

Regional Oceans Governance

Making Regional Seas Programmes, Regional Fishery Bodies and Large Marine Ecosystem Mechanisms Work Better Together



Raphaël Billé, Lucien Chabason, Petra Drankier, Erik J. Molenaar, Julien Rochette

Context of the paper

The development of regional governance for the protection of the environment and its biodiversity is unquestionably a cornerstone of international environmental law and policy. With regard to marine and coastal issues, regional oceans governance has mainly been taking place through: (i) Regional Seas programmes, many of them supported or coordinated by the United Nations Environment Programme (UNEP); (ii) regional fishery bodies (RFBs), some established under the framework of the United Nations Food and Agriculture Organization (FAO); and (iii) Large Marine Ecosystem (LME) mechanisms, including projects supported by the Global Environment Facility (GEF). Although based on a similar geographical approach, there are concerns regarding their coordination and efficiency, and possibly overlaps in their aims.

Objectives of the paper

The review of existing regional oceans governance mechanisms is intended to assist states that participate in such mechanisms, as well as those that considering participating, by clarifying the key distinctions between the mandates of these mechanisms, highlighting their successes and the challenges

they face, and outlining cooperation between them. Furthermore, options are identified for strengthening existing mechanisms and cooperation between them, as well as for the creation of new regional oceans governance mechanisms, with particular reference to the ecosystem approach.

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List of Acronyms

ABNJ	Areas beyond national jurisdiction
ACAP	Agreement on the Conservation of Albatrosses and Petrels
APFIC	Asia-Pacific Fisheries Commission
APFIC	Asia-Pacific Fishery Commission
ATCM	Antarctic Treaty consultative meetings
ATLAFCO	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic
ATS	Antarctic Treaty System
BBNJ Working Group	Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction
BCC	Benguela Current Commission
BCLME	Benguela Current Large Marine Ecosystem
BOBP-IGO	Bay of Bengal Programme Inter-Governmental Organization
BP/RAC	Blue Plan Regional Activity Centre
CBD	Convention on Biological Diversity
CCAMLR	Commission on the Conservation of Antarctic Marine Living Resources
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCAS	Convention for the Conservation of Antarctic Seals
CCBSP	Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea
CCLME	Canary Current Large Marine Ecosystem
CCRF	FAO Code of Conduct for Responsible Fisheries
CCSBT	Commission for the Conservation of Southern Bluefin Tunas
CEARAC	Special Monitoring and Coastal Environment Assessment RAC
CECAF	Fishery Committee for the Eastern Central Atlantic
CEP	Committee on Environmental Protection
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on Migratory Species of Wild Animals
COBSEA	Coordinating Body of the Seas of East Asia
COFI	FAO Committee on Fisheries
COMHAFAT	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean
COP	Conference of the Parties
COREP	Regional Fisheries Committee for the Gulf of Guinea
CPPS	Permanent Commission for the South Pacific
CRFM	Caribbean Regional Fisheries Mechanism
CTMFM	Joint Technical Commission of the Maritime Front
DINRAC	Data and Information Network RAC
EAF	Ecosystem approach to fisheries
EAS	East Asian seas

EBFM	Ecosystem-based fisheries management
EBM	Ecosystem-based management
EBSA	Ecologically or Biologically Significant Marine Area
EC\$	East Caribbean Dollar
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EU	European Union
FAO	United Nations Food and Agriculture Organization
FCWC	Fishery Committee for the West Central Gulf of Guinea
FFA	Pacific Islands Forum Fisheries Agency
FFEM	Fonds Français pour l'Environnement Mondial
GAIRAS	Generally accepted international rules and standards
GCC	Guinea Current Commission
GCLME	Guinea Current Large Marine Ecosystem
GEF	Global Environment Facility
GFCM	General Fisheries Commission for the Mediterranean
GOOS	Global Ocean Observing System
GPA	Global Programme of Action for the Protection of the Marine Environment from Land-based Activities
GWP-Med	Global Water Partnership – Mediterranean
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
ICGCLME	Interim Commission of the Guinea Current Large Marine Ecosystem
ICRW	International Convention for the Regulation of Whaling
ICZM	Integrated Coastal Zone Management
IGM	Intergovernmental Meeting
IMO	International Maritime Organization
INFO/RAC	Information and Communication Regional Activity Centre
IOC	Intergovernmental Oceanographic Commission (UNESCO)
IOTC	Indian Ocean Tuna Commission
IPHC	International Pacific Halibut Commission
IPOA	International Plan of Action
ISA	International Seabed Authority
IUU	Illegal, unreported and unregulated (fishing)
IW	International Waters (GEF focal area)
IWC	International Whaling Commission
IWRM	Integrated Water Resources Management
JPOI	Johannesburg Plan of Implementation
LBSA	Land-based sources and activities
LME	Large Marine Ecosystem
LMO	Living modified organism
MAP	Mediterranean Action Plan
MARPOL	International Convention for the Prevention of Pollution from Ships

MCSD	Mediterranean Commission on Sustainable Development
MedPartnership	The Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem
MEDU	MAP Coordinating Unit
MERRAC	Marine Environmental Emergency Preparedness and Response RAC
MIO-ECSDE	Mediterranean Information Office for Environment, Culture and Sustainable Development
MOP	Meeting of the Parties
MoU	Memorandum of Understanding
MPA	Marine Protected Area
MSSD	Mediterranean Strategy on Sustainable Development
MSY	Maximum sustainable yield
MTF	Mediterranean Trust Fund
NAFO	Northwest Atlantic Fisheries Organization
NAFO	North Atlantic Fisheries Organization
NAMMCO	North Atlantic Marine Mammal Commission
NAP	National Action Plan
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North-East Atlantic Fisheries Commission
NFP	National focal points
NGO	Non-governmental organisation
nm	Nautical mile
NOAA	United States National Oceanic and Atmospheric Administration
NOWPAP	Northwest Pacific Action Plan
NPAFC	North Pacific Anadromous Fish Commission
NPFC	North Pacific Fisheries Commission
OFMP	Pacific Islands Oceanic Fisheries Management Project
OLDEPESCA	Latin American Organization for Fisheries Development
OPRC	International Convention on Oil Pollution Preparedness, Response and Cooperation
OSPESCA	Central America Fisheries and Aquaculture Organization
PAP/RAC	Priority Action Programme Regional Activity Centre
PCBs	Polychlorinated Biphenyls
PEMSEA	Partnership in Environmental Management for the Seas of East Asia
PERSGA	Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden
PICES	North Pacific Marine Science Organization
PMU	Project Management Unit
POMRAC	Pollution Monitoring RAC
POPs	Persistent Organic Pollutants
PRCM	Programme Régional Côtier et Marin
PSC	Pacific Salmon Commission
RAC	Regional Activity Centre
RAP	FAO regional Office for Asia and the Pacific

RCFM	Regional Consultative Forum Meeting
RCU	Regional Coordinating Unit
RECOFI	Regional Commission for Fisheries
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
RFB	Regional Fishery Body
RFMO	Regional Fisheries Management Organisation
ROMO	Regional Oceans Management Organisation
RSN	Regional Fishery Body Secretariats Network
RSP	UNEP Regional Seas Programme
SAP	Strategic Action Programme
SAP-Bio	Strategic Action Program for the Conservation of Mediterranean Marine and Coastal Biological Diversity
SAP-Med	Strategic Action Program to address pollution from land-based activities
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice (CBD)
SCP/RAC	Sustainable Consumption and Production Regional Activity Centre
SCSLME	South China Sea Large Marine Ecosystem
SEAFDEC	Southeast Asian Fisheries Development Center
SEAFO	South East Atlantic Fisheries Organization
SIDA	Swedish International Development Agency
SIOFA	Southern Indian Ocean Fisheries Agreement
SOCA	UN Subcommittee on Ocean and Coastal Areas
SOM	Senior Officials Meeting
SPA/RAC	Specially Protected Areas Regional Activity Centre
SPC	Secretariat of the Pacific Community
SPCG	Strategic Partnership Coordination Group
SPRFMO	South Pacific Regional Fisheries Management Organization
SPSC	Strategic Partnership Steering Committee
SRFC	Sub Regional Fisheries Commission
SSC	Scientific sub-committee
SSGGRSP	Scientific Committee Steering Group on Regional Seas programmes
SWIOFC	Southwest Indian Ocean Fisheries Commission
SWIOFP	South West Indian Ocean Fisheries Project
TAC	Total allowable catch
TDA	Transboundary Diagnostic Analysis
TDA-MED	Transboundary Diagnostic Analysis for the Mediterranean
TROM	Target resources-oriented management
UfM	Union for the Mediterranean
UNCCD	United Nations Convention to Combat Desertification
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme

UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNIDO	United Nations Industrial Development Organisation
UNOPS	United Nations Office for Project Services
US\$	United States Dollar
VME	Vulnerable marine ecosystem
WB	The World Bank
WCPFC	Western and Central Pacific Fisheries Commission
WECAFC	Western Central Atlantic Fishery Commission
WGLMEBP	Working Group on Large Marine Ecosystems Best Practices
WIOSEA	Western Indian Ocean Sustainable Ecosystem Alliance
WPEAOFM	West Pacific East Asia Oceanic Fisheries Management project
WWF	World Wildlife Fund
WWF MedPo	WWF Mediterranean Programme Office
YSLME	Yellow Sea Large Marine Ecosystem

Executive summary

Introduction and Objective

Oceans are of vital importance to the international community, not only for their living and non-living resources and the shipping and other maritime uses they facilitate, but also for the key role they play in the global climate and weather system. The marine environment, its resources, and its biodiversity are increasingly threatened by human activities, both maritime and terrestrial. Anthropogenic climate change, sea-based and land-based pollution, habitat destruction, introduction of alien species, over-exploitation of non-renewable resources, and destructive fishing practices are among the most serious threats. While each of these threats requires dedicated, separate attention, there is increasingly wide support for more holistic and integrated governance approaches that take account of the spatial dimension and functioning of ecosystems. This paper refers to such approaches as “ecosystem-based management” (EBM).

The following three types of regional oceans governance mechanisms are reviewed in this paper:

- (a) Regional Seas programmes, most of which are supported or coordinated by the United Nations Environment Programme (UNEP);
- (b) Regional fishery bodies (RFBs), some of which have been established under the framework of the United Nations Food and Agriculture Organization (FAO); and
- (c) Large Marine Ecosystem (LME) mechanisms, most of which are projects supported by the Global Environment Facility (GEF).

This review is intended to assist states that participate in existing regional oceans governance mechanisms, as well as those that are considering participating, by clarifying the key distinctions between their mandates, highlighting the successes and challenges of existing mechanisms, and outlining cooperation and coordination efforts. Options are identified for strengthening existing mechanisms and cooperation and coordination between them, as well as for the creation of new regional oceans governance mechanisms, with particular reference to EBM.

Global framework for the Law of the Sea

Regional oceans governance mechanisms operate under the global framework for the law of the sea, the foundation of which is the United Nations Convention on the Law of the Sea (UNCLOS) and its two Implementing Agreements (on deep seabed mining and on straddling and highly migratory fish stocks). A new international legally-binding instrument on marine biodiversity in areas beyond national jurisdiction

(ABNJ) is currently being discussed under the auspices of the United Nations General Assembly (UNGA): negotiations for such an agreement started in 2016.

A large number of global and regional instruments and bodies implement or complement UNCLOS and its Implementing Agreements, some do both. Chapter 2 provides an overview of relevant key features of the UNCLOS and its Implementing Agreements as well as other related global instruments and bodies. Separate subsections focus on the protection and preservation of the marine environment, fisheries, conservation of marine biodiversity and EBM. Each devotes specific attention to obligations on regional cooperation in global instruments and their implementation.

Analysis of existing regional oceans governance mechanisms

An analysis of existing the Regional Seas programmes, RFBs and LME mechanisms is provided in Chapters 3 and 4, and its two Annexes. The two case studies in Chapter 4 –East Asia and West, Central and Southern Africa – as well as the detailed information on the Regional Seas programmes and the RFBs in Annexes I and II, provided inputs for the analysis in Chapter 3. This analysis focuses firstly on categorizing mechanisms and identifying their substantive mandates, objectives, geographical coverage, and participation. Table 1 contains a schematic overview of the comparative analysis of key features of the three types of regional oceans governance mechanisms.

Successes and challenges of existing regional oceans governance mechanisms

Each type of regional oceans governance mechanism can boast many successes, though a variety of challenges remain. While Regional Seas programmes and RFBs are well established and have gained widespread acceptance and participation, the key problems they seek to resolve remain as pressing as when they were founded. Land-based pollution and over-exploitation of target species – often due to overcapacity and subsidies – are among their most serious challenges, together with implementing a precautionary approach to fisheries management. Many Regional Seas programmes lack modern and well-funded institutions. While LME mechanisms have strengthened regional oceans governance, for instance by generating valuable scientific data and assessments and contributing to capacity building, their principal challenge is to ensure that their successes secure sufficient support by regional stakeholders and are fed into adequate governance mechanisms so that regional threats to the marine environment and its biodiversity are addressed.

Table 1: Key Features of Regional Oceans Governance Mechanisms

	Regional Seas programmes	RFBS	LME mechanisms
Geographical scope	Mostly coastal areas up to the limits of EEZ (4 cover areas beyond national jurisdiction (ABNJ).	Three groups: (1) both high seas and coastal state maritime zones; (2) only or mainly the high seas; and (3) only coastal state maritime zones.	Mostly EEZ and territorial sea only; some in high seas.
Mandate	From pollution to protection of marine biodiversity. No mandate for activities covered by sectoral organisations such as IMO, ¹ ISA, FAO/RFBS.	Advisory or not. Specific (types of) species or “residual” within certain area. Mostly only one human activity, namely fishing (and associated activities); sometimes also aquaculture and/or research. Aimed at target species or EAF.	Multi-sectoral ecosystem-based assessment and management of LME goods and services.
Participation	Only coastal states (with the exception of the ATS).	Depends on spatial scope: either exclusively coastal states or both coastal states and extra-regional states (mostly distant water fishing states).	Only coastal states.
Institutional arrangements	Secretariat/RCU, COP /inter-governmental meeting. RACs in some; status depends on relationship to UNEP.	Stand-alone bodies or FAO bodies. International organisations (with secretariat) or Conference of the Parties/Meetings of the Parties (COPs/MOPs) (commonly without secretariat)	Multi-agency partnership, under the leadership of an international organisation. Few institutions established (Benguela Current Commission + Guinea soon).

Cooperation and coordination between existing regional oceans governance mechanisms

Given that the three types of regional oceans governance investigated here were conceived and designed successively and independently from one another, rather than

¹ However, many Regional Seas programmes have adopted Oil spills / Emergency protocols, which are also a topic in the framework of IMO’s mandate. In some cases, RACs have been created to deal with this issue and are run or supported by IMO.

as a bundle of complementary tools, cooperation and coordination between them is a crucial challenge. In sections 3.5 and 3.6 and Chapter 4, attention is paid to cooperation and coordination between existing regional oceans governance mechanisms, which occurs both among mechanisms of the same type and between different types of mechanism.

Despite the absence of a general obligation or framework for cooperation, regional oceans governance mechanisms are increasing their efforts to ensure the coordination between their respective activities. Regional Seas programmes and RFBs enter into partnerships through memoranda of understanding (MoU) and other instruments. LME mechanisms entered this crowded governance arena aiming to support on-going efforts. Some of the Regional Seas programmes and the RFBs have managed to strengthen their activities making use of GEF LME projects. Nonetheless, the issue of their place in the governance landscape must be explicitly addressed if synergies are to be fully exploited.

The level of cooperation and coordination between regional ocean governance mechanisms varies from one region to another, as illustrated by the two case studies provided in Chapter 4. In the West, Central and Southern Africa Region, cooperation between RFBs and the Abidjan Convention seems to be on track, as demonstrated by the 2012 Decision of the Abidjan Convention Contracting Parties to work together with these organisations and develop cooperation. The Guinea Current Large Marine Ecosystem (GCLME) project has proven useful in the process of revitalising the Abidjan Convention. The Canary Current Large Marine Ecosystem (CCLME) project – currently being implemented – has established cooperative arrangements both with the Abidjan Convention and the Sub-Regional Fisheries Commission (SRFC). The decision to create the Guinea Current Commission (GCC) within the Abidjan Convention framework is a positive step and will facilitate cooperation between both mechanisms.

The East Asian region is a telling example of organisational complexity with regard to regional oceans governance. The two Regional Seas programmes and two RFBs in the region are complemented with a high density of LMEs, some of them still purely ecological concepts while are the subject of a GEF LME project producing a Transboundary Diagnostic Analysis (TDA) and a Strategic Action Programme (SAP). To further complicate matters, some GEF projects cover two LMEs (such as the South China Sea and Gulf of Thailand LME projects) and one is not part of the region (The Partnership in Environmental Management for the Seas of East Asia - PEMSEA). The potential Yellow Sea Commission, emerging from the Yellow Sea Large Marine Ecosystem (YSLME) project in addition to the pre-existing Northwest Pacific Action Plan (NOWPAP) and RFBs, is an example where additional institutional frameworks are of questionable utility.

Finally, it should be kept in mind when considering coordination between RFBs and Regional Seas programmes that these are often weak mechanisms. They are short of resources to effectively implement their mandates, and states remain the key actors

when it comes to concrete implementation of measures agreed at the regional level. Therefore, while cooperation and coordination are major issues, they should never overshadow the basic need to strengthen individual mechanisms.

Options for new and existing regional oceans governance mechanisms

The concluding Chapter provides recommendations and options towards applying EBM in regional oceans governance. This means making the existing system more coherent, effective and efficient, including by a better use of scarce available resources (human, financial, logistical, etc.). Firstly, this may be done through:

- (a) Strengthening existing regional oceans governance mechanisms;
- (b) Creating new regional oceans governance mechanisms (including to replace existing ones) as necessary; and
- (c) Enhancing cooperation and coordination.

Attention must be drawn to three strategic dead-ends that should be avoided:

- (a) Bypassing existing regional oceans governance mechanisms in cases where they are deemed weak or unable to deliver change;
- (b) Developing action plans without seriously considering future implementation issues, means, resources and actors; and
- (c) Proclaiming the importance of regional oceans governance while failing to strengthen weak regional governance mechanisms.

Secondly, acknowledging that regional oceans governance mechanisms are highly heterogeneous and that this variety reflects the fragmentation of competences at the national level, it is suggested:

- (a) That the mandates of various regional oceans governance mechanisms are revised so as, *inter alia*, to fill gaps and facilitate implementation of the ecosystem approach to fisheries (EAF) by RFBs and EBM by Regional Seas programmes;
- (b) In parallel, that individual mechanisms are strengthened to improve their efforts to better coordinate with other mechanisms; and
- (c) That informal cooperation and coordination are promoted, as this is often more realistic than formal reorganisations for historical and institutional reasons. For instance merging the Regional Seas programmes and the RFBs into so-called Regional Oceans Management Organisations (ROMOs) may be the way forward in a few very specific cases but cannot

be a generally applicable pathway. In the same vein, the Benguela Current Commission (BCC) is suited to a specific context but should not be taken as a model since its generalisation would reinforce the institutional proliferation syndrome.

Finally, special attention is devoted to LME mechanisms and their role in regional oceans governance. Many of these were developed through GEF projects, which raises concerns as to their long-term prospects, while an increasing number of originally GEF-supported LME projects have also led to the establishment of formal, perennial organisations, which then raises other concerns about the role they will play in the crowded oceans governance landscape.

Whereas the added value of LME mechanisms with regard to TDAs and SAPs is widely acknowledged, there is also a widespread expert opinion that the governance dimension of LME mechanisms needs further consideration. We recommend that national and international agencies supporting LME mechanisms work together to develop and adopt an explicit and comprehensive strategy with regard to LME governance. Some guiding principles could include:

- (a) Governance, and its knowledge needs, should come first, driving scientific assessments in an iterative process;
- (b) LME mechanisms may form a platform for scientific assessments, capacity building and on-the-ground interventions, but these should be operated under existing regional oceans governance mechanisms wherever possible;
- (c) When a new international body is deemed necessary to implement the LME approach in an area within the competence of a Regional Seas programme, such a body should be established under umbrella of that Regional Seas programme;
- (d) Although considered a flagship governance outcome of the LME approach, replication of the BCC scenario should be based on a detailed and context-specific governance gap analysis rather than being considered a generally applicable pathway;
- (e) LME mechanisms should be used primarily as catalysers of change in existing regional oceans governance mechanisms; and
- (f) To allow a clearer governance strategy to be developed, several terms and concepts should be clarified.

1. Introduction

1.1. Challenges for regional oceans governance

Governance can be defined as “the structures, functions, processes, and organizational traditions that have been put in place within the context of a program’s authorizing environment to define and achieve objectives in an effective and transparent manner” (IEG-World Bank 2007). The 2012 FAO report on governance performance of regional fishery bodies (RFBs) (FAO 2012), highlights key governance challenges, such as: transparency (e.g. regarding the rules for observers); relationships with non-contracting parties; cooperation with other international organizations and other RFBs, especially those targeting the same species; and special requirements of developing states. Although similar performance reviews for regional seas programmes and LME mechanisms are lacking, it is clear that effective regional oceans governance is not only about what should be done, but also who should be engaged and how this could be organized within and between various (international) organizations. Cooperation between organizations is not only needed because of overlapping convention areas and/or straddling fish stocks and the interconnection between ecosystems, but also because of different responsibilities regarding a wide range of activities that take place in and around the oceans.

Oceans play a key role in the global climate and weather system, but they also accommodate uses such as fisheries, shipping, mining, bioprospecting, renewable energy production and telecommunication. In other words, the marine environment serves important functions for global food security and economic prosperity. An essential condition for sustaining both these functions, as well as the intrinsic value of the environment, is healthy, productive and resilient marine ecosystems.

Significant damage to the oceans is caused by sea-based and land-based pollution, unsustainable exploitation of living and non-living resources, physical impacts by human activities on habitats for important and endangered species, and important ecosystem services for human benefits and climate change. Examples of threats faced by the oceans are overfishing and destructive fishing practices, ocean acidification, ocean warming, marine debris, industrial, agricultural and urban run-offs, accidental oil and other chemical spills, nuclear accidents, and invasive alien species from ballast water,² among others.

Overfishing is a particularly tough challenge because of the difficulties of (at-sea) enforcement of deep-sea bottom trawl fishing regulations (UNEP 2006; 24). However, coastal areas and exclusive economic zones (EEZs) also have particular challenges, such as the lack of interaction between the fisheries sector and other socio-economic sectors (as further explained in section 3.6.2).

² UNCSD Secretariat, RIO 2012 Issues Briefs. No. 4 Oceans, pp. 3-4.

To ensure the preservation and protection of the marine and coastal environment and its biodiversity for future generations, as well as maintaining ecosystem services for the economic and social benefits of human beings, these three pillars of sustainable development need to be in balance. The concept of “sustainable development” was introduced by the World Commission on Environment and Development (Brundtland Commission) in 1987. It was defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.³ A sustainable approach is a systems-based approach that seeks to understand the interactions that exist among the three pillars (environment, social, and economic) in an effort to better understand the consequences of our actions. Despite critical debates between actors related to each of the pillars about the apparent dominance of one of the pillars in various situations, the international community has continued to use the concept.⁴

Agenda 21, developed at the 1992 United Nations Conference on Environment and Development (UNCED or Rio Summit), explicitly promotes a holistic approach to oceans management. Chapter 17 observes that the marine environment, including the oceans and all seas and adjacent coastal areas, form an integrated whole. For this reason, marine and coastal area management requires an approach that is integrated at the national, (sub-) regional and global levels.

Such an integrated approach requires the involvement of all sectors for efficient coordination between organizations, compatibility between policies and activities, as well as a balance of uses.⁵ Since management measures are in many cases sectoral in nature, coordination is required internally as well as with the competent organizations.

Chapter 17.1 further provides that international law as reflected in the provision of the United Nations Convention on the Law of the Sea (UNCLOS)⁶ provides the international basis upon which to pursue the protection and sustainable development of the marine and coastal environment and its resources. At Rio+10 in Johannesburg, 2002, the commitments to the Rio Principles and Agenda 21 were reaffirmed. The Johannesburg Plan of Implementation (JPOI) paid much attention to the three components of sustainable development (economic development, social development and environmental protection) as interdependent and mutually reinforcing pillars.⁷

³ Sustainable Development – concept and action, available at http://www.unece.org/oes/nutshell/2004-2005/focus_sustainable_development.html

⁴ Sustainability Primer, available at http://www.epa.gov/ncer/rfa/forms/sustainability_primer_v7.pdf

⁵ Earth Summit. Agenda 21: The United Nations Action Programme from Rio, para. 17.5(a). Available at: <http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

⁶ Montego Bay, 10 December 1982. In force 16 November 1994, 1833 *United Nations Treaty Series* 396; <www.un.org/Depts/los>.

⁷ World Summit on Sustainable Development (2002), Plan of Implementation. Available at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf

At Rio+20, held in Rio de Janeiro in 2012, the earlier commitments were reaffirmed again in the oceans section of the outcome document “The Future We Want”. The common goal is described as ‘Healthy Oceans for Prosperity’.⁸

1.2. Institutional framework

States frequently participate in three different types of regional oceans governance mechanism: Regional Seas programmes, REBs and LMEs. One of the key institutional challenges is the overlap in mandates and geographical coverage of these mechanisms.

1.2.1. Regional Seas Programmes

In the early 1970s the UNEP Governing Council endorsed a regional cooperation approach to address marine pollution, and in 1974 the UNEP Regional Seas Programme (RSP) was established. The RSP covers 18 marine and coastal regions worldwide. 14 Regional Seas programmes were established under the auspices of UNEP: 7 are directly administered by UNEP further to a decision by the states participating in the relevant regional seas convention or action plan, while 7 are administered by other regional organisations that host and/or provide the Secretariat, including the management of the financial, budgetary and administrative services. These latter programmes received initial support from UNEP in setting up the relevant conventions or action plans for the respective regions. Finally, 4 Regional Seas programmes were established independently and act as independent programmes. However, they are invited to participate in the global meetings of the RSPs, share experiences, are parties in twinning arrangements and exchange policy advice and support.

For each of the Regional Seas programmes, an action plan serves as the basis for regional cooperation to address the issues prioritised regarding their marine and coastal environments. For some of the Regional Seas programmes, the participating states decided to adopt legally binding instruments and framework conventions, and protocols were therefore developed to support the parties in the achievement of their common objectives. The work of the RSP is coordinated by UNEP’s Marine Ecosystems Branch in the Division of Environmental Policy Implementation, based at the Nairobi Headquarters. Regional Coordinating Units (RCUs) have been established to support the secretariat functions and the implementation of the regional seas conventions and action plans of the UNEP-administered Regional Seas programmes.

1.2.2. Regional Fishery Bodies

RFBs are regional mechanisms through which states or entities⁹ cooperate on the sustainable use and conservation of marine living resources (fish as well as marine

⁸ UN doc. A/CONF.216/L.1, of 19 June 2012.

⁹ I.e. the European Union (EU) and Chinese Taipei (Taiwan).

mammals) and/or the development of marine capture fisheries.¹⁰ As will be explained in subsection 3.3.2, different types of RFBs exist due to diverging mandates, which can be specified geographically, in terms of species, in terms of functions, or a combination. The most important distinction is that there are RFBs with a management mandate that includes the competence to establish legally binding conservation and management measures – so-called regional fisheries management organisations (RFMOs) – and “advisory” RFBs. For the purpose of this paper, the term RFMO also covers a so-called “Arrangement”,¹¹ unless specifically indicated otherwise. The main differences between an RFMO’s constitutive instrument and an Arrangement are that the latter does not establish an international organisation – and therefore no Secretariat – and may also be non-legally binding.

As explained in section 1.4.1, the geographical scope of this paper is confined to the marine environment, subject to some exceptions. This does not include RFBs whose mandate is confined to inland waters, thus “RFB” is understood here to exclude such “inland waters-RFBs”. Regional bodies whose mandate consists of sustainable use as well as conservation of marine mammals are not excluded from this definition e.g. the North Atlantic Marine Mammal Commission (NAMMCO). However such bodies aimed solely at conservation, and not also at sustainable use, are excluded from the scope of this paper.¹²

Currently, there are 41 marine RFBs worldwide, comprising 21 RFMOs and 20 advisory RFBs (3 scientific; 17 management advisory). Other RFBs are in the planning or development stages, contributing to the aim of global high seas coverage of RFBs. Some RFBs have been modernised in recent years and have updated their constitutive instruments or replaced them with new ones. However, the mandates of some RFBs are considered by the FAO as out-dated, since they do not adequately address contemporary fisheries management approaches and issues, such as impacts on non-target species and the broader marine ecosystem.¹³

1.2.3. Large Marine Ecosystem (LME) mechanisms

Based on the United States National Oceanic and Atmospheric Administration (NOAA)’s research and proposed approach, 64 LMEs have been identified and delimited (Sherman and Hempel 2008). Since its establishment in 1991, the Global Environment Facility (GEF) has adopted the LME concept as the marine component

¹⁰ Excluded are therefore regional bodies aimed exclusively at the conservation of marine species, e.g. regional bodies established in the framework of the Convention on the Conservation of Migratory Species of Wild Animals (CMS; Bonn, 23 June 1979. In force 1 November 1983, 1651 *United Nations Treaty Series* 355; <www.cms.int>).

¹¹ See the definition in art. 1(1)(d) of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (hereafter UNFSA), New York, 4 August 1995. In force 11 December 2001, 2167 *United Nations Treaty Series* 3; <www.un.org/Depts/los>), whose main conditions are consistency with international law and a purpose that falls within the scope of the UNFSA. This does not prevent states from establishing an Arrangement with a purpose that extends beyond the scope of the UNFSA, for instance because it also deals with discrete high seas fish stocks. It is this broader meaning of the term Arrangement that is adopted in this paper.

¹² E.g. those established pursuant to the CMS, note 10 supra...

¹³ FAO (2012), *The State of World Fisheries and Aquaculture 2012*, p. 92. Available at: <http://www.fao.org/docrep/016/i2727e/i2727e00.htm>

of its International Waters (IW) focal area, and has instituted 21 LME projects amounting to US\$3.1 billion and involving 110 states as well as intergovernmental organizations such as UNEP, the UN Development Programme (UNDP), the Intergovernmental Oceanographic Commission (IOC) of the UN Educational, Scientific and Cultural Organization (UNESCO), FAO, the World Bank and regional development banks (Sherman 2013). LME projects aim at engaging states and partners in an ecosystem approach linking coastal zone management with the marine environment, including socio-economic aspects. In some cases, states have been invited to establish new governance bodies, such as LME commissions.¹⁴

1.3. Ecosystem management concepts

This section first describes how the various concepts of ecosystem management have evolved over time. Next, the most relevant concepts for regional oceans governance will be described in more detail, specifically: EBM, ecosystem management and the ecosystem approach to fisheries (EAF). EAF relates exclusively to the fisheries sector, while the other two concepts have been developed and matured in various forums. The most relevant international forums with respect to regional oceans management are also mentioned, i.e. UNEP with respect to EBM, and the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD),¹⁵ the UNGA, and UNEP with respect to the ecosystem approach.

1.3.1. Evolving views on ecosystem management

As discussed in section 1.1 of this paper, it is important that marine and coastal ecosystem services are managed sustainably in order to ensure the well-being of people as well as a good condition of the natural environment (UNEP 2011; 10). Ecosystem services are the benefits provided by ecosystems that contribute to making human life both possible and worth living, including products (such as food and water) and non-material benefits (such as recreational benefits in natural areas).¹⁶ The impact of an activity or process on one component of an ecosystem may have consequences on other components of the same system. The traditional approaches to environmental management according to sectors or biomes¹⁷ have a number of shortcomings, such as disregarding the interdependence of ecosystem services and human needs (UNEP 2009; 10). For this reason, holistic decision-making is required for sustainable ecosystem management, preferably through participation of all relevant stakeholders.¹⁸

¹⁴ http://www.lme.noaa.gov/index.php?option=com_content&view=article&id=47&Itemid=41

¹⁵ Convention on Biological Diversity, Nairobi, 22 May 1992. In force 29 December 1993, 1760 *United Nations Treaty Series* 143 (1993); <www.biodiv.int>.

¹⁶ UK National Ecosystem Assessment, available at <http://uknea.unep-wcmc.org/EcosystemAssessmentConcepts/EcosystemServices/tabid/103/Default.aspx>

¹⁷ Biomes can be defined as geographically and climatically linked natural communities (UNEP 2009; p. 10).

¹⁸ Ibid.

Ecosystem management derives from wildlife management, born on land, involving direct manipulation of the habitat and population as well as of human activity with a view to optimizing long-term returns to humans (FAO 2003; 3-4). Inland fisheries management has developed as an extension of such wildlife management. However, FAO argues that the possibility of marine environment management is limited to controlling human activities, such as fisheries (FAO 2003; 3-4). The latter is also the view of UNEP and many scientists with regard to EBM, which would focus on the management of human activities, rather than on the management of entire ecosystems (including human activities) preferred by UNEP.¹⁹

The terms EBM and the ecosystem approach are often used interchangeably in the international discourse. However, the term ecosystem-based fisheries management (EBFM), as defined by the United States National Research Council, found insufficient support at the 2001 FAO Reykjavik Conference on Responsible Fisheries in the Marine Ecosystem (2001 Reykjavik Conference). Possibly some states may have interpreted the term as giving the environmental pillar pre-eminence over the other pillars of sustainable development. Instead, a preference existed for the acronym EAF (FAO 2003; 6; UNEP 2001). EAF is a key component of marine EBM, although the latter is generally regarded to be an overarching or more comprehensive concept covering multiple sectors for common objectives (UNEP 2011; 10-12). Finally, the different ecosystem management concepts all follow an area-based approach. Rather than jurisdictional boundaries, ecosystems themselves represent the spatial scopes of the management radius. Regional-scale management is an especially important part of ecosystem management (UNEP 2011; 10-11).

Since its establishment in 1974, the RSP has adapted itself to address the changing needs of its participating states, initially addressing pollution, monitoring and capacity building, the priorities have shifted towards integrated ecosystem management. The Regional Seas programmes have therefore been requested to cover a wider range of issues related to the sustainable development of marine and coastal areas. This is reflected in the revised versions and new titles of some of the regional seas conventions and protocols.²⁰ Moreover, rather than mere “protection”, the focus also expanded to encompass “management”. This, too, was reflected in the titles of amended conventions.²¹

¹⁹ Scientific Consensus Statement on Marine Ecosystem-Based Management. Prepared by scientists and policy experts to provide information about coasts and oceans to U.S. policy-makers, Released on March 21, 2005, p. 6.

²⁰ E.g. the 1976 Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona, 16 February 1976. In force 12 February 1978, 15 *International Legal Materials* 290; <www.unepmap.org>) was revised in 1995 as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona, 10 June 1995. In force 9 July 2004, <www.unepmap.org>); and Annex V “On the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area” (Sintra, 23 September 1998. In force 30 August 2000) to the OSPAR Convention (Convention for the Protection of the Marine Environment of the North-East Atlantic, Paris, 22 September 1992. In force 25 March 1998, <www.ospar.org>).

²¹ E.g. the 1981 Abidjan Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region is since 2008 the Convention for Co-operation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region.

A similar development can be seen within the fisheries sector, where RFBs are moving from focusing exclusively on target species towards pursuing multiple objectives under the broader concept of EAF. For example, the International Commission on the Conservation of Atlantic Tunas (ICCAT) has a tuna mandate, but is also looking at sharks in ecological risk and stock assessments.²² However, implementation is a challenge and is only taking place in a few regions, so much greater commitment and action will be needed in the coming decades to ensure global application.

The basic purpose of the LME approach is promoting the ecosystem approach and management through a Transboundary Diagnostic Analysis (TDA) and a Strategic Action Programme (SAP), addressing together all aspects of marine and coastal development. Primarily oriented toward large-scale assessment and monitoring of the marine environment, LME projects have started to incorporate policy and governance issues, moving towards the establishment of permanent institutional structures, mainly in the form of LME commissions.

1.3.2. Ecosystem-Based Management

EBM is an approach that recognizes ecosystems as a mix of elements interacting with each other, which is especially important for the sustainable management of oceans and coasts (UNEP 2011; 10). The EBM approach is developed and applied by many actors, but notable are UNEP's extensive guidelines "Taking Steps toward Marine and Coastal Ecosystem-Based Management – An Introductory Guide" (2011).

Most EBM definitions are based on the one prepared in 2005 by 70 United States scientists and policy experts. Their Scientific Consensus Statement on Marine Ecosystem-Based Management defines EBM as follows:²³

[A]n integrated approach to management that considers the entire ecosystem, including humans. The goal of [EBM] is to maintain an ecosystem in a healthy, productive and resilient condition so that it can provide the services humans want and need. [EBM] differs from current approaches that usually focus on a single species, sector, activity or concern; it considers the cumulative impacts of different sectors.

For the purpose of this paper, however, the definition as provided by UNEP will be used (UNEP 2006; 5):

In EBM, the associated human population and economic/social systems are seen as integral parts of the ecosystem. Most importantly, EBM is concerned with the processes of change within living systems and sustaining the services that healthy ecosystems produce. EBM is therefore designed and executed as an adaptive,

²² See www.iccat.int/en/assess.htm and www.iccat.int/Documents/Meetings/Docs/SCRS/SCRS-08-138_Cortes_et_al.pdf.

²³ 2005 Scientific Consensus Statement, note 19 supra, at p.1.

learning-based process that applies the principles of the scientific method to the processes of management.

Various characteristics of EBM are especially important to take into account. Firstly, EBM is a work in progress and should be considered a process rather than an end state. In order to deal with the complex and dynamic nature of ecosystems and the lack of full scientific knowledge of ecosystem functioning, it is important to apply adaptive management (UNEP 2011; 12-13 and 29).

Secondly, EBM requires the identification of spatial units capturing ecosystem structure and functions. Area-based approaches and transboundary perspectives are central to EBM, since these provide more opportunities to effectively deal with many threats to the environment such as transboundary pollution (UNEP 2011; 15). The identification of management units within ecosystems should be based on ecological criteria instead of institutional boundaries or criteria, whether national or sectoral. Issues of scale can be addressed by viewing ecosystems as nested systems. Increased international cooperation in shared ecosystems could be addressed through existing regional management bodies and, as necessary, new collaborative efforts focused on individual ecosystems.²⁴

1.3.3. Ecosystem approach

The ecosystem approach has been described by the COP to the CBD as “a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way”.²⁵ The definition used by UNEP is almost the same, but leaves out the term “conservation” and instead includes “sustainable delivery of ecosystem services” (UNEP 2011; 13).

Relating the ecosystem approach to ocean management, the UNGA noted in 2006 that it should be focused on managing human activities in order to maintain and, where needed, restore ecosystem health to sustain goods and environmental services, provide social and economic benefits for food security, sustain livelihoods in support of international development goals... and conserve marine biodiversity.²⁶ The UNGA has since reiterated this position in its annual resolutions on oceans and the law of the sea.

Pursuant to the CBD, the ecosystem approach is a normative framework that needs to be translated into methods for further application tailored to the needs of specific users. “One-size-fits-all” solutions for the ecosystem approach are neither feasible nor desirable. Therefore, parties to the CBD are invited to develop guidelines for the

²⁴ Norwegian Polar Institute, Best Practices in Ecosystem-Based Oceans Management in the Arctic, Report Series no. 129, April 2009, pp. 111-112. Available at: <http://portal.sdwg.org/media.php?mid=1017&xwm=true>

²⁵ COP Decision V/6 on Ecosystem Approach (2002), para. A (1).

²⁶ UNGA Resolution 61/222 (doc. A/RES/61/222, of 16 March 2007), p. 20, para. 119(b).

application of the ecosystem approach for specific bio-geographical regions and circumstances, building upon existing efforts where applicable.²⁷

In 2000, the 5th COP to the CBD (COP-5) adopted 12 complementary and interlinked principles of the ecosystem approach, as well as 5 operational guidelines for its application.²⁸ They recognize that management of natural resources calls for increased inter-sectoral communication and cooperation at a range of levels.²⁹ Secondly, in 2008 COP-9 adopted scientific criteria for the identification of ecologically or Biologically Significant Marine Areas (EBSAs). Areas found to meet the criteria may require enhanced conservation and management measures.³⁰ A process to identify EBSAs has been set out by COP-10. However, the CBD emphasizes that the identification of EBSAs and the selection of conservation and management measures is a matter for states and competent intergovernmental organizations, in accordance with international law, including the UNCLOS.³¹

Within the context of UNEP, the term ecosystem approach has for several years been incorporated into global strategy documents. For example, the UNEP Global Strategic Directions for the Regional Seas Programme 2008-2012 emphasizes the need to implement the ecosystem approach “as an overarching management framework for addressing threats to the sustainability of regional seas” (UNEP 2007). The UNEP Medium-term Strategy 2010-2013 identifies ecosystem management as one of its six cross-cutting thematic priorities.³² It is foreseen that ecosystem management will continue to be a priority in the Medium-term Strategy 2014-2017.³³

1.3.4. Ecosystem Approach to Fisheries (EAF)

The EAF is perceived by FAO as the amalgamation of two related paradigms: ecosystem management and fisheries management (FAO 2003; 6 and 11). The latter is also known as “target resources-oriented management” (TROM) (FAO 2003; 11). Both paradigms have different objectives, based on different perspectives, processes and institutions. However, the FAO considers that the EAF “is not a departure from the past fisheries management paradigms; it is, rather, a new phase in a process of continuous evolution” (FAO 2003; 73).

Although the FAO Code of Conduct for Responsible Fisheries (CCRF),³⁴ a voluntary framework to increase the sustainable contribution of fisheries to development, does not mention the EAF, it does cover most of its components. At the 2001 Reykjavik

²⁷ COP Decision IX/7 (2008), para. 2(f).

²⁸ COP Decision V/6, note 25 *supra*, at para. A (1).

²⁹ *Ibid.*, para. 12.

³⁰ COP Decision IX/20 (2008), pp. 1 and 7-12.

³¹ See COP Decision X/29 (2010), para. 26.

³² UNEP (date unknown), UNEP Medium-term Strategy 2010-2013: Environment for Development, UNEP/GCSS.X/8, pp. 9, 11 and 27. Available at: <http://www.unep.org/PDF/FinalMTSGCSS-X-8.pdf>

³³ <http://uncsd.iisd.org/news/unep-preparing-draft-medium-term-strategy/>

³⁴ Code of Conduct for Responsible Fisheries. Adopted by the Twenty-eight Session of the FAO Conference, Rome, 31 October 1995, <www.fao.org/fishery/code/en>.

Conference a major step was taken by trying to identify means by which ecosystem considerations could be included in capture fisheries management. One of the key provisions in the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem is the following:³⁵

It is important to strengthen, improve, and where appropriate establish, regional and international fisheries management organizations and incorporate in their work ecosystem considerations and improve cooperation between those bodies and regional bodies in charge of managing and conserving the marine environment.

This emphasises the institutional aspect, which must be strengthened and improved in order to successfully incorporate ecosystem considerations in fisheries management.

EAF was included in the framework of the CCRF by means of Technical Guidelines adopted in 2003, and defined as follows (FAO 2003; 14):

an ecosystem approach to fisheries (EAF) strives to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries.

The term “approach” indicates, according to FAO, that the EAF is a way of taking ecosystem considerations into more conventional fisheries management, or “the spirit in which the [FAO CCRF] ought to be implemented” (FAO 2003; 6). It was emphasized by FAO that the existing management controls and measures retain their importance, but these will need to be considered in a broader context and include objectives as minimizing or avoiding impacts of fishing on non-target species (FAO 2003; 29).

Additional papers which elaborated on the EAF include: Putting into Practice the Ecosystem Approach to Fisheries (2005);³⁶ Best Practices in Ecosystem Modelling for Informing an Ecosystem Approach to Fisheries (2008);³⁷ The Human Dimension of the Ecosystem Approach to Fisheries (2009);³⁸ and Marine Protected Areas and Fisheries (2011).³⁹

Some RFBs already have chosen to orient their management mandate towards EAF. However, in general EAF is still an evolving practice, with the pace of its incorporation varying significantly by region and RFB. Challenges include the reduction of fragmentation in policies, sectors, institutions and sciences; institutionalization of the implementation process; and simplification of regulatory frameworks (CBD 2007; 12-16). It has been emphasized by FAO that EAF does not

³⁵ Available at: <http://www.fao.org/docrep/meeting/004/Y2211e.htm>

³⁶ Available at: <ftp://ftp.fao.org/docrep/fao/008/a0191e/a0191e00.pdf>

³⁷ Available at: <http://www.fao.org/docrep/011/i0151e/i0151e00.htm>

³⁸ Available at: <http://www.fao.org/docrep/010/i0163e/i0163e00.htm>

³⁹ Available at: <http://www.fao.org/docrep/015/i2090e/i2090e.pdf>

replace or diminish the need to control fish mortality on target and bycatch species, nor the need to control fishing capacity (FAO 2003; 26).

1.4. Objectives of this report

The review of existing regional oceans governance mechanisms in this paper is intended to assist states and other stakeholders that participate in existing mechanisms, as well as those that may be considering participating in the future, by clarifying the key distinctions between the mandates and scope of these mechanisms, highlighting successes and challenges, and assessing the cooperation between them. Furthermore, options are identified for strengthening existing mechanisms and cooperation between them, as well as for the creation of new regional oceans governance mechanisms, with particular reference to the ecosystem approach.

1.4.1. Geographical scope

As this paper deals with regional oceans governance, its geographical scope is primarily limited to the marine environment, which comprises the salt-water environment – both the water column and the seabed and subsoil – in the various coastal state maritime zones and ABNJ (see section 2.2). Also included, however, are regional oceans governance mechanisms whose geographical mandate covers inland waters and land territory (e.g. catchment areas), but whose main focus is the protection and preservation of the marine environment, the conservation of marine biodiversity and/or EBM.

1.4.2. Structure

This first Chapter briefly addressed the challenges for regional oceans governance and the institutional framework with respect to RSPs, RFBs and LME mechanisms. Both the institutional framework and challenges will be further elaborated upon in Chapters 4 and 3 respectively. Chapter 1 described the various ecosystem-based concepts which have been discussed and promoted by countries and are guiding the action of relevant organisations. Chapter 2 provides an overview of the global framework for the law of the sea. The key instruments, institutions and developments at the global level are described, as well as the obligations under the law of the sea related to regional cooperation.

Chapter 3 analyses existing regional oceans governance mechanisms, drawing from the two Annexes that provide an overview of Regional Seas programmes and RFBs, including information on their legal basis, institutional frameworks and financial arrangements. The first focus of chapter 3 is on the instruments and bodies of the various Regional Seas programmes, RFBs and LME mechanisms. Attention is then paid to cooperation and coordination between regional oceans governance mechanisms. The Chapter finishes with an overarching and comparative analysis, including an identification of the successes and challenges of existing mechanisms and cooperation activities. Chapter 4 is dedicated to two case-studies, namely the

Wider East Asia Region and the West, Central and Southern Africa Region with a particular focus on the mandates, institutional arrangements, cooperation mechanisms, financial arrangements and best practices of effective governance pursuing the ecosystem approach.

The final chapter offers a rationale and options for new regional oceans governance mechanisms or possible adjustments to existing mechanisms. In developing these options, various considerations are taken into account, such as avoiding duplication and overlap, enhancing coherence and efficiency, and incorporating the ecosystem approach.

2. The global framework for the Law of the Sea

2.1. UNCLOS and its Implementing Agreements

The UNCLOS and its two Implementing Agreements – the Part XI Deep-Sea Mining Agreement⁴⁰ and the Fish Stocks Agreement (UNFSA)⁴¹ – set out the legal framework within which all activities in the oceans and seas must be carried out and, as reaffirmed by the UNGA in its Resolution No. 66/231, is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector. At the time of writing, there were 166 parties to the UNCLOS, including the EU.

The UNCLOS establishes a delicate balance between the rights and duties of states in the various maritime zones as well as between the need for economic and social development through the use of the oceans and their resources and the need to protect and preserve the marine environment, and conserve and manage those resources. From that perspective, it can be considered to embody the concept of sustainable development.

Divides the oceans into a number of maritime zones where states have different rights and obligations, the UNCLOS includes provisions on: navigation; conservation and management of marine living resources; exploration and exploitation of mineral resources in the Area; the protection and preservation of the marine environment; marine scientific research, transfer of marine technology; and dispute settlement mechanisms.

2.2. Maritime zones

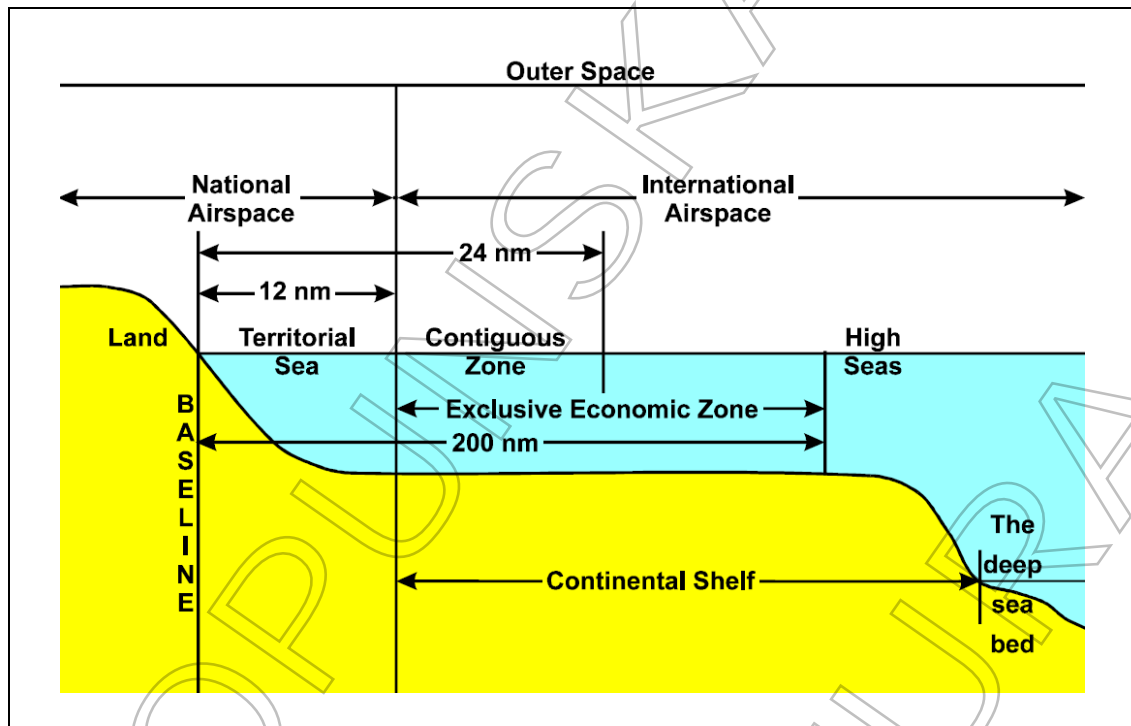
Seaward from the baselines, the zones under national sovereignty or jurisdiction are: the territorial sea (up to 12 nautical miles (nm)); the contiguous zone (up to 24 nm); the EEZ (up to 200 nm); and the continental shelf (up to 200 nm but which can extend further up to 350 nm or 100 nm from the 2,500-metre isobaths, subject to a number of

⁴⁰ Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, New York, 28 July 1994. In force 28 July 1996, 1836 *United Nations Treaty Series* 42 (1994); <www.un.org/Depts/los>.

⁴¹ See note 11 supra.

conditions as set out in article 76 of the UNCLOS). The zones beyond areas of national jurisdiction are the high seas and the Area (see Figure 1)

Figure 1: Maritime zones



The sovereignty of a coastal state extends beyond its land territory and internal waters and, in the case of an archipelagic state, its archipelagic waters, to the territorial sea. This sovereignty extends to the seabed and subsoil.

In the contiguous zone, the coastal state may exercise control for preventing and punishing infringement of its laws and regulations concerning customs, fiscal, immigration or sanitary matters within its territory or territorial sea, as well as removal of archaeological and historical objects found at sea.

In the EEZ, the coastal state has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of this zone, such as the production of energy from the water, currents and winds; (b) jurisdiction with regard to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment; and (c) other rights and duties provided for in the UNCLOS. A number of coastal states have chosen not to establish an EEZ and instead, some of them claim, or continue to claim, exclusive fishery zones or ecological protection zones, although the UNCLOS does not provide for such zones.

Coastal states exercise sovereign rights over the continental shelf, which comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea, for the purpose of exploring it and exploiting its natural resources. Such rights do not depend on occupation, effective or notional, or on any express proclamation. The natural resources consist of mineral and other non-living resources of the seabed and subsoil, together with living organisms belonging to sedentary species. Such species are defined as organisms that, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

The high seas are governed by the regime of the freedom of the high seas, guaranteeing all States: freedom of navigation; freedom of overflight; freedom to lay submarine cables and pipelines, subject to Part VI of the UNCLOS; freedom to construct artificial islands and other installations permitted under international law, subject to Part VI of the UNCLOS; freedom of fishing, subject to the conditions laid down in section 2 of Part VII of the UNCLOS on the conservation and management of the living resources of the high seas; and freedom of scientific research, subject to Parts VI and XIII of the UNCLOS. The Area and its resources have the status of common heritage of mankind and are subject to the regime laid down in Part XI of the UNCLOS and in the Part XI Deep-Sea Mining Agreement.

2.3. Relevant global instruments and bodies

2.3.1. Introduction

The UNCLOS serves as a unifying framework for a growing number of more detailed international instruments on marine environmental protection and the utilization, conservation and management of marine resources, which implement or further develop its general provisions. Global instruments include the International Convention for the Prevention of Pollution from Ships (MARPOL),⁴² the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention)⁴³ and its Protocol,⁴⁴ the CBD and its Cartagena and Nagoya Protocols,⁴⁵ the Global Programme of Action for the Protection of the Marine

⁴² International Convention for the Prevention of Pollution from Ships, London, 2 November 1973, as modified by the 1978 Protocol (London, 1 June 1978) and the 1997 Protocol (London, 26 September 1997) and as regularly amended. Entry into force varies for each Annex. At the time of writing Annexes I-VI were all in force.

⁴³ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, Mexico City, Moscow, Washington D.C., 29 December 1972. In force 30 August 1975, 11 *International Legal Materials* 1294 (1972); as amended; consolidated version available at <www.imo.org>.

⁴⁴ 1996 Protocol, London, 7 November 1996. In force 24 March 2006, *Law of the Sea Bulletin* No. 34 (1997), p. 71; as amended in 2006, consolidated version at <www.imo.org>.

⁴⁵ Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, 29 January 2000. In force 11 September 2003; 2226 *United Nations Treaty Series* 208 (257) (2005); <www.biodiv.int>); Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya, 29 October 2010. Not in force; Doc. UNEP/CBD/COP/DEC/X/1, of 29 October 2010; <www.biodiv.int>).

Environment from Land-based Activities (GPA),⁴⁶ as well as the FAO Compliance Agreement,⁴⁷ the CCRF, and several International Plans of Action.

Both the UNCLOS and its Implementing Agreements acknowledge the competence of pre-existing global or regional instruments and bodies impose obligations on states to cooperate and agree on regulations through them. While pre-existing international bodies are occasionally mentioned by name,⁴⁸ it is more common for the UNCLOS to use non-specific references to “competent” international organisations. This acknowledges not only that more than one pre-existing international body may have competence in certain scenarios, but also that the mandates of international bodies may develop over time and that new international bodies may be established.⁴⁹

Parties to the UNCLOS can be bound to the regulations adopted by these competent international organisations by so-called “rules of reference” included in the UNCLOS. Regarding vessel-source pollution, for instance, flag states are required to adopt laws and regulations that have “at least the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference”.⁵⁰ The primary competent international organisation is in this case the International Maritime Organization (IMO)⁵¹ and “generally accepted international rules and standards” (GAIRES) are at any rate those laid down in legally binding IMO instruments that have entered into force (Molenaar 1998; 140-167). Rules of reference relating to fisheries (for other than marine mammals) are intended to refer primarily to FAO and RFBs.⁵² The UNEP is also regarded as a competent international organisation for a number of relevant provisions in the UNCLOS.⁵³

The UNGA is the global institution with the competence to undertake an annual consideration and review of developments relating to ocean affairs and the law of the sea (UNGA resolution 68/70). It has established processes to address specific issues. For example, since 2011, the Working Group established in 2004 by the UNGA to study the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction has embarked on a process to ensure that the legal framework effectively addresses the issue, including through the implementation of existing instruments and the possible development of an international instrument under the UNCLOS.

⁴⁶ Washington D.C., 3 November 1995. Doc. UNEP (OCA)/LBA/IG.2/7, of 5 December 1995; <www.gpa.unep.org>.

⁴⁷ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Rome, 24 November 1993. In force 24 April 2003, 33 *International Legal Materials* 969 (1994); <www.fao.org/legal>.

⁴⁸ E.g. the International Civil Aviation Organization (ICAO) in art. 39(3) (a) of the UNCLOS.

⁴⁹ See the study “Competent or relevant international organizations” under the United Nations Convention on the Law of the Sea”, *Law of the Sea Bulletin* No. 31 (1996), pp. 79-96.

⁵⁰ Art. 211(2) of the UNCLOS.

⁵¹ See the 1996 Study, note 49, at p. 87. See also IMO doc. LEG/MISC.7, of 19 January 2012, “Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization”.

⁵² See, *inter alia*, art. 61(3) of the UNCLOS and the 1996 Study note 49.

⁵³ See the 1996 Study, note 49.

In light of the commitment made in Rio+20 to address, on an urgent basis, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the UNCLOS, the UNGA, in resolution 68/70, mandated the Working Group to provide it with recommendations on the scope, parameters and feasibility of an international instrument under the UNCLOS. Finally, in 2015, States took by UNGA Resolution 69/292 the historic step to open the negotiations for such a new legally binding instrument.

2.3.2. The global legal and policy regime for the protection and preservation of the marine environment

Part XII of the UNCLOS is the cornerstone in the global legal regime for the protection and preservation of the marine environment (see above), and provides that states have the sovereign right to exploit their natural resources pursuant to their policies and in accordance with their duty to protect and preserve the marine environment.

Before dealing with relevant obligations on regional cooperation and implementation in the UNCLOS, a concise overview is given of the main global instruments relating to the different sources of marine pollution distinguished in Sections 5 and 6 of Part XII, namely:

- (a) Land-based pollution: Substantive rules specifically aimed at the marine environment are laid down in UNEP's non-legally binding GPA. More general instruments on land-based pollution include the global Watercourses Convention⁵⁴ (not yet in force) and the Stockholm Convention on Persistent Organic Pollutants (POPs Convention)⁵⁵;
- (b) Pollution from seabed activities in areas under national jurisdiction: There are no legally binding or non-legally binding (intergovernmental) instruments on pollution from seabed activities in areas under national jurisdiction at the global level;
- (c) Pollution from activities in the Area: The only global instrument in existence is the ISA's Mining Code;⁵⁶
- (d) Pollution by dumping: Only one global instrument exists, namely the London Convention as modified by its Protocol;

⁵⁴ Convention on the Non-Navigational Uses of International Watercourses, New York, 21 May 1997. Not in force; doc. UNGA Res. 51/229 (1997).

⁵⁵ Convention on Persistent Organic Pollutants, Stockholm, 22 May 2001. In force 17 May 2004; text at <chm.pops.int>.

⁵⁶ Available at <www.isa.org.jm>.

- (e) Vessel-source pollution: Regulatory activity predominantly takes place at the global level within IMO. Relevant instruments include the MARPOL, the Anti-fouling Convention,⁵⁷ the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC),⁵⁸ the Ship Recycling Convention,⁵⁹ the various instruments on liability and compensation for pollution damage, and the various standards that can be made applicable in specific areas, such as Special Areas under various Annexes of MARPOL and the Associated Protective Measures applicable within Particularly Sensitive Sea Areas (PSSAs); and
- (f) Pollution from or through the atmosphere: As regards activities at sea, reference can be made to the global regulation of incineration at sea by the London Convention as modified by its 1996 Protocol, and the regulation of vessel-source air pollution through Annex VI to MARPOL. As regards activities on land, reference can be made to the United Nations Framework Convention on Climate Change (UNFCCC)⁶⁰ and its 1997 Kyoto Protocol,⁶¹ and, on ozone, the Vienna Convention⁶² and its Montreal Protocol⁶³.

Issue-specific instruments that are difficult to group under these sources of marine pollution, but which are relevant for regional implementation, include the Basel Convention.⁶⁴

2.3.3. Global legal and policy regime for fisheries

The global instruments on marine capture fisheries have primarily been developed under the auspices of the UNGA and FAO. The only other global instrument is the stand-alone International Convention for the Regulation of Whaling (ICRW),⁶⁵ which is aimed at the conservation and management of large whales. The International Whaling Commission (IWC) has for that purpose adopted a moratorium on commercial whaling, which is currently in force.

⁵⁷ International Convention on the Control of Harmful Anti-fouling Systems on Ships, London, 5 October 2001. In force 17 September 2008, IMO Doc. AFS/CONF/26, of 18 October 2001.

⁵⁸ International Convention on Oil Pollution Preparedness, Response and Cooperation, London, 30 November 1990. In force 13 May 1995, 1891 *United Nations Treaty Series* 77 (1995).

⁵⁹ Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, Hong Kong, 15 May 2009. Not in force, IMO doc. SR/CONF/14, of 19 May 2009.

⁶⁰ United Nations Framework Convention on Climate Change, New York, 9 May 1992. In force 21 March 1994, 1771 *United Nations Treaty Series* 107; <unfccc.int>.

⁶¹ Kyoto Protocol, Kyoto, 11 December 1997. In force 16 February 2005, 2303 *United Nations Treaty Series* 214 (2005); <unfccc.int>.

⁶² Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985. In force 22 September 1988, 1513 *United Nations Treaty Series* 324 (1988); <www.unep.org/ozone>.

⁶³ Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987. In force 1 January 1989, as amended. Consolidated version available at <www.unep.org/ozone>.

⁶⁴ Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Basel, 22 March 1989. In force 5 May 1992, 28 *International Legal Materials* 657 (1989); <www.basel.int>.

⁶⁵ International Convention for the Regulation of Whaling, Washington D.C., 2 December 1946. In force 10 November 1948, 161 *United Nations Treaty Series* 72; <www.iwcoffice.org>.

In addition to the UNCLOS and the UNFSA, the UNGA has contributed to international fisheries law through Resolutions, through which it has contributed to the phase-out of large-scale pelagic driftnet fishing and imposed innovative restrictions on bottom-fisheries on the high seas, among other things.⁶⁶ Both initiatives were predominantly aimed at the conservation of non-target species and vulnerable marine ecosystems (VMEs).

The UNCLOS provides the overarching international legal framework for the conservation and management of marine living resources. In terms of the sovereign right of coastal states to explore and exploit their natural resources, and in particular the living resources in the EEZ, the UNCLOS provides that the coastal state has the obligation to ensure that living resources, including fishery resources, are not endangered by overexploitation, taking into account the best scientific evidence available to it and with a view to promoting the optimum utilization of such resources. To this end, the coastal state is entitled to enforce its fisheries laws and regulations in the EEZ against foreign fishing vessels by taking such measures as boarding and inspection, arrest, and judicial proceedings. Conservation measures are to be aimed at maintaining or restoring populations of harvested species at levels that can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors.

The UNFSA aims at implementing the relevant provisions of the UNCLOS by setting out a more detailed legal framework for the conservation and management of straddling fish stocks and highly migratory fish stocks. The Agreement stipulates that its general principles, as well as the application of the precautionary approach and its provisions on compatibility of conservation and management measures, also apply within areas under national jurisdiction. The Agreement gives full consideration to the special requirements of developing states in respect of the conservation and management of straddling fish stocks and highly migratory fish stocks. The UNFSA and other FAO instruments are implemented through fisheries regulations carried out by states individually or collectively, including through RFBs (see section 3.3).

Under the UNCLOS, responsibility for ensuring the long-term sustainability of living resources in the waters of the EEZ rests with the coastal state. Pursuant to the rights and obligations set out in Part V of the Convention, the coastal state is obligated to determine the total allowable catch (TAC) of the living resources in its EEZ (article 61), and its capacity to harvest those resources (article 62). When a coastal state does not have the capacity to harvest the entire TAC of the living resources of its EEZ, it is required to give other states access to the surplus of the allowable catch, through agreements or other arrangements, having particular regard to the right of land-locked states (article 69) and the right of geographically disadvantaged states (article 70), especially in relation to developing states (article 62). In giving access to other states to its EEZ, the coastal state must take into account all relevant factors, including the

⁶⁶ See e.g. UNGA Res. 46/215 (1991) and UNGA Res. 61/105 (2006), paras 80-89.

significance of the living resources of the area to its economy and other national interests (article 62(3)).

Nationals of other states who fish in the EEZ are required to comply with the conservation measures established in the laws and regulations of the coastal state. These laws and regulations must be consistent with the UNCLOS and may relate, *inter alia*, to regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used (article 62(4)).

The UNCLOS also requires states to take, or cooperate with other states in taking, measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas (article 117) and to cooperate with each other in the conservation and management of living resources in the high seas (article 118). Obligations to cooperate on transboundary fish stocks are also contained in other provisions of the UNCLOS, *inter alia*, in articles 63-64 and 66-67. Many RFBs have been established pursuant to these provisions. Table 2 below sets out the different categories of fish stocks that are distinguished in international fisheries law.

Table 2: Categories of fish stocks

Category	Definition
Discrete inshore stocks	Occur exclusively in the maritime zones (or inland waters) of one single state
Joint (shared) stocks	Occur within the maritime zones (or inland waters) of two or more coastal states, but not on the high seas
Straddling stocks	Occur within the maritime zones of one or more coastal states and on the high seas
Highly migratory stocks	The fish species listed in Annex I to the UNCLOS (e.g. tuna)
Anadromous stocks	Spawn in rivers but otherwise occur mostly at sea (e.g. salmon)
Catadromous stocks	Spend greater part of life cycle in inland waters but spawn at sea (e.g. eels)
Discrete high seas stocks	Occur exclusively on the high seas

As regards marine mammals, article 65 of the UNCLOS stipulates:

[...] States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

Article 65 contains a number of intricacies, but the main point of relevance here is that while it does not require cooperation to be at the regional level, it also does not prohibit it. Even though the global IWC was established several decades prior to the adoption of the UNCLOS, article 65 does not stipulate that “appropriate international organizations” have to be global organisations, and the use of the plural indicates that

other organisations than the IWC may have competence as well. Consequently, not only the NAMMCO but also the COPs of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),⁶⁷ and the Convention on the Conservation of Migratory Species of Wild Animals (CMS) are relevant under article 65.

The UNFSA only applies to straddling and highly migratory fish stocks. The conservation and management of such stocks must be based on the precautionary approach and the best scientific evidence available. The Agreement also elaborates on the fundamental principle established in the Convention that states should cooperate in taking the measures necessary for the conservation of these resources. Under the UNFSA, RFMOs are the primary vehicles for cooperation between coastal states and high seas fishing states in the conservation and management of straddling fish stocks and highly migratory fish stocks.

The UNFSA also incorporated new principles, norms and rules that constitute a progressive development of the relevant provisions of the Convention and are aimed at addressing new challenges affecting high seas fisheries. Conservation and management measures that are adopted for areas under national jurisdiction and established in the high seas are required to be compatible. In addition, mechanisms are provided for the compliance and enforcement of measures on the high seas. The UNFSA further recognizes the special requirements of developing states, including in the development of their own fisheries and in their participation in high seas fisheries for straddling and highly migratory fish stocks.

The FAO – especially through its Committee on Fisