA established the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine BBNJ (**the BBNJ Working Group**).<sup>37</sup> Based on the recommendations of the BBNJ Working Group, the UNGA established a **preparatory committee (BBNJ Prepcom)** in June 2015 to make substantive recommendations on the elements of a draft text of a **legally-binding instrument on BBNJ under UNCLOS**.<sup>38</sup> This work started in March 2016 and will carry on into 2017. Before the end of its 72<sup>nd</sup> session in 2018, the UNGA will decide on the convening and starting date of an intergovernmental conference, under the auspices of the UN, to consider the preparatory committee's recommendations and elaborate the text of an international legally binding instrument under UNCLOS.<sup>39</sup>

## 2.2 Global institutions and instruments with a sectoral mandate related to ABNJ

This section describes some of the major global agreements and institutions with a mandate related to the conservation and/or sustainable use of biodiversity in ABNJ, and provides information on their potential role in advancing and strengthening global and regional ocean governance. Figure 2 and Table 1 provide an overview of the different institutions and legal instruments examined. This section describes the following sectors:

- **Shipping:** The International Maritime Organization (IMO);
- **Fisheries Management:** Regional Fisheries Bodies (RFBs) and FAO;
- **Whale Conservation and Management:** The International Whaling Commission (IWC);
- **Deep Sea Mining:** The International Seabed Authority (ISA);
- **Cable Laying:** The International Cable Protection Committee (ICPC);
- **Marine Environmental Protection:** UN Environment, the Regional Seas Programmes (RSP)<sup>40</sup> and biodiversity-related conventions (such as the CBD) and the Convention on the Conservation of Migratory Species of Wild Animals (CMS).

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<sup>37</sup> UN. Marine biological diversity beyond areas of national jurisdiction legal and policy framework.

[http://www.un.org/Depts/los/biodiversityworkinggroup/webpage\\_legal%20and%20policy.pdf](http://www.un.org/Depts/los/biodiversityworkinggroup/webpage_legal%20and%20policy.pdf) [Accessed: 19 July 2016]

<sup>38</sup> UNGA resolution 69/292

<sup>39</sup> UN. Prepcom Background information (2012). <http://www.un.org/depts/los/biodiversity/prepcom.htm> [Accessed: 19 July 2016]

<sup>40</sup> <http://web.unep.org/regionalseas/who-we-are/regional-seas-programmes>



**ABNJ**  
RELATED

# OCEAN ACTIVITIES & EXAMPLES OF INSTITUTIONS<sup>(1)</sup>

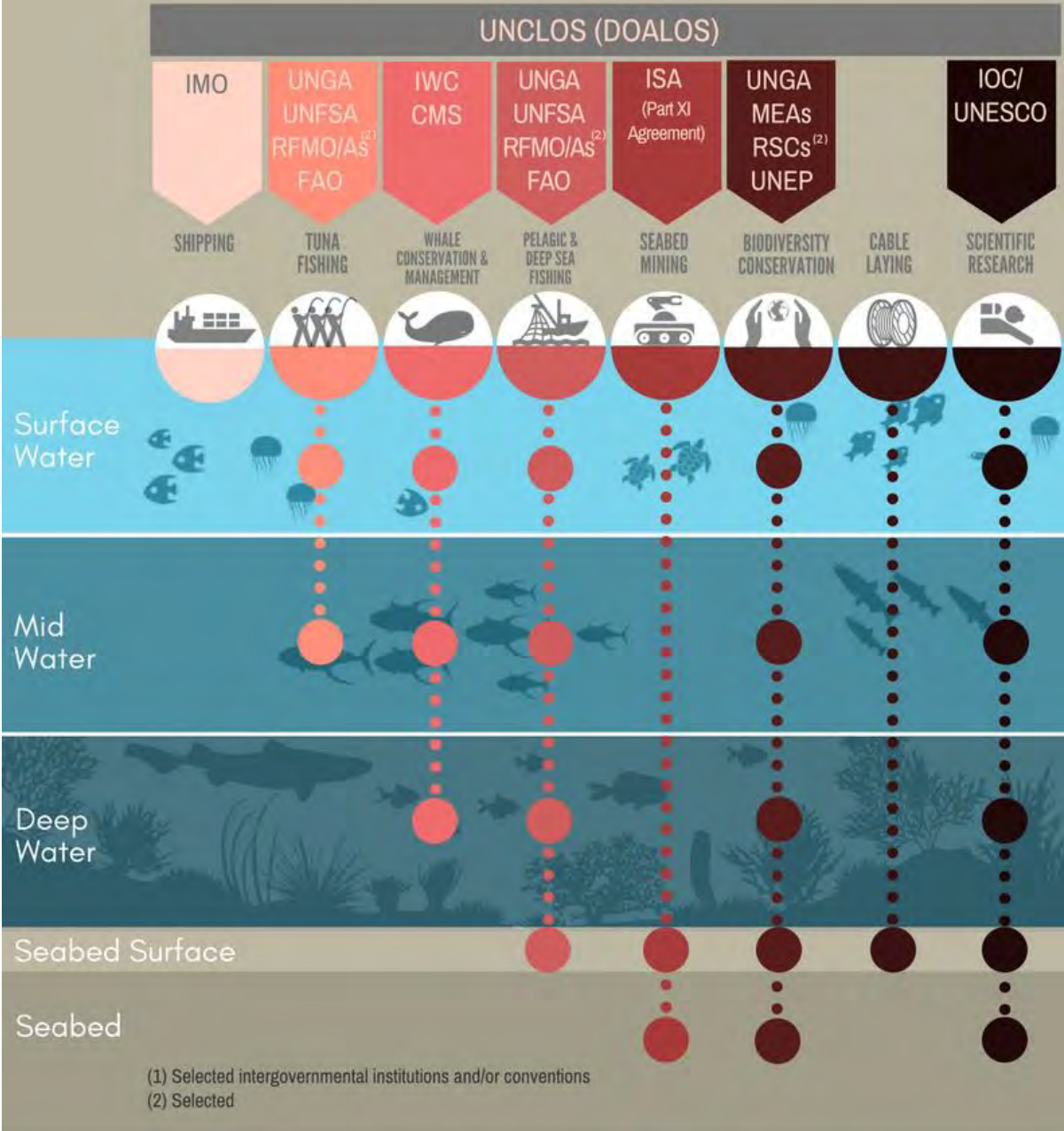


Figure 2. Multiple ocean uses and examples of institutions related to ABNJ © Legal Atlas

Table 1. Global organizations and instruments of relevance to global governance of ABNJ

Sector	Name	Type	Member countries/ Parties	Area-based management tools
<b>General Ocean Governance</b>	UN Convention on the Law of the Sea (UNCLOS)	Global Agreement	168 Parties, including all Western Indian Ocean countries, and Chile and Peru among South East Pacific countries	none
	UN General Assembly (UNGA)	Organ of the UN	Comprises all 193 Members of the UN, including all Western Indian Ocean and South East Pacific countries	n/a
	Division for Ocean Affairs and the Law of the Sea (DOALOS)	UN administrative division within the UNGA's Office of Legal Affairs	n/a	n/a
<b>Shipping</b>	International Maritime Organization (IMO)	Intergovernmental organization	171 Member States, including all Western Indian Ocean and South East Pacific countries	1. MARPOL 'Special Areas'; and 2. Particularly Sensitive Sea Areas (PSSAs) and associated protective measures
<b>Fisheries Management</b>	1995 UN Fish Stocks Agreement	Implementing Agreement to UNCLOS	83 Parties, including Kenya, Mauritius, Mozambique, Réunion of France, Seychelles, South Africa and the United Republic of Tanzania among Western Indian Ocean countries. No South East Pacific country is Party to the Agreement.	None, but requirement to ensure that the necessary measures to conserve high seas living resources are taken, in particular through the establishment of sub-regional or regional fisheries organizations
	Regional Fisheries Bodies (RFBs)	Regional Intergovernmental organizations	Country membership varies among RFBs	RFBs with a management mandate (called RFMOs) can adopt area-based management tools to avoid catching target species, non-target species or to avoid impact on sensitive habitats
	UN Food and Agricultural Organization (FAO)	Intergovernmental organization	194 Member Nations	None
<b>Whale Conservation and Management</b>	International Whaling Commission (IWC)	Intergovernmental organization	88 members, including all South East Pacific countries and Kenya, Mauritius, France with regard to Réunion, Seychelles, South Africa and the United Republic of Tanzania among Western Indian Ocean countries	Whale sanctuaries
<b>Deep Seabed Mining</b>	International Seabed Authority (ISA)	Intergovernmental organization	168 Members, including all Western Indian Ocean countries and Chile and Ecuador among the South East Pacific countries	1. Mining licence areas;



Sector	Name	Type	Member countries/ Parties	Area-based management tools
				<p>2. Two types of reference zones within mining areas (preservation and impact reference zones); and</p> <p>3. Areas of Particular Environmental Interest (APEIs), designed to protect the marine environment from seabed mining activities</p>
<b>Cable Laying</b>	International Cable Protection Committee (ICPC)	Industry association	No country membership (the 159 member organizations are based in 63 different countries across the globe) <sup>41</sup>	None
<b>Marine Environmental Protection</b>	Biodiversity-related conventions: - Convention on Biological Diversity (CBD) - World Heritage Convention (WHC) - Convention on International Trade in Endangered Species (CITES) - Convention on Migratory Species (CMS)	Global agreements	<b>CBD:</b> 194 Parties, including all Western Indian Ocean and South East Pacific countries <b>WHC:</b> 192 State Parties, including all Western Indian Ocean and South East Pacific countries, with the exception of Somalia <b>CITES:</b> 182 Parties, including all Western Indian Ocean and South East Pacific countries <b>CMS:</b> 123 Parties, including Chile, Ecuador and Peru among South East Pacific countries; and all Western Indian Ocean countries with the exception of Comoros	<b>CBD:</b> No management mandate, but development of a set of scientific criteria for identifying Ecologically or Biologically Significant Marine Areas (EBSAs) in need of protection in open ocean waters and deep sea habitats, as well as scientific guidance for selecting areas towards the establishment of a representative network of Marine Protected Areas (MPAs) <b>WHC:</b> World Heritage Sites, including natural properties and mixed sites, inscribed both as cultural and natural world heritage sites <b>CITES:</b> None <b>CMS:</b> The CMS guidance that relates to the development of instruments under the Convention is broad and permits the inclusion of area-based management tools
	UN Environment's Regional Sea Programme	Regional intergovernmental cooperation established through Action Plans, Conventions and Protocols. Mandates and roles vary considerably between regions	Membership varies among the Regional Seas Conventions and Action Plans and to date only four explicitly cover activities in ABNJ  <i>(the Regional Seas Conventions for the Western Indian Ocean and the South East Pacific will be presented in the relevant sections)</i>	Some RSPs have established a management mandate through the development of respective conventions and protocols and thus can adopt area-based management tools (i.e. MPAs). This includes the four Regional Seas Conventions and Action Plans that explicitly cover activities in ABNJ.

<sup>41</sup> <https://iscpc.org/about-the-icpc/member-list/> [accessed on 20 February 2017]

## 2.2.1 Shipping: The International Maritime Organization

### *Introduction*

As a specialized agency of the UN predating UNCLOS, the International Maritime Organization (IMO) is “the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented”.<sup>42</sup> As such, the IMO also serves as the secretariat for numerous conventions specific to different aspects of shipping, such as pollution and safety.

### *Area-based management tools*

The IMO is the competent international body to establish area-based management tools in defined areas where shipping presents a risk, both within and beyond national jurisdiction. The IMO is member-driven, and therefore IMO Member States must propose the designation of such area-based management tools, which can take two forms:

#### **1. MARPOL ‘Special Areas’**

The International Convention for the Prevention of Pollution from Ships (MARPOL) was developed by IMO to regulate vessel design, equipment, and operational discharges from all ships within and beyond national jurisdiction, as well as the designation of **Special Areas** where more stringent discharge rules apply. MARPOL deals with pollution from ships (by oil, noxious liquid substances carried in bulk, harmful substances carried by sea in packaged form; sewage, garbage, and air pollution) and defines certain sea areas as Special Areas of regulation in relation to these specific types of pollution. To designate a Special Area, the proposed areas must meet certain oceanographic and or meteorological conditions, there must be existing discharge regulations unmet by international traffic, and it must be proven that the area is unable to cope with any pollutants that could be legally discharged from ships. Current examples of Special Areas that include ABNJ are situated in the Mediterranean Sea and the Southern Ocean. The IMO Secretariat advised that Special Area criteria are typically met in semi-enclosed seas like the Mediterranean Sea or in case of special meteorological conditions (e.g. where pollutants are blown to the seashore). Neither of these situations are commonly identified within ABNJ, hence the small number occurring at present.

#### **2. Particularly Sensitive Sea Areas (PSSAs)**

PSSAs are defined as areas that require special protection due to their significance for recognized ecological, socio-economic or scientific reasons, and which may be vulnerable to damage by international shipping activities.<sup>43</sup> PSSAs are different from MARPOL Special Areas in that the former are not only focusing on physical discharge from ships, but on possible impacts from shipping in general, including collisions, groundings, anchoring, noise and whale strikes by ships.

IMO Members can propose a PSSA to the Marine Environment Protection Committee (MEPC) of the IMO, and must do so with one or more **associated protective measures (APMs)**, which describe the legal regulation of shipping activities in the PSSA. Generally, APMs are aimed at addressing and reducing the identified negative impacts of shipping and therefore include routeing measures, slow steaming, strict application of MARPOL discharges (i.e. Special Area status) and equipment requirements for ships, such as oil tankers. The IMO MEPC assesses

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<sup>42</sup> IMO. Introduction to IMO (2016). <http://www.imo.org/en/About/Pages/Default.aspx> [Accessed: 20 July 2016]

<sup>43</sup> Resolution A.982(24) of the revised guidelines for the identification and designation of PSSA

proposals for PSSAs and APMs and, if approved, the designation of a PSSA is then made by a non-legally binding resolution. Therefore, the interest of a PSSA lies largely in the APMs which will govern the area.

PSSAs can be designated within and beyond jurisdictional limits. To date, however, no proposals have been made by a Member State to designate a PSSA in ABNJ. The IMO Secretariat considers this to be primarily because more substantiated information can be found on the impact of shipping closer to the shores and thus within national jurisdiction. In addition, measures closer to the shore are easier to enforce.

### *Cross-sectoral collaboration*

**Global partners** of IMO include UN Environment, the CBD, the UNESCO/World Heritage Centre and the IOC-UNESCO, CMS and the International Whaling Commission (IWC).

IMO collaborates with **IWC** on the topic of whale ship strikes. Initiated about 8 years ago, the collaboration has led to the adjustment of ship routings near ports in certain seasons, and IMO also supported IWC in the development of a ship strikes database.<sup>44</sup> The collaboration continues to date under a Memorandum of Understanding (MoU). Other collaborative agreements, including on IMO observer status, are underway with the **Commonwealth Secretariat** and the **ISA**.<sup>45</sup>

Furthermore, Article 1 of the Convention of the IMO, which stipulates the purposes of the Organization, includes under (d) *to provide for the consideration by the Organization of any **matters concerning shipping and the effect of shipping on the marine environment that may be referred to it by any organ<sup>46</sup> or specialized agency of the United Nations.***<sup>47</sup> Although, this hasn't happened to date, this is a noteworthy clause, because it effectively means that a matter raised by specific bodies external to the IMO must be looked into, even if there is no interest from IMO members themselves.

**Regional intergovernmental organizations** which have signed agreements of cooperation with IMO include the **African Union (AU)**, **CPPS**, IOC-UNESCO, the Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR) and the North East Atlantic Fisheries Commission (NEAFC). Such cooperation mainly involves technical activities, including data exchange. The IMO also engages in more informal cooperation with regional organizations and conventions. For example, the IMO regularly requests support from the RSPs for technical capacity building activities related to the environment.

### *The potential to strengthen cross-sectoral cooperation in ABNJ*

The IMO has engaged in discussions with the OSPAR Commission and NEAFC to explore ways to protect areas of the Charlie-Gibbs Fracture Zone (CGFZ) in the North East Atlantic. This has involved the exchange of data and information under an MoU with OSPAR. However, these collaborative discussions have not resulted in any IMO Member State proposals to designate protective measures in ABNJ that would support cross-sectoral area-based planning in the North East Atlantic. Notwithstanding the aforementioned technical challenges in designating MARPOL 'Special Areas',

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<sup>44</sup> IWC. Ship Strikes. <https://iwc.int/ship-strikes> [Accessed: 20 July 2016]

<sup>45</sup> IMO. Intergovernmental Organizations that have concluded agreements of cooperation with IMO (2016).

<http://www.imo.org/en/About/Membership/Pages/IGOsWithObserverStatus.aspx> [Accessed: 20 July 2016]

<sup>46</sup> The UN Charter establishes as principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat (Chapter III, Article 7). The Trusteeship Council suspended its operations on 1 November 1994, a month after the independence of Palau, the last remaining United Nations trust territory.

<sup>47</sup> Specialized Agencies are legally independent international organizations with their own rules, membership, organs and financial resources that were brought into relationship with the United Nations through negotiated agreements. They include for example the Food and Agriculture Organization (FAO), the UN Educational, Scientific and Cultural Organization (UNESCO), the World Bank Group, the World Meteorological Organization (WMO), the World Health Organization (WHO) and IMO itself.

PSSAs and associated APMs in ABNJ, it appears that IMO Member States have not prioritized the protection of areas under consideration by OSPAR and NEAFC. Given that there is shared membership among all three organizations, this could be due to a lack of coordination between the relevant ministries at the national level and/or the fact that members of a global organization like IMO might be reticent to prioritize specific regional issues over and above a broader sectoral agenda.

Notwithstanding the impact of the new legal instrument that is currently being negotiated under UNCLOS, the IMO Secretariat suggests there are activities that could be done to strengthen cross-sectoral cooperation at the global level. These could include **exploring ways to harmonize approaches between organizations**, recognising that coordinated activities can have greater impact in terms of increased efficiency, a more holistic approach to sustainable resource use and greater global awareness. For example, the IMO Secretariat highlights the work of the CBD on **Ecologically or Biologically Significant Marine Areas (EBSAs)** (presented in [section 2.2.6](#)). Given that both organizations have established a similar approach to identifying areas of significance, the CBD and the IMO could establish a coordinated process to discuss the consistency between ecological criteria used and whether EBSAs might support the identification of MARPOL Special Areas and/or PSSAs.

The IMO Secretariat suggests that the regulation of **specific shipping activities associated with seabed mining** is a notable gap in the international regulations that needs to be explored further, either through actions from UN agencies or a group of countries. The ISA and IMO have signed an agreement to exchange data and cooperate on issues such as loading of deep-sea minerals and waste disposal in the high seas, which will involve setting up a working group to make recommendations to Member States. Member States need to submit a formal proposal through the established processes under the IMO or ISA in order to implement working group recommendations.

## 2.2.2 Management of Fisheries: Regional Fisheries Bodies and the FAO

### *Key legal instruments and bodies*

Under UNCLOS, the freedom of fishing in the high seas is qualified by the provisions on the conservation and management of high seas living resources<sup>48</sup> and exercised in accordance with the 1995 UN Fish Stocks Agreement (the 'UN Fish Stocks Agreement'), one of the two Implementing Agreements to UNCLOS.<sup>49</sup> States are required to ensure that their national fishing vessels take the necessary measures to conserve high seas living resources, and in doing so, States must cooperate together, in particular through the establishment of sub-regional or regional fisheries organizations or bodies.<sup>50</sup>

Today there are more than 40 **regional fishery bodies (RFBs)** that have a key role in the governance of shared fisheries worldwide. RFBs are *"a mechanism through which States or organizations that are parties to an international fishery agreement or arrangement work together towards the conservation, management and/or development of fisheries"*.<sup>51</sup> Whereas some RFBs have an advisory mandate, others – called **Regional Fisheries Management Organizations or Agreements (RFMO/As)**<sup>52</sup> – have a management mandate, adopting fisheries conservation and management measures that are binding on their members, based on scientific evidence. RFMO/As exist in the majority of high seas areas that

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<sup>48</sup> UNCLOS Part VII, section 2

<sup>49</sup> UNCLOS Article 2 and Part 2

<sup>50</sup> Article 118 UNCLOS and Part III of the UN Fish Stocks Agreement

<sup>51</sup> FAO. What are Regional Fishery Bodies (RFBs)? (2013). <http://www.fao.org/fishery/topic/16800/en> [Accessed: 20 July 2016]

<sup>52</sup> Ibid.

have major deep-sea fisheries and are usually tasked with collecting fisheries statistics, assessing resources, making management decisions and monitoring activities.<sup>53</sup>

The adoption of the **UN Fish Stocks Agreement strengthened the competence of RFMOs** by making access to high sea fishery resources restricted to nations which are members of a specific RFMO or which agree to apply the conservation and management measures established by an RFMO<sup>54</sup> (Cole *et al.*, 2012). The focus is thus on cooperation within RFMOs in order to achieve their collective objective: the long-term conservation and sustainable use of straddling and highly migratory fish stocks through effective implementation of the relevant provisions of UNCLOS.<sup>55</sup> The UN Fish Stocks Agreement also introduces important principles to the fisheries sector, such as the **ecosystem approach**<sup>56</sup> and the **precautionary approach**<sup>57</sup> to fisheries management, in order to reduce the risk of overexploitation and depletion of fish stocks.<sup>58</sup> The adoption and coming into force of the UN Fish Stocks Agreement as an Implementing Agreement for UNCLOS in 2001 is widely considered as significant because it was the first time that provisions on integrating environmental considerations into fisheries decision-making have been spelt out explicitly in a major fisheries agreement (Birnie *et al.*, 2009).<sup>59</sup>

**The UN Food and Agriculture Organization (FAO)** plays a major role in supporting and promoting responsible and sustainable development in fisheries. FAO has a range of programmes supporting management and conservation, knowledge dissemination, global databases and information networks. In addition, some RFBs have been established within the **constitutional framework of FAO**. This means that under its global mandate, FAO provides technical and administrative support to these RFBs in relation to promoting and recommending national and international action pertaining to fisheries research, conservation, management and development. RFBs established under FAO's Constitution can be either advisory or have a management mandate. Those established based on Article VI of the FAO Constitution have an advisory mandate and those established under Article XIV have a management mandate and thus can take decisions that are binding on their members. The latter RFMOs are thus the only RFBs that can **adopt area-based management tools**. FAO also closely monitors RFBs established outside of the FAO framework, and generally promotes collaboration and consultation among all RFBs on matters of common concern, including participation of RFBs in FAO's consultation processes and technical forums such as the **Committee on Fisheries (COFI)**, a subsidiary body of the FAO Council. According to FAO, COFI *"presently constitutes the only global inter-governmental forum where major international fisheries and aquaculture problems and issues are examined and recommendations addressed to governments, regional fishery bodies, non-governmental organization (NGOs), fishworkers, FAO and international community"*.<sup>60</sup>

In addition to the Fish Stocks Agreement, a number of **FAO instruments** shape the mandate and activities of a wide range of RFBs, whether established within or outside of the FAO framework. The

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<sup>53</sup> FAO. Regional fisheries management organizations and deep-sea fisheries (2013). <http://www.fao.org/fishery/topic/166304/en> [Accessed: 20 July 2016]

<sup>54</sup> Article 8.4 UN Fish Stocks Agreement

<sup>55</sup> Article 2 UN Fish Stocks Agreement

<sup>56</sup> The ecosystem approach to fisheries management, as introduced as a concept in the UN Fish Stocks Agreement (Article 5), emphasizes the need to preserve the integrity of the ecosystem by considering and managing the impacts of fishing on other species in the ecosystem, in addition to the target species.

<sup>57</sup> Within the UN Fish Stocks Agreement (Article 6), the precautionary approach calls for the use of best available scientific evidence, techniques to manage risk and uncertainty and comprehensive data gathering on the impacts of fisheries when making fisheries management decisions

<sup>58</sup> For more information please view: FAO (forthcoming in 2016). Analysis and Guide for the Implementation of International Legal and Policy Instruments Related to Deep-Sea Fisheries and Biodiversity Conservation in ABNJ.

<sup>59</sup> Ibid.

<sup>60</sup> FAO. COFI (2016). <http://www.fao.org/cofi/en/> [Accessed: 20 July 2016]; FAO. FAO and Regional Fishery Bodies (2013). <http://www.fao.org/fishery/topic/16918/en> [Accessed: 20 July 2016]

two **legally-binding FAO instruments** are the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the '**Compliance Agreement**'), and the Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing ('**Port State Measures Agreement**'), which entered into force in June 2016.

For an example of **non-legally binding instruments**, FAO members adopted the 2008 International Guidelines for the Management of Deep-sea Fisheries in the High Seas ('**Deep-sea Fisheries Guidelines**') to assist in the implementation of UNGA resolutions on fisheries. UNGA resolutions are not legally binding, but they call on states and RFMOs to implement them by setting rules to be complied with. The Deep-sea Fisheries Guidelines, which were adopted following UNGA 2006 resolution 61/105, provide countries and RFMOs with a voluntary tool to manage their deep-sea fisheries in a sustainable way and to protect **Vulnerable Marine Ecosystems (VMEs)** from destructive fishing practices, including bottom fishing. Another prominent non-legally binding FAO instrument is the 1995 Code of Conduct for Responsible Fisheries (the '**Code of Conduct**' or **CCRF**) (FAO, 1995). The CCRF establishes principles and standards applicable to the conservation, management and development of all fisheries and continues to serve as the global reference instrument for the sustainable development of fisheries. In support of the Code of Conduct, FAO has also produced a number of Technical Guidelines, including one on Marine Protected Areas (MPAs) and Fisheries (FAO, 2011).

As with the Fish Stocks Agreement, all FAO instruments are implemented through fisheries regulations carried out by states, individually or collectively, including through RFBs.

#### *Area-based management tools and other management measures*

In implementing the different global fisheries instruments presented above, the types of **Conservation and Management Measures (CMMs)** adopted by RFMOs include, amongst others:

- Restrictions to catch and effort (e.g. for the management of bottom fisheries and VME protection);
- Designated species for which targeted fishing is prohibited;
- Minimum size limits for target species;
- Maximum bycatch limits;
- Gear specifications; and
- Temporal/seasonal or spatial measures (e.g. closed areas) aimed at avoiding catching target species (e.g. in nursing and spawning areas) or non-target species (e.g. important feedings areas) or avoiding impact on sensitive habitat (e.g. cold water coral reefs or more generally VMEs).

These types of CMMs are regularly complemented by measures aimed at ensuring compliance, for instance boarding and inspection schemes, port state measures (UN Environment, 2014. pg.38), data collection and reporting requirements.

#### *Intra-sectoral cooperation*

Mechanisms for **intra-sectoral cooperation among RFBs** include: formalizing cooperation by means of MoUs; having standing agenda items on such cooperation; according each other observer status; and sending designated representatives to each other's meetings (UN Environment, 2014. Pg. 46-47). Cooperation often also focuses on specific issues, such as shared stocks and fisheries in areas where two convention/regulatory areas overlap (UN Environment, 2014. pg.45-46). An example of an intra-sectoral mechanism for global collaboration and harmonization involving all the member states of



RFMOs is the ‘Kobe process’, aimed at harmonization of activities of all tuna RFMOs.<sup>61</sup> The role of FAO in fostering coordination should also be highlighted, for instance through the initiation of the Regional Fishery Body Secretariats Network, a forum for RFB Secretariats only.<sup>62</sup>

#### *Cross sectoral cooperation*

Cooperation between the **Regional Seas Programmes (RSPs) and RFBs** is regularly stimulated and encouraged by UN Environment and FAO. As part of a 2001 joint U Environment/FAO initiative, various options have been identified to enhance cooperation and coordination between the RSPs and the RFBs. In addition to a formalisation of cooperation by means of MoUs, identified mechanisms for cooperation similarly include having standing agenda items on cooperation, according each other observer status and sending designated representatives to each other’s meetings.

Details of the specific **RFBs of the study pilot areas** will be presented in the respective sections of this study.

#### *2.2.3 Whale Conservation and Management: The International Whaling Commission*

The International Whaling Commission (IWC) is an intergovernmental organization which was established by the 1946 International Convention for the Regulation of Whaling with a mandate to **conserve whales and manage whaling**. The IWC is the competent authority to regulate whale hunting, including in the high seas, but it also works to understand and address a wide **range of non-whaling threats** to cetaceans, including entanglement in fishing gear, ship strikes, marine debris, climate change and other environmental concerns. All 88 signatories to the Convention are automatically member countries of IWC.

An integral part of the Convention is the legally binding ‘Schedule’. The Schedule sets out specific measures that the IWC has collectively decided as necessary in order to fulfil its mandate. The Schedule is regularly amended and updated when the Commission meets. The IWC has the competence to set **catch limits for commercial whaling**. In 1982 the IWC decided that there should be a pause in commercial whaling on all whale species and populations (known as ‘whale stocks’) from the 1985-86 season onwards. This pause is often referred to as the **commercial whaling moratorium**, and it remains in place today. The moratorium is binding on all members of the IWC.<sup>63</sup> However, taking whales for the purposes of scientific research is permitted under conditions specified in the convention. Furthermore, Norway and Iceland take whales commercially at present within their EEZ, either under objection to the moratorium decision, or under reservation to it. The Russian Federation has also registered an objection to the moratorium decision, but does not exercise it.

#### *Area-based management tools and other management measures*

To fulfil its mandate, the IWC can designate **whale sanctuaries** and adopt **Conservation Management Plans (CMPs)**.

Two whale sanctuaries are currently designated by IWC – in the Southern Ocean and the Indian Ocean – both of which prohibit commercial whaling,<sup>64</sup> and a third sanctuary in the South Atlantic is proposed. All member states that did not lodge an objection are bound by the resolutions that established the whale sanctuaries.

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<sup>61</sup> Government of Canada. Kobe Process (2011), <http://www.dfo-mpo.gc.ca/international/tuna-thon/Kobe-eng.htm> [Accessed: 20 July 2016]

<sup>62</sup> FAO. Regional Fishery Body Secretariat Network (RSN) (2015). <http://www.fao.org/fishery/rsn/en> [Accessed: 20 July 2016]

<sup>63</sup> IWC. Catch Limits & Catches taken. <https://iwc.int/catches> [Accessed: 20 July 2016]

<sup>64</sup> IWC. Whale sanctuaries. <https://iwc.int/sanctuaries> [Accessed: 20 July 2016]



The IWC has adopted **CMPs** as a practical tool for improving the conservation status of the most at risk populations of whales and other cetaceans. CMPs are conservation strategies that consolidate the best available science and management expertise. The CMPs guide and complement management efforts to protect and rebuild vulnerable cetacean populations.<sup>65</sup> **Three CMPs** have been endorsed by IWC. These cover the Gray Whale (*Eschrichtius robustus*) population in the western North Pacific and two populations of Southern Right Whale (*Eubalaena australis*) along the eastern and western coasts of South America. Two more plans are under consideration for whale species in the Arabian Sea and in the Arctic. Depending on the range of targeted whale populations, the scope of CMPs may cover ABNJ.<sup>66</sup>

Once the need to develop a CMP has been identified (usually by the IWC's Scientific Committee), the 'key range states' of the relevant population, meaning the countries whose national waters fall within the species' ranges, are encouraged to begin the process. **Range state agreements** thus form an integral part in the development of CMPs. For example, in the case of the CMP for the eastern South Pacific population of Southern Right Whale, an agreement was concluded between Chile and Peru, as range states of that species.

#### *Intra-sectoral and cross-sectoral cooperation*

Recently, there has been an **increasing number of mandates** in IWC recommendations for the Secretariat to cooperate with different organizations (for example, cooperation with: UNGA with respect to UNCLOS; IMO; the Arctic Council; RFMOs; and the biodiversity-related conventions). In addition, IWC Resolution 2014-2 "*Decides to seek enhanced collaboration in the conservation of migratory cetaceans with other intergovernmental organizations whose cooperation is essential to secure the lasting protection of these species in the world ocean*".

The IWC is considered a fisheries management organization by FAO and thus also participates in the Regional Fishery Body Secretariats Network. An issue for discussion within the Committee on Fisheries (COFI) and RFMOs is, for example, **fishing gear marking** which has the potential to contribute to more sustainable fisheries management and, with respect to cetaceans, mitigation of the entanglement of whales in active or abandoned, lost and discarded fishing gears (ALDFG).

The IWC addresses a range of threats to whale stock recovery. One major concern is whale collisions with vessels and therefore the IWC has been collaborating with the **IMO** in order to mitigate these incidents. Information exchange among the two organizations informed routing measures adopted by the IMO. As previously noted (see IMO section 2.2.1.), the IWC has also created a database on ship strikes and recently submitted an information document on progress in minimising ship strikes to the IMO.

The IWC collaborates with the Convention on Migratory Species (**CMS**) and, since 2001, also with its two daughter agreements: the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (ACCOBAMS), and the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic and North Seas (ASCOBANS). The collaboration is facilitated by the fact that the scientific bodies of both IWC and CMS have some members in common. Joint activities include the development of guidance for stranding events and for the future potential for whale watching. However, a challenge is that the different agreements themselves do not have the same members.

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<sup>65</sup> IWC. Conservation Management Plans. <https://iwc.int/conservation-management-plans> [Accessed: 20 July 2016]

<sup>66</sup> IWC. *Current & Future Conservation Management Plans*. <https://iwc.int/current-future-conservation-management-plans> [Accessed: 20 July 2016]

Recent attempts by the IWC to strengthen its engagement with the **CBD** have included discussions on the opportunities to collaborate on the issues of marine debris, entanglement of whales in fishing gear, and ship strikes.

With regard to cooperation with **regional organizations**, the IWC Secretariat highlighted in particular the cooperation with the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Secretariat of the Pacific Regional Environment Programme (SPREP) and the Permanent Commission for the South Pacific (CPPS). IWC and CCAMLR have a shared interest in the management of krill (particularly in the implementation of the ecosystem approach), and cooperation is facilitated by the well-established governance framework of the Antarctic. Notwithstanding the raised awareness of common issues facilitated by many of the same scientists representing Member States at the different intergovernmental meetings, IWC has not engaged, formally or informally, with any other regional initiative to strengthen ABNJ management.

Regarding **opportunities to further strengthen cross-sectoral collaboration in ABNJ**, the IWC Secretariat recently received a **broader mandate from its Member States to explore opportunities for cooperation**,<sup>67</sup> which refers to the need for concerted additional conservation efforts in the high seas.

#### 2.2.4 Deep Seabed Mining: The International Seabed Authority

##### *Introduction*

The International Seabed Authority (ISA) is the regulatory authority established under UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of UNCLOS for seabed mining. According to UNCLOS, the ISA is the body entitled to act on behalf of mankind as a whole in relation to mineral resources of the Area<sup>68</sup> and thus to give concrete content to the principle of the ‘common heritage of mankind’ (see UNCLOS Section 2.1).

A principal function of the ISA is to **regulate deep seabed mining**, with special emphasis on ensuring that the marine environment is protected from any harmful effects which may arise during mining activities, including exploration.<sup>69</sup> Thus, the ISA is responsible for establishing international rules, regulations and procedures to prevent, reduce and control pollution of the marine environment from mining activities in the Area (as defined by UNCLOS). In addition, UNCLOS gives the ISA responsibility for distributing the revenues that States or individual contractors generate from the exploitation of non-living resources in the outer continental shelf.<sup>70</sup>

To date, the Authority has issued three separate legally binding **Regulations on Prospecting and Exploration**, which apply for the whole of the Area (i.e. the seabed in ABNJ, see Section 2.1), and which relate to:

1. Polymetallic Nodules in the Area (adopted 13 July 2000) which was later updated and adopted 25 July 2013;
2. Polymetallic Sulphides in the Area (adopted 7 May 2010);
3. Cobalt-Rich Crusts (adopted 27 July 2012).<sup>71</sup>

Each set of regulations contains provisions dedicated to the **protection and preservation of the marine environment**. These regulations set out the respective responsibilities of contractors,

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<sup>67</sup> Resolution 2014-2

<sup>68</sup> Article 137(2) UNCLOS

<sup>69</sup> e.g. Article 145 UNCLOS

<sup>70</sup> UNCLOS Article 82

<sup>71</sup> ISA. Scientific Activities and Promotion. <https://www.isa.org.jm/scientific-activities> [Accessed: 20 July 2016]

sponsoring states and the ISA itself in order to ensure environmentally sustainable development of seabed mineral resources.

#### *Area-based management tools and other management measures*

The ISA is able to designate a number of different area-based management tools within its mandate: mining licence areas (associated with specific contracts for mining exploration); two types of reference zone within mining areas (preservation and impact reference zones); and Areas of Particular Environmental Interest (APEIs), designed to protect the marine environment from seabed mining activities.

To date, the ISA has entered into 15-year **contracts for exploration** for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts in the deep seabed with twenty three contractors. These contracts are geographically spread and include locations such as the West Indian Ridge, the Mid-Atlantic Ridge and the Clarion-Clipperton Zone.<sup>72</sup> Information on contracts affecting the two regions will be provided in the respective sections of this study.

The ISA regulations include measures for setting aside parts of a mining licence area, in the form of preservation reference zones or impact reference zones. **Preservation reference zones** are defined as *“areas in which no mining shall occur to ensure representative and stable biota of the seabed in order to assess any changes in the biodiversity of the marine environment”*.<sup>73</sup> **Impact reference zones** are *“areas to be used for assessing the effect of each contractor’s activities in the Area on the marine environment and which are representative of the environmental characteristics of the area”*. In other words, preservation reference zones are exempt from mining and contain representative areas that are similar to the mined areas but are to be used as reference points, whereas impact reference zones contain mining and are used to monitor the impact of the mining activities. Both measures only come into play when there is a plan of work for exploration in a specific area and are therefore only implemented at a mining project scale.

In 2014, the ISA began developing a regulatory framework for mineral exploitation in the Area (the so-called ‘exploitation code’), which included an environmental impact assessment process and a strategy for the development of **regional Environmental Management Plans (EMPs)**, which identify **Areas of Particular Environmental Interest (APEI)** that are mining-free zones.

The first (and so far only) regional EMP to protect the deep seabed habitats is in the Clarion-Clipperton Fracture Zone (CCZ) in the Pacific Ocean.<sup>74</sup> The Clarion-Clipperton EMP (CCZ-EMP) identifies nine so-called APEIs in the CCZ. The designation of APEIs is thus independent of the later designation of contractor-designated impact reference and preservation reference zones. The APEIs are only provisionally in place for a period of time, subject to review at upcoming ISA sessions.

Following the adoption of the CCZ-EMP, the **UNGA** invited the ISA to consider developing and approving **EMPs in other international seabed area zones**, in particular where there are currently exploration contracts.<sup>75</sup> In line with this resolution, a series of workshops, similar to the process that developed the CCZ-EMP, are envisaged in areas where the ISA has entered into exploration contracts for polymetallic sulphides and cobalt-rich ferromanganese crust deposits. Participation is thus open

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<sup>72</sup> ISA. Overview. <https://www.isa.org.jm/deep-seabed-minerals-contractors/overview> [Accessed: 20 July 2016]

<sup>73</sup> See e.g. Polymetallic Sulphide Regulations, Regulation 33; Cobalt-Rich Crust Regulations, Regulation 33

<sup>74</sup> Decision of the Council relating to an environmental management plan of the Clarion-Clipperton Zone, Document ISBA/18/C/22, 26 July 2012

<sup>75</sup> UNGA Resolution 68/70

to all interested organizations. According to the ISA Secretariat, preliminary steps to adopt an EMP have in particular been undertaken for mining zones in the Atlantic Ocean.

#### *Cross-sectoral collaboration*

With regard to **key partners** of the organization, the ISA Secretariat first points to the consultation of all relevant stakeholders in the further development of the mining code (regulations on exploitation of mineral resources).

With regard to **regional initiatives to strengthen governance of marine biodiversity in ABNJ**, the ISA has agreed an MoU with the OSPAR Commission,<sup>76</sup> outlining administrative cooperation on information exchange, in particular with regard to the 'Collective Arrangement' adopted by NEAFC and the OSPAR Commission.<sup>77</sup> The MoU also encourages the conduct of marine scientific research in the sea areas of the North East Atlantic that are located beyond national jurisdiction, in order to contribute towards ongoing assessments of vulnerable deep water habitats, populations of marine species, and measures aimed at the conservation of marine biological diversity in ABNJ in the North East Atlantic.<sup>78</sup>

As outlined by the ISA Secretariat, **collaboration between the ISA and other sectoral authorities** is established where necessary and where a need has been identified, but there are some **challenges**. Generally, a lack of resources and political will are seen as the main barriers to collaboration, but also the differing compositions of Member States in intergovernmental organizations. Moreover, as a global organization with no regional presence, the ISA may be unfamiliar with the regional governance arrangements.

#### **2.2.5 Cable Laying: The International Cable Protection Committee**

The laying of submarine cables and pipelines is provided for under the freedom of the high seas.<sup>79</sup> However, **an intergovernmental organization has not been established with a mandate related to cables**. This section therefore presents the International Cable Protection Committee (ICPC) as the main forum for the **submarine cable industry**.<sup>80</sup>

ICPC describes its role as a provider of expertise and evidence-based information to guide **planning, maintenance and protection of cable systems**. This information takes a general nature but it can be tailored to meet local conditions. Actual cable route planning is the responsibility of the owners and operators of cables. The ICPC can, however, work to facilitate information exchanges and provide expertise.

The information presented in this section refers only to fibre-optic telecommunications cables, as submarine power cables do not yet extend into ABNJ (although this may change in the future with the development of trans-oceanic systems). Although the size and characteristics of these two cables differ, with power cables generally being larger and exerting at least a small electromagnetic field

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<sup>76</sup> ISA. Memorandum of Understanding between the OSPAR Commission and the International Seabed Authority (2010).

<https://www.isa.org.im/sites/default/files/documents/EN/Regs/MOU-OSPAR.pdf> [Accessed: 20 July 2016]

<sup>77</sup> In 2014, the North East Atlantic Fisheries Commission (NEAFC) and the OSPAR Commission adopted a Collective Arrangement for working together on particular areas outside of national jurisdiction and within their convention areas (see <http://www.ospar.org/news/collective-arrangement>). The intention of the Collective Arrangement is to facilitate cooperation and coordination between the competent authorities that will ensure that they share information and avoid undermining each other's CMMs. According to a jointly developed document on the arrangement, "this includes not only observing each other's meetings and providing written notifications, as is done pursuant to a MoU, but includes maintaining a joint overview of areas that are subject to special measures and even having joint meetings to discuss issues related to these areas" (NEAFC and OSPAR (2015) The Process of Forming a Cooperative Mechanism Between NEAFC and OSPAR).

<sup>78</sup> Article 2

<sup>79</sup> subject to Part VI of UNCLOS, Continental Shelf (Article 87 (c))

<sup>80</sup> ICPC. About the ICPC (2015). <https://www.iscpc.org/about-the-icpc/> [Accessed: 20 July 2016]

(Copping *et al.*, 2016 and Normandeau *et al.*, 2011), the size of potential future submarine power cables in ABNJ is not yet known.

Generally, ICPC regards positive engagement and collaboration with other sectors as essential for the **protection of submarine cables**. More specifically, strengthening cooperation with other users of the marine environment depends upon the occurrence of submarine cables. If cables are involved with, or potentially impacted by, another ocean management regime, be it environmental protection or resource exploitation, cooperation with other stakeholders is an important consideration.

Worldwide, ICPC uses the following approaches to encourage its **cooperation** with other groups with interest in ABNJ: conferences, in particular an annual three-day plenary; external engagement through the media and the dissemination of professional information; education, mainly through peer-reviewed publications; attendance at workshops and formal meetings; participation in committees; joint projects; development of industry recommendations; and collaborative research.

Currently, ICPC's working relationships with intergovernmental organizations is high on the agenda. This includes ISA, with respect to protecting cables in areas designated for deep-sea mining, and the International Hydrographic Organization (IHO). Furthermore, ICPC is engaged in cooperation with the Sargasso Sea Alliance<sup>81</sup> regarding legal and environmental aspects of cables in the proposed Sargasso Sea MPAs. Since recent research has shown that there is negligible impact on the marine ecosystem from submarine telecommunication (Carter *et al.*, 2009), ICPC consider that there is generally no need to develop conservation measures with respect to cable laying and maintenance of cables.

#### 2.2.6 Marine Environment Protection: Regional Seas Conventions and Action Plans and biodiversity-related conventions

A considerable number of intergovernmental environmental agreements are of relevance to marine environment protection in ABNJ, both at global and regional levels. Because of their high relevance to biodiversity conservation and sustainable use of natural resources in ABNJ, two of the global **international biodiversity-related conventions**<sup>82</sup> hosted by UN Environment – the Convention on Migratory Species and the Convention on Biological Diversity – will be presented. At the regional level, the Regional Seas Programmes and thus the **Regional Seas Conventions and Action Plans** will be described. The Regional Seas Conventions of the two regions – the Nairobi Convention in the Western Indian Ocean and the Lima Convention in the South East Pacific – will be presented in the corresponding sections of this report.

##### *Global marine protection of ABNJ*

The Convention on Migratory Species of Wild Animals (CMS) aims to comprehensively address the conservation and sustainable use of terrestrial, avian and marine migratory species and their habitats across their entire migratory range. The CMS establishes the principle that its Contracting Parties act to avoid any migratory species becoming endangered, even when the species' range includes ABNJ. Twenty-seven species on CMS Appendix I (Endangered migratory species) and 53 species on Appendix II (Migratory species conserved through Agreements) have ABNJ as part of their range. To date, seven

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<sup>81</sup> The Sargasso Sea Alliance was a partnership led by the Government of Bermuda, in collaboration with scientists, international marine conservation groups and private donors. Between 2010- 2014, the Alliance mobilized support from a variety of organizations and governments to ensure legal protection for the ocean ecosystem of the Sargasso Sea. The Alliance helped to create the current Sargasso Sea Commission, through the signing of the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea: <http://www.sargassoseacommission.org/>.

<sup>82</sup> The s-called biodiversity-related conventions include the conventions who's Secretariats are members in the Biodiversity Liaison Group. These are: the Convention on Biological Diversity (CBD), the Convention on Migratory Species of Wild Animals (CMS), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Ramsar Convention on Wetlands (Ramsar Convention), the World Heritage Convention (WHC), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Plant Protection Convention (IPPC).

CMS instruments<sup>83</sup> have been agreed that relate to these species.<sup>84</sup> The CMS guidance that relates to the development of instruments is broad and permits the inclusion of area-based management tools.<sup>85</sup> For example, the Agreement on the Conservation of Cetaceans of the Black Sea and contiguous Atlantic Area (ACCOBAMS) includes the creation of a network of specially protected areas to conserve cetaceans.<sup>86</sup>

CMS works with a number of partners, including **CBD**, **CITES**, **FAO**, and **IWC** as well as a number of **RFMOs** operating in ABNJ, in order to mainstream migratory species conservation considerations into the work programmes of other competent international organizations.

The objectives of the **CBD** are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of its utilisation.<sup>87</sup> There are 194 Parties to the CBD, with the USA being a notable exception.<sup>88</sup> Whilst the provisions of the CBD do not directly apply to biological diversity in ABNJ, they do apply to processes and activities carried out under a state's jurisdiction or control in ABNJ (Cole *et al.*, 2012).

Since the Jakarta Mandate in 1995, the CBD has been working towards the conservation and sustainable use of the biological diversity and productivity of marine and coastal areas. In 2008, the Conference of Parties (COP) to CBD agreed upon a set of scientific criteria for identifying Ecologically or Biologically Significant Marine Areas (EBSAs) in need of protection in open ocean waters and deep sea habitats, as well as scientific guidance for selecting areas towards the establishment of representative networks of MPAs.<sup>89</sup> In 2010, CBD Parties noted that “the application of [EBSA] criteria is a scientific and technical exercise, that areas found to meet the criteria may require enhanced [CMMs], and that this can be achieved through a variety of means, including [MPAs] and impact assessments”.<sup>90</sup> In the same paragraph, Parties also emphasized “that the identification of [EBSAs] and the selection of [CMMs] is a matter for States and competent intergovernmental organizations, in accordance with international law, including [UNCLOS].” Since then, the CBD Secretariat has organized a series of regional workshops to support the identification and description of EBSAs, including in the two regions of this study. In 2012, Parties took note of voluntary guidelines for environmental assessment and Marine Spatial Planning (MSP), including in ABNJ.<sup>91</sup> Notwithstanding the CBD has a mandate to provide scientific advice but has no management authority, it does play an important role in strengthening the capacity of Parties, especially developing country Parties, to use MSP as a tool to enhance existing efforts in integrated marine and coastal area management; to identify EBSAs, and generally to advance marine biodiversity conservation and sustainable-use practices.

In 2010, the CBD adopted the **Strategic Plan for Biodiversity 2011-2020** and its **20 ‘Aichi Biodiversity Targets’**, which include the ambition that at least 10% of marine and coastal areas are protected by 2020 (Aichi Biodiversity Target 11), and that all fish and invertebrate stocks and aquatic plants will be sustainably and legally managed and harvested using ecosystem based approaches by 2020 (Aichi

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<sup>83</sup> CMS instruments are separate, international legally-binding instruments and other agreements among range states of single migratory species or, more often group of species that have been concluded under the CMS as a framework convention (CMS 2016).

<sup>84</sup> CMS. Migratory Marine Species in areas beyond the limits of national jurisdiction (ABNJ).

[http://www.cms.int/sites/default/files/publication/CMS\\_ABNJ\\_21Aug2013.pdf](http://www.cms.int/sites/default/files/publication/CMS_ABNJ_21Aug2013.pdf) [Accessed: 20 July 2016]

<sup>85</sup> Article V CMS

<sup>86</sup> Article II paragraph 1.

<sup>87</sup> Article 1 CBD

<sup>88</sup> CBD. List of parties. <https://www.cbd.int/information/parties.shtml> [Accessed: 20 July 2016]

<sup>89</sup> CBD, COP Decision VIII/24 on Protected Areas

<sup>90</sup> CBD, COP Decision X/29, para 26

<sup>91</sup> CBD COP Decision XI/18



Biodiversity Target 6). Following the adoption of the Strategic Plan, the UNGA agreed to take the plan as a universal framework for action on biodiversity and as a foundation for sustainable development for all stakeholders, including agencies across the UN System.<sup>92</sup>

#### *Regional marine protection of ABNJ*

**UN Environment** established its **Regional Seas Programme** in 1974 to address the accelerating degradation of the world's oceans and coastal areas through the sustainable management and use of the marine and coastal environment. By encouraging formal collaboration between countries around regional sea basins, fourteen 'Regional Seas Programmes' (often collectively referred to as Regional Seas Conventions and Action Plans) were established under UN Environment auspices, six of which are directly administered by UN Environment, and the others are administered by other regional organizations that host and/or provide the Secretariat (UN Environment, 2014). A further five regional intergovernmental partnerships for the Southern Ocean, Baltic Sea, Caspian Sea, North East Atlantic and the Arctic were also established, independently of UN Environment, with similar approaches.

While taking into account the particular needs of the region, all Regional Seas Programmes tackle common environmental issues through joint coordinated activities and function primarily through conventions and/or action plans, which are adopted by Member Governments in order to establish a strategy and framework for protecting the environment and promoting sustainable development and use.<sup>93</sup> Most Regional Seas conventions have also added protocols, which are legal agreements addressing specific issues such as protected areas or land-based sources of pollution.

Because Regional Seas conventions are negotiated by different groups of countries, their mandate and role varies considerably. Whereas some conventions assign a coordinating and advisory role, such as the Nairobi Convention for the Western Indian Ocean, others explicitly establish a management mandate, such as the Convention for the Protection of the Marine Environmental and the Coastal Region of the Mediterranean (Barcelona Convention). This distinction explains why some Regional Seas conventions provide for the adoption of area-based management tools and others do not.

In addition, the geographic scope of the conventions varies considerably. To date, only four of the Regional Seas Conventions explicitly cover activities in ABNJ: the OSPAR Convention for the Protection of the marine environment of the North East Atlantic; the Convention for Conservation of Antarctic Marine Living Resources (CCAMLR) in the Southern Ocean; the Barcelona Convention in the Mediterranean; and the Noumea Convention for the Pacific. All four of these conventions provide for the adoption of protected areas in ABNJ, however, to date only the OSPAR Convention, Barcelona Convention and CCAMLR have made use of this competence.

### **2.3 Concluding remarks**

The overview highlights the range of intergovernmental organizations and legal instruments that play a role in governing activities and offering relevant technical and scientific advice related to biodiversity conservation and sustainable use in the marine environment. These institutions could potentially play a role in area-based planning approaches in ABNJ.

**Effective cross-sectoral area-based planning in ABNJ is fully reliant upon cooperation between relevant institutions.**

A number of global institutions and legal instruments regulate or guide activities in ABNJ. While UNCLOS provides the overarching legal framework for activities in ABNJ, including specific

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<sup>92</sup> UNGA resolution 65/161

<sup>93</sup> UNEP. The Regional Seas Programmes (2016). <http://www.unep.org/regionalseas/programmes/default.asp> [Accessed: 5 August 2016]



implementing agreements that bestow a management mandate upon key sectoral authorities in ABNJ (i.e. RFMOs for straddling fish stocks and ISA for deep sea mining), it does not provide any provisions related to the implementation of cross-sectoral area-based planning. Effective area-based planning in ABNJ is therefore reliant upon the coordinated involvement of institutions who have a mandate to implement area-based management measures (rather than general measures, e.g. methods, quotas or targets) in ABNJ. However, institutions with a purely (scientific) advisory or coordinating role can play an important role in catalysing or facilitating relevant processes.

**Any efforts to undertake cross-sectoral area-based planning in ABNJ will necessarily involve both global and regional legal instruments and institutions.**

Currently, the activities that are regulated through *global-scale* mandated area-based management tools in ABNJ are shipping (through the IMO), seabed mining (through the ISA), and whale conservation and management (through the IWC). For both fisheries and environmental management there is no global-scale institution that has a mandate to establish area-based management tools, and ABNJ management is undertaken through regional instruments, namely the RFMO/As and the Regional Seas Conventions and Action Plans. Neither RFMOs nor Regional Seas Conventions and Action Plans have comprehensive global coverage in their regional organizations, and there remain large areas of ABNJ that are not under any sectoral management regime. In the case of Regional Seas Conventions and Action Plans, only some have the mandate to establish MPAs in ABNJ, and those that do, have not necessarily done so. Existing initiatives to enhance cooperation between sectoral authorities have indicated that organizations with a global mandate may be reluctant to engage in regional level cooperation, possibly due to the lack of regional presence leading to unfamiliarity with regional governance arrangements and general lack of capacity.

**There may be limited application of existing area-based management tools due to the specific challenges that are present in ABNJ.**

Although institutions may have the mandate to establish area-based management tools, these tools are not necessarily applied in ABNJ. This may be because conditions in ABNJ do not readily meet the criteria needed to apply the management tool. For example, conditions required to establish MARPOL 'Special Areas' are not typically met in ABNJ. Similarly, no PSSAs and associated protective measures (APMs) have been established in ABNJ, probably because the limitations of data paucity and logistical challenges of enforcement mean that PSSAs have been more easily identified in coastal areas.

**Inter-agency cooperation could be strengthened at both national and regional levels.**

With regard to establishing cross-sectoral cooperation, some institutions only respond to the general obligation to cooperate that is included in UNCLOS and their constituting agreements, while others have more specific cooperation mandates that are either included in their constituting agreements (e.g. IMO), or received by their members (e.g. IWC). Intergovernmental organizations are member-driven organizations but the same Member State will usually be represented by different government departments within the relevant intergovernmental organizations. Interviewees suggested that there is insufficient communication or integrated policy established between government departments. Consequently, very little demand for cross-sectoral engagement emerges from Member States.

**Progress in cross-sectoral collaboration will require identifying common issues across organizations and the advantages of operating collectively.**

Establishing issues of common concern was regarded as crucial in order to foster intra- and/or cross-sectoral collaboration, such as ship strikes with whales triggering cooperation between IMO and IWC,

and more recently, shipping in the context of seabed mining triggering cooperation between IMO and ISA. The key to advancing further is therefore to identify who would need to collaborate and to communicate why cross-sectoral cooperation would better achieve the objectives and mandates of those involved. Exploring the potential for area-based planning in ABNJ must therefore consider regions on a case-by-case basis in order to assess which instruments and institutions are in place, and to identify if and where any gaps in sectoral activity management and formal cooperation might exist. The following chapters 3 and 4 will take this approach in the Western Indian Ocean and the South East Pacific respectively.

### 3. Governance of ABNJ in the Western Indian Ocean

Having outlined the global ABNJ-related institutions and instruments in the previous chapter, **Section 3.1** provides an overview of the regional-scale institutions and instruments managing or influencing marine activities in the Western Indian Ocean that are, or could be, of relevance to supporting area-based planning in ABNJ. **Section 3.2** then presents the regional sectoral governance structures in the Western Indian Ocean in more detail, sector-by-sector. **Section 3.3** describes the regional activities undertaken by global intergovernmental organizations and agreements presented in chapter 2 and **Section 3.4** considers the potential for cross-sectoral area-based planning in ABNJ in the Western Indian Ocean.

#### 3.1 Overview of ABNJ governance in the Western Indian Ocean

This section provides some context for ocean governance in the Western Indian Ocean by describing the various regional organizations that have a mandate of relevance to ABNJ, including their interaction with relevant global organizations. The **Western Indian Ocean** here refers to the waters adjacent to the mainland African countries of Somalia, Kenya, United Republic of Tanzania, Mozambique and South Africa, as well as the oceanic areas surrounding the island states of Madagascar, Seychelles, Comoros, Mauritius and the French Territories (Réunion, Mayotte, and the Scattered Islands).

Since its establishment in 1980, the **UN Environment's Regional Seas Programme for the Western Indian Ocean** (previously called the Eastern African Regional Seas Programme) has served as a conduit for regional cooperation, as well as becoming a platform for the regional and national implementation of Multilateral Environmental Agreements (MEAs), including the IMO conventions and biodiversity-related conventions such as CBD, CITES and CMS. In conjunction with the adoption of an Action Plan, the Regional Seas Programme was formalized in 1985 through the adoption of the **Nairobi Convention** of the Eastern African Region and its protocols on protected areas and cooperation in combating marine pollution. The Nairobi Convention entered into force in 1996, only two years after UNCLOS, and was amended and renamed to reflect the change of geographical focus from "Eastern African Region" to "Western Indian Ocean" in 2010. Initially the focus of the convention was on the coastal areas but through Nairobi Convention COP decisions, the convention area was expanded to focus on the entire EEZs of its Contracting Parties. It was only recently, in 2015, that the Nairobi Convention COP adopted a number of decisions which relate to ABNJ and/or the adjacent waters (see section 3.2.1).

In 1993, the agreement establishing the **Indian Ocean Tuna Commission (IOTC)** (successor to the Indo-Pacific Tuna Development and Management Programme, IPTP) was concluded under Article XIV of the FAO Constitution and entered into force in 1996. The IOTC's geographical coverage includes ABNJ, and as a fisheries management body, IOTC membership is open to any states that have a coastline within the Indian Ocean region, as well as any state that fishes for tuna in the Indian Ocean region.

In the late 1990s, Western Indian Ocean countries worked with FAO to establish a regional fisheries management body to deal with **non-tuna fisheries**, demersal species in particular, within their national waters. During the negotiations, calls for the management of fisheries resources in the high seas arose as well, particularly due to concerns regarding overfishing of Orange Roughy (*Hoplostethus atlanticus*). However, since the coastal countries preferred to create an advisory body that focused only on national waters, the negotiations resulted in two outcomes. One outcome was the

establishment of the **South West Indian Ocean Fisheries Commission (SWIOFC)**, an advisory body<sup>94</sup> with a mandate within national jurisdictions only; and the other was the adoption of the **South Indian Ocean Fisheries Agreement (SIOFA)**, which entered into force in 2012, which has a mandate to regulate fisheries in the high seas only.

In addition to these authorities, there are notable organizations, partnerships or initiatives that do not have a regulatory mandate in ABNJ but are influencing regional marine governance in relevant ways. For example, the **Indian Ocean Commission (IOC)** is an intergovernmental organization comprising the four island states of the Western Indian Ocean and Réunion Island (France). IOC's mission includes the preservation of the environment and sustainable management of marine and coastal resources. A flag-ship project co-managed by IOC and FAO is the 'SmartFish' programme for the implementation of a Regional Fisheries Strategy. The **Southern Indian Ocean Deep-sea Fishers' Association (SIODFA)** is an association of deep-sea fishing companies that operate in the Indian Ocean ABNJ and have implemented voluntary Benthic Protection Areas (BPAs) closed to bottom-trawling. The **Consortium for the Conservation of Coastal and Marine Ecosystems in the WIO (WIO-C)** is a joint initiative by numerous NGOs and the IOC-UNESCO with the aim of developing synergistic partnerships that will advance marine research, conservation and management in the Western Indian Ocean region. The **Agulhas and Somali Current Large Marine Ecosystem Project (ASCLME)**, part of the Global Environment Facility (GEF) LME Programme, conducted an environmental transboundary diagnostic assessment and developed an associated Strategic Action Programme (SAP) for Western Indian Ocean countries. A five-year follow-on project called the Strategic Action Programme Policy Harmonization and Institutional Reforms (SAPPHIRE) project commenced in 2015 and takes forward the ASCLME SAP actions. The **SAPPHIRE project** includes a specific component which aims to negotiate and evolve the partnerships and agreements necessary to manage the ABNJ within the ASCLME area.

Figure 3 provides an overview of ABNJ relevant events and milestones in the Western Indian Ocean region. Table 2 provides an overview of the principal regional and global institutions and instruments of relevance to the governance of ABNJ for biodiversity conservation and sustainable use in the Western Indian Ocean.

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<sup>94</sup> under Article VI 1 of the FAO Constitution



Figure 3. Key ABNJ milestones in the Western Indian Ocean © Legal Atlas

Table 2. Principal organizations and instruments of relevance to governance of ABNJ for biodiversity conservation and sustainable use in the Western Indian Ocean

Sector	Name	Type	ABNJ mandate and area-based management tools in ABNJ	Western Indian Ocean member countries
<b>Marine Conservation</b>	UN Convention on the Law of the Sea (UNCLOS)	Global legal instrument	Framework convention for the oceans as a whole, including ABNJ	All Western Indian Ocean countries
	Nairobi Convention and its Protocols	Regional legal instrument	No explicit mandate in the Convention text, but adoption of three decisions of relevance to ABNJ at COP 8	All countries in the Western Indian Ocean are Contracting Parties to the Convention
<b>Fisheries</b>	Indian Ocean Tuna Commission (IOTC)	Regional intergovernmental organization, tuna RFMO	Yes, tuna fisheries areas and closed areas	Comoros, France, Kenya, Madagascar, Mauritius, Mozambique, Seychelles and United Republic of Tanzania. South Africa is a Cooperating Non-Contracting Party (CNCP) <sup>95</sup>
	South Indian Ocean Fisheries Agreement (SIOFA)	Regional intergovernmental agreement, Non-tuna RFMO	Yes, fisheries areas and closed areas	Mauritius and Seychelles and Réunion (France)
	South West Indian Ocean Fisheries Commission (SWIOFC)	Regional intergovernmental organization, RFB	No	Comoros, France, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, South Africa and United Republic of Tanzania
<b>Seabed Mining</b>	International Seabed Authority (ISA)	Global intergovernmental organization	Yes, mining licence areas, two types of reference zones within mining areas, and APEIs	All Western Indian Ocean member countries (Somalia has not signed MARPOL)
<b>Shipping</b>	International Maritime Organization (IMO)	Global intergovernmental organization	Yes, MARPOL Special Areas and PSSAs (and associated APMs)	All Western Indian Ocean member countries
<b>Whale conservation and management</b>	International Whaling Commission (IWC)	Global intergovernmental organization	Yes, whale sanctuaries	Kenya, Mauritius, Réunion (France), Seychelles, South Africa and United Republic of Tanzania

<sup>95</sup> The status of a CNCP is granted upon request from the respective State. The duration of the status as well as its content is subject to the rules and regulations of the institution in question. For information on CNPS to IOTC, see <http://iotc.org/about-iotc/structure-commission>.

### 3.2 Regional institutions and instruments in the Western Indian Ocean

In the following, regional institutions and instruments of importance with regard to the governance of ABNJ in the Western Indian Ocean will be presented organized per sector, based on the results of interviews with sectoral representatives on how their organization's responsibilities, mandates and levels of intra- and inter-sectoral cooperation could support cross-sectoral area-based planning in ABNJ.

#### 3.2.1 General Marine Conservation Instruments: The Nairobi Convention and its Protocols

The objective of the Nairobi Convention<sup>96</sup> is to provide a framework for dialogue and sharing of experiences related to all activities of relevance to the protection of the marine environment, with the main aim of managing the adverse effects of any activities on the marine environment. The Convention also supports a range of catalytic activities related to environmental protection, such as the process aiming to develop regional guidelines on environmental management for oil and gas development. Supported by its Secretariat, which is located at UN Environment Headquarters in Nairobi, Kenya, the Nairobi Convention COP is convened every two years to review the implementation of the Convention and its Protocols. All countries bordering the Western Indian Ocean are Contracting Parties to the Convention.

Figure 4 provides an illustrative overview of the development of the Nairobi Convention over time, including Contracting Parties and ratification dates.

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<sup>96</sup> UNEP. Nairobi Convention Text. [http://www.unep.org/NairobiConvention/The\\_Convention/Nairobi\\_Convention\\_Text/index.asp](http://www.unep.org/NairobiConvention/The_Convention/Nairobi_Convention_Text/index.asp) [Accessed: 20 July 2016]



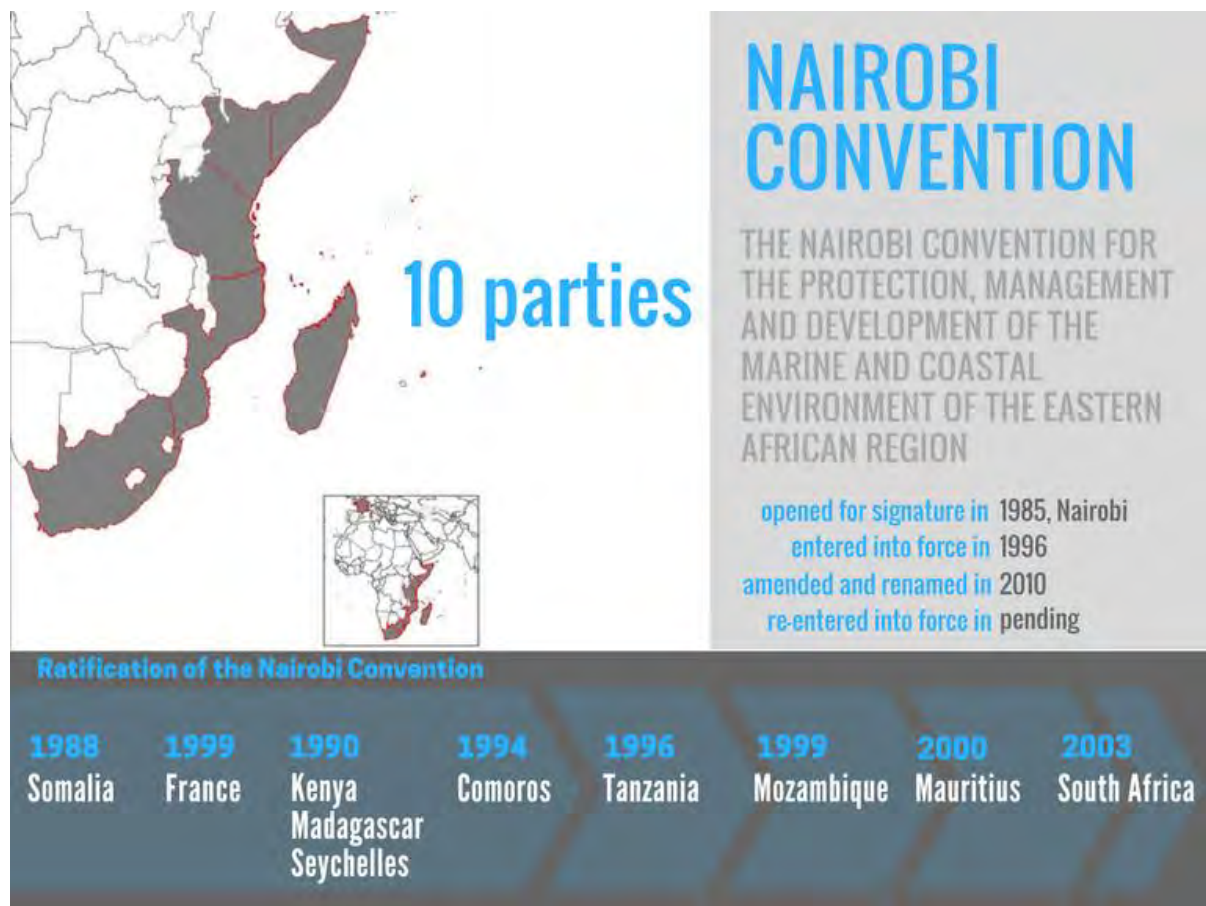


Figure 4. The Nairobi Convention and its Contracting Parties, including ratification dates © Legal Atlas

#### Key developments of potential relevance to ABNJ governance

As outlined by its Executive Secretary, the Nairobi Convention, like many other Regional Seas programmes, did not initially envisage the need for a **mandate in ABNJ**. Instead, Article 2 of the Nairobi Convention states that “the “Convention area” shall comprise the riparian marine and coastal environment including the watershed of the Contracting Parties to this Convention”. However, the Convention mandate to protect, manage and develop the marine and coastal environment has evolved over time as necessary and as relevant knowledge has become available. As such, the Nairobi Convention Contracting Parties recently expanded the Convention’s mandate to cover the adjacent water in ABNJ in order to fully implement an ecosystem-based approach to environmental management.

The Nairobi Convention Executive Secretary highlights the **adoption of three decisions at the last COP 8** in June 2015 in Mahé, Seychelles as a demonstration of a newly evolving mandate of the Nairobi Convention in ABNJ:

- Decision CP8/10 (Blue and Ocean Economy) urges Contracting Parties to cooperate in **improving the governance of ABNJ**, building on existing regional institutions including the Nairobi Convention and developing area-based management tools such as marine spatial planning to promote the blue economy pathways in the Western Indian Ocean Region.

- Decision CP8/6 (Support to implementation of projects) requests Contracting Parties, the GEF and other partners, to support projects on, amongst others, conservation and sustainable exploitation of seamount and hydrothermal vent ecosystems of the South West Indian Ocean **in ABNJ** and collaborate in the management of activities **in their adjacent waters** by IUCN.
- Decision CP8/5 (Agenda 2063 and the Africa Integrated Maritime Strategy 2050) urges Contracting Parties to implement the Cairo Declaration of the 15<sup>th</sup> Session of the African Ministerial Conference on Environment (AMCEN) on Africa Integrated Maritime Strategy 2050 and Agenda 2063 on ecosystem-based management approaches for marine resources in the EEZs **and adjacent waters** and inform on progress at AMCEN sessions.

With regard to decision CP8/5, the **Cairo Declaration** was adopted by AMCEN, a body under the African Union (AU), in March 2015. Within the declaration, in order to manage Africa's natural capital and marine ecosystems, it was agreed upon to:

- *'support activities on marine ecosystems, the development of marine spatial planning and area-based planning, MPAs and valuation and natural capital accounting tools' in collaboration with Regional Seas programmes, IOC-UNESCO, FAO and RFMOs';*
- *support the preparation of periodic reports by Regional Seas programmes 'on the status of the oceans, including land-based sources and activities and governance';*
- *support the Regional Seas programmes in Africa 'as regional platforms for the implementation of the Africa Integrated Marine Strategy 2050 and Agenda 2063 on Ecosystem-Based Management Approaches for marine resources in the EEZs **and adjacent waters**';*
- *'develop a **governance strategy**, in accordance with [UNCLOS and Regional Seas conventions], on oceans and seas in Africa for the effective management of the region's shared maritime resources and call for a regional conference to address the matter by 2016'.<sup>97</sup>*

#### *Intra- and inter-sectoral collaboration*

Although the Nairobi Convention has a number of regional and global partners, there are currently no formal cooperation agreements in place between the Nairobi Convention and other key regional and global organizations with a mandate related to ABNJ. For instance, there is no specific cooperation agreement in place with **SIOFA** and in the absence of a specific legal requirement to cooperate (besides the general obligation to cooperate in UNCLOS) the likelihood of cooperation occurring depends on the commitment and understanding of the governments and to some degree also individual representatives involved. Associated challenges also include the fact that the geographical coverage of SIOFA is much larger than the Nairobi Convention area of intervention. Furthermore, SIOFA and the Nairobi Convention have different parties/member countries. As an RFMO, SIOFA attracts members from across the globe (e.g. European Union, Japan and Australia), but only two member states (Mauritius and Seychelles) are also Parties to the Nairobi Convention. However, an MoU is currently being drafted between the Nairobi Convention and **SWIOFC** to formalise the need for cooperation and commitment between the two organizations with regard to issues within national jurisdictions, demonstrating progress towards cross-sectoral cooperation.

The Nairobi Convention Executive Secretary suggests that for sustainability and greater impact of these partnerships, as well as overcoming single sector silo thinking (i.e. conservation of resources versus extraction of resources), an institutional cooperation mechanism is needed and would encourage the **establishment of closer collaboration with specific organizations**, namely the IOTC

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<sup>97</sup> Cairo Declaration on Managing Africa's Natural Capital for Sustainable Development and Poverty Eradication: [https://wedocs.unep.org/bitstream/handle/20.500.11822/11154/cairo\\_declaration.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/11154/cairo_declaration.pdf?sequence=1&isAllowed=y)

and SIOFA as well as SIODFA. Since the management of the marine and coastal resources is an economic imperative, the Executive Secretary is also of the opinion that there would be value in the Nairobi Convention establishing a relationship with **regional economic commissions**. This would support the implementation of Nairobi Convention COP Decision CP8/10, urging Contracting Parties to apply Blue Economy approaches to achieve sustained economic growth, food security, poverty eradication, job creation and environmental sustainability. Other issue areas which would potentially benefit from a cross-sectoral approach include **marine litter, maritime security and maritime transport**.

#### *Opportunities and barriers to area-based planning in ABNJ*

The main **challenge in planning and implementing activities related to ABNJ** in the Western Indian Ocean is reported to be the **lack of capacity on ABNJ-related issues** at the national level. To respond to the newly evolving ecosystem-based approaches and mandate of the Nairobi Convention in ABNJ, it will thus be critical to develop relevant capacities, including raising awareness around the connectivity between EEZs and ABNJ. Capacity building should target the national level, where a number of ocean policies have already been developed. Once a body of knowledge demonstrating the ecological importance of ABNJ to national resources is created and understood by all sectors, the **Nairobi Convention could act as a champion** to strengthen cross-sectoral cooperation in ABNJ in the Western Indian Ocean.

### 3.2.2 Fisheries Management in the Western Indian Ocean

#### *South Indian Ocean Fisheries Agreement (SIOFA)*

As an RFMO in the Southern Indian Ocean, SIOFA entered into force in June 2012. SIOFA's objective is to ensure the long-term conservation and sustainable use of fisheries.<sup>98</sup> SIOFA is responsible for the management of all fishery resources within its area of application, with the exception of sedentary species subject to the fishery jurisdiction of coastal States and of highly migratory species (tuna and tuna-like fishing in the region are already subject to regulation by the IOTC).<sup>99</sup> The SIOFA **Area of Competence** covers the high seas between eastern Africa and Western Australia and of the eight SIOFA Parties, only Mauritius, Seychelles and Réunion (France) are from the Western Indian Ocean region.<sup>100</sup>

Unlike other regional fisheries agreements, SIOFA did not automatically establish a Commission. Instead, the **Meetings of the Parties** is responsible for reviewing the state of fishery resources, promoting research and cooperation, evaluating the impact of fishing on the fishery resources and the marine environment, formulating and adopting conservation and management measures necessary for ensuring the long-term sustainability of fishery resources, and developing and monitoring measures to prevent, deter and eliminate IUU fishing.<sup>101</sup> Figure 5 provides an illustrative overview of the development of SIOFA over time, its area of competence and Parties.

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<sup>98</sup> Article 2 SIOFA

<sup>99</sup> Article 1(f) SIOFA

<sup>100</sup> FAO. South Indian Ocean Fisheries Agreement (SIOFA) (2016). <http://www.fao.org/fishery/rfb/siofa/en> [Accessed: 20 July 2016]

<sup>101</sup> Article 6 SIOFA

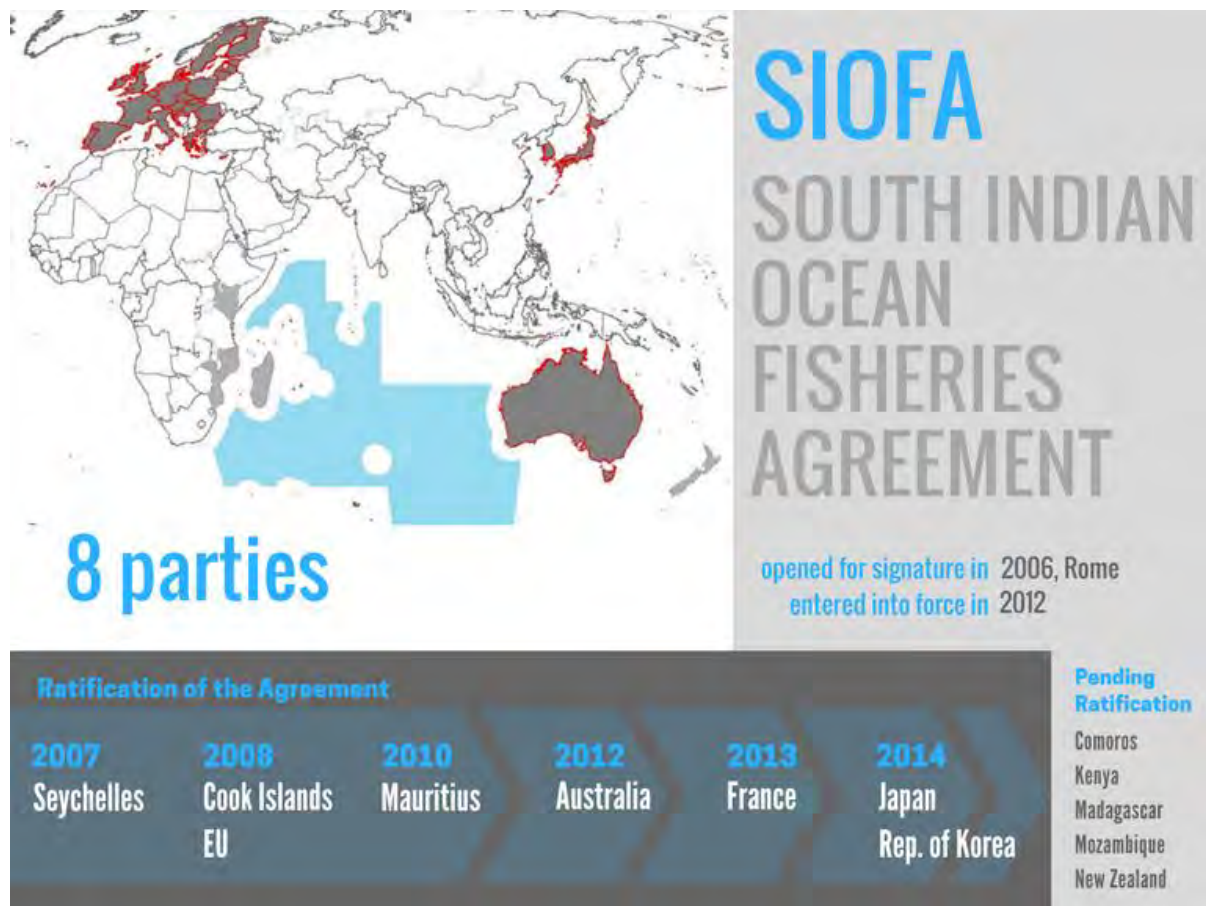


Figure 5. The South Indian Ocean Fisheries Agreement, its area of competence and membership © Legal Atlas.

#### *Management measures and area-based management tools relevant to ABNJ*

The SIOFA integrates modern management principles and tools derived from various international agreements. In this regard, Article 4 of SIOFA stipulates that Contracting Parties shall apply *inter alia* general principles such as the use of the best scientific evidence available, the sustainable use of fishery resources, the ecosystem approach to fishery resources management and the precautionary approach. Furthermore, it is recognised that “*biodiversity in the marine environment shall be protected*”. Article 6 also acknowledges the need to evaluate the impacts of fishing activities and to adopt **conservation and management measures** which take into account the need to protect marine biodiversity. Such conservation measures could include carrying out environmental impact assessments and closing certain areas to fishing (Druel *et al.*, 2012).

SIOFA is not fully operational yet, with the rules of procedure only adopted in 2015. In the meantime, the **2006 SIOFA Interim Measures** are applicable measures for the management of discrete high seas fish stocks. The **first Scientific Committee meeting** provided advice on the management of bottom fishing, deep-water gillnets and large pelagic driftnets. With regard to benthic protected areas established by SIODFA, the SIOFA Scientific Committee noted that three of these areas meet the criteria for **EBSAs**, and recommended that they be closed to fishing.<sup>102</sup>

<sup>102</sup> Report of the First Meeting of the South Indian Ocean Fisheries Agreement (SIOFA) Scientific Committee 21-24 March 2016, Fremantle, Australia.



The SIOFA Scientific Committee also discussed the potential role of management measures such as the identification of the fishing footprint (i.e. the spatial extent of historical bottom fishing in the Agreement Area) and limiting fishing to within the footprint area. It was noted that an appropriate spatial scale and time period for the footprint would need to be determined. In providing advice on limiting fishing effort, the Scientific Committee noted that one option is to prohibit vessels from undertaking bottom fishing outside their historical bottom fishing footprint. Finally, the Scientific Committee agreed to develop standards for the identification of future areas for protection or spatial management, and included this activity in its 2016-2018 Operational Work Plan.<sup>94</sup>

#### *Intra-sectoral and cross-sectoral cooperation*

The SIOFA incorporates a call for intra-sectoral cooperation in its convention text. Contracting Parties “shall cooperate closely with other international fisheries and related organizations in matters of mutual interest, in particular SWIOFC and any other regional fisheries management organization with competence over the high seas waters adjacent to the Area”.<sup>103</sup> On the issue of cooperation, the SIOFA Interim Secretary noted that potential key partners have not been identified yet, therefore no mechanisms for cooperation are in place. However, based on directions from the Meeting of the Parties, the meeting of the Scientific Committee developed its first work plan and a set of research priorities, including a list of organizations it intends to consult and collaborate with, including CCAMLR, the South Pacific Regional Fisheries Management Organization (SPRFMO), IOTC, the South East Atlantic Fisheries Organization (SEAFO), the North Pacific Fisheries VME working group, SIOFA and the Deep Sea Conservation Coalition.<sup>94</sup>

#### *Opportunities and challenges to area-based planning in ABNJ*

With regard to SIOFA’s response to any **regional initiative to strengthen cross-sectoral collaboration in ABNJ** in the Western Indian Ocean, the SIOFA interim Secretary noted that this will depend on the willingness of the Contracting Parties to engage, and thus priorities that will be defined in the future, but at present SIOFA would not have the ability to respond to a cross-sectoral planning initiative in the region, due to the infancy of the organization.

#### *Indian Ocean Tuna Commission (IOTC)*

IOTC is an intergovernmental RFMO established under Article XIV of the **FAO Constitution**. Its objective is ensuring, through appropriate management, the conservation and optimum utilisation of stocks covered by the organization’s establishing Agreement, and encouraging sustainable development of the associated fisheries. The mandate of the organization, as expressed in the IOTC Agreement, originally included only tuna and tuna-like species, but more recently, as ecosystem considerations came into play, the mandate has been expanded, *de facto* and thus without a formal *de jure* mandate from states, to include data collection and conservation measures on non-target species, such as seabirds, sharks and marine turtles. Nevertheless, the primary objective of the organization is still to regulate the amount of fishing pressure that is exerted on stocks that are distributed over the whole of the Indian Ocean and beyond, if necessary. Therefore, the geographical coverage of the mandate expands far beyond the Western Indian Ocean to ensure full coverage over the species under the mandate. Accordingly, membership of IOTC is not limited to the coastal states of the Indian Ocean, but includes virtually all the distant water fishing nations that are operating in the high seas of the Indian Ocean, or are licensed to operate in the EEZ of coastal countries. There are currently 32 Contracting Parties to the IOTC Agreement and four Cooperating Non-Contracting Parties (CNCs). Contracting Parties from the Western Indian Ocean region are Comoros, France, Kenya,

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<sup>103</sup> Article 16 SIOFA

Madagascar, Mauritius, Mozambique, Seychelles and United Republic of Tanzania. Figure 6 provides an illustrative overview of the development of IOTC over time and its area of competence.

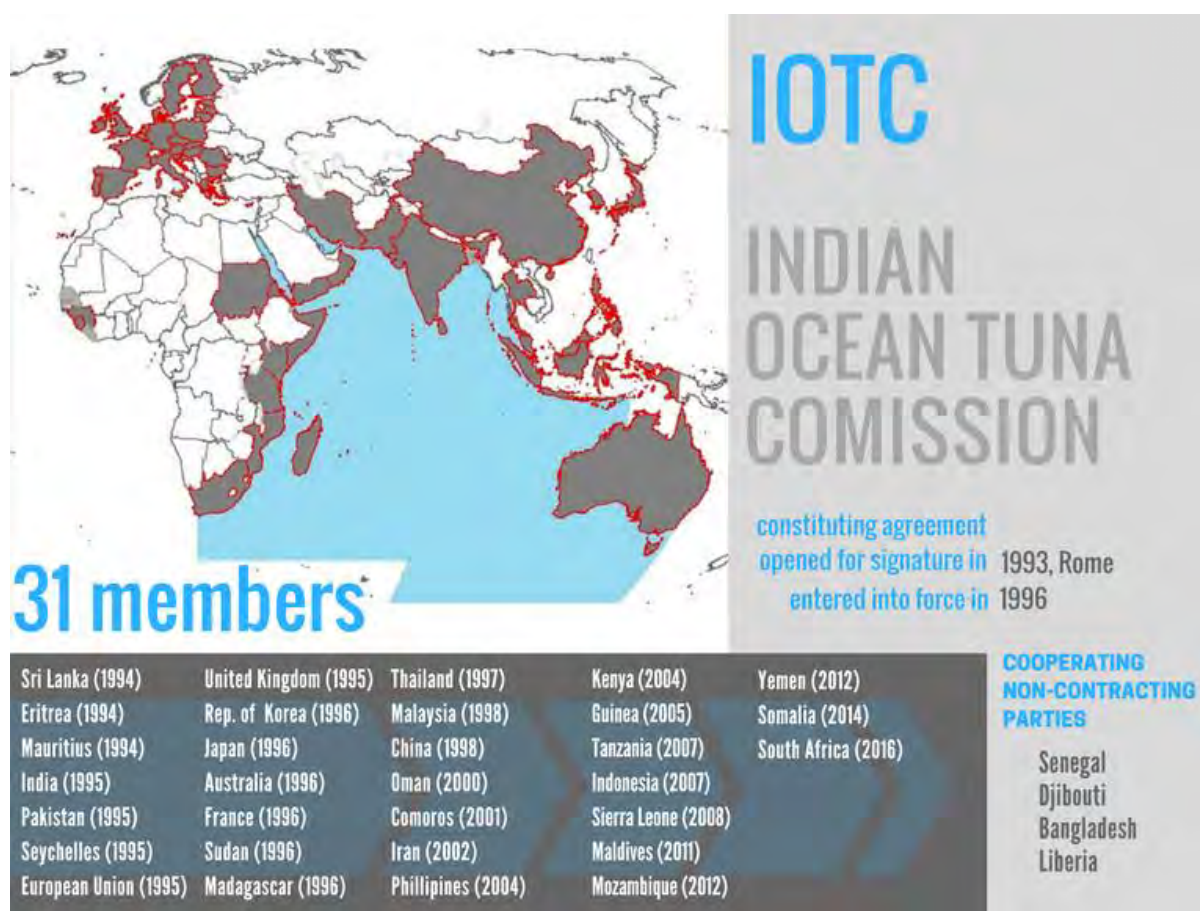


Figure 6. The Indian Ocean Tuna Commission, its area of competence and membership © Legal Atlas

#### *Management measures and area-based management tools relevant to ABNJ*

At each session of the IOTC Commission, Members may adopt binding Conservation and Management Measures (CMMs) concerning the management of tuna and tuna-like species under the IOTC mandate.<sup>104</sup> Today, this also includes managing the adverse impacts of these fisheries on other resources, for example marine turtles. CMM decisions are passed in the form of either Resolutions (binding on its Members) or Recommendations (voluntary implementation) and include measures such as the allocation of fishing quotas, rules on fishing in the proximity of data buoys, fishing gear and bycatch, as well as measures related to management in the fishing grounds and of transshipment (from the fishing grounds to the landing ports).<sup>105</sup> IOTC CMMs are generally applicable to the entire area of intervention and are not restricted to any specified group of measures. They may thus include area-based management measures.

Area-based management measures to reduce fishing pressure on tuna stocks, such as spatial-temporal area closures, have been tried in the Western Indian Ocean, but are considered less effective than other measures due to the highly migratory nature of the resource, meaning that the fish can be

<sup>104</sup> Article V (2) (c) of the IOTC Agreement

<sup>105</sup> For an overview of all active CMMs please consult the Compendium of Active Conservation Management Measures for the Indian Ocean Tuna Commission (26 November 2016): <http://www.iotc.org/cmmms>.



caught as soon as they pass through the closed areas. Scientific evaluation of the impact of closures indicate that to be effective, area-based measures have to be much more extended, both spatially and temporally, which risks disrupting small-scale fisheries and regional economies.

#### *Achievement and challenges of the organization*

The IOTC Executive Secretary indicated that there has been a gradual improvement in all aspects of the Commission's work. The adoption of a comprehensive compliance scheme in 2001 was regarded as a significant achievement in the organization's history. In the following years, a number of measures that implemented different aspects of that scheme were adopted by Member States, which reportedly changed the nature of IOTC from a clearing house for data and scientific assessments to an organization with a compliance mechanism to support the implementation of the management measures adopted. Despite the adoption of various fisheries control mechanisms, the lack of compliance by some Member States has remained a key challenge in achieving the IOTC's objectives. Efforts to improve catch and effort data is also uniquely challenging with Indian Ocean tuna, because almost 50% of the catches of tuna and tuna-like species come from small scale and artisanal fisheries for which the collection of accurate catch data is problematic.

The adoption of a harvest control rule for skipjack tuna (*Katsuwonus pelamis*) in 2016, which implemented the precautionary approach, is hailed as a landmark IOTC decision, as it is the first time that such a measure has been adopted for a resource that is not overfished. Key challenges for the IOTC have been the development of a quota allocation system for fisheries for the sustainable management of IOTC species, as well as managing the diversity of membership and objectives for shared resources. However, it is clear that participation of the coastal States in the process is increasing both in substance and quality, with improved cooperation amongst them and a stronger presence at the time of decision making.

#### *Intra-sectoral and cross-sectoral cooperation*

In the Western Indian Ocean region, the IOTC's key partners are the African Union (AU) and SWIOFC. Global partners include the World Bank (through IOC) and the Western and Central Pacific Fisheries Commission (WCPFC). Due to IOTC being an intergovernmental organization, IOTC's key partners are other intergovernmental organizations. However, other actors such as NGOs and business associations can play an important role in the IOTC decision-making process as they regularly form part of national delegations and thus contribute to the position of the respective Member State. In addition, the IOTC Agreement provides a mechanism for the participation of non-members as observers at IOTC meetings. IOTC observers include FAO, non-member countries, intergovernmental organizations (e.g. the Agreement on the Conservation of Albatrosses and Petrels (ACAP), CITES, IOC and other RFMOs), non-governmental organizations (e.g. the World Wide Fund for Nature (WWF) and Birdlife International), and private sector representatives such as the International Seafood Sustainability Foundation.<sup>106</sup> In 2016, the principle for an MoU between the IOTC and CMS was approved by the Commission members.

As a general rule, the interactions with other organizations are driven by specific needs, including to address specific problems. The IOTC has, for example, a close relationship with **IOC** due to the joint implementation of a large-scale tuna project over a period of five years in the mid 2000's, and this collaboration paved the way for further MoUs to conduct additional joint activities. Notwithstanding this, the IOTC Expert noted that opportunities for cooperation had not yet been identified with either the Nairobi Convention, the CBD or SIOFA. In the latter case, this is mainly due to the fact that tuna

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<sup>106</sup> For the full list of observers please visit <http://www.iotc.org/about-iotc/observers-iotc-meetings> [Accessed: 20 July 2016]

fishing tends to happen in relatively shallow waters compared to the typical deep-sea operations of the fleets under the SIOFA purview. Tuna boats mostly operate in the upper 200m of the water column in the high seas and rarely interact with other users of the marine environment. As a consequence, the concerns generated by the impact of bottom-trawling are, for example, of little relevance to IOTC, compared to SIOFA. The same situation occurs with the issue of **seabed mining**; while interactions between seabed mining operations and bottom-trawling can be important, the interactions with pelagic tuna fisheries are thought to be minimal. However, the potential impacts of future deep sea mining are not fully understood at present. Nevertheless, as the only other RFMO in the region, IOTC provided support to the establishment of SIOFA, serving as the database host until SIOFA established its own data arrangements.

#### *Opportunities and challenges to area-based planning in ABNJ*

The key challenges in **planning and implementing area-based management measures in ABNJ** were regarded to be achieving agreement among all fishing nations, as well as achieving compliance with any agreements. While acknowledging a **need for more cross-sectoral collaboration in the Western Indian Ocean**, IOTC is managing highly migratory stocks, and therefore any actions taken in the Western Indian Ocean must be in conjunction with actions in other areas that are frequented by the migratory stocks covered by IOTC. To achieve cross-sectoral area-based planning in ABNJ in the Western Indian Ocean, the IOTC Executive Secretary is of the opinion that **IOTC** as well as the **AU** would in particular need to strengthen their cooperation arrangements. Furthermore, socio-economic considerations will regularly indicate the need to cooperate with other institutions and sectors in the Western Indian Ocean.

With regard to the **potential for greater cross-sectoral collaboration**, it was suggested that since each governance authority in the region serves a specific mandate which guides any activity and any form of collaboration with other organizations, cooperation would be most effective when the nature of the cooperation, and its scope, were clearly defined, as well as the purpose of any initiative and how this cooperation will be implemented. From the IOTC perspective, the following steps were considered to be important for any successful initiative for enhanced collaboration among intergovernmental organizations:

1. Identification of the common concern and its origins, e.g. different pressures exercised on a specific resource or ecosystem;
2. Identification of the organizations with a mandate to address the identified pressures/regulate relevant activities; and
3. Communication of the issue in the language and perspective of each of the organizations, including elaboration on the limitations of each individual organization to address the matter alone, thus on the need to address the matter in a coordinated way.

These steps could be the basis for a protocol of communication between the various initiatives that could be formalized through a framework MoU, indicating the main areas of cooperation and communication. This approach would allow the issues of concern to dictate the extent and modalities of the partnerships required to address them.

It was noted that the driving force for collaboration is always the recognition that IOTC Members' decisions might not be enough to ensure the organization's objective, in particular to manage the adverse impacts of fishing operations on other species of the ecosystem. In such cases, the organization should reach out to, or welcome the approach of, other actors who have an influence on activities that affect conservation, for example the collaboration between IOTC and Birdlife International on seabird conservation, and the collaboration between IOTC and the IOSEA Marine

Turtle MoU. The **conservation of sea turtles** was also identified as a potential opportunity for collaboration between IOTC and the **Nairobi Convention**, due to the mortality of sea turtles in the high seas caused by entanglement in fishing gear, and in coastal areas due to the disturbance and destruction of nesting sites.

The IOTC Expert also emphasized the general potential of intergovernmental organizations to cooperate in the **identification of areas for conservation in the high seas**, while stressing again the need to link any area-based planning mechanism to the specific mandate of each of the partners. If the common concern requires that compatible actions be undertaken, the intergovernmental nature of any management process needs to be considered. For example, all ten Nairobi Convention Parties are also Parties to IOTC (although IOTC has an additional 20 Parties) so, in principle, this should facilitate the communication between IOTC and the Nairobi Convention. However, **domestic coordination between Ministries should be encouraged** as the national delegations to the Nairobi Convention and the IOTC are often composed of officials from different Ministries, with different emphasis in their policies (e.g. Environment Ministries and Fisheries Ministries).

#### *Potential response to a regional area-based planning initiative in ABNJ*

The IOTC Executive Secretary suggested that, notwithstanding resource limitations, IOTC would have the ability to respond to **cross-sectoral planning initiatives in the region**. IOTC Members would generally be open to participate in a regional initiative if the objective of such an initiative was in line with and supportive of the IOTC mandate, and therefore both possible and feasible. In such case, gaining the required consensus of the Member States to engage should not be a problem. Nevertheless, the general challenge will be attempting to establish collaboration between organizations that can adopt binding management decisions for its Members, as well as others that cannot, since there may be little incentive for the former to engage with the latter.

The reasons for any challenges or obstacles to foster cross-sectoral collaborations up to now have not been created at the international level, but are often a reflection of the sector-based management approach common in many countries. It is quite common for the same government to have different views in different international forums, depending on whether those forums are fisheries or conservation orientated. It was suggested that before there is any move towards new intergovernmental arrangements for collaboration, there is **a need to develop harmonised approaches across sectors at national level** and/or an emphasis should be on the **development and strengthening of regional and national ocean policies**. In any case, the dialogue between the different sectors needs to be strengthened and in that regard the negotiations under UNCLOS for a new global instrument on BBNJ are important as a platform to advance harmonisation of national views.

#### *The South West Indian Ocean Fisheries Commission (SWIOFC)*

**SWIOFC** is a regional fishery advisory body under FAO and its area of competence is the national waters, including the EEZ, of its members, which are the coastal states in the South West Indian Ocean.<sup>107</sup> The **main objective** of SWIOFC is to promote the sustainable utilization of the living marine resources of the South West Indian Ocean region by the proper management and development of the living marine resources, and to address common problems of fisheries management and development faced by the Members of SWIOFC.<sup>108</sup>

Although SWIOFC has no mandate in ABNJ, the interlinked negotiation history for the establishment of SWIOFC and the drafting of SIOFA mean that the organization is of potential relevance for any

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<sup>107</sup> 1. Area of Competence, Statutes of SWIOFC, [ftp://ftp.fao.org/fi/DOCUMENT/safr/swiofc\\_1\\_2005/inf4e.pdf](ftp://ftp.fao.org/fi/DOCUMENT/safr/swiofc_1_2005/inf4e.pdf) [Accessed: 20 July 2016]

<sup>108</sup> 4. Objectives and Functions of the Commission, Statutes of SWIOFC, [ftp://ftp.fao.org/fi/DOCUMENT/safr/swiofc\\_1\\_2005/inf4e.pdf](ftp://ftp.fao.org/fi/DOCUMENT/safr/swiofc_1_2005/inf4e.pdf) [Accessed: 20 July 2016]

regional initiative to advance cross-sectoral area-based planning in ABNJ. Furthermore, SWIOFC has developed into the forum for all fishery management-related discussions in the region, according to the SWIOFC Secretariat representative. For example, Members regularly discuss and coordinate their positions before going to **IOTC** meetings. Additionally, SWIOFC often conducts biennial assessments of fishery resources, acts as a steering platform for regional fisheries projects, and has championed regional fishery management plans alongside the **ecosystem approach to fisheries management**, which require some consideration of the transboundary nature of ecosystems. Figure 7 provides an illustrative overview of the development of SWIOFC over time, its members and its area of competence.

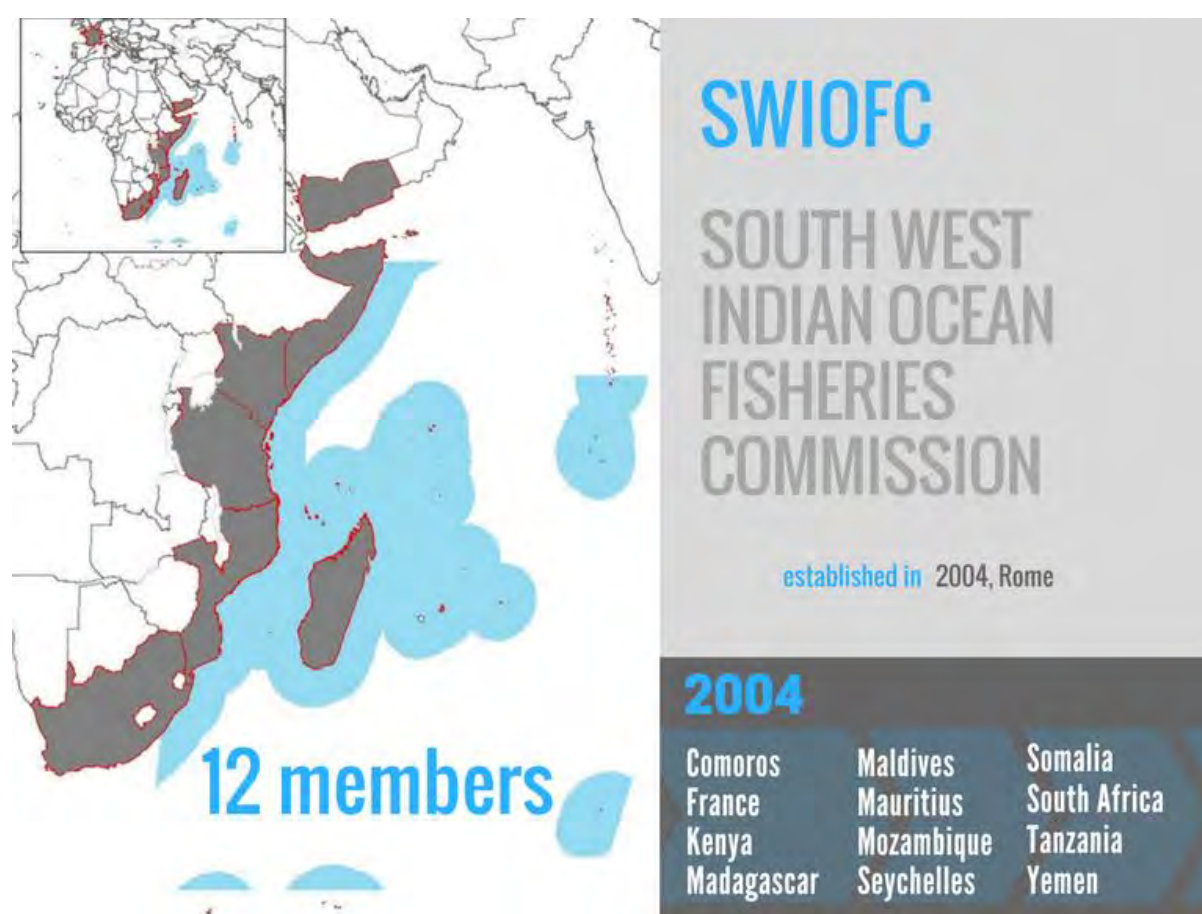


Figure 7. The South West Indian Ocean Fisheries Commission, its area of competence and membership © Legal Atlas

#### *Intra-sectoral and cross-sectoral cooperation*

As described by the SWIOFC Secretariat representative, key partners of SWIOFC in the region include WWF, IOC, the Southern African Development Community (SADC) and the Nairobi Convention. At present, SWIOFC does not cooperate with global intergovernmental organizations, and the need to do so has not yet been identified. The main mechanism for collaboration is usually the joint implementation of projects. SWIOFC is often asked to act as a member of regional fisheries project steering committees. Furthermore, there is considerable informal collaboration between SWIOFC and other organizations. However, MoUs or other formal agreements have not yet been concluded.

Against the background of the parallel negotiation history of SWIOFC and **SIOFA** described above, the partnership with SIOFA is engrained in the Statutes of SWIOFC, which state that SWIOFC shall establish close working relations with any agreement or arrangement for the management and conservation of the high seas fisheries resources of the Southern Indian Ocean. Article 10 of the Statutes further specify that such working relations shall, in particular, provide for the holding of back-to-back meetings; ensure the informed and effective participation of members of the Commission that are Contracting Parties to any such agreement in meetings of such agreement; and ensure that the Commission is adequately informed on the activities of any such agreement.<sup>109</sup> Issues of common interest are **shared straddling fish stocks**, on which rather little is known, with the exception of tuna. However, the priorities of SWIOFC are the wide range of other species currently monitored, particularly due to their relevance for food security.

SWIOFC cooperates with the **Nairobi Convention** on several issues, such as capacity development for improved ocean governance in the Western Indian Ocean, and cooperation mechanisms include joint meetings and the joint implementation of projects. A step towards strengthening the cooperation could be that SWIOFC directly and regularly reports to the Nairobi Convention on the status of fishery resources in its area of competence. Furthermore, the two organizations have been working towards an agreed MoU to formalize their relationship. Following strengthened cooperation and an MoU between FAO and UN Environment, the host organizations of SWIOFC and the Nairobi Convention respectively, it is likely that a SWIOFC/Nairobi Convention MoU will soon be agreed.

#### *The potential to strengthen cross-sectoral cooperation in ABNJ*

According to the SWIOFC Secretariat representative, the key challenges in planning and implementing activities related to area-based planning in ABNJ in the Western Indian Ocean are the magnitude of the task and the vastness of ABNJ within the region. It is thus deemed essential to have a clear objective for any area-based planning initiative and to ensure that there is support from all sectoral partners. In that context, the SWIOFC Secretariat representative highlights the constraints of each of these potential partners (i.e. intergovernmental organizations), with respect to their different mandates. As such, a formal structure would likely be needed, notwithstanding the difficulties associated with setting up any intergovernmental arrangements, even in a single sector.

From the perspective of the SWIOFC Secretariat representative, SWIOFC has an interest in cooperating with other institutions and sectors on ABNJ-related issues in the Western Indian Ocean, notably **straddling fish stocks** that occur in EEZ as well as the high seas, such as tuna, monkfish, Orange Roughy and a number of sharks. In order to achieve cross-sectoral area-based planning in ABNJ in the Western Indian Ocean, the SWIOFC Secretariat representative regards the **full operationalization of SIOFA** as crucial. Furthermore, the representative of the SWIOFC Secretariat supported the AU's increased emphasis on ocean governance, particularly with regard to IUU fishing. However, at the same time it was considered that AU should limit its focus on the coastal areas and EEZ rather than ABNJ, given the already immense governance challenges in the EEZs of the Western Indian Ocean.

#### *The Southern Indian Ocean Deep Sea Fishers' Association (SIODFA)*

SIODFA is a **fishery industry group** formed in 2006 by the four companies that were active in the **deep-sea high-seas fisheries** of the Southern Indian Ocean at the time.<sup>110</sup> SIODFA is thus distinctively different from the other organizations presented in this section in that it is not an intergovernmental

<sup>109</sup> 10. Statutes of SWIOFC, [ftp://ftp.fao.org/fi/DOCUMENT/safr/swiofc\\_1\\_2005/inf4e.pdf](ftp://ftp.fao.org/fi/DOCUMENT/safr/swiofc_1_2005/inf4e.pdf) [Accessed: 20 July 2016]

<sup>110</sup> SIODFA. Who are we?, <http://siodfa.org/about/who-are-we/> [Accessed: 20 July 2016]



organization. However, to date the adoption of fisheries area-based management measures in ABNJ in the Western Indian Ocean is solely due to the work of SIODFA.

Prior to the adoption of SIOFA, SIODFA established its own **benthic protected areas** (BPAs) in the high seas which are closed to deep-water trawling by the fishing industry group.<sup>111</sup> Since 2012, when SIOFA was ratified, **SIOFA** has been a key partner for SIODFA. Important mechanisms for interaction with SIOFA include SIODFA's attendance at SIOFA meetings of the Parties and of the Scientific Committee. Other mechanisms for interacting with intergovernmental organizations in the fishery sectors include participation in COFI and other UN and FAO-related meetings. SIODFA has an MoU with IUCN to *"cooperate in investigating, developing and promoting appropriate means of deep-sea resources management, including mitigation of adverse impact of fishing activities on the marine environment and non-targeted species, based on the FAO Code of Conduct"*.<sup>112</sup> According to the SIODFA Executive Secretary, cooperation under the MoU continues today on various Southern Indian Ocean matters and especially research, but the major initiative has been the joint cooperation on the declaration of the high seas BPAs.

With regard to a potential need for cross-sectoral collaboration in ABNJ in the Western Indian Ocean, the Executive Secretary highlights the issue of **seabed mining** as a concern for fishery activities and expresses the hope that the interests of fisheries organizations are adequately represented in ISA negotiations in the further development of the Mining Code. According to the SIODFA Executive Secretary, a first step with regard to the launch of any regional initiative to strengthen cross-sectoral cooperation in ABNJ in the Western Indian Ocean would be to clearly identify the issues that need to be addressed and identify and articulate the objectives. In principal, SIOFA could be the driver of such an initiative, while stressing that the Meeting of the Parties may have other priorities for the time being. The Executive Secretary stressed the general ability of SIODFA to engage in a cross-sectoral planning initiative in the region (e.g. through involvement in consultations), while highlighting that the benefits to be gained from the process, and the mechanisms for implementation, would need to be clear.

### 3.2.3 Other Western Indian Ocean organizations

#### *The Indian Ocean Commission (IOC)*

IOC is an intergovernmental organization whose members are the Western Indian Ocean island states of Comoros, Réunion (France), Madagascar, Mauritius and Seychelles. The IOC's principal mission is to actively contribute to the construction of a regional platform for sustainable development. Its mission includes safeguarding the common interest of its Member States on the regional and international level, and the development and implementation of regional cooperation projects. To fulfil its mission, IOC engages with the Eastern and Southern African region, the AU, with multilateral institutions and various donors, as well as generally in cooperation with other southern hemisphere organizations.

A flag-ship EU-funded project managed by IOC is the SmartFish programme for the implementation of a Regional Fisheries Strategy in the Eastern and Southern Africa and Indian Ocean region (ESA-IO region).<sup>113</sup> From the point of view of fisheries governance at the regional level, the SmartFish

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<sup>111</sup> IUCN. Biggest zone closed to fishing announced (2013). [http://www.iucn.org/media/news\\_releases/?13875/Biggest-zone-closed-to-fishing-announced](http://www.iucn.org/media/news_releases/?13875/Biggest-zone-closed-to-fishing-announced) [Accessed: 20 July 2016]

<sup>112</sup> SIODFA. Who are we?. <http://siodfa.org/about/who-are-we/> [Accessed: 20 July 2016]. View also: IUCN. IUCN and the fishing industry team up for promoting sound deepwater fisheries management in the high seas. <http://www.iucn.org/es/node/5452> [Accessed 25 July 2016]

<sup>113</sup> IOC. Good governance of marine fisheries: Concepts and Intervention Framework of the SmartFish Programme. [http://commissionoceanindien.org/fileadmin/projets/smartfish/Fiche/FICHE\\_21\\_ENGLISH.pdf](http://commissionoceanindien.org/fileadmin/projets/smartfish/Fiche/FICHE_21_ENGLISH.pdf) [Accessed: 20 July 2016]



Programme has supported activities of partner RFMOs (IOTC and SWIOFC) and the national fisheries institutions, mainly regarding their roles in the fight against IUU fishing and in managing access to resources.<sup>114</sup> There have also been **voluntary seasonal octopus closures** in Rodrigues (Mauritius) under the SmartFish programme.

IOC also implements a programme for the Coastal, Marine and Island Specific Biodiversity Management in the ESA-IO. Signed in January 2013, its overall objective is to contribute to regional integration by ensuring more effective, coherent, coordinated and adaptive biodiversity management. A specific aim is to develop and strengthen the national and regional capacities for sustainable participatory management of coastal, marine and island specific biodiversity in the island and coastal states of the ESA-IO region. The programme is designed to be complementary to other programmes in the region, particularly fostering cooperation with the Nairobi Convention.<sup>115</sup> The programme also aims to strengthen existing exchange mechanisms in support of international conventions related to biodiversity.

### 3.3 Global institutions and instruments in the Western Indian Ocean

#### 3.3.1 Shipping in the Western Indian Ocean: The International Maritime Organization

As described by the IMO Secretariat, IMO decisions to date have not addressed the possibility of establishing **Special Areas under MARPOL** in ABNJ within the Western Indian Ocean. Similarly, no **PSSAs** (and associated protection measures) have been designated in ABNJ and no respective proposal has been made by a Member State. However, the reasons for this are related to the applicability of such area-based management tools to ABNJ in general (see IMO [section 2.2.1](#)) rather than to the unsuitability of the Western Indian Ocean ABNJ for the application of those tools in particular. Regional intergovernmental organizations which have established agreements of cooperation with IMO include AU and **IOC**, mainly concerning technical cooperation activities, including data exchange. The IMO also engages in informal cooperation with the **Nairobi Convention**. For general information on IMO's engagement at the regional level, including the opportunities and challenges identified by the IMO Secretariat with regard to the establishment of cross-sectoral protective measures in ABNJ, see [section 2.2.1](#).

#### 3.3.2 Deep Seabed Mining in the Western Indian Ocean: The International Seabed Authority

Among the contracts for seabed exploration there are **two of relevance to the Western Indian Ocean**; one contract for polymetallic nodules in the Indian Ocean/Central Indian Ridge with the Government of India and the other on polymetallic sulphides in the South West Indian Ridge, sponsored by China.<sup>116</sup> As highlighted in [section 2.2.4 on the ISA](#), the **UNGA** invited the Authority to consider developing and approving **Environmental Management Plans (EMPs) in other international seabed area zones**, in particular where there are currently exploration contracts.<sup>117</sup> With regard to mining zones in the Western Indian Ocean the ISA Secretariat points out that the development of EMPs is still in the very early stages, mainly due to the fact that regional coordination under ISA is less developed than global coordination. Currently, the ISA does not engage with the Nairobi Convention or any other regional intergovernmental organization in the Western Indian Ocean. However, as outlined in [section 2.2.4](#), there are different ways for all interested stakeholders to engage in ISA processes.

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<sup>114</sup> Ibid.

<sup>115</sup> EU. Indian Ocean Commission.

[http://eeas.europa.eu/delegations/mauritius/regional\\_integration/indian\\_ocean\\_commission/index\\_en.htm](http://eeas.europa.eu/delegations/mauritius/regional_integration/indian_ocean_commission/index_en.htm) [Accessed: 20 July 2016]

<sup>116</sup> ISA. Overview. <https://www.isa.org.jm/deep-seabed-minerals-contractors/overview> [Accessed: 20 July 2016]

<sup>117</sup> UNGA Resolution 68/70

### 3.3.3 Biodiversity conservation in the Western Indian Ocean: The biodiversity-related conventions

The **Convention on Migratory Species (CMS)** instruments are introduced in [Section 2.2.6](#). Although the CMS does not employ specifically area-based management tools in the Western Indian Ocean, it has established other management measures for species whose migratory range includes the Western Indian Ocean, such as marine turtles. The MoU on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South East Asia (IOSEA Marine Turtle MOU) is a specialized intergovernmental agreement concluded under the auspices of CMS. It became effective in September 2001. The IOSEA Marine Turtle MoU aims to protect, conserve, replenish and recover marine turtle populations and their habitats within the Indian Ocean and South East Asian region, working in partnership with other relevant actors and organizations. The IOSEA Marine Turtle MoU applies to the waters and coastal States of the Indian Ocean and South East Asia and adjacent seas and the agreement area covers 44 range states, including Somalia, Kenya, Madagascar, Mozambique, South Africa, Mauritius, Comoros, Réunion (France) and Seychelles. For implementation purposes, the area is divided into four sub-regions, including the Western Indian Ocean.<sup>118</sup> As described in [section 2.2.6](#), the **Convention on Biological Diversity (CBD)** facilitated the identification of **EBSAs** in the Southern Indian Ocean through a regional workshop<sup>119</sup> in Mauritius in 2012, convened by the **CBD** Secretariat in collaboration with FAO and the Secretariat of the Nairobi Convention.

### 3.3.4 Cable Laying in the Western Indian Ocean: The International Cable Protection Committee

According to ICPC, the Western Indian Ocean is a region with few submarine telecommunications cables, compared to, for example, the North Atlantic Ocean or the Mediterranean Sea. There are no formal agreements between the ICPC and other institutions or sectors in the Western Indian Ocean as there is no regional cable protection organization in the region at present (for an overview of the general approaches used by ICPC to encourage cooperation with other groups with interest in ABNJ, please view [section 2.2.5](#)). In such situations, the ICPC generally encourages its members to informally collaborate within the region, and there are nascent initiatives by individual ICPC members in the Indian Ocean. Strengthening cooperation will depend upon the occurrence of submarine cables in the Western Indian Ocean and if cables are involved with or potentially impacted by another ocean use or interest, whether environmental protection or resource exploitation, cooperation with other stakeholders is an important consideration for the ICPC. At the same time, the limitations of a modestly-sized organization were highlighted as potential constraints to cooperation with all stakeholders and sectors.

### 3.3.5 Whale Conservation and Management in the Western Indian Ocean: The International Whaling Commission

The commercial whaling moratorium introduced in [section 2.2.3](#) is of course applicable in the Western Indian Ocean.<sup>120</sup> Furthermore, one of the two whale sanctuaries designated by IWC is the Indian Ocean Sanctuary. Established in 1979 and prior to the commercial whaling moratorium, it covers the whole of the Indian Ocean south to latitude 55°S. In 1992, the duration of the sanctuary was extended indefinitely.<sup>121</sup> However, none of the IWC-endorsed Conservation Management Plans (CMPs), in effect or under consideration, cover populations occurring in the Western Indian Ocean. According to

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<sup>118</sup> CMS. IOSEA Marine Turtles. <http://www.cms.int/en/legalinstrument/iosea-marine-turtles> [Accessed: 20 July 2016]

<sup>119</sup> CBD. Report of the Southern Indian Ocean Regional Workshop to facilitate the description of EBSAs. Flic en Flac, Mauritius, 31 July to 3 August 2012. <https://www.cbd.int/doc/meetings/mar/ebsa-sio-01/official/ebsa-sio-01-04-en.pdf> [Accessed: 20 July 2016]

<sup>120</sup> IWC. Catch Limits & Catches taken. <https://iwc.int/catches> [Accessed: 20 July 2016]

<sup>121</sup> IWC. Whale Sanctuaries. <https://iwc.int/sanctuaries> [Accessed: 20 July 2016]

the IWC Secretariat, there is no cooperation at present with any regional intergovernmental organization in the Western Indian Ocean, except for potential informal exchange with RFMOs in the region in meetings of the Regional Fishery Body Secretariats Network.

### 3.4 Intra-sectoral and cross-sectoral cooperation in the Western Indian Ocean

There are a number of examples of informal or formal cooperation among the regional organizations in the Western Indian Ocean, as well as a few cases of cooperation among regional and global organizations with a mandate related to ABNJ.

#### Cooperation between regional institutions

Generally, interviewees see a need for more cross-sectoral as well as intra-sectoral cooperation in the Western Indian Ocean. While some highlight specific examples of collaboration which could be strengthened, others focus on associated challenges, such as diverging geographical coverages and different membership compositions, and stress in particular the need to identify a clear objective of any initiative to advance cross-sectoral collaboration. The Nairobi Convention Secretariat, for example, is of the opinion that there is clearly a need for more cross-sectoral collaboration, particularly to implement recent Nairobi Convention COP decisions, and to address specific issues, such as marine litter. The Nairobi Convention therefore considers capacity building as crucial in order to enhance understanding of the interlinkages between activities in the territorial seas, the EEZs and ABNJ.

The Nairobi Convention Secretariat highlighted the current development of an MoU with SWIOFC as a mechanism for collaboration, as well as the desire to foster cooperation with the other fisheries organizations in the region. However, any form of cooperation is currently highly dependent on individual commitment from the respective organizations, which can present a challenge. Therefore, institutionalizing cooperation should aim to achieve strengthened collaboration independently of any individual champions, for example, through the future international legal instrument on ABNJ under UNCLOS that is currently being negotiated. Within the fisheries sector, the focus is mostly on intra-sectoral cooperation between RFBs. The cooperation mostly takes place through informal means and for the purpose of project coordination. Cooperation with non-fishery bodies as already mentioned include partnerships with the Nairobi Convention.

Recognising that it will take time to enable the prioritisation of collaboration, SIOFA's operationalization is expected to strengthen intra-sectoral and cross-sectoral collaboration, especially between SIOFA and SWIOFC. Nevertheless, SIOFA was named as an instrument that could drive a regional initiative to strengthen collaboration in the future. The SWIOFC Secretariat representative pointed to the Nairobi Convention as a potential champion for cross-sectoral collaboration efforts, which aligned with the Nairobi Convention Secretariat's perspective, notwithstanding the need to further strengthen the capacity of member countries and enhance the knowledge base around ABNJ issues.

#### Cooperation between regional and global institutions

At present, there are very low levels of systematic collaboration between regional and global bodies. As in other regions of the world, this form of collaboration in the Western Indian Ocean takes place when global organizations host regional workshops, implement projects in the region or undertake other forms of capacity building, for example the CBD-organised Western Indian Ocean EBSA workshop in 2012 in Mauritius. However, the concern raised with regard to whether the regional fisheries interests would be adequately taken into account in the further development of the global level Mining Code for seabed mining highlights a potential gap in engagement between regional and

global institutions. Regional organizations that were listed as partners by global intergovernmental organizations include, the AU and IOC as partners of IMO, mainly for technical cooperation activities, including data exchange. An interesting case of cross-sectoral linkages that recently emerged in the Western Indian Ocean is the recommendation of the SIOFA Scientific Committee to close the areas designated by SIODFA as BPA to fishing, due to the fact that they meet the CBD's EBSA criteria.

Table 3 provides information on the membership of countries of the Western Indian Ocean region in regional and global institutions, indicating the challenges of cooperation among institutions with different membership compositions.

*Table 3. Membership of global and regional agreements/intergovernmental institutions related to ABNJ among Western Indian Ocean countries/Nairobi Convention Parties*

Western Indian Ocean countries/ Nairobi Convention Parties	Global institutions and agreements									Regional institutions and agreements			
	UNCLOS	IMO	MARPOL	ISA	UNFSA	IWC	CBD	CMS	CITES	SIOFA	IOTC	SWIOFC	IOC
Comoros	✓	✓	✓	✓			✓		✓		✓	✓	✓
Kenya	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Madagascar	✓	✓	✓	✓			✓	✓	✓		✓	✓	✓
Mauritius	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mozambique	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	
Réunion (FR)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Seychelles	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Somalia	✓	✓		✓			✓	✓	✓			✓	
South Africa	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Tanzania	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	

### 3.5 Concluding remarks

#### **Regional and global organizations have made limited use of their competences to adopt area-based management tools in the Western Indian Ocean.**

In the case of IMO, the available instruments have been applied globally and can in principle be applied in ABNJ, however they seem more suitable for application closer to the shore. In the case of ISA, a number of management plans have been developed globally, but the development of EMPs in the Western Indian Ocean are still in the very early stages mainly due to the perceived weakness of the regional governance framework. In the case of IOTC, area-based management measures have been tried in the region, but are not a prominent management tool, and in the case of SIOFA, only interim measures have been applied as the Agreement has only recently entered into force.

**Organizations without a management mandate in ABNJ can have important coordinating or advisory roles in the Western Indian Ocean.**

Organizations such as SWIOFC, IOC and the Nairobi Convention provide forums for discussion on a range of issues, including on the interlinkages of different ocean uses. They thus play an important role in shaping and implementing regional policies, as can be demonstrated with the current development of the regional guidelines for oil and gas extraction (of relevance to EEZs) by the Nairobi Convention, and also the role that the Nairobi Convention plays in implementing the Cairo Declaration on Managing Africa's Natural Capital for Sustainable Development and Poverty Eradication adopted by AMCEN.

**There is strong regional-level interest in strengthening cooperation between organizations.**

Collaboration in the Western Indian Ocean is typically issue-driven, such as between IOTC and the Turtle MoU. In some cases, detailed calls for cooperation are even included in agreement text, such as in the case of SIOFA and the SWIOFC Statute. At the same time, most organizations are open to greater cooperation, with the Nairobi Convention in particular stating its enthusiasm to be a potential champion for catalysing and supporting greater collaboration towards area-based planning in the region.

**Strengthened collaboration needs to take into account specific challenges and concerns.**

Specific concerns and challenges raised by interviewees in the Western Indian Ocean were:

- Mandate and membership: The different regional and global organizations have different mandates and compositions of members, which limits member engagement in issues related to other agreements; this is a reflection of the history, interests and capacities members have to engage in any particular issue regulated under the different agreements;
- Geographical coverage: The geographical coverage of the different regional agreements is not the same;
- Mandate in ABNJ: While IOTC and SIOFA have different areas of competencies in ABNJ in the Western Indian Ocean, some organizations with an interest in ABNJ, such as SWIOFC, do not have a mandate in ABNJ, and for other organizations the mandate is not clear, such as in the case of the Nairobi Convention, where different opinions prevail;
- Capacity related to ecological connectivity: Capacity is considered to be limited at the national level and in the region regarding the understanding of ecological connectivity, particularly between ABNJ and EEZs, which thereby limits capacity to identify common issues of concern that trigger collaborative action (e.g. knowledge on straddling fish stocks other than tuna or on the potential interactions between marine ecosystems and seabed mining);
- General constraints in capacity: Capacities of regional and global organizations to engage in collaborative activities or even to tackle challenges in ABNJ is also limited;
- Governance arrangements at the national level: There is poor coordination at the national level between sectoral management authorities, which is then reflected in the disconnected sectoral governance approaches at the regional and global level; and
- Cooperation between management and non-management organizations: Management organizations that can adopt binding decisions for its members have a limited interest in cooperating with other organizations that do not have management competence.

**Overcoming the challenges inherent in any attempt to strengthen collaboration will require some agreed steps.**

Ways to address the challenges highlighted by interviewees, were noted as follows:

- A clear objective is needed for any regional initiative to undertake area-based planning in ABNJ, which should also determine the selection of the relevant stakeholders;
- All relevant stakeholders should be on board from the very beginning of any regional initiative, and collectively agree on the objective of the initiative;
- Capacity will need to be strengthened at the national and regional level related to issues of ecological connectivity and the subsequent identification of common concerns for different stakeholders;
- the further development of national and regional ocean policies can play an important role in providing a common understanding of the objectives of the region;
- Issues of common concern should be communicated from the perspective of the different stakeholders, thus making the point why it is necessary in some cases to collaborate in order to achieve an organization's mandate; and
- Communication should be increased at the national level between different government representatives and departments who attend the various meetings of the governing bodies of the intergovernmental organizations, as a more coordinated approach at the national level is likely to result in more coordinated activities between regional or global intergovernmental organizations.

## 4. Governance of ABNJ in the South East Pacific

Following on from the description of global ABNJ-related institutions and instruments in Chapter 2, **Section 4.1** provides an overview of the regional-scale institutions and instruments managing or influencing marine activities in the South East Pacific that are, or could be, of relevance to supporting area-based planning in ABNJ. **Section 4.2** presents the regional sectoral governance structures in the South East Pacific in more detail, sector-by-sector. **Section 4.3** describes regional activities of global intergovernmental organizations and agreements presented in chapter 2 and **Section 4.4** considers the regional-scale potential for cross-sectoral area-based planning in the South East Pacific.

### 4.1 Overview of ABNJ governance in the South East Pacific

The defining environmental characteristics of the South East Pacific region are the Humboldt Current and the El Niño-Southern Oscillation (ENSO) phenomenon, which originates in the equatorial Pacific. The South East Pacific here refers to the waters adjacent to the four coastal countries of Colombia, Ecuador, Peru, Chile, and Panama.

In 1952, Chile, Ecuador and Peru agreed to establish a regional cooperation mechanism to address the overexploitation of the South East Pacific waters by foreign fleets that were fishing and whaling in the area (Llanos Mansilla, 1993). As a result, the **Permanent Commission of the South Pacific (Comisión Permanente del Pacífico Sur, CPPS)** was established to halt illegal fishing in the region, particularly because the countries in the South East Pacific were dependent on fisheries for their livelihoods. Colombia, as the fourth country, joined the organization in 1979. With Peru and Chile as members, CPPS today includes two of the top ten main fish producer countries in the world (FAO 2014:10). Some of the species that occur in the South East Pacific, such as the Peruvian anchovy (*Engraulis ringens*) and the Chilean jack mackerel (*Trachurus murphyi*) are among the main marine harvested species in the world (FAO 2014; Durussel 2015). From 1981, CPPS also became the Executive Secretariat of the



**South East Pacific Regional Seas Programme (SEP RSP)**, established through the Convention on the Protection of the Marine and Coastal Areas of the South East Pacific (**Lima Convention**) and the accompanying South East Pacific Action Plan, which, in addition to CPPS members, includes Panama.

Since fishing in 1952 was already occurring in the high seas (at that time national jurisdictions only extended to 12 nautical miles), the South East Pacific countries proclaimed their exclusive sovereign rights and jurisdictions over the seas along their respective coasts “to a minimum distance of 200 nautical miles” as set out in the **1952 Santiago Declaration**, the first declaration adopted by CPPS. This declaration was a milestone in the development of international maritime law because it contributed to the development of the concept of EEZs, now codified in UNCLOS. At the same time, it meant that **ABNJ** entered into the CPPS agenda at a very early stage in the history of ocean governance. International developments with regard to ABNJ have been further influenced by CPPS through the **1981 Cali Declaration**, which supported the establishment of the ISA in order to avoid industrialized countries taking unilateral decisions on the seabed and subsoil. In 1987, the **Quito Declaration** reaffirmed CPPS’s interest in the conservation and optimal use of marine resources beyond the 200 nautical mile zone and the 2012 **Galapagos Commitment for the XXI Century** promoted coordinated action with regard to living and non-living resources beyond CPPS member jurisdictions.

In 2000 an attempt was made to adopt a Framework Agreement for the Conservation of Living Marine Resources in the high seas of the South East Pacific, with special reference to straddling and highly migratory fish populations (**‘the Galapagos Agreement’**). The agreement provides for the adoption of fisheries management measures, such as catch quotas, and area-based management tools. At the present time, however, this agreement has not yet entered into force.

An important milestone in the region’s ocean governance was the establishment in 1949 of the **Inter-American Tropical Tuna Commission (IATTC)** by the United States of America and Costa Rica, becoming the **first tuna RFMO** globally. Today IATTC has grown to 21 members, including the South East Pacific countries of Colombia, Ecuador, Panama and Peru. The IATTC area of intervention includes the area of the Eastern Pacific Ocean bounded by the coastline of North, Central, and South America.<sup>122</sup> The South East Pacific region thus forms only a part of the geographical coverage of IATTC.

Other important landmarks in regional governance related to ABNJ include the modernization of IATTC through the revision of IATTC’s constitution in 2003<sup>123</sup> and the establishment of the **South Pacific Regional Fisheries Management Organization (SPRFMO)** in 2012.<sup>124</sup> SPRFMO’s geographical coverage includes the whole of the South Pacific and its mandate is the sustainable management of straddling fish stocks in the high seas of the South Pacific as well as safeguarding the marine ecosystems in which fishery resources occur. SPRFMO’s 14 Members include Peru, Chile and Ecuador, with Colombia and Panama as cooperating non-Contracting Parties. Figure 8 provides an overview of ABNJ relevant events and milestones in the South East Pacific.

In the following section, the three most relevant regional intergovernmental institutions and instruments<sup>125</sup> for ABNJ in the South East Pacific will be presented in more detail (see Table 4). The focus will be on the successes, barriers and challenges of these institutions in delivering their objectives, emphasizing aspects that could be of relevance for area-based planning, and the extent to which they collaborate with stakeholders from other sectors.

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<sup>122</sup> Article 3 Antigua Convention

<sup>123</sup> Entered into force in 2010

<sup>124</sup> Entry into force of the SPRFMO constituting agreement

<sup>125</sup> CPPS and the Lima Convention will be presented together under “General Ocean Governance” as the Lima Convention Secretariat is hosted by CPPS.



Figure 8. Key ABNJ milestones in the South East Pacific © Legal Atlas

Table 4. Principal organizations and instruments of relevance to governance of ABNJ for biodiversity conservation and sustainable use in the South East Pacific

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>ABNJ mandate and area-based management tools in ABNJ</b>	<b>South East Pacific member countries</b>
<b>General</b>	UN Convention on the Law of the Sea (UNCLOS)	Global legal instrument	Framework convention for the oceans as a whole, including ABNJ	Chile, Ecuador and Panama
	Permanent Commission for the South Pacific (CPPS)	Regional intergovernmental organization	No mandate for area-based management tools in ABNJ	Chile, Colombia, Ecuador and Peru
<b>Marine Conservation</b>	Lima Convention	Regional legal instrument	No mandate for area-based management tools in ABNJ	Chile, Colombia, Ecuador, Peru and Panama
<b>Fisheries management</b>	Inter-American Tropical Tuna Commission (IATTC)	Regional intergovernmental organization, Tuna RFMO	Yes, fisheries areas	Colombia, Ecuador and Peru and Panama
	South Pacific Regional Fisheries Management Organization (SPRFMO)	Regional intergovernmental organization, Non-tuna RFMO	Yes, fisheries areas and VMEs	Chile, Ecuador and Peru. Colombia is a CNCP
<b>Seabed Mining</b>	International Seabed Authority (ISA)	Global intergovernmental organization	Yes, mining licence areas, two types of reference zones within mining areas, and APEIs	Chile, Ecuador and Panama
<b>Shipping</b>	International Maritime Organization (IMO)	Global intergovernmental organization	Yes, MARPOL Special Areas, and PSSAs (and APMs).	Chile, Colombia, Ecuador, Peru and Panama
<b>Whale conservation and management</b>	International Whaling Commission (IWC)	Global intergovernmental organization	Yes, whale sanctuaries.	Chile, Colombia, Ecuador, Peru and Panama

## 4.2 Regional institutions and instruments in the South East Pacific

### 4.2.1 General Ocean Governance: The Permanent Commission for the South Pacific (CPPS)

CPPS was established in 1952 through the adoption of the Agreement on the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific by Chile, Ecuador and Peru. Colombia joined the organization in 1979.<sup>126</sup> The organization was established to enforce the objectives of the **Santiago Declaration on the Maritime Zone**.<sup>127</sup>

CPPS coordinates regional maritime policies in order to adopt concerted positions of its member states in international negotiations, development of the Law of the Sea, International Environmental Law and other multilateral initiatives. The organization promotes linkages between marine research and regional policies, coordinates and fosters research activities, including the coordination of the El Niño Regional Research Program (ERFEN) and is also engaged in capacity-building processes at the national and regional levels on marine environment issues. CPPS activities support the implementation of the FAO Code of Conduct for Responsible Fisheries, and promote flag States rights and responsibilities, as well as combat IUU fishing.<sup>128</sup> The organization has no management authority but instead holds an **advisory or consultation mandate** to promote the conservation of marine living resources and the protection of the marine environment in the South East Pacific. In the first years of the organization's existence, CPPS had the ability to impose sanctions upon member states' national and foreign vessels for infringing recommendations within the CPPS area of responsibility. The organization also imposed on its member states the obligation of adopting measures for the control and monitoring of resource exploitation within national jurisdictions. Figure 9 provides an illustrative overview of the development of CPPS over time and its members, including ratification years of the constituting agreement.

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<sup>126</sup> CPPS. Agreement related to the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific.

[http://cpps.dyndns.info/consulta/documentos/legal/convenios/conf\\_explot\\_riquezas\\_pacif\\_sur\\_1952.pdf](http://cpps.dyndns.info/consulta/documentos/legal/convenios/conf_explot_riquezas_pacif_sur_1952.pdf) (in Spanish) [Accessed: 20 July 2016]

<sup>127</sup> CPPS. Declaration on the Maritime Zone, 1952.

<http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/1.Declaración%20de%20Santiago%201952.pdf> (in Spanish) [Accessed: 20 July 2016]

<sup>128</sup> FAO. Permanent Commission for the South Pacific (CPPS). <http://www.fao.org/fishery/rfb/cpps/en> [Accessed: 20 July 2016]

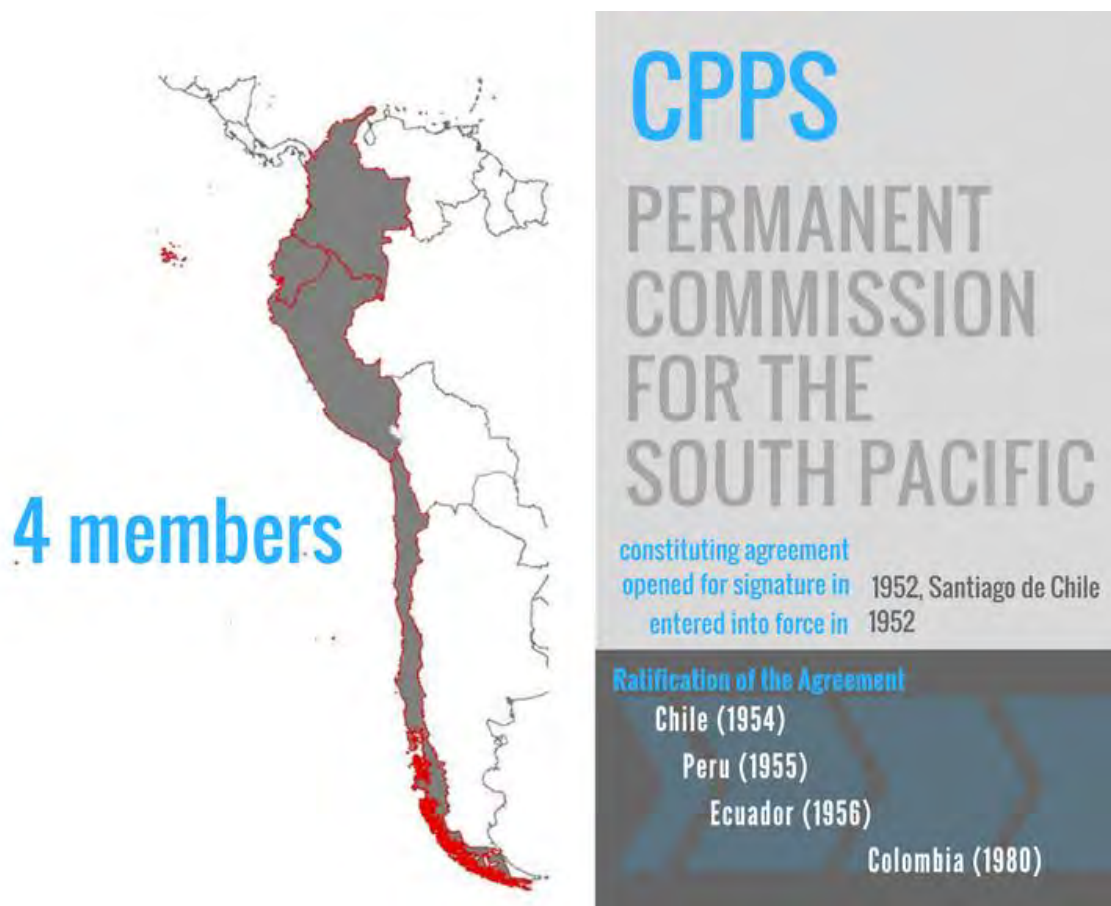


Figure 9. The Permanent Commission for the South Pacific and its membership © Legal Atlas

In 1981, CPPPS became the Executive Secretariat of the **Lima Convention**,<sup>129</sup> to which all CPPPS members and Panama are Parties. The Lima Convention Parties also adopted the Plan of Action for the Protection of the Marine Environment and Coastal Areas in the Southeast Pacific,<sup>130</sup> thereby establishing the UN Environment's **South East Pacific Regional Seas Programme**. Figure 10 provides an illustrative overview of the development of the Lima Convention over time and its parties, including ratification dates.

<sup>129</sup> Center for International Earth Science Information Network (CIESIN). Environmental Treaties and Resource Indicators (ENTRI). <http://sedac.ciesin.org/entri/texts/marine.environment.coastal.south.east.pacific.1981.html> [Accessed: 20 July 2016]

<sup>130</sup> Available from [http://cpps.dyndns.info/consulta/documentos/legal/plan\\_accion/plan\\_accion\\_1981.pdf](http://cpps.dyndns.info/consulta/documentos/legal/plan_accion/plan_accion_1981.pdf) (In Spanish) [Accessed: 20 July 2016]



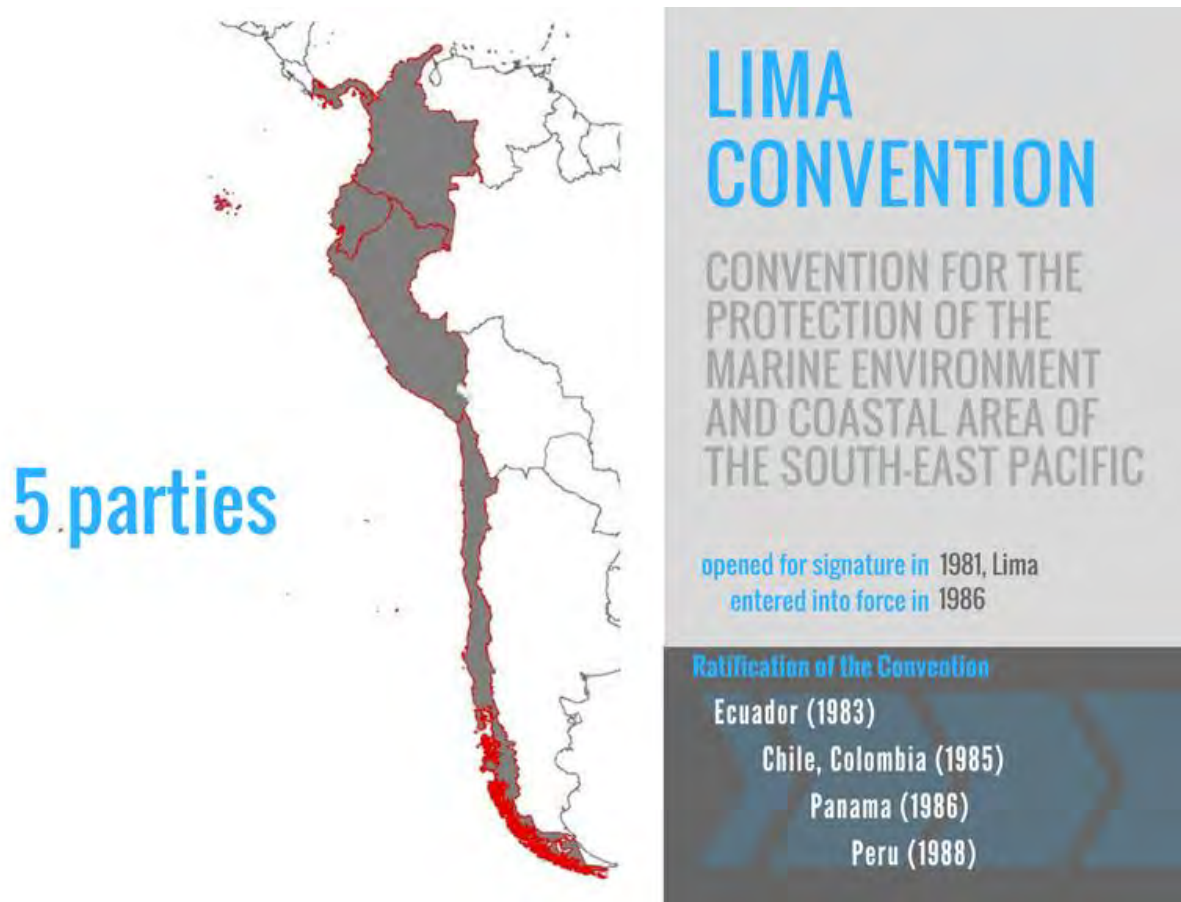


Figure 10. The Lima Convention and its membership © Legal Atlas

#### CPPS and ABNJ

The consideration of areas beyond the CPPS members' national jurisdictions has been a constituting trait for the organization since its establishment in 1952. As pointed out by the CPPS Secretariat, when Chile, Ecuador and Peru adopted the Santiago Declaration proclaiming their sovereign rights to a minimum distance of 200 nautical miles from their coasts, these areas were, at the time, ABNJ. If the current understanding of ABNJ in accordance with UNCLOS is applied, ABNJ entered the CPPS agenda in 1979 when matters related to the Area and its mineral resources were being discussed in the context of the Third UN Conference on the Law of the Sea. Since the adoption of the Santiago Declaration, and after the recognition of the "200 nautical miles doctrine" as a principle of customary law codified in UNCLOS, CPPS members continuously expressed their interest in ABNJ through the following declarations:

- The **Cali Declaration** (1981) expressed the need for an international regime that could ensure that the Area and its mineral resources were declared common heritage of mankind, precluding that their exploitation could cause adverse effects in the economies of the States that produced the same resources on land.<sup>131</sup> In addition, CPPS members expressed their position in favour of the establishment of an International Seabed Authority so as to avoid industrialised countries taking unilateral decisions on the seabed and subsoil.<sup>132</sup> Importantly, the Cali Declaration also affirmed

<sup>131</sup> CPPS. Cali Declaration, 1981, fourth paragraph. Available at <http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/2.Declaración%20de%20Cali%20-%201981.pdf> (in Spanish) [Accessed: 20 July 2016]

<sup>132</sup> Cali Declaration, fifth paragraph.



the intention to support governments in actively participating in the exploitation of the deep seabed and subsoil beyond their national jurisdictions.<sup>133</sup>

- Drawing upon the Cali Declaration and following the **adoption of UNCLOS** in 1982, CPPS countries adopted the **Viña del Mar Declaration** (1984)<sup>134</sup> which expressed the legitimate interests of the coastal States around the conservation and optimal use of marine resources beyond 200 nautical miles, when those resources are part of the same populations in coastal States or species populations related to them. Furthermore, it asks the CPPS Secretariat to coordinate with relevant national authorities to start a consultation process among countries in order to establish the principles and necessary measures to enable mechanisms for the conservation and sustainable use of those resources.
- The **Quito Declaration** (1987)<sup>135</sup> reaffirmed the interests of the coastal States for the conservation and optimal use of marine resources beyond 200 nautical miles, as well as CPPS' role as the relevant regional organization to coordinate the common interest in preserving marine resources in ABNJ. With respect to the seabed beyond national jurisdiction, and building up on the Cali Declaration, the Quito Declaration called for cooperation on research and training programmes.
- The recent adoption of the **Galapagos Commitment for the XXI Century** (2012)<sup>136</sup> confirms the interest of CPPS in ABNJ-related issues. The commitment gave the organization a renewed focus to enable more effective dealing with emerging challenges. Furthermore, it affirms that the new strategic orientation, which covers a series of priority areas such as climate change, sustainable development, food security and small-scale fishing, does not only apply to areas within the jurisdiction of CPPS countries, but will also guide the plans of CPPS countries in ABNJ.<sup>137</sup> The Commitment also reaffirms the Member States' interest regarding living and non-living resources in Marine ABNJ.<sup>138</sup> To ensure coherence between the CPPS statutes and other strategic documents, CPPS launched a process for the development of an **integrated regional ocean policy**. In that regard, the CPPS Secretariat points out that the CPPS Workshop on Integrated Regional Ocean Policy, held in Bogota (28-20 October 2015), constituted a milestone in the contemporary commitment of CPPS towards ABNJ matters. At the end of the workshop the participants agreed a draft integrated ocean policy in the region, including ABNJ, which was presented for consideration to the CPPS General Assembly held at the end of 2015 in Galapagos.<sup>139</sup> After considering this matter, the CPPS General Assembly decided to establish a Working Group on the Integrated Regional Ocean Policy to identify the areas of common interest among the CPPS member countries and develop a regional vision in relation to ocean policy. Initially, the Working Group will provide advice on the development of national maritime policies to interested CPPS Members.<sup>140</sup>

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<sup>133</sup> Cali Declaration, sixth paragraph.

<sup>134</sup> CPPS. Viña del Mar Declaration, 1984. Available at

<http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/3.Declaraci%C3%B3n%20de%20Vi%C3%B1a%20del%20Mar.1984.pdf> (in Spanish) [Accessed: 20 July 2016]

<sup>135</sup> CPPS. Quito Declaration, 1987. Available at

<http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/4.Declaraci%C3%B3n%20de%20Quito.1987.pdf> (in Spanish) [Accessed: 20 July 2016].

<sup>136</sup> CPPS. Galapagos Commitment for the XXI Century, 2012, paragraphs 1, 20-21. Available at

<http://cpps.dyndns.info/consulta/index.php/asambleas/ordinarias/86-x-asamb-ord-2012/358-comp-galapagos> (in Spanish) [Accessed: 20 July 2016]

<sup>137</sup> Galapagos Commitment for the XXI Century. Paragraph 1

<sup>138</sup> Galapagos Commitment for the XXI Century. Paragraph 20

<sup>139</sup> The recommendations are available at <http://cpps.dyndns.info/cpps-docs-web/secgen/2015/pol-oceanica-regional/info/Documento%20GT1-GT2%20-%20final.pdf> (in Spanish) [Accessed: 20 July 2016]

<sup>140</sup> CPPS, Resolución CPPS/AO/XII/Nº 3/2015, available at [http://cpps.dyndns.info/consulta/documentos/xii\\_asamblea\\_r3.pdf](http://cpps.dyndns.info/consulta/documentos/xii_asamblea_r3.pdf).

### Cross-sectoral cooperation

CPPS was established as a regional mechanism with a main objective to protect the maritime interests of its member countries. As such, it is an organization that since its origin has given special importance to the establishment and strengthening of cooperation mechanisms. For example, the Viña del Mar Declaration (1984) requested that the CPPS Secretariat coordinate with relevant national authorities and start a consultation process to establish enabling measures for the conservation and sustainable use of marine resources, toward the development of a science-based regional policy.

According to the CPPS Secretariat, key partners of the organization are UN Environment, FAO, IMO, IOC-UNESCO, the World Meteorological Organization (WMO), WWF, MarViva,<sup>141</sup> the International Research Centre on El Niño (CIIFEN), the Pew Charitable Trust, Conservation International (CI), various universities, CBD, IATTC, SPRFMO, the Fisheries and Aquaculture Sector Organization of the Central American Isthmus (OSPESCA), The Nature Conservancy (TNC), Oceans 5 and national research organizations linked to the governments of Chile, Colombia, Ecuador, Peru and Panama.

CPPS has signed a series of cooperation agreements with various organizations and these have been the main mechanism for collaboration used to date. They include, for example, cooperation agreements with the **Economic Commission for Latin America and the Caribbean (ECLAC)/UNDP** (1983) on marine resources and regional development;<sup>142</sup> with FAO (1985) on areas of mutual interest such as fisheries planning and development and research on living marine resources;<sup>143</sup> and with the **State Oceanic Administration from China** (1987) on oceanic activities undertaken in the Pacific basin. More recently, the following four MoUs should be highlighted:

1. In 1998, an MoU with the **CBD Secretariat**<sup>144</sup> promotes and facilitates the regional implementation of CBD's Jakarta Mandate<sup>145</sup> on issues regarding marine and coastal protected areas, conservation of coastal and marine resources and ecosystems, integrated coastal and marine area management, and effects of pollution on marine and coastal biodiversity.
2. In 2001, an MoU with the **South Pacific Regional Environment Programme (SPREP)** develops joint activities, coordinates bioregional meetings to review the state of the marine environment in the South Pacific, exchange information, and cooperate in capacity-building in areas such as Integrated Coastal Zone Management (ICZM); coastal and marine protected areas; climate change; biodiversity conservation and environmental education.
3. In 2002, an MoU with the **Secretariat of the Basel Convention** developed regional level joint activities for the control of transboundary movements of hazardous waste.
4. In 2015, an MoU with **IATTC**<sup>146</sup> strengthened cooperation in the context of the conservation of sharks, rays and chimaeras. The main components are scientific exchange, technical assistance and capacity building. In addition it was agreed that both organizations would evaluate the possibility of creating a scientific committee with scientists from their member countries.

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<sup>141</sup> A regional, non-governmental organization focusing on the conservation and sustainable use of marine and coastal resources. See <http://www.marviva.net/?q=en/history>.

<sup>142</sup> Cooperation Agreement between CPPS and ECLAC/UNDP regional project on marine resources and regional development, 1983, article 1. Available at <http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/2.AC.CPPS-CEPAL-PNUD-1983.pdf> [Accessed: 20 July 2016]

<sup>143</sup> Available at <http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/3.AC.CPPS-FAO-1985.pdf> [Accessed: 20 July 2016]

<sup>144</sup> Available at <https://www.cbd.int/doc/agreements/amt-cpps-1998-06-03-moc-en.pdf> [Accessed: 20 July 2016]

<sup>145</sup> For more information on the Jakarta mandate please see <https://www.cbd.int/doc/publications/im-brochure-en.pdf> [Accessed: 20 July 2016]

<sup>146</sup> Available at <http://www.iattc.org/PDFFiles2/CPPS-IATTC-MOU-Jun-2015.pdf> [Accessed: 20 July 2016]

Specifically in matters related to ABNJ, the CPPS Secretariat also points out that two of the CPPS Member States are parties to the 1995 Agreement Relating to the Implementation of Part XI of UNCLOS and that CPPS has an observer status in the ISA, where it consistently follows the development of the seabed regime.

While the seabed and its resources in ABNJ are important for CPPS, fisheries and marine environment in ABNJ are also of high concern for the organization. As noted, concern for fisheries in the then “ABNJ” is stated in the 1952 Santiago Declaration and has been consistently on the CPPS agenda ever since. One of the CPPS Member States is also Party to the 1995 UN Agreement on Straddling Fish Stocks (Chile acceded to the Agreement in 2016), and three CPPS Members are also State Members of SPRFMO. From the perspective of the CPPS Secretariat, **SPRFMO’s** presence in the region is important, specifically in order to facilitate the exploration of a range of area-based management tools and their consideration for the specific ecological and governance context presented by ABNJ and deep-sea ecosystems.

#### The potential to strengthen cross-sectoral cooperation in ABNJ

According to the CPPS Secretariat, cross-sectoral collaboration is not fully developed in the South East Pacific. While CPPS does not have a mandate to implement a specific ABNJ initiative or area-based management tool, it does have the mandate to work on ABNJ-related matters in general through the Galapagos Commitment. However, the work towards formulating an **integrated regional ocean policy for the South East Pacific** could lead to the strengthening of regional cooperation in ABNJ and related matters. The CPPS Secretariat points out that a statement related to a regional cooperation for planning in ABNJ could for example be included in the regional ocean policy. The recommendations developed at the 2015 CPPS Workshop on Integrated Regional Ocean Policy (including ABNJ), stress the preeminent role of national policies and competences in relation to any potential development of a regional ocean policy.<sup>147</sup>

The interviewed South East Pacific ABNJ governance expert agreed that CPPS can play a role in strengthening cross-sectoral collaboration in ABNJ in the future, primarily because of its advisory mandate. CPPS could initiate such a process, and could also play a role in linking its South American coastal state members with the RFMOs and their member states to encourage the adoption of conservation and management measures in ABNJ, and as a scientific platform to build a common knowledge base. CPPS continues to undertake extensive scientific research across the South East Pacific, particularly on environmental and climate-related issues. Such environmental data form an important basis for taking scientifically sound management decisions. Therefore CPPS could also provide a scientific platform for SPRFMO and IATTC to ensure that environmental and climatic data are complementary and necessary to fisheries management and biodiversity conservation, and are shared between the three institutions.

With regard to a regional integrated policy initiative, it was considered that a more inclusive approach (multi-stakeholder, cross-sectoral) would be critical to ensure the acceptance and implementation of such a policy. It was also suggested that a regional cooperative mechanism should be established through hard or soft law instruments together with a joint knowledge base. A regional legal agreement could potentially be an option in the long-term.

From the perspective of the CPPS Secretariat, one of the main **challenges** in strengthening cross-sectoral collaboration relates to the sensitivities arising from the economic and social importance of

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<sup>147</sup> The recommendations are available at <http://cpps.dyndns.info/cpps-docs-web/secgen/2015/pol-oceanica-regional/info/Documento%20GT1-GT2%20-%20final.pdf> (in Spanish) [Accessed: 20 July 2016]

the fisheries sector in the South East Pacific, notably that CPPS countries are reticent to share scientific data and information that could disclose information of critical importance for the region's economic or social development. Nevertheless, the CPPS Secretariat regards the complementary nature of the different institutions operating in marine related issues at the regional level (i.e. CPPS, SPRFMO, IATTC, and CCAMLR) as a **strength** that can be used to improve biodiversity conservation in the region's deep seas.

#### 4.2.2 Management of Fisheries in the South East Pacific

##### *The Inter-American Tropical Tuna Commission*

In 1949, the IATTC was established as an independent body (an RFMO outside the FAO framework) with regulatory powers to manage tuna and tuna-like species through a bilateral agreement between the USA and the Republic of Costa Rica. A number of additional countries joined IATTC soon after. Today the following 20 countries (including CPPS countries in bold) and the European Union are members of IATTC: Belize, Canada, China, **Colombia**, Costa Rica, **Ecuador**, El Salvador, France, Guatemala, Japan, Kiribati, Mexico, Nicaragua, **Panama**, **Peru**, Republic of Korea, Chinese Taipei, United States, Vanuatu, and Venezuela. Cooperating Non-Members include Bolivia, Honduras, Indonesia, and Liberia. In 2003, the Convention for the Strengthening of IATTC (commonly known as the "**Antigua Convention**") was adopted by IATTC parties. The Antigua Convention entered into force in August 2010 and represents a substantial revision of IATTC's constitution. The Antigua Convention also reflects modern developments in fisheries management including the UN Fish Stocks Agreement.<sup>148</sup>

The objective of IATTC is to ensure the long-term conservation and sustainable use of tuna and tuna-like species and other species of fish taken by vessels fishing for such species in the Eastern Pacific Ocean.<sup>149</sup> This also includes the conservation of species that can be affected through by-catch, such as dolphins. Additionally the Commission also provides the Secretariat for the "Agreement on International Dolphin Conservation Program" (AIDCP). According to the IATTC Secretariat, a **key achievement** is the good status of several tuna species due to the robust scientific advice provided by IATTC's own scientific staff. Another achievement highlighted by the IATTC Secretariat is the good communication and collaboration with IATTC's sister organization, the Western Central Atlantic Fishery Commission (WECAFC). Lastly, the IATTC also consider a major achievement to be the successful management of the International Dolphin Conservation Program (IDCP), which has resulted in a sustainable dolphin population in the convention area.<sup>150</sup> Figure 11 provides an illustrative overview of the development of IATTC over time, its members and its area of competence.

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<sup>148</sup> IATTC. Antigua Convention. [http://www.iattc.org/PDFFiles2/Antigua\\_Convention\\_Jun\\_2003.pdf](http://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf) [Accessed: 20 July 2016]

<sup>149</sup> Article 2 Antigua Convention

<sup>150</sup><sup>150</sup> For more information please visit the following website: <http://www.iattc.org/IDCPENG.htm> [Accessed: 20 July 2016]

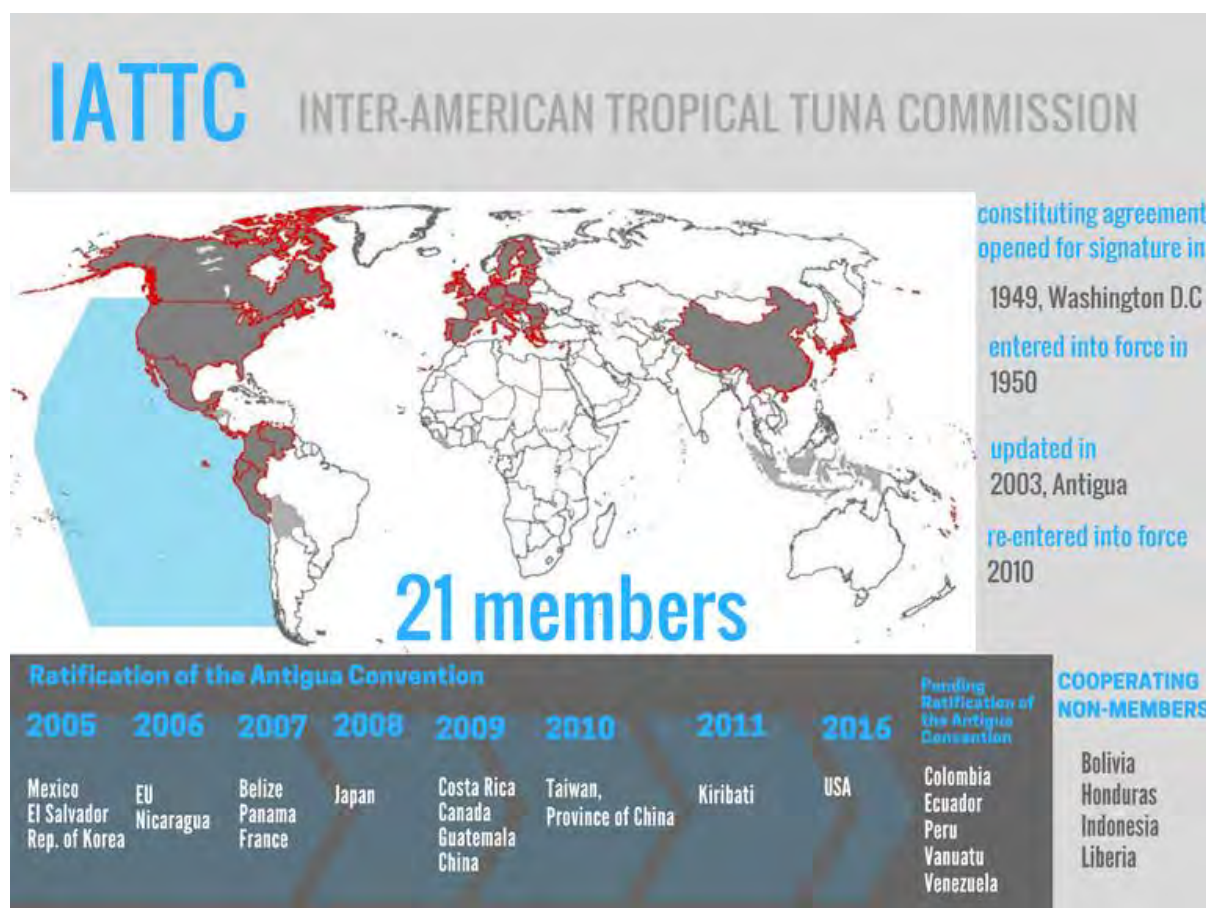


Figure 11. The Inter-American Tropical Tuna Commission, its area of competence and membership © Legal Atlas

#### Management measures and area-based management tools

IATTC is responsible for the conservation and management of tuna and other marine resources in the Eastern Pacific Ocean. Member States are obliged to enforce strict compliance with measures passed by the Commission. The IATTC Secretariat highlights Resolution C-13-01, adopted at its 85<sup>th</sup> meeting in June 2013, in which members agree to apply a number of **conservation and management measures** (CMMs) for yellowfin tuna (*Thunnus albacares*) and bigeye tuna (*Thunnus obsesus*), which include **closure periods for specified areas** in 2014, 2015 and 2016 in an area west of the Galápagos Islands. In general, IATTC has implemented conservation measures for targeted fish stocks, including the spatial and temporal closures of the fishery, focusing on the maximum sustainable yield (MSY), but only some conservation measures have been implemented for associated, dependent and ecosystem-related species, such as seabirds, sharks and sea turtles. There are no ecosystem-based measures or specific measures focusing on critical fishery habitats and VMEs. However, seasonal and spatial closures of the fishery may indirectly help to protect these last two features (Durussel, 2015).

#### Intra-sectoral and cross-sectoral cooperation

The Antigua Convention calls on IATTC to cooperate with sub-regional, regional, and global fishery organizations and arrangements and, as appropriate, to establish relevant institutional arrangements such as consultative committees.<sup>151</sup> Where the Convention Area overlaps with an area under

<sup>151</sup> Article XXIII.1 Antigua Convention



regulation by another fisheries management organization, or where there are migratory fish stocks in common with another organization, the IATTC shall cooperate with such other organization.<sup>152</sup>

According to the IATTC Secretariat, the organization has a very successful collaboration with the Western and Central Pacific Fisheries Commission (WCPFC), with which IATTC shares fish stocks, and the two organizations have signed three MoUs. Areas of cooperation include data exchange, research related to stocks and species of mutual interest and conservation and management measures.<sup>153</sup> The IATTC, in coordination with WCPFC, has also adopted a recommendation<sup>154</sup> on the IATTC-WCPFC overlap area, which included the establishment of a joint working group to explore avenues for managing tuna stocks in the entire Pacific Ocean. IATTC also collaborates with other tuna RFMOs such as IOTC. In addition, it has an MoU with the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC), an intergovernmental body dedicated to advancing fishery science around the North Pacific tuna and tuna-like fishes through cooperation and collaboration, as well with the Secretariat of the Pacific Community Oceanic Fisheries Program (SPC-OFP).

IATTC also has an MoU in place with CPPS,<sup>155</sup> although according to the IATTC Secretariat, interaction is limited to activities such as training of fishery managers. Another partner is OSPESCA, a regional fisheries body which aims to encourage the development and coordinated management of regional fisheries and aquaculture activities. IATTC has been invited by OSPESCA to contribute to capacity building of scientists. With regard to key partners the IATTC also points to the organization's observer programme which is outlined in Annex 2 of the Antigua Convention.

The IATTC Secretariat does not consider SPRFMO as a key partner of the Commission, even though they operate in some of the same areas, firstly because of the SPRFMO focus on different species and second because of IATTC's larger geographical scope (i.e. both EEZ and ABNJ). With regard to strengthening collaboration, the IATTC Secretariat stresses the need to gain Chile as an IATTC member. While emphasizing the duty for cooperation as stipulated in the Antigua Convention, the IATTC Secretariat considers that the **need for cross-sectoral collaboration is not evident**, mainly due to the fact that the organization deals only with migratory species and that all necessary scientific data and information is regularly collected by the IATTC itself. With regard to cross-sectoral area based planning measures, the IATTC Secretariat points out that IATTC could potentially lose some of its flexibility, such as having full control over the establishment of seasonal closures.

### *South Pacific Regional Fisheries Management Organization (SPRFMO)*

Established by the Convention on Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, which entered into force in 2012, SPRFMO's mandate is the sustainable management of straddling fish stocks in the high seas of the South Pacific. Since SPRFMO implements the ecosystem approach, the mandate also includes the safeguarding of the marine ecosystems in which fishery resources occur.<sup>156</sup> This wording gives an indication of how SPRFMO views its role in the stewardship of the high seas of the South Pacific Ocean, ensuring that marine ecosystems will provide essential services, including fishery resources, to future generations.

SPRFMO's Convention Area covers about a quarter of the world's high seas area and the 14 Members of the SPRFMO Commission include all countries/entities, coastal or distant fishing, that have an interest in fishing activities in the South Pacific Ocean (Durussel, 2015). SPRFMO also has four CNCPs:

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<sup>152</sup> Article XXIII.3 Antigua Convention.

<sup>153</sup> The three MoUs are available on the following website: <http://www.iattc.org/IATTCDocumentsENG.htm> [Accessed: 20 July 2016]

<sup>154</sup> Recommendation C-12-11

<sup>155</sup> Available at <http://www.iattc.org/PDFFiles2/CPPS-IATTC-MOU-Jun-2015.pdf> (in Spanish) [Accessed: 20 July 2016]

<sup>156</sup> Article 2 of the SPRFMO Convention



Liberia, Panama, the United States and Colombia. The latter two have initiated the legal process of ratifying the SPRFMO Convention. SPRFMO has the ability to take majority-based decisions if consensus cannot be reached.<sup>157</sup> This option is supported through a well-defined objection procedure<sup>158</sup> that has already been put to the test in 2013 and proven to work. Figure 12 provides an illustrative overview of the development of SPRFMO over time, its members and its area of competence.

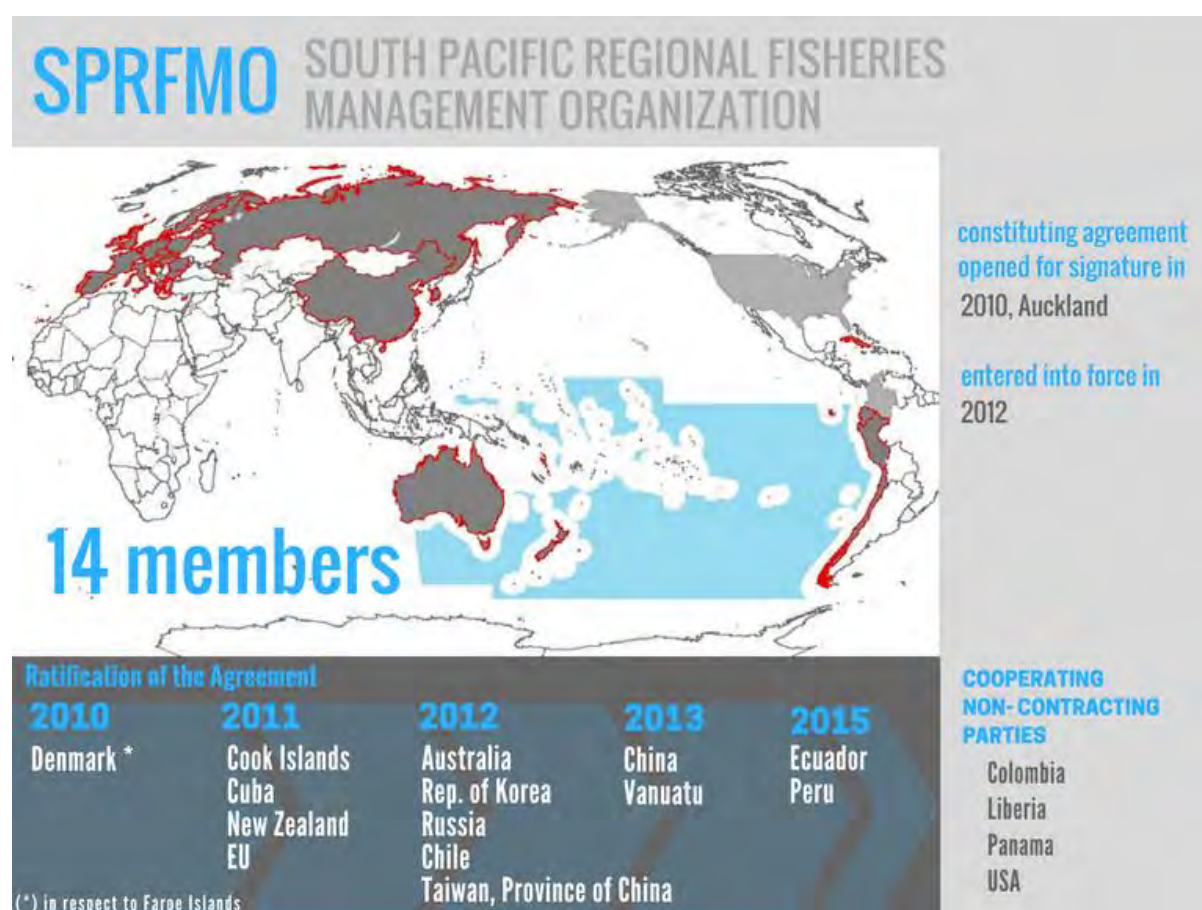


Figure 12. The South Pacific Regional Fisheries Management Organization, its area of competence and membership © Legal Atlas

#### Management measures and area-based management tools

A key achievement of the organization is the successful management of fisheries through the adoption of a wide range of **CMMs** and the work of SPRFMO's Scientific Committee. Most of the SPRFMO fisheries are pelagic or mid-water fisheries. The relatively small portion of bottom fishing activities take place in the South West Pacific off New Zealand and Australia. Currently two CMMs<sup>159</sup> regulate bottom fishing, of which one provides the general framework under which bottom fishing is allowed in the SPRFMO Convention Area (only in so-called bottom-fishing footprint areas defined by each Member and CNCP for its vessels).<sup>160</sup> By contrast, the other only applies to the New Zealand exploratory fishery for toothfish in the Convention Area.<sup>161</sup> At present, only New Zealand and Australia

<sup>157</sup> SPRFMO Convention, Article 16

<sup>158</sup> SPRFMO Convention, Article 17

<sup>159</sup> 4.03 and 4.14

<sup>160</sup> CMM 4.03

<sup>161</sup> CMM 4.14

are bottom-fishing in the SPRFMO Area. Other SPRFMO CMMs address the management of Jack mackerel (*Trachurus murphyi*), the banning of gillnetting, the collection of detailed fishing data, inspections in port and at sea, transshipments, a Vessel Monitoring System, an IUU List, vessels without nationality, minimising the bycatch of seabirds and establishing a compliance and monitoring scheme.

The **enforcement** of adopted conservation measures is a responsibility of Members and CNCPs (each for their vessels). However, the SPRFMO Secretariat considers that the SPRFMO IUU vessel list (CMM 4.04) represents an effective enforcement tool, as the consequences for vessels on that list are quite severe and essentially prevent their involvement in fishery operations and access to ports in the South Pacific (as well as other high seas areas because the IUU lists are shared among RFMOs). With regard to monitoring, control and surveillance (MCS), SPRFMO already has important elements in place and is in the process of strengthening and broadening its pertinent measures. Among these, a Vessel Monitoring System (VMS) – as required by the Convention – is currently under development. Also, SPRFMO has the ability to conduct inspections at sea, based on the UN Fish Stocks Agreement stipulations. Furthermore, SPRFMO has adopted a CMM concerning port inspections. Lastly, SPRFMO has implemented a compliance and monitoring scheme which allows the annual, highly transparent assessment of compliance with the SPRFMO measures by Members and CNCPs.

#### Intra-sectoral and cross-sectoral cooperation

As indicated by SPRFMO's commitment to the ecosystem approach and in accordance with its Convention,<sup>162</sup> the organization strives toward collaboration with all relevant user groups of the South Pacific Ocean. However, the SPRFMO Secretariat pointed out that there are limitations when trying to implement such intentions, in particular the shortage of personnel, time and funds.

With regard to international collaboration, the SPRFMO Secretariat mentioned the large number of Intergovernmental organizations (IGOs), NGOs and industry organizations that have observer status in SPRFMO. SPRFMO meetings are in general open to observers and, as in other intergovernmental organizations, observers to SPRFMO do not have voting rights but are given the opportunity to intervene at meetings, and some observers participate quite actively in the Scientific Committee. SPRFMO has MoUs with ACAP and with CCAMLR, and is currently exploring the possibility of having further MoUs with neighbouring RFMOs. With regard to NGOs, SPRFMO observers consist of organizations with a conservation mandate as well as with a fishery industry mandate, and the SPRFMO Secretariat believes that the participation of all sectors is of equal importance to the organization.<sup>163</sup> CPPS is also an observer of SPRFMO and regularly attends the organizations meetings. The two organizations have a good informal relationship.

The SPRFMO Secretariat indicated that in addition to attending SPRFMO meetings, stakeholders have the option of exerting influence through their national governments. The countries participating in the SPRFMO meetings are responsible for ensuring that the views of their national constituency are adequately represented by their delegation. Thus, a key mechanism for societal groups to achieve cross-sectoral collaboration within SPRFMO is through activities such as lobbying at the national level. With regard to the transportation and mining sectors, SPRFMO has no official links with IMO and the ISA. However, the SPRFMO Secretariat considers that SPRFMO members are likely to be interested in any activities by others that have the potential to impact SPRFMO's fisheries and conservation efforts, including the exploitation of minerals in the high seas.

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<sup>162</sup> Article 31

<sup>163</sup> For a full list of SPRFMO observer organizations please visit the following website: <https://www.sprfmo.int/about/participation/> [Accessed: 20 July 2016]

### The potential to strengthen intra- and cross-sectoral cooperation

SPRFMO is interested in enhancing its link with other fishery bodies, including those that operate in the same or adjacent areas (e.g. tuna RFMOs such as WCPFC, the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), IOTC, IATTC and other RFMOs such as CCAMLR, SIOFA and the North Pacific Fisheries Commission (NPFC)). Areas of collaboration include stock assessment, monitoring, control and surveillance (MCS) activities, and combatting IUU fishing. The SPRFMO Secretariat has thus been requested to explore opportunities and priorities for establishing MoUs with neighbouring organizations with common areas of interest. In addition to the general interest to increase cooperation in ABNJ, the SPRFMO Secretariat considers it important to examine whether the mandate of existing mechanisms (e.g. RFMOs) can be broadened and/or strengthened before creating new intergovernmental organizations. For example, if any cross-sectoral collaboration required specific monitoring activities, SPRFMO and other RFMOs already carry out monitoring of fishing activities and could therefore take on additional monitoring tasks. Also, it was felt important to ensure that any new high seas activities and regulations, including mining or the establishment of MPAs, are consistent with the conservation and management measures of existing organizations. Thus, the SPRFMO Secretariat believes that the involvement and support of RFMOs is critical for the success of any spatial planning initiatives in the high seas.

A key for any successful collaboration would be to understand the mandates and objectives of the different intergovernmental organizations operating in the South Pacific and the specific interests of each organization in a collaboration. With regard to RFMOs for example, it is important to keep in mind that they do not have a specific mandate for the conservation of marine biodiversity but instead are mandated to conserve fishing resources in the long term, and only in this context, to safeguard the marine environment in which the resources occur in implementing the ecosystem approach. The SPRFMO Secretariat felt that there were no obvious candidate organizations that could act as a **champion for any regional initiative to foster cross-sectoral collaboration**. However, it noted that established organizations such as the CPPS could potentially play a key role. The SPRFMO Secretariat would encourage stakeholders to participate in SPRFMO meetings, e.g. those of the Scientific Committee, to discuss any spatial planning initiatives, highlighting recommendations for the possible involvement of the SPRFMO and the benefits for SPRFMO and its fisheries. The Secretariat regarded the mandate of the SPRFMO as broad enough to enable participation in a cross-sectoral collaboration in ABNJ, but noted that any collaboration would ultimately be decided by SPRFMO members.

## 4.3 Global institutions and instruments in the South East Pacific

### 4.3.1 Shipping in the South East Pacific: The International Maritime Organization

As outlined by the IMO Secretariat, no discussions have addressed the potential establishment of **Special Areas under MARPOL** in ABNJ in the South East Pacific to date. Furthermore, no **PSSAs** have been designated in ABNJ and no respective proposal has been made by a Member State. The reasons for very few Special Areas or PSSAs being designated in ABNJ have been outlined in [section 2.2.1](#). The IMO has established a number of agreements with regional intergovernmental organizations, including an agreement with CPPS that mainly includes technical cooperation activities, including data exchange. For general information on IMO's engagement at the regional level, including the opportunities and challenges identified by the IMO Secretariat with regard to the establishment of cross-sectoral protective measures in ABNJ, please view [section 2.2.1](#).

#### 4.3.2 Deep Seabed Mining in the South East Pacific: The International Seabed Authority

Among the contracts for exploration there are **none for mining in the South East Pacific**.<sup>164</sup> Thus, there has been no need identified to consider the development of EMPs in the region. The ISA currently does not have a MoU with CPPS or any other regional organization, but is engaged in informal cooperation with CPPS. In addition, Ecuador, Chile and Panama are members of ISA and CPPS has an observer status in the ISA and attends the annual meetings.

#### 4.3.3 Biodiversity conservation in the South East Pacific: The biodiversity-related conventions

The CMS instruments introduced in [section 2.2.6](#) include species whose migratory range incorporates the South East Pacific. For example, the Single Species Action Plan for the Loggerhead turtle (*Caretta caretta*) in the South Pacific Ocean was adopted at CMS COP 14.<sup>165</sup> The resolution urges South Pacific parties and other parties with fishing fleets operating in the South Pacific Ocean, and invites South Pacific non-party range states, to implement the Action Plan. Chile, Ecuador and Peru have signed the Action Plan. In addition to the aforementioned MoU signed by CPPS and the CBD Secretariat in 1998 in order to promote and facilitate the regional implementation of CBD's Jakarta Mandate on marine and coastal issues,<sup>166</sup> the CBD supported a **workshop to facilitate the identification of EBSAs** in the Eastern Tropical and Temperate Pacific.<sup>167</sup> The workshop was convened by the CBD, in collaboration with CPPS and hosted by the Government of Ecuador in Galapagos, Ecuador, from 28 to 31 August 2012. It was attended by a large number of experts from most of the CPPS countries, as well as regional and global governmental and non-governmental organizations and academia.

#### 4.3.4 Cable Laying in the South East Pacific: The International Cable Protection Committee

According to ICPC, the South East Pacific is a region with few submarine telecommunications cables, compared to, for example, the North Atlantic Ocean and the Mediterranean Sea. The ICPC is not aware of any existing formal collaborative mechanisms with other institutions/sectors in the South East Pacific, and there is no regional cable protection organization in the South East Pacific. For an overview of the general approaches used by ICPC to encourage cooperation with other groups with interest in ABNJ, please view [section 2.2.5](#).

#### 4.3.5 Whale conservation and management in the South East Pacific: the International Whaling Commission

The global commercial whaling moratorium introduced in [section 2.2.3](#) is, of course, also applicable in the South East Pacific. The pause in commercial whaling on all whale species and populations is binding on all IWC members, including Chile, Ecuador, Peru and Panama.<sup>168</sup> While neither of the two whaling sanctuaries designated by IWC are located in the South East Pacific,<sup>169</sup> one of the three Conservation Management Plans (CMPs) endorsed by IWC covers whale species and populations that occur in the South East Pacific: the CMP for the eastern South Pacific population of Southern right whales. The respective range state agreement was concluded between Chile and Peru.<sup>170</sup> IWC cooperates with **CPPS** on a number of issues, including ship strikes, entanglement of whales in fishing gear and tourism. IWC for example provides training and fosters information exchange with CPPS.

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<sup>164</sup> ISA. Overview. <https://www.isa.org/im/deep-seabed-minerals-contractors/overview> [Accessed: 20 July 2016]

<sup>165</sup> CMS Resolution 11.21

<sup>166</sup> Available at <https://www.cbd.int/doc/agreements/agmt-cpps-1998-06-03-moc-en.pdf> [Accessed: 20 July 2016]

<sup>167</sup> CBD. Report of the Eastern Tropical and Temperate Pacific Regional Workshop to Facilitate the Description of EBSAs, Galapagos Islands, Ecuador, 28 to 31 August 2012. <https://www.cbd.int/doc/?meeting=EBSA-ETTP-01> [Accessed: 20 July 2016]

<sup>168</sup> IWC. Catch Limits & Catches taken. <https://iwc.int/catches> [Accessed: 20 July 2016]

<sup>169</sup> IWC. Whale Sanctuaries. <https://iwc.int/sanctuaries> [Accessed: 20 July 2016]

<sup>170</sup> IWC. Current Conservation Management Plans. <https://iwc.int/current-future-conservation-management-plans> [Accessed: 20 July 2016]

#### 4.4 Intra-sectoral and cross-sectoral cooperation in the South East Pacific

The three intergovernmental organizations of relevance to governance of ABNJ in the South East Pacific cooperate with a number of partners at regional and global level, however, less so amongst themselves. We provide an overview here of the mechanisms for cooperation and associated challenges highlighted by the interviewees.

##### Cooperation between regional institutions

There are relatively **limited levels of cooperation among the regional organizations** in the South East Pacific and there would certainly seem to be potential for further collaboration. For example, the MoU between CPPS and IATTC includes the option to establish a scientific committee including representatives from the CPPS countries. The focus of some organizations limits cooperation, for example by only considering target fish species, as is the case with IATTC, while others take a broader ecosystem approach, such as SPRFMO, and consider the wider interactions in the region as a whole. In addition, issues of common interest, such as IUU fishing, could benefit considerably from cooperation. In many cases, such as between CPPS and SPRFMO, the relationship between the organizations is facilitated by informal cooperation and observer status at meetings, rather than any formal MoU, highlighting the fact that the presence of formal agreements is not always necessary.

Most interviewees felt that **the need to strengthen cooperation should be issue-driven** and would arise from individual circumstances. There was no consensus on whether greater cooperation was necessary as a more general principle. CPPS and the SPRFMO Secretariats, as well as the South East Pacific ABNJ governance expert were of the opinion that strengthening cross-sectoral cooperation will be important for regional ABNJ governance in the South East Pacific. However, the need for cross-sectoral cooperation is not yet a priority from the perspective of the IATTC Secretariat, and instead the key partners of IATTC are mostly other tuna fisheries organizations because of the challenges of managing highly migratory species. IATTC also has its own scientific staff that sources all necessary data and information. Cross-sectoral planning is something that therefore needs to have a focus of interest to all sectors involved in order to successfully facilitate collaboration.

With regard to a potential **champion to strengthen regional ABNJ governance**, the SPRFMO Secretariat felt there was no single organization that would be the obvious candidate. However, the Secretariat highlighted the relative merits of CPPS and SPRFMO: whereas CPPS is a well-established organization, **SPRFMO has management authority**, and thus “teeth”. SPRFMO also encourages stakeholders to participate in its meetings, e.g. those of the Scientific Committee, to discuss any spatial planning initiatives. While CPPS acknowledges that it does not have a specific mandate to start a cross-sectoral initiative to strengthen governance in ABNJ in the region, by supporting the development of an **integrated regional ocean policy** for the South East Pacific there is an opportunity to provide strengthened cooperation in ABNJ related matters. In general, it was thought that establishing regional cooperative mechanisms through hard or soft law instruments, together with a collective knowledge base, may yield better results in the region in the short-term and as a first step, as outlined by the South East Pacific ABNJ governance expert. Strengthening existing mandates may also be an efficient mechanism for supporting planning processes.

With regard to CPPS, the same expert is of the opinion that CPPS could also play a role as a link between the South American coastal states and the RFMOs and their member states. Such a link would include the provision of a **scientific platform** for the other two institutions (i.e. SPRFMO and IATTC) to ensure that environmental and climatic data are complementary and shared between the three institutions. Leadership from a national government would be another mechanism for area-based planning to be better integrated into the regional forums. It was considered important that any



planning initiative is supported by a broad group of organizations or states. The South East Pacific ABNJ governance expert suggested the establishment of a cross-sectoral, multi-stakeholder **task force or working group** as a cooperative mechanism under the three regional institutions to look into ways to comprehensively improve and to commit to the conservation of high seas biodiversity in the South East Pacific, incorporating several global and regional organizations.

#### Cooperation between regional and global institutions

With regards to cooperation between regional and global intergovernmental institutions, cooperation in the South East Pacific is not strongly developed. As in most regions of the world, and including the Western Indian Ocean, global and regional cooperation in the South East Pacific takes place when global organizations host regional workshops, implement projects in the region or undertake other forms of capacity building. Another mechanism for cooperation among the two levels of governance is the possibility to hold an observer status in other organizations, whether global or regional. No interviewee specifically highlighted the need to strengthen cooperation between regional and global intergovernmental organizations in the South East Pacific. Where activities could be identified that potentially impacted upon another organization's resource, collaboration would be considered important. In addition, the SRFMO Secretariat noted that regions can benefit from global meetings that bring different regional stakeholders together, such as COFI, which can facilitate regional dialogue.

Table 5 provides information on the membership of countries of the South East Pacific region in regional and global institutions, illustrating the challenges of cooperation among institutions with different compositions of membership in the region.

*Table 5. Parties to/membership of global and regional agreements intergovernmental institutions (including Collaborating Non-Contracting Parties, CNCPs) related to ABNJ among South East Pacific countries/ CPPS members.*

South East Pacific countries/ CPPS members	Global institutions and agreements									Regional institutions and agreements	
	UNCLOS	IMO	MARPOL	ISA	UNFSA	IWC	CBD	CMS	CITES	IATTC	SPRFMO
Chile	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Colombia		✓	✓			✓	✓		✓	✓	CNCP
Ecuador		✓	✓	✓		✓	✓	✓	✓	✓	✓
Peru	✓	✓	✓			✓	✓	✓	✓	✓	✓

## 4.5 Concluding remarks

### Not all competent authorities have implemented area-based management tools

Of the South East Pacific regional institutions identified, only IATTC and SPRFMO, as management authorities, can make conservation and management decisions, as well as adopt rules and regulations on compliance and enforcement. SPRFMO has legal provisions on the protection of the marine environment, VMEs and habitats, and has also implemented rules on bottom fishing closures in its Convention Area. IATTC has spatial and temporal conservation measures for different tuna species. With regard to global-level authorities, the IWC has a conservation management plan in place for Southern Right Whales, but currently neither the ISA nor the IMO have area-based management tools established in the South East Pacific.



**Despite having no formal mandate for area-based planning, the CPPS plays a very strong coordinating role in the region and has a clear interest in ABNJ.**

Since its establishment, CPPS members have regularly declared their collective interest in ABNJ issues (e.g. Cali and Vinã del Mar declarations, Galapagos Commitment). CPPS itself does not have any management authority, but has long been supporting collaboration between the South East Pacific countries, notably for the sharing of information. In October 2015, at the request of its members, CPPS launched a process for the development of an integrated regional ocean policy that could strengthen cooperation in ABNJ-related matters. Interviews revealed that CPPS is considered to be an organization that could catalyse collaborative partnerships in the region and could serve as a platform for increased availability of regional data.

**Collaboration between institutions with interests in the South East Pacific ABNJ is relatively limited.**

Several of the regional organizations in the South East Pacific have strong formal collaborative agreements with instruments or institutions *outside of the region* (e.g. CPPS has MoUs with CBD, SPREP and the Basel Convention Secretariat, SPRFMO has MoUs with CCAMLR and ACAP). However, collaborations between the key actors within the region are not well developed and are primarily characterised by agreements to exchange information or to be observers at meetings. Across the region's key institutions, enthusiasm for enhanced collaboration is varied. Whereas SPRFMO is generally open to discuss any spatial planning initiatives and strives towards collaboration with all user groups of the ocean in order to apply the ecosystem approach to fisheries, IATTC is concerned that cross-sectoral area-based planning initiatives may compromise the ability of the organization to adopt a flexible approach to species protection.

**A number of key challenges face cross-sectoral cooperation in the South East Pacific.**

Interviewees from the key institutions identified the following issues:

- Composition of membership: The different regional and global organizations have different compositions of members, which limits member engagement in issues related to other agreements and potentially collaboration.
- Geographical coverage: With very large areas of intervention across differing geographical areas, the key regional authorities have significantly different member state composition, and in many cases, South East Pacific countries form a minority among all members. This makes it harder to gain support and traction for regional initiatives that are not of interest to all member states.
- Economic and social situation: Socio-economically, fisheries is a fundamentally important sector in the region, leading to a reluctance by some authorities to commit to sharing of data and information on those resources.
- Limited capacity: Authorities have noted a shortage of personnel, time and funds to devote to issues that are not at the core of their mandates.
- Institutional culture: The different cultures that have developed in the organizations over time affects the choice of partners, as well as the overall interest the organization may have in cross-sectoral cooperation.

**Overcoming the challenges inherent in any attempt to strengthen collaboration will require a concerted approach.**

Interviewees suggested the following steps to support any initiative to strengthen cross-sectoral collaboration:

- Identify specific issues that would be better addressed through cross-sectoral cooperation in order to make the case for who should cooperate, and on what topic;
- Understand the mandates and objectives of the different intergovernmental organizations operating in the South East Pacific and their specific or potential interests in cross-sectoral cooperation;
- Identify who could champion an initiative to strengthen cross-sectoral cooperation, e.g. CPPS as an established organization, SRFMO due to its broad mandate which encompasses the determination of legal measures, or a country that could take the lead in promoting the application of area-based planning within the South East Pacific ABNJ, either through regional forums where it is a member State (e.g. CPPS or SPRFMO) or within relevant international forums;
- Raise awareness that no state or organization alone should be at the heart of any area-based planning initiative, but rather there needs to be an inclusive, transparent, cross-sectoral process driving such an initiative;
- Lobby at national level to ensure that consistent messages are communicated across the relevant sectoral authorities;
- Encourage active attendance (as an observer) at meetings of the different organizations, including meetings of the scientific bodies, and the presentation of common issues from the perspective of the respective organizations;
- Take advantage of existing international meetings for Pacific organizations to meet up, such as in the margins of COFI;
- Avoid isolated approaches towards area based planning, including establishment of MPAs, but ensuring that additional rules that will potentially be developed are consistent with already existing ones; and
- Focus first on broadening and strengthening the mandate of existing mechanisms before any attempts to create new regional instruments or mechanisms.

**There appears to be considerable scope to further strengthen and formalise collaborations between governing institutions.**

Suggestions of ways to facilitate a regional initiative to develop cross-sectoral area-based planning tools include:

- Calling for an ABNJ area-based planning initiative in the integrated regional ocean policy.
- The possibility that CPPS could act as link between its Member States and the RFMOs and their member states to foster coordinated action with regard to the adoption of CMMs.
- Establishing of a cross-sectoral, multi-stakeholder task force or working group as a cooperative mechanism under the three regional institutions to look into ways to comprehensively improve and to commit to the conservation of high seas biodiversity in the South East Pacific. This joint task force could also incorporate other relevant regional and global organizations.
- Building a common knowledge base in the region, which, together with a regional cooperative mechanism, could support a first step towards strengthened collaboration. The 2015 MoU between IATTC and CPPS could potentially provide inspiration, as it includes a paragraph on evaluating the possibility of creating a scientific committee with scientists from their member countries.

## 5. Conclusions

In ABNJ, cross-sectoral area-based planning, which describes the **design and application of spatial management tools to rationalise and regulate resource use activities in a given location**, requires strong coordination between the institutions with a mandate to manage and monitor human activities.

### **There are gaps in the global coverage of management mandates and, specifically, in area-based management tools in ABNJ**

Several regions do not yet have an RFMO or Regional Seas Convention established and therefore activities occurring in ABNJ remain largely unmanaged and unmonitored. Indeed, conservation and environmental interests in particular are regularly under-represented in ABNJ governance arrangements. Regional Seas Conventions and Action Plans are the instruments responsible for coordinated action to tackle marine environmental issues, but while some Regional Seas Conventions include a mandate to identify MPAs in ABNJ, most others do not. Additionally, even where such legal capacity exists, some global institutions with sectoral mandates in ABNJ have not yet applied their area-based management tools in ABNJ, primarily because such tools are better suited to application within coastal waters where data to support their identification are more readily available (e.g. MARPOL Special Areas), but also due to the significant enforcement or monitoring costs associated with ABNJ.

### **Management gaps and challenges are evident in the Western Indian Ocean and South East Pacific.**

Within the **Western Indian Ocean**, two of the three global institutions with a management mandate in ABNJ – the ISA and IWC – have established specific area-based management measures. Regional fisheries bodies are established for tuna (IOTC) and for non-tuna stocks within national jurisdictional areas (SWIOFC). However, the very recent establishment of SIOFA means that management of non-tuna stocks in ABNJ is still in its infancy in the Western Indian Ocean. The Nairobi Convention is well established, but does not have a formal, comprehensive mandate to work in ABNJ and although issue-specific ABNJ mandates have been agreed by members, the capacity and willingness to engage in ABNJ issues may not be consistent across the member states themselves. Overall, the region's capacity to initiate cross-sectoral area-based planning in ABNJ is somewhat limited by the varying levels of advancement and engagement in ABNJ management across the sectors. The **South East Pacific** region has well-established sectoral institutions for fisheries, both tuna (IATTC) and non-tuna (SPRFMO), but there is no institution with a comprehensive management mandate for the marine environment, including the designation of MPAs. CPPS was established to promote collaboration in maritime management and having had a long history of engagement with ABNJ issues, CPPS has been catalytic in advancing related international law of the sea matters. At the global level, intergovernmental institutions for seabed mining (ISA), shipping (IMO) and conservation and management of whales (IWC) have not yet implemented area-based management tools in the South East Pacific ABNJ.

### **Regional cross-sectoral area-based planning must involve both regional and global institutions.**

A key challenge facing cross sectoral planning in ABNJ at the regional level is coordination among management authorities with different geographical areas of coverage, with some being set up specifically for the Western Indian Ocean or the South East Pacific, others covering a much larger area, and some only covering parts thereof. Depending on the specific geographical coverage, and of course the mandate of the individual institutions, members may also hail from very different parts of the world. Thus, their priorities and focus points may well be very different. In addition, global institutions may be reluctant to prioritise a specific regional agenda over their broader international sectoral remit.

**Sectoral conservation and management measures have limitations in ABNJ.**

Where conservation measures have been adopted, their effectiveness might be limited due to several reasons: 1) the measures are binding only on the members of the organization that adopted the measure; 2) the difficulties associated with enforcement in the high seas (as outlined in the [introductory section on governance in ABNJ](#)); and 3) by nature, management measures adopted by sectoral bodies only regulate the respective sectoral activity such as fishing (and regularly only of certain stocks) and have no regulatory effect on other sectoral uses of the marine environment, which might undermine the intended outcome of the measure, such as recovery of fish stocks.

**Notwithstanding the gaps and challenges, there is scope to strengthen institutional collaboration to facilitate cross-sectoral area-based planning in both regions.**

The **Western Indian Ocean** region boasts a considerable number of ABNJ-related projects, partnerships and initiatives, and some institutions in the region, both management and advisory bodies, have expressed considerable interest in the possibility of strengthening collaboration towards cross-sectoral area-based planning in ABNJ. For these reasons, it is conceivable that several actors in the region could support the development of enabling conditions for such an initiative to take place. The Nairobi Convention in particular, is keen to facilitate the process of enhanced collaboration towards area-based planning. In the **South East Pacific**, CPPS has already initiated the development of a coordinated regional marine strategy, which, given the ABNJ interests and experience of the South East Pacific countries, could provide a strong framework for collaboration that supports the subsequent development of an area-based planning initiative. With regard to both regions, interviewees observed a need for greater coordination between domestic sectoral departments in order to stimulate member-led calls for greater cross-sectoral engagement between intergovernmental institutions.

**Application of the ecosystem approach should improve cross-sectoral linkages but requires strengthened scientific and governance capacity**

In essence, the ecosystem approach represents a move away from single-sector management towards more holistic cross-sectoral management for the multiple goods and services that ecosystems provide, while carefully addressing the broader and cumulative impacts of human activities on those ecosystems. Successfully applying the ecosystem approach is extremely challenging for any one institution or process without sufficient integration with other governance systems that are also interacting with the ecosystem. In the **South East Pacific**, SPRFMO has encouraged collaboration with other regional organizations in order to enhance its ability to manage the wider ecosystem impact of fishing activities, demonstrating that the ecosystem approach promotes the broadening of existing sectoral mandates. However, the limited level of scientific knowledge, and the associated challenge of translating that knowledge into policy, hinders the comprehensive implementation of the ecosystem approach. If the cumulative impact of the different sectoral activities and the ecological repercussions across jurisdictional boundaries are not fully understood, then the incentive to improve the sustainability of human activities can be obscure. For this reason, strengthening national-, regional- and global-level capacity to understand and support essential ecological connectivity in our oceans through appropriate governance systems will play an important role in the successful delivery of ecosystem-based management. Overcoming any reluctance to share data and information in order to build a common scientific knowledge base will be a necessary part of that capacity building processes.

**Interviewees from both regions suggested similar elements that would be required in efforts to strengthen collaboration.**

Despite the differences between the regions in their capacities and potentials to develop cross-sectoral area-based planning, the interviewees, mostly representing regional and global organizations, had very similar views on how to approach any such regional initiative:

1. Identify and clarify the specific objective of the initiative
2. Consider which sectors and key players need to collaborate to achieve the specific objective:
3. Clarify the potential role of each stakeholder in achieving the objective:
  - a. Identify which sectors have which competencies and how their decisions are made
4. Make the case for each stakeholder to join the initiative by presenting the common issue of concern from the perspective of each stakeholder
5. Increase regular interaction through different means, such as:
  - a. Make active use of an observer status in a potential partner organization, including through attendance at meetings; and
  - b. Organise meetings or workshops, potentially in the margins of global meetings such as COFI or meetings for the development of regional ocean policies to save time and resources
6. Ensure an open, inclusive and transparent process from the start

**Strengthening ABNJ governance could be done through scientific collaboration, integrated policy making and the establishment of cross-sectoral platforms for cooperation.**

The majority of interviewees, representing both regional and global institutions, were in favour of strengthening ABNJ governance through a cross-sectoral planning initiative to foster a more holistic approach to sustainable resource management. As evidence of that, some suggestions were put forward as to what could be done to encourage this:

- *Strengthening scientific cooperation among the different stakeholders* - This could potentially lead to more harmonized approaches among the different management systems established by the different legal instruments related to ABNJ. For example, a harmonized approach to Strategic Environmental Assessments, Environmental Impact Assessments or area-based planning tools could reap scientific and economic benefits.
- *The further development of national and regional ocean policies*, potentially leading to a more coordinated approach between the national representatives/different government departments, who attend various global and regional meetings.
- *Develop a cross-sectoral, multi-stakeholder task force or working group* to provide a mechanism for strengthening cooperation.

Cross-sectoral area-based planning in ABNJ certainly faces a number of substantial challenges. This study demonstrates that despite the regionally-specific actors and issues, there is a widespread interest in strengthening mutually beneficial collaboration through broadened mandates, integrated working practices and the more widespread application of the ecosystem approach in order to tackle the management challenges faced in ABNJ.

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## Annexes

### Annex 1: Institutional Arrangements

#### Global Arrangements

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ globally</b>	<b>Country memberships</b>
<b>General ocean governance</b>	UNCLOS	Global agreement	UNCLOS serves as a unifying framework for several more specific international agreements that address one or more particular ocean use such as shipping, mining or fishing. The zones it defines, and the principles, rights and obligations it created, provide the basic framework and starting point for many of these more detailed agreements.	Yes, UNCLOS, often referred to as the Constitution of the Sea, provides the framework for all ocean uses, whether under national jurisdiction or beyond national jurisdiction.	UNCLOS has 168 Parties, including all WIO countries and Chile and Peru among SEP countries.
	UNGA	One of the six principal organs of the UN; main deliberate, policymaking and representative organ of the UN	The UNGA, as the global institution having the competence to consider and undertake a review of the overall developments relating to the law of the sea (resolution 49/28), has been carrying out such annual reviews since 1983, following the adoption of UNCLOS in 1982, based on annual comprehensive reports prepared by the Secretary-General.	In the context of its review of the overall developments related to the law of the sea, the UNGA adopts two annual resolutions which have touched upon issues relating to ABNJ: a resolution on oceans and the law of the sea and a resolution on sustainable fisheries	It comprises all 193 Members of the UN, including all WIO and all SEP countries
	DOALOS	UN division	DOALOS of the UN Office of Legal Affairs serves several functions. Mandated by UNGA, DOALOS is the Secretariat of UNCLOS and UN Fish Stocks Agreement and also services various processes under UNGA.	n/a	n/a
	The Commonwealth Secretariat	Intergovernmental organization for a political group	The Commonwealth Secretariat provides guidance on policy making, technical assistance and advisory services to Commonwealth member countries. It supports governments to help achieve sustainable, inclusive and equitable development. Priority areas of work are agreed at Commonwealth Heads of Government Meetings, which occur every two years. As part of their support to SIDS, for example, the Commonwealth Secretariat supports development opportunities with respect to the ocean economy.		Commonwealth countries in the WIO include Kenya, Mozambique, South Africa, Seychelles and Mauritius. No SEP country is a Commonwealth country.
<b>Shipping</b>	IMO	Intergovernmental organization	As a specialized agency of the UN, predating UNCLOS, the IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair, effective, and universally adopted	Yes, IMO's regulatory framework covers all aspects of technical matters pertaining to the safety of ships and of life at sea, efficiency of navigation, and the prevention and control of marine and air pollution from ships	IMO has 171 Member States, including all WIO and SEP countries.

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ globally</b>	<b>Country memberships</b>
<b>Fisheries Management</b>	UN Fish Stocks Agreement	Implementing Agreement to UNCLOS	UN Fish Stocks Agreement provides a framework for the conservation and management of highly migratory and straddling fish stocks in international waters	Yes, the Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks in ABNJ (Article 3)	UN Fish Stocks Agreement has 83 Parties, including Kenya, Mauritius, Mozambique, Réunion (France), Seychelles, South Africa and the United Republic of Tanzania among WIO countries. No SEP country is Party to the Agreement.
	RFBs	Intergovernmental organizations	RFBs are a mechanism through which States or organizations that are parties to an international fishery agreement or arrangement work together towards the conservation, management and/or development of fisheries. The mandates of RFBs vary. Some RFBs have an advisory mandate, and provide advice, decisions or coordinating mechanisms that are not binding on their members. Some RFBs have a management mandate – these are called RFMOs. They adopt fisheries conservation and management measures that are binding on their members	Depends on the mandate and competencies of the specific RFB. RFMOs exist in the majority of high seas areas that have major deep-sea fisheries and are usually tasked with collecting fisheries statistics, assessing resources, making management decisions and monitoring activities	Country membership varies among RFBs
	FAO	Intergovernmental organization	FAO's by virtue of its general mandate, promotes and supports sustainable development in fisheries. FAO has a range of programmes supporting management and conservation, knowledge dissemination, global databases and information networks. In addition, some RFBs have been established within the constitutional framework of FAOAs well as the UN Fish Stocks Agreement, a number of FAO instruments shape the mandate and activities of a wide range of RFBs, whether established within or outside of the FAO framework.	A number of FAO programmes and instruments adopted are of relevance to fisheries management in ABNJ	194 Member Nations
	IWC	Intergovernmental organization	The IWC is an intergovernmental organization which was established by the 1946 International Convention for the Regulation of Whaling. Its mandate is the conservation of whales and the management of whaling.	IWC is the competent authority to regulate whale hunting, including in the high seas	88 members, including all SEP countries and Kenya, Mauritius, Réunion (France), Seychelles, South Africa and the United Republic of Tanzania among WIO countries
<b>Deep Seabed Mining</b>	ISA	Intergovernmental organization	The ISA is the regulatory authority established under UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of UNCLOS for seabed mining. A principal function of the Authority is to regulate deep seabed mining, with an emphasis on resource extraction and the environmental repercussions.	Yes, implements Part XI of UNCLOS on the Area	168 Members, including all WIO countries and Chile and Ecuador among the SEP countries
<b>Marine Environment Protection</b>	UNEP RSP	Regional intergovernmental cooperation	In the early 1970s UNEPs Governing Council endorsed a regional cooperation approach to address marine pollution and in 1974 the UNEP RSP was established. The UNEP RSP covers 18 marine and coastal regions worldwide. For some of the RSPs, the participating states decided to adopt legally-binding instruments and framework	Mostly coastal areas up to the limits of EEZ. Only 4 Regional Seas Agreements explicitly cover ABNJ.	Membership varies among the RSPs

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ globally</b>	<b>Country memberships</b>
			conventions, and protocols were therefore developed to support the parties in the achievement of their common objectives		
	CBD and its Protocols	Global agreement (one of the seven biodiversity-related conventions)	The objectives of CBD are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of its utilisation (Article 1 CBD).	Whilst the provisions of the CBD and its Protocols do not directly apply to biological diversity in ABNJ, they do apply to processes and activities carried out under a state's jurisdiction or control in ABNJ. In addition scientific advice is provided.	194 countries, including all WIO and all SEP countries
	WHC	Global agreement (one of the seven biodiversity-related conventions)	The WHC aims to promote cooperation among nations to protect heritage around the world that is of such outstanding universal value (OUV) that its conservation is important for current and future generations.	No mandate in ABNJ, but it is being explored how the concept of OUV can be applied in the high seas	192 State Parties, including all countries of the SEP and the WIO, with the exception of Somalia
	CMS	Global agreement (one of the seven biodiversity-related conventions)	CMS aims to comprehensively address the conservation and sustainable use of terrestrial, avian and marine migratory species and their habitats across their entire migratory range.	The Convention establishes the principle that its Contracting Parties act to avoid any migratory species becoming endangered, even when the species' range includes ABNJ.	123 Parties, including all WIO countries with the exception of Comoros and Chile, Ecuador and Peru among SEP countries
	CITES	Global agreement (one of the seven biodiversity-related conventions)	CITES aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.	CITES regulated global trade in endangered species and through this process affords a certain level of protection of these species, including in ABNJ.	182 Parties, including all WIO and all SEP countries
	UN Environment	Intergovernmental organization	UN Environment is the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system and serves as an authoritative advocate for the global environment.	UN Environment is associated with serving intergovernmental environmental agreements, including RSCs, some of which have already expanded their activity into ABNJ.	The main decision-making body is the UN Environment Assembly (UNEA) in which all UN member nations are represented.
<b>Marine Scientific Research</b>	IOC-UNESCO	Intergovernmental organization; established as a body with functional	IOC-UNESCO is the only competent organization for marine science within the UN system. The Commission promotes international cooperation and coordinates programmes in research, services and capacity-building, in order to learn more about the nature and resources of the ocean and coastal areas and to apply that knowledge for the improvement of management, sustainable development, the protection	IOC is recognized through UNCLOS as the competent international organization in the fields of Marine Scientific Research (Part XIII) and Transfer of Marine Technology (Part XIV).	148 members

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ globally</b>	<b>Country memberships</b>
		autonomy within UNESCO	of the marine environment, and the decision-making processes of its Member States.		
<b><i>Cable Laying</i></b>	ICPC	Industry association	The ICPC is the main forum for the submarine cable industry	No intergovernmental organization, thus no legal competencies in ABNJ	No country membership

## Western Indian Ocean

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ in the WIO</b>	<b>Country memberships</b>
<b>General ocean governance</b>	IOC	Intergovernmental organization	The IOC's principal mission is to actively contribute to the construction of a regional platform for sustainable development by strengthening the ties of friendship and solidarity amongst its Member States. Its mission includes safeguarding the common interest of its Member States on the regional and international level and the development and implementation of regional cooperation projects.	IOC supports activities of partner RFMOs and national fisheries institutions and generally manages projects related to ocean governance, including in ABNJ	The IOC comprises of five countries in the Indian Ocean, these are: Union of the Comoros, France/Réunion Island, Madagascar, Mauritius and Seychelles.
<b>General Marine Conservation</b>	The Nairobi Convention and its Protocols	Regional Agreement (formalisation of the UN Environment RSP for Eastern Africa)	The Nairobi Convention, which entered into force in 1996, provides a mechanism for regional cooperation, coordination and collaborative actions in the Eastern and Southern African region that enables the Contracting Parties to harness resources and expertise from a wide range of stakeholders and interest groups towards solving interlinked problems of the coastal and marine environment.	Initially the focus of the convention was on the coastal areas (Article 2) but through COP decisions expanded over time to also focus on the EEZs of its Contracting Parties. It was only recently in 2015, that the COP adopted a number of decisions which relate to ABNJ and/or the adjacent waters	The countries of the WIO are the Contracting Parties to the Convention (Comoros, France, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, Tanzania and the Republic of South Africa)
	WIOMSA	Regional, non-profit membership organization/ Non-governmental organization	Established as a regional, non-profit, membership organization in 1993, WIOMSA is dedicated to promoting the educational, scientific and technological development of all aspects of marine sciences throughout the WIO region, with a view toward sustaining the use and conservation of its marine resources. WIOMSA has a particular interest in linking the knowledge that emerges from research to the management and governance issues that affect marine and coastal ecosystems in the region.	No intergovernmental organization, thus no legal competencies in ABNJ. However, it strengthens the knowledge base for informed decision making and promoted coordination and collaboration in the region.	No country memberships
	CORDIO	Non-profit research organization	CORDIO was initiated in 1999 as a response to the El-Niño related mass bleaching and mortality of corals in the Indian Ocean in 1998. It is a non-profit research organization, registered in Kenya, with a network of projects, collaborators and partners that extends across the Indian Ocean.	No intergovernmental organization, thus no legal competencies in ABNJ	No country memberships
	WIO-C	Joint initiative by governmental and non-governmental organizations	WIO-C is a joint initiative launched in 2007 by IUCN, WWF, WIOMSA, CORDIO, WCS, Nairobi Convention, IOC, NEPAD and IOC-UNESCO, aimed at developing synergistic partnerships that will advance marine research, conservation and management in the WIO region.	No intergovernmental organization, thus no legal competencies in ABNJ	No country memberships

<i>Sector</i>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ in the WIO</b>	<b>Country memberships</b>
<b>Fisheries management</b>	IOTC	Intergovernmental organization, Tuna RFMO	IOTC is an intergovernmental organization responsible for the management of tuna and tuna-like species in the Indian Ocean. The Agreement for the Establishment of the IOTC came into force in March 1996 and is open to any state that has coasts within the Indian Ocean region (or adjacent seas) as well as any state that fishes for tuna in the Indian Ocean region. The agreement is also open to regional economic organizations.	IOTC's geographical coverage includes ABNJ	There are currently 30 Contracting Parties to the IOTC Agreement and two CNCPs. Contracting Parties from the WIO region are Comoros, France, Kenya, Madagascar, Mauritius, Mozambique, Seychelles and Tanzania. South Africa is a CNCP.
	SIOFA	Regional Agreement, Non-tuna RFMO in the South Indian Ocean	The SIOFA is a non-tuna RFMO in the Indian Ocean. The Agreement was concluded in 2006 and entered into force in 2012.	The SIOFA Area of Competence covers the high seas between eastern Africa and Western Australia (Article 3 SIOFA)	Of the 8 Parties to the Agreements, 4 are from the WIO region: Mauritius, Seychelles, France for Réunion Island)
	SWIOFC	Intergovernmental organization, RFB	The main objective of SWIOFC is to promote the sustainable utilization of the living marine resources of the Southwest Indian Ocean region, by the proper management and development of the living marine resources, and to address common problems of fisheries management and development faced by the Members of SWIOFC, without prejudice to the sovereign rights of coastal States.	No mandate in ABNJ	All countries of the WIO are members of SWIOFC
	SIODFA	Industry association	SIODFA was formed in 2006 by the four companies that were active in the deep-sea high-seas fisheries of the Southern Indian Ocean at the time. The objectives of the industry association includes the promotion of responsible management of the deepwater fishery resources of the South Indian Ocean to ensure sustained harvests to the benefit of mankind while conserving biodiversity, especially deepwater benthos in the area of the fishery and associated and dependent species.	No intergovernmental organization, thus no legal competencies in ABNJ. However, the members of SIODFA operate in the high seas of the Indian Ocean and put in place voluntary BPAs	No country membership



## South East Pacific

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ in the SEP</b>	<b>Country memberships</b>
<b>General ocean governance</b>	CPPS	Intergovernmental organization	CPPS is the maritime organization that coordinates regional maritime policies in order to adopt concerted positions of its Member States in international negotiations, development of the Law of the Sea, International Environmental Law and other multilateral initiatives. The organization promotes linkages between marine research and regional policies, coordinates and fosters research activities, including the coordination of the El Niño Regional Research Program (ERFEN) and is also engaged in capacity-building processes at the national and regional levels on marine environment issues.	CPPS holds an advisory or consultation mandate to promote the conservation of marine living resources and the protection of the marine environment in the SEP and the consideration of areas beyond the CPPS members' national jurisdictions has been a constituting trait for the organization since its establishment in 1952	The countries of the SEP are members of CPPS: Chile, Columbia, Ecuador and Peru
<b>General Marine Conservation</b>	Lima Convention	Regional Agreement	The Convention was adopted in order to protect the rich marine and coastal environment of the region. In conjunction with the South-East Pacific Action Plan it established the South East Pacific RSP. CPPS is the Executive Secretariat of the Convention and the RSP.	The objective of the Convention is to protect the marine environment and coastal zones of the South-East Pacific within the 200-mile area of maritime sovereignty and jurisdiction of the Parties, and beyond that area, the High Seas up to a distance within which pollution of the High Seas may affect that area	All CPPS members are Party to the Lima Convention and Panama
	Intra-American Convention for the Protection and Conservation of Sea Turtles	Regional Agreement	The Convention provides the legal framework for countries in the American Continent to take actions in benefit of sea turtles and entered into force in 2001. The Convention promotes the protection, conservation and recovery of the populations of sea turtles and those habitats on which they depend, on the basis of the best available data and taking into consideration the environmental, socioeconomic and cultural characteristics of the Parties (Article II, Text of the Convention)	Not applicable in ABNJ (compare Article 3)	The Convention has 15 Contracting Parties, including Chile, Ecuador, Panama and Peru
<b>Fisheries management</b>	IATTC	Intergovernmental organization, Tuna RFMO	The IATTC is responsible for the conservation and management of tuna and other marine resources in the eastern Pacific Ocean. In 2010 the Antigua Convention came into force, which represents a substantial revision of the constitution of IATTC.	Yes, the area of application comprises the area of the Eastern Pacific Ocean bounded by the coastline of North, Central, and South America (Article 3 Antigua Convention)	21 members, including Colombia, Ecuador, Panama and Peru

<b>Sector</b>	<b>Name</b>	<b>Type</b>	<b>Mandate/ competencies</b>	<b>Mandate/ competencies in ABNJ in the SEP</b>	<b>Country memberships</b>
	SPRFMO	Intergovernmental organization, Non-Tuna RFMO	SPRFMO was established by the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, which entered into force in 2012	The SPRFMO Convention is applied to the High Seas of the South Pacific, covering about a quarter of the Earth's high seas area	The 14 Members of the organization include Peru, Chile and Ecuador. Colombia and Panama are CNCPs.
	Latin American Organization for Fisheries Development (OLDEPESCA)	Intergovernmental organization, RFB	The main purpose of OLDEPESCA is to meet Latin American food requirements adequately, making use of Latin American fishery resource potential for the benefit of Latin American peoples	Has a mandate to work exclusively in marine areas within national jurisdiction	The 12 members include Ecuador and Peru
<b>Shipping</b>	ROCRAM	Informal regional organization	The Operative Network for Regional Cooperation amongst Maritime Authorities of South America, Cuba, Mexico and Panama (ROCRAM, for its acronym in Spanish) is an informal regional organization, for Maritime Authorities to interact at different levels of cooperation, by means of fluent, open and permanent communications.	Informal regional organization, thus no legal competencies in ABNJ	No country membership
<b>Extractives/ Deep-sea Mining</b>	ARPEL	Industry association	ARPEL is a non-profit association gathering oil, gas and biofuels sector companies and institutions in Latin America and the Caribbean. Founded in 1965 as a vehicle of cooperation and reciprocal assistance among sector companies, its main purpose is to actively contribute to industry integration and competitive growth, and to sustainable energy development in the region.	No intergovernmental organization, thus no legal competencies in ABNJ	No country membership

## Annex 2: Interviewee list

### Global

Organization	Name	Function	Type of stakeholder
IMO	Edward Kleverlaan	Head, Office for the London Convention/Protocol and Ocean Affairs	Intergovernmental organization
ISA	Michael Lodge	Legal Counsel & Deputy to the Secretary-General	Intergovernmental organization
IWC	Simon Brockington	Executive Secretary	Intergovernmental organization
IWC	Sarah Smith	Project Development Officer	Intergovernmental organization
ICPC	Keith Schofield	General Manager	Private business association
DOALOS	Charlotte Salpin	Legal Officer	Intergovernmental organization

### Western Indian Ocean

Organization	Name	Function	Type of stakeholder
Nairobi Convention	Dixon G Waruinge	Executive Secretary	Intergovernmental agreement
IOTC	David Wilson	Interim Executive Secretary	Intergovernmental organization
FAO	Alejandro Anganuzzi	Project Coordinator for the Common Oceans Tuna Project	Expert
SIOFA	Orlando Fachado	SIOFA interim Secretary	Intergovernmental agreement
SIOFA	Ilona Stobutzki	Chair of the Scientific Committee	Intergovernmental agreement
SIODFA	Ross Shotton	Executive Secretary	Private business association
SWIOFC	Aubrey Harris	FAO Senior Fisheries Officer for Southern and East Africa	Intergovernmental organization

### South East Pacific

Organization	Name	Function	Type of stakeholder
CPPS	<i>Multiple</i>	Secretariat ( <i>Consolidated responses were provided</i> )	Intergovernmental organization
SPRFMO	Johanne Fischer	Executive Secretary	Intergovernmental organization
IATTC	Guillermo A. Compeán	Director	Intergovernmental organization
IASS	Carole Durussel	Project Scientist	Expert

## Annex 3: Chronology of key events

### Global level

Year <sup>171</sup>	Event	Description	Links	Significance
1946	Establishment of IWC by the 1946 International Convention for the Regulation of Whaling ( <i>The Convention entered into force in 1948</i> )	IWC's mandate is the conservation of whales and the management of whaling. It is thus the competent authority to regulate whale hunting, including in the high seas.	<a href="https://iwc.int/home">https://iwc.int/home</a>	Competent authority for the conservation of whales and the management of whaling, including in the high seas
1948	Establishment of the IMO ( <i>The IMO Convention entered into force in 1958</i> )	IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping.	<a href="http://www.imo.org/en/Pages/Default.aspx">http://www.imo.org/en/Pages/Default.aspx</a>	Competent authority to regulate shipping
1960	Establishment of the IOC-UNESCO	The purpose of the Commission is to promote international cooperation and to coordinate programmes in research, services and capacity-building	<a href="http://ioc-unesco.org/">http://ioc-unesco.org/</a>	The only competent organization for marine science within the UN system
1972	<i>UN Conference on the Human Environment, Stockholm</i>	<i>First global environmental conference</i>	<a href="http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97">http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97</a>	
1972	Adoption of WHC ( <i>The convention came into force on 17 December 1975</i> )	The WHC aims to promote cooperation among nations to protect heritage around the world that is of such OUV that its conservation is important for current and future generations.	<a href="http://whc.unesco.org/">http://whc.unesco.org/</a>	No mandate in ABNJ, but it is being explored how the concept of OUV can be applied in the High Seas
1972	<i>Establishment of UNEP</i>	<i>The leading global environmental authority</i>	<a href="http://www.unep.org/">http://www.unep.org/</a>	
1973	Adoption of CITES ( <i>The convention entered into force on 1 July 1975</i> )	CITES is an international agreement between governments, which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.	<a href="https://www.cites.org/">https://www.cites.org/</a>	CITES regulated global trade in endangered species and through this process affords a certain level of protection of these species, including in ABNJ.
1973	International Convention for the Prevention of Pollution from Ships (MARPOL) ( <i>The MARPOL entered into force on 2 October 1983</i> )	MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.		MARPOL regulates vessel design, equipment, and operational discharges from all ships within and beyond national jurisdiction.
1974	Launch of the UNEP RSP	The UNEP RSP aims to address the accelerating degradation of the world's oceans and coastal areas through the sustainable management and use of the marine and coastal environment, by engaging neighbouring countries in comprehensive and specific actions to protect their shared marine environment.	<a href="http://www.unep.org/regionalseas/">http://www.unep.org/regionalseas/</a>	Legal framework for protecting the oceans and seas at the regional level

<sup>171</sup> Please note that the date refers to the adoption of each instrument, in case the event is related to a legal agreement. Therefore, the entry into force of the conventions, protocols, etc. are different from those and is included in the 2<sup>nd</sup> column.

Year <sup>171</sup>	Event	Description	Links	Significance
1979	Adoption of CMS ( <i>The convention entered into force in 1983</i> )	CMS aims to comprehensively address the conservation and sustainable use of terrestrial, avian and marine migratory species and their habitats across their entire migratory range.	<a href="http://www.cms.int/">http://www.cms.int/</a>	CMS objective is the protection of migratory species, including species with a range in ABNJ
1982	Adoption of UNCLOS ( <i>The convention entered into force in November 1994</i> )	The purpose of the Law of the Sea Treaty is to establish a comprehensive set of rules governing the oceans.	<a href="http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf">http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf</a>	Commonly referred to as the Constitution of the Sea, it provides a framework for all ocean uses within and beyond national jurisdiction
1982	Establishment of a commercial whaling moratorium by IWC, from the 1985/1986 season onwards.	The commercial whaling moratorium established a pause in commercial whaling on all whale species and populations (known as 'whale stocks') from the 1985/1986 season onwards. It remains in place today.	<a href="https://iwc.int/commercial">https://iwc.int/commercial</a>	The commercial whaling moratorium remains in place today
1992	<i>UN Conference on Environment and Development (UNCED), Rio de Janeiro, Brazil</i>	<i>Second global environmental conference</i>		<i>Milestone in international environmental law which further shaped the concept of sustainable development</i>
1992	Adoption of the CBD ( <i>The Convention entered into force in December 1993</i> )	CBD is designed to ensure the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of its utilisation (Article 1 CBD).	<a href="https://www.cbd.int/">https://www.cbd.int/</a> ; <a href="https://www.cbd.int/doc/legal/cbd-en.pdf">https://www.cbd.int/doc/legal/cbd-en.pdf</a>	A comprehensive, binding agreement covering the use and conservation of biodiversity that also provides an important scientific platform.
1994	Adoption of the Agreement relating to the implementation of Part XI of UNCLOS. <i>The agreement entered into force on 28 July 1996.</i>	Implementing agreement to UNCLOS which amended the regime of seabed mining	<a href="https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/332/98/PDF/N9433298.pdf?OpenElement">https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/332/98/PDF/N9433298.pdf?OpenElement</a>	
1994	Establishment of the ISA	ISA is the regulatory authority established under UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of UNCLOS for seabed mining.	<a href="https://www.isa.org.im/">https://www.isa.org.im/</a>	A principal function of the Authority is to regulate deep seabed mining with special emphasis on ensuring that the marine environment is protected from any harmful effects which may arise during mining activities.
1995	Adoption of the UN Fish Stocks Agreement <i>In force from 11 December 2001.</i>	2 <sup>nd</sup> implementing agreement to UNCLOS; the objective of the UN Fish Stocks Agreement is to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks.	<a href="https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement">https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement</a>	Strengthened and augmented the authorities of RFMOs and introduced important principles to the fisheries sector
1995	CBD Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity	The Jakarta Mandate is a global consensus on the importance of marine and coastal biological diversity. It is part of the Ministerial Statement at the COP meeting in Jakarta in 1995 on the implementation of the CBD.	<a href="https://www.cbd.int/doc/publications/jm-brochure-en.pdf">https://www.cbd.int/doc/publications/jm-brochure-en.pdf</a>	

Year <sup>171</sup>	Event	Description	Links	Significance
2000	Adoption of Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area <i>(later updated and adopted in 2013)</i>	First of three separate Regulations on Prospecting and Exploration adopted by ISA for different minerals, which apply for the whole of the Area	<a href="https://www.isa.org.im/files/documents/EN/Regs/MinRegCode.pdf">https://www.isa.org.im/files/documents/EN/Regs/MinRegCode.pdf</a>	
2004	Establishment of the BBNJ Working Group by UNGA	The objective of the BBNJ discuss the scope, parameters and feasibility of a possible new international instrument on marine BBNJ under UNCLOS		Based on the recommendations of the BBNJ Working Group UNGA launched the formal negotiations for a new legal instrument on ABNJ in 2015
2006	Emergence of the concept of VMEs	The VME concept emerged from discussions at the UNGA and gained momentum after UNGA Resolution 61/105.	<a href="http://www.fao.org/in-action/vulnerable-marine-ecosystems/en/">http://www.fao.org/in-action/vulnerable-marine-ecosystems/en/</a>	
2008	Agreement of a set of scientific criteria for identifying EBSAs at CBD COP 9.	In 2008, CBD COP 9 agreed upon a set of scientific criteria for EBSAs in need of protection in open ocean waters and deep sea habitat. The decision also provided guidance for selecting areas to establish a representative network of MPAs.	<a href="https://www.cbd.int/ebsa/about">https://www.cbd.int/ebsa/about</a>	
2008	Adoption of the International Guidelines for the Management of Deep-sea Fisheries in the High Seas	FAO adopted the 2008 Guidelines to ensure the implementation of the resolutions of the UN with regard to fisheries. The guidelines provide countries and RFMOs with a voluntary tool to manage their deep sea fisheries in a more sustainable way and protect VMEs		
2010	Adoption of the Strategic Plan for Biodiversity 2011–2020 and the Aichi Targets at CBD COP 10.	The Strategic Plan for Biodiversity provides the global framework for biodiversity conservation and sustainable use until 2020	<a href="https://www.cbd.int/decision/cop/?id=12268">https://www.cbd.int/decision/cop/?id=12268</a>	
2010	Adoption of Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area.	2nd of three separate Regulations on Prospecting and Exploration adopted by ISA for different minerals, which apply for the whole of the Area	<a href="https://www.isa.org.im/sites/default/files/files/documents/isba-16a-12rev1_0.pdf">https://www.isa.org.im/sites/default/files/files/documents/isba-16a-12rev1_0.pdf</a>	
2012	Adoption of Regulations on Prospecting and Exploration for Cobalt-Rich Crusts.	Third of three separate Regulations on Prospecting and Exploration adopted by ISA for different minerals, which apply for the whole of the Area	<a href="https://www.isa.org.im/sites/default/files/files/documents/isba-18a-11_0.pdf">https://www.isa.org.im/sites/default/files/files/documents/isba-18a-11_0.pdf</a>	
2012	Approval of the Clarion-Clipperton Environmental Management Plan (CCZ-EMP) by the ISA.	In 2012, the ISA approved a first (and so far only) regional EMP for the deep seabed in implementation of the precautionary approach.	<a href="https://www.isa.org.im/sites/default/files/files/documents/isba-17ltc-7_0.pdf">https://www.isa.org.im/sites/default/files/files/documents/isba-17ltc-7_0.pdf</a>	
2014	CBD COP 12 – Parties took note of voluntary guidelines for environmental assessment and MSP	At CBD COP 12, Parties took note of voluntary guidelines for environmental assessment and MSP, including in ABNJ.		
2014	Launch of a process for the development of a regulatory framework for mineral exploitation	In 2014 the ISA started a stakeholder consultation process on the development.		Agreement on a list of seven priority deliverables for the development of an exploitation code, including the



Year <sup>171</sup>	Event	Description	Links	Significance
	(the so-called 'exploitation code') in the Area by ISA			development of an environmental impact assessment process and a strategy for the development of regional environmental management plans
2015	The first global integrated marine assessment welcomed with appreciation by UNGA.		<a href="http://www.un.org/depts/los/global_reporting/WOA_RegProcess.htm">http://www.un.org/depts/los/global_reporting/WOA_RegProcess.htm</a>	

### Western Indian Ocean

Date of adoption <sup>172</sup>	Event	Description	Links	Significance
1979	Establishment of the Indian Ocean Sanctuary by <b>IWC</b>	The sanctuary prohibits commercial whaling by IWC members and it covers the entire Indian Ocean south to 55°S. The status of the sanctuary is reviewed every ten years.	<a href="https://iwc.int/sanctuaries">https://iwc.int/sanctuaries</a>	Only two sanctuaries are currently designated by IWC.
1980	Creation of the Eastern African Regional Seas Programme by UNEP		Governing Council Decision 8/13C	
1982	<i>Adoption of UNCLOS (entered into force in November 1994)</i>			
1982	Creation of the IOC in Port-Louis, Mauritius ( <i>Institutionalised in 1984 by the Victoria Agreement in the Seychelles</i> )	Originally conceived to encourage trade and tourism, the intergovernmental organization has today expanded its objectives to include economic development and fisheries management	<a href="http://eeas.europa.eu/delegations/mauritius/regional_integration/indian_ocean_commission/index_en.htm">http://eeas.europa.eu/delegations/mauritius/regional_integration/indian_ocean_commission/index_en.htm</a>	IOC plays an important role in the management and coordination of projects in the region
1982	Establishment of the Indo-Pacific Tuna Development and Management Programme.			The Programme was succeeded by IOTC in 1993.
June 1985	Adoption of the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region			

<sup>172</sup> Please note that the dates in the first column of the table refer to the date of adoption of each instrument in the case of a legal agreement. Therefore, the entry into force of the conventions, protocols, etc. are different from those.

Date of adoption <sup>172</sup>	Event	Description	Links	Significance
June 1985	Adoption of <b>the Nairobi Convention</b> and two protocols (on protected areas and cooperation in combating marine pollution) ( <i>The Convention entered into force in 1996</i> )	The Convention aims to provide a framework for dialogue and sharing of experiences related to all activities of relevance to the protection of the marine environment	<a href="http://www.unep.org/NairobiConvention/docs/English_Nairobi_Convention_Text.pdf">http://www.unep.org/NairobiConvention/docs/English_Nairobi_Convention_Text.pdf</a>	Formalization and thus strengthening of the UNEP administered RSP through an intergovernmental agreement (binding on its members)
1993	Western Indian Ocean Marine Science Association (WIOMSA) established	A regional, non-profit, membership organization, that is dedicated to promoting the educational, scientific and technological development of all aspects of marine sciences throughout the WIO region	<a href="http://www.wiomsa.org/">http://www.wiomsa.org/</a>	
November 1993	Agreement for the Establishment of the IOTC approved by the FAO Council ( <i>entered into force on 27 March 1996</i> )	IOTC is an intergovernmental organization responsible for the management of tuna and tuna-like species in the Indian Ocean.	<a href="ftp://ftp.fao.org/Fi/DOCUMENT/iotc/Basic/IOTCA_E.pdf">ftp://ftp.fao.org/Fi/DOCUMENT/iotc/Basic/IOTCA_E.pdf</a>	Applicable to ABNJ <sup>173</sup>  Its geographical coverage is larger than the WIO alone and it also encompasses its Eastern part.
1994	<i>UNCLOS entered into force</i>			
1996	<i>The Nairobi Convention entered into force</i>			
2002	ISA signed a 15-year contract with the Government of India for the exploration of polymetallic nodules in the deep seabed in an area located in the Central Indian Ridge <sup>174</sup>			
2004	Establishment of SWIOFC	The objective is to promote the sustainable utilization of the living marine resources of the Southwest Indian Ocean region.		The competence of SWIOFC does not include ABNJ <sup>175</sup> .
2006	Adoption of SIOFA ( <i>entered into force on 21 June 2012</i> )	The SIOFA is a non-tuna RFMO which completes the coverage of RFMOs in the Indian Ocean.	<a href="http://www.fao.org/fileadmin/user_upload/legal/docs/035t-e.pdf">http://www.fao.org/fileadmin/user_upload/legal/docs/035t-e.pdf</a>	The agreement covers ABNJ.  Its geographical coverage is larger than the WIO alone.

<sup>173</sup> Article II of the Agreement: “The area of competence of the Commission (...) shall be the Indian Ocean (...) and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such seas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean”.

<sup>174</sup> See document ISBA/17/A/2 of 13 June 2011, Report of the Secretary-General of the International Seabed Authority under Article 166, paragraph 4, of the United Nations Convention on the Law of the Sea, p.16.

<sup>175</sup> According to Article 1 of the Statutes of the South West Indian Ocean Fisheries Commission, “the area of competence of the Commission shall be all the waters of the South West Indian Ocean within the national jurisdiction of coastal States within the area of competence”.

Date of adoption <sup>172</sup>	Event	Description	Links	Significance
2006	Adoption of a Resolution on Interim Arrangements concerning the High Seas in the Southern Indian Ocean	Until SIOFA is fully operational, the interim measures are applicable measures for the management of discrete high seas fish stocks.		Voluntary arrangements that are not legally binding to incentivize measures prior to SIOFA is fully operational
2006	Creation of SIODFA	An association of commercial fishing operators, that promotes responsible management of the deepwater fishery resources of the SIO to ensure sustained harvests to the benefit of mankind while conserving biodiversity	<a href="http://www.siodfa.org/about/who-are-we/">http://www.siodfa.org/about/who-are-we/</a>	Mandate in ABNJ  Has established 13 BPAs, voluntarily closed to fishing through bottom trawling.
2007	Consortium for Conservation of Coastal and Marine Ecosystems in Western Indian Ocean	The WIO-C is a joint initiative by IUCN, WWF, WIOMSA, CORDIO, WCS, UNEP-Nairobi Convention, IOC, NEPAD and IOC-UNESCO, aimed at developing synergistic partnerships that will advance marine research, conservation and management in the Western Indian Ocean region.	<a href="http://www.unep.org/roa/docs/pdf/ConservationCoastalWIO.pdf">http://www.unep.org/roa/docs/pdf/ConservationCoastalWIO.pdf</a>	
2010	Nairobi Convention was amended, and adopted, to the Amended Convention for the Protection, Management and Development of the Marine and Coastal Environment of the WIO. <i>(not in force yet, so far only Mozambique and Mauritius have ratified the amendment)</i>			
2010	Nairobi Convention Protocol for the Protection of the Marine and Coastal Environment of the Western Indian Ocean from Land-Based Sources and Activities (LBSA) <i>(not yet in force)</i>		<a href="http://www.unep.org/NairobiConvention/docs/FinalAct_Protocol&amp;Text_Protocol_Nairobi_Convention.pdf">http://www.unep.org/NairobiConvention/docs/FinalAct_Protocol&amp;Text_Protocol_Nairobi_Convention.pdf</a>	
2010	Launch of a process towards a Protocol on integrated coastal zone management (ICZM) under the Nairobi Convention <sup>176</sup>			
2011	ISA approved plans for the exploration of polymetallic sulphides in the Southwest Indian Ridge by the China Ocean Mineral Resources			

<sup>176</sup> The Conference of Plenipotentiaries and the Sixth Meeting of Contracting Parties to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi, Kenya, 29 March – 1 April 2010), Decisions, UNEP(DEPI)/EAF/CP.6/3 : Strengthening Integrated Coastal Zone Management in the Western Indian Ocean Region.

Date of adoption <sup>172</sup>	Event	Description	Links	Significance
	Research and Development Association <sup>177</sup>			
June 2011	A South WIO regional governance workshop was held in South Africa and led to the adoption of recommendations aimed at improving the governance framework of the region.	The workshop was part of the IUCN project “Applying an ecosystem approach to fisheries management in the high seas: a focus on seamounts in the Southern Indian Ocean” (2009-2012)		
June 2012	<i>The South Indian Ocean Fisheries Agreement (SIOFA) entered into force</i>			
July/ August 2012	A first workshop to facilitate the identification of EBSAS in the WIO took place in Mauritius	The meeting was convened by the Secretariat of the CBD in collaboration with the FAO and the Secretariat of the Nairobi Convention.	<a href="https://www.cbd.int/doc/meetings/mar/ebsa-sio-01/official/ebsa-sio-01-04-en.pdf">https://www.cbd.int/doc/meetings/mar/ebsa-sio-01/official/ebsa-sio-01-04-en.pdf</a>	
January 2014	Adoption of the 2050 Africa’s Integrated Maritime Strategy (2050 AIM Strategy) at the 22nd Summit of the African Union (AU) in Addis Ababa	The 2050 AIM Strategy provides an overall understanding of maritime security that encompasses the economic, social, environmental and security dimensions.	<a href="http://pages.au.int/sites/default/files/2050%20AIM%20Strategy%20%28Eng%290.pdf">http://pages.au.int/sites/default/files/2050%20AIM%20Strategy%20%28Eng%290.pdf</a>	
March 2015	Adoption of the Cairo Declaration by the 15th Session of AMCEN on Africa Integrated Maritime Strategy 2050 and Agenda 2063 on ecosystem-based management approaches for marine resources in the exclusive economic zones and adjacent waters		<a href="http://www.unep.org/roa/Portals/137/AMCEN15Docs/Cairo%20declaration.pdf">http://www.unep.org/roa/Portals/137/AMCEN15Docs/Cairo%20declaration.pdf</a>	
June 2015	Nairobi Convention COP 8	Adoption of three decisions that make reference to the adjacent waters as well as ABNJ (Decision CP8/5, 6 and 10)		

<sup>177</sup> See document ISBA/17/C/11 of 8 July 2011, Report and Recommendations to the Council of the International Seabed Authority relating to an application for approval of a plan of work for exploration for polymetallic sulphides by the China Ocean Mineral Resources Research and Development Association.

## South East Pacific

Date of adoption <sup>178</sup>	Event	Description	Links	Significance
1949	Adoption of the Convention for the Establishment of IATTC by the United States of America and the Republic of Costa Rica	IATTC is a tuna RFMO within the Eastern Pacific Ocean.	<a href="http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf">http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf</a>	IATTC is the first tuna RFMO globally
1952	Adoption of the Santiago Declaration on the Maritime Zone by Chile, Ecuador and Peru	A political declaration aiming to regulate marine resources to avoid their overexploitation, in particular by foreign fleets. To achieve this objective, the countries proclaimed their exclusive sovereignty and jurisdiction over the seas along their respective coasts “to a minimum distance of 200 nautical miles”.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/1.Declaración%20de%20Santiago%201952.pdf">http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/1.Declaración%20de%20Santiago%201952.pdf</a>	The Santiago Declaration was at the forefront in the development of the law of the seas. It proclaimed sovereignty and jurisdiction of 200 nautical miles from coastal states’ coastlines prior to the adoption of UNCLOS, which includes the 200 nautical mile zone known as EEZ.
August 1952	Establishment of CPPS through the adoption of the Convention on the Organization of the Permanent Commission of the Conference on the Use and Conservation of the Marine Resources of the South Pacific	CPPS is regional mechanism for cooperation, destined for the enforcement of the objectives of the Santiago Declaration. It has an advisory mandate to promote the conservation of marine living resources and the protection of the marine environment within the jurisdiction of its member States. The organization promotes linkages between marine research and regional policies, coordinates and fosters research activities, It is also engaged in related capacity-building processes	<a href="http://cpps.dyndns.info/consulta/documentos/legal/convenios/conf_explot_riguas_pacif_sur_1952.pdf">http://cpps.dyndns.info/consulta/documentos/legal/convenios/conf_explot_riguas_pacif_sur_1952.pdf</a>	CPPS is the maritime organization that coordinates regional maritime policies in order to adopt concerted positions of its Member States in international negotiations, development of the Law of the Sea, International Environmental Law and other multilateral initiatives.
1974	Establishment of the ERFEN Program	Member States constitute the program for the study of ENSO phenomenon due to severe socioeconomics impacts across sectors		Monitoring and predicting ENSO effects supports national and regional-level decision making processes
1977	COI-OMM-CPPS Joint Working Group was established through resolution COI x-2	The Joint Working Group is an extended regional forum between the technical-scientific institutions in the Member States of the CPPS and specialized bodies of the United Nations: IOC-UNESCO and the WMO.		Not operational today
January 1981	Adoption of the Cali Declaration by CPPS members	The Declaration calls for the need to establish an International Seabed Authority in order to avoid that mineral resources in the deep seabed and subsoil are unilaterally exploited, potentially adversely affecting the economies of States that produce the same resources on land. The Declaration also reaffirmed the 200 nautical mile doctrine.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/2.Declaración%20de%20Cali%20-%201981.pdf">http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/2.Declaración%20de%20Cali%20-%201981.pdf</a>	The Declaration refers to the importance of regulating the exploitation of mineral resources in ABNJ.

<sup>178</sup> Please note that the dates in the first column of the table refer to the date of adoption of each instrument in the case of a legal agreement. Therefore, the entry into force of the conventions, protocols, etc. are different from those.

Date of adoption <sup>178</sup>	Event	Description	Links	Significance
				Today two CPPS members are part of the 1995 Implementation Agreement of Part XI of UNCLOS and CPPS has observer status in the ISA.
November 1981	Adoption of the Convention on the Protection of the Marine and Coastal Areas of the Southeast Pacific, also known as Lima Convention ( <i>The Convention entered into force in 1986</i> )	<p>The objective of the Convention to protect and preserve the marine environment and coastal areas of the South East Pacific from all types of pollution and pollution sources; and emphasize the economic, social and cultural significance of the South East Pacific as a means of interlinking the countries within the region.</p> <p>The geographical scope includes the marine and coastal area of the Southeast Pacific up to the 200 nm maritime zone of the Contracting Parties and beyond that zone, the High Seas, until a distance where the pollution can affect it.</p> <p>The CPPS serves as the Convention's Executive Secretariat.</p>	<a href="http://cpps.dyndns.info/consulta/documentos/legal/convenios/CONVENIO%20PARA%20LA%20PROTECCION%20DEL%20MEDIO%20AMBIENTE%20Y%20ZONA%20COSTERA%20DEL%20PS/TEXTO%20DEL%20CONVENIO.pdf">http://cpps.dyndns.info/consulta/documentos/legal/convenios/CONVENIO%20PARA%20LA%20PROTECCION%20DEL%20MEDIO%20AMBIENTE%20Y%20ZONA%20COSTERA%20DEL%20PS/TEXTO%20DEL%20CONVENIO.pdf</a>	<p>Panama ratified the Convention joining CPPS countries.</p> <p>The Convention established the non-UNEP administered South-East Pacific Regional Seas Programme, to which CPPS serves as the Executive Secretariat.</p>
November 1981	Adoption of the South-East Pacific Action Plan by the Lima Convention Parties	<p>The Plan was adopted to protect the marine and coastal environment of the region and it is implemented within the framework of the Lima Convention and counts with interagency cooperation between CPPS, UNEP and some two dozen agencies, programmes and Convention Secretariats.</p> <p>The CPPS serves as the Executive Secretariat.</p>	<a href="http://cpps.dyndns.info/consulta/documentos/legal/plan_accion/plan_accion_1981.pdf">http://cpps.dyndns.info/consulta/documentos/legal/plan_accion/plan_accion_1981.pdf</a>	
November 1981	Adoption of the Agreement on Regional Cooperation in Combating Pollution in the South East Pacific by Hydrocarbons and other Harmful Substances in cases of Emergency	This agreement refers to the pollution caused by hydrocarbon and other harmful substances and to the need for regional cooperation in cases of emergency.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/convenios/ACUERDO%20SOBRE%20COOP.%20REG.%20PARA%20EL%20COMBATE%20CONTRA%20LA%20CONTAMINACION%20DE%20HIDROCARBUROS%20Y%20SUST.%20NO%20CIVILES/TEXTO%20DEL%20ACUERDO.pdf">http://cpps.dyndns.info/consulta/documentos/legal/convenios/ACUERDO%20SOBRE%20COOP.%20REG.%20PARA%20EL%20COMBATE%20CONTRA%20LA%20CONTAMINACION%20DE%20HIDROCARBUROS%20Y%20SUST.%20NO%20CIVILES/TEXTO%20DEL%20ACUERDO.pdf</a>	
1982	<i>Adoption of UNCLOS. The Convention entered into force in November 1994</i>			<i>Only two countries of the SEP region have ratified UNCLOS: Panama in 1996 and Chile in 1997.</i>



Date of adoption <sup>178</sup>	Event	Description	Links	Significance
June 1983	Cooperation Agreement between the CPPS and the Economic Commission for Latin America and the Caribbean (ECLAC)/UNDP Programme on marine resources and regional development	Agreement to cooperation in the execution of their programmes on sea related issues including on specific issues such as the protection, conservation and use of their resources, scientific research, training of scientific and technical personnel, etc. as well as on general issues such as information sharing, organization of joint seminars, cooperation among research and education institutions, etc.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/2.AC.CPPS-CEPAL-PNUD-1983.pdf">http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/2.AC.CPPS-CEPAL-PNUD-1983.pdf</a>	
July 1983	Protocol for the Protection of the South East Pacific Against Pollution from Land- Based Sources ( <i>Entered into force: 1986</i> )	The Provides the framework of several programs related to surveillance, monitoring and control of pollution, including marine litter, from land-based sources. CPPS serves as Executive Secretariat.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/convenios/PROTOCOLO%20PARA%20PROTECC.%20PS%20CONTRA%20LA%20CONTAMINAC.%20PROVENIENTE%20DE%20FUENTES%20TERRESTRES/TEXTO%20DEL%20PROTOCOLO.pdf">http://cpps.dyndns.info/consulta/documentos/legal/convenios/PROTOCOLO%20PARA%20PROTECC.%20PS%20CONTRA%20LA%20CONTAMINAC.%20PROVENIENTE%20DE%20FUENTES%20TERRESTRES/TEXTO%20DEL%20PROTOCOLO.pdf</a>	
February 1984	Viña del Mar Declaration adopted by CPPS	The Declaration expresses the legitimate interests of the coastal States for the conservation and optimal use of marine resources beyond the 200 nautical miles, when those resources are part of the same populations in coastal States or species populations related to them.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/3.Declaración%20de%20Viña%20del%20Mar.1984.pdf">http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/3.Declaración%20de%20Viña%20del%20Mar.1984.pdf</a>	Specific reference to ABNJ (builds on Cali Declaration)
April 1985	Cooperation Agreement between CPPS and FAO	Identified areas of mutual interest include fisheries planning and development, research on living marine resources, training and capacity-building, dissemination of information, organization and execution of technical and scientific meetings.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/3.AC.CPPS-FAO-1985.pdf">http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/3.AC.CPPS-FAO-1985.pdf</a>	
September 1987	Cooperation Agreement between the State Oceanic Administration from China and CPPS	Cooperation on oceanic activities conducted in the Pacific basin.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/4.AC.Adm.EstatdelMar.Rep.China-CPPS-1987.pdf">http://cpps.dyndns.info/consulta/documentos/legal/cooperacion/4.AC.Adm.EstatdelMar.Rep.China-CPPS-1987.pdf</a>	
December 1987	Quito Declaration adopted by CPPS	In reaffirmation of the Viña del Mar Declaration, CPPS is declared as the relevant regional organization to coordinate the common interest in preserving marine resources in ABNJ.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/4.Declaración%20de%20Quito.1987.pdf">http://cpps.dyndns.info/consulta/documentos/legal/declaraciones/4.Declaración%20de%20Quito.1987.pdf</a>	More detailed references on ABNJ

Date of adoption <sup>178</sup>	Event	Description	Links	Significance
September 1989	Protocol for the Protection of the South East Pacific from Radioactive Pollution	It provides for regulations, principles, criteria and general obligations prohibiting the dumping of radioactive waste and other radioactive substances into the sea and/or seabed included within the scope of application of the Convention; i.e., the maritime area of the South East Pacific under the sovereignty and jurisdiction of Governments up to 200 nautical miles. This Protocol is also applicable to the continental shelf when extended by the High Contracting Parties beyond their 200 nautical mile zones.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/convenios/PROTOCOLO%20PARA%20LA%20PROTECCION%20DEL%20PS%20CONTRA%20LA%20CONTAMINACION%20RADIATIVA/TEXTODEL%20PROTOCOLO.pdf">http://cpps.dyndns.info/consulta/documentos/legal/convenios/PROTOCOLO%20PARA%20LA%20PROTECCION%20DEL%20PS%20CONTRA%20LA%20CONTAMINACION%20RADIATIVA/TEXTODEL%20PROTOCOLO.pdf</a>	
September 1989	Protocol for the Conservation and Management of Marine and Coastal Protected Areas of the South East Pacific ( <i>Entered into force: 1995</i> )	Through this Protocol, countries agreed on the need to adopt appropriate measures to protect and preserve fragile, vulnerable ecosystems or ecosystems which have a unique natural value, as well as the fauna and flora on the verge of depletion or extinction.	<a href="http://cpps.dyndns.info/consulta/documentos/legal/convenios/PROTOCOLO%20PARA%20LA%20CONSERV.%20Y%20ADM.%20DE%20AREAS%20MARINAS%20Y%20COSTERAS%20PROTEGIDAS%20DEL%20PS/TEXTODEL%20PROTOCOLO.pdf">http://cpps.dyndns.info/consulta/documentos/legal/convenios/PROTOCOLO%20PARA%20LA%20CONSERV.%20Y%20ADM.%20DE%20AREAS%20MARINAS%20Y%20COSTERAS%20PROTEGIDAS%20DEL%20PS/TEXTODEL%20PROTOCOLO.pdf</a>	
1992	Protocol for the study of ENSO in the South Pacific - ERFEN Lima, Peru	Integrated scientific program on oceanography, meteorology, marine biology, fisheries, including socioeconomic aspects and impacts	Basic texts page 211-224	Institutionalization of the ERFEN program for the study of El Nino in the South Pacific
1998	MoU between CPPS and CBD Secretariat	To promote and facilitate the regional implementation of the Jakarta Mandate <sup>179</sup> on issues regarding: marine and coastal protected areas; conservation of coastal and marine resources and ecosystems; integrated coastal and marine area management; effects of pollution on marine and coastal biodiversity	<a href="https://www.cbd.int/doc/agreements/amt-cpps-1998-06-03-moc-en.pdf">https://www.cbd.int/doc/agreements/amt-cpps-1998-06-03-moc-en.pdf</a>	
2000	CPPS initiated the Programme on Conservation of marine turtles in the South-East Pacific region			
August 2000	Framework Agreement for the Conservation of Living Marine Resources in the High Seas of the Southeast Pacific (Galapagos Agreement) ( <i>To date the Agreement did not enter into force</i> )	The agreement provides for the creation of relevant legal agreements and regulations as well as the establishment of a separate body in charge of the conservation and management of high seas living resources for the South-East Pacific.  Ratified by: Chile, Ecuador and Peru	<a href="http://cpps.dyndns.info/consulta/documentos/legal/convenios/ACUERDO%20DE%20GALAPAGOS/TEXTODEL%20ACUERDO.pdf">http://cpps.dyndns.info/consulta/documentos/legal/convenios/ACUERDO%20DE%20GALAPAGOS/TEXTODEL%20ACUERDO.pdf</a>	Attempt to establish formal jurisdictional competency for the conservation and management of living resources in the high seas area of the South-East Pacific.

<sup>179</sup> For more information on the Jakarta mandate, please visit <https://www.cbd.int/doc/publications/im-brochure-en.pdf>

Date of adoption <sup>178</sup>	Event	Description	Links	Significance
2001	MoU between CPPS and the South Pacific Environment Programme (SPREP)			Twining arrangement between two RSPs, promoted by UNEP
August 2002	Santiago Declaration		pages 57-58 of the CPPS Basic Texts 4 <sup>th</sup> edition	
2002	MoU among CPPS and the Secretariat of the Basel Convention	To develop a regional level joint activities for the control of transboundary movements of hazardous wastes, which includes among others the design and development of education materials and training programs; cooperation in monitoring the effects of the management of hazardous wastes of human health and on the marine and coastal environment and transfer of technology.		A similar MoU is currently in consultation with the Secretariat of the Framework Convention on Climate Change and with the Ramsar Convention.
2003	Adoption of the Convention for the Strengthening of IATTC established in 1949 (IATTC Antigua Convention) ( <i>The Convention entered into force in 2010</i> )	The Convention updated and strengthened IATTC. IATTC now incorporates modern conservation principles, such as the precautionary approach and the need for compatibility between conservation and management measures for the High Seas and the EEZ.	<a href="http://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf">http://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf</a>	
2009	Adoption of the Convention on the Conservation and Management of High Seas Fishery resources in the South Pacific Ocean, which established the South Pacific RFMO (SPRFMO) ( <i>the Agreement entered into force in 2012</i> )	SPRFMO's mandate is the sustainable management of straddling fish stocks in the High Seas of the South Pacific as well as the safeguarding of the marine ecosystems in which fishery resources occur.	<a href="ftp://ftp.fao.org/FI/DOCUMENT/sprfmo/legal/SPRFMO_Convention.pdf">ftp://ftp.fao.org/FI/DOCUMENT/sprfmo/legal/SPRFMO_Convention.pdf</a>	
2012	Commitment of Galapagos for the XXI Century adopted by CPPS	Adopted on occasion of CPPS' 60 <sup>th</sup> anniversary, the commitment gives the organization a renewed orientation to enable effective dealing with emerging challenges and also reaffirms the interest of the organization in ABNJ related matters. It states that CPPS shall support its Member States to reach their sustainable development from a global perspective within their zones of sovereignty and jurisdiction and that the same orientation shall also lead its projection beyond those areas.	<a href="http://cpps.dyndns.info/consulta/documentos/x_asamblea/Compromiso%20de%20Gal%C3%A1pagos.pdf">http://cpps.dyndns.info/consulta/documentos/x_asamblea/Compromiso%20de%20Gal%C3%A1pagos.pdf</a>	The new strategic orientation of the convention applies in the areas of sovereignty and jurisdiction of Member States of the CPPS, and will also guide its projection beyond that area, including the Pacific basin.
August 2012	Eastern Tropical and Temperate Pacific Regional Workshop to Facilitate the Description of EBSAs convened in Galapagos, Ecuador.	Convened by the CBD Executive Secretary in collaboration with CPPS.		

Date of adoption <sup>178</sup>	Event	Description	Links	Significance
October 2012	Adoption of a IATTC recommendation on the IATTC-WCPFC overlap area		<a href="https://www.iattc.org/PDFFiles2/Resolutions/C-12-11-IATTC-WCPFC-Overlap-area.pdf">https://www.iattc.org/PDFFiles2/Resolutions/C-12-11-IATTC-WCPFC-Overlap-area.pdf</a>	
June 2013	Adoption of Resolution C-13-01 at the IATTC's 85 <sup>th</sup> meeting	IATTC members agreed to apply a number of conservation and management measures for yellowfin and bigeye tuna which include closure periods for specified areas in 2014, 2015 and 2016 in an area west of the Galápagos Islands.		
2015	MoU between CPPS and IATTC	To promote the conservation and sustainable used of straddling stocks: in particular sharks.	<a href="http://www.iattc.org/PDFFiles2/CPPS-IATTC-MOU-Jun-2015.pdf">http://www.iattc.org/PDFFiles2/CPPS-IATTC-MOU-Jun-2015.pdf</a>	Both organizations promote the science base decision making process in the region
April 2016	Adoption of Conservation Management Measure 4.03 by SPRFMO	It provides the general framework under which bottom fishing is allowed in the SPRFMO Convention Area.		Since only two countries defined bottom-fishing footprint areas most of the South Pacific is de facto closed to bottom fisheries.

#### Annex 4: Additional information on DOALOS involvement in global processes

Some of the primary functions of the **Meeting of States Parties** to UNCLOS are to elect members of the International Tribunal for the Law of the Sea (ITLOS) and members of CLCS, as well as to receive the report of the Secretary-General under Article 319 of UNCLOS on issues of a general nature, relevant to State parties, that have arisen with respect to UNCLOS.<sup>180</sup> The ITLOS and the CLCS are **bodies** established by UNCLOS. The ITLOS is **one of the means for the peaceful** settlement of disputes. The mandate of the CLCS is to make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf **beyond 200 nautical miles from the baselines**.

The **informal consultations of States parties to the 1995 UN Fish Stocks Agreement** provide a forum for States to discuss issues relating to the implementation of the UN Fish Stocks Agreement and to take preparatory steps for the Review Conference. The Informal Consultations also contribute to the consideration by the UNGA of its agenda item on oceans and the law of the sea.<sup>181</sup> The **Review Conference on the UN Fish Stocks Agreement** assesses the effectiveness of the UN Fish Stocks Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks.<sup>182</sup>

DOALOS services **the Informal Consultative Process on Oceans and the Law of the Sea (ICP)**, which is mandated to suggest particular issues to be considered by the UNGA, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced. The ICP meets annually and recent discussion topics have been: Marine Renewable Energies (2012); Impacts of Ocean Acidification on the Marine Environment (2013); the Role of Seafood in Food Security (2014); oceans and sustainable development: integration of the three dimensions of sustainable development, namely, environmental, social and economic (2015); and in June 2016 the topic will be marine debris, plastics and micro-plastics.<sup>183</sup>

DOALOS supports the delivery of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment including Socioeconomic Aspects (**'the Regular Process'**), established by UNGA following a commitment of States at the World Summit on Sustainable Development, held in Johannesburg, South Africa in 2002. The first product of the Regular Process was a global integrated marine assessment (the **'World Ocean Assessment 1'**), produced in December 2015. The assessments to be undertaken under the Regular Process are aimed to support informed decision-making, and thus contribute to managing in a sustainable manner human activities that affect the oceans and seas.<sup>184</sup>

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<sup>180</sup> UN. Meetings of States Parties to the 1982 United Nations Convention on the Law of the Sea.

[http://www.un.org/depts/los/meeting\\_states\\_parties/meeting\\_states\\_parties.htm](http://www.un.org/depts/los/meeting_states_parties/meeting_states_parties.htm) [Accessed: 20 July 2016]

<sup>181</sup> UN. Informal Consultations of States Parties.

[http://www.un.org/depts/los/convention\\_agreements/fish\\_stocks\\_agreement\\_states\\_parties.htm](http://www.un.org/depts/los/convention_agreements/fish_stocks_agreement_states_parties.htm) [Accessed: 20 July 2016]

<sup>182</sup> Ibid.

<sup>183</sup> UN. United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

[http://www.un.org/depts/los/consultative\\_process/consultative\\_process.htm](http://www.un.org/depts/los/consultative_process/consultative_process.htm) [Accessed: 20 July 2016]

<sup>184</sup> UN. United Nations World Ocean Assessment (2013). <http://www.worldoceanassessment.org/> [Accessed: 20 July 2016]

### The ABNJ Deep Seas Project

The Sustainable Fisheries Management and Biodiversity Conservation of Deep Sea Living Resources in Areas Beyond National Jurisdiction Project (referred to as “the ABNJ Deep Seas Project”) is a five-year Global Environment Facility project and is implemented jointly by FAO and UN Environment. The UN Environment component of the project is executed through the UN Environment World Conservation and Monitoring Centre.

The ABNJ Deep Seas Project is designed to enhance sustainability in the use of deep-sea living resources and biodiversity conservation in the ABNJ through the systematic application of an ecosystem approach. It brings together over 20 partners who work on deep-sea fisheries and conservation issues in ABNJ globally. The partnership includes regional organizations responsible for the management of deep-sea fisheries, Regional Seas Programmes, the fishing industry and international organizations.

The Project aims to:

- strengthen policy and legal frameworks for sustainable fisheries and biodiversity conservation in the ABNJ deep seas;
- reduce adverse impacts on VMEs and enhanced conservation and management of components of EBSAs;
- improve planning and adaptive management for deep sea fisheries in ABNJ; and
- develop and test methods for area-based planning.

The ABNJ Deep Seas Project is one of four projects under the **GEF Common Oceans Programme**.

More information is available from [www.commonoceans.org](http://www.commonoceans.org)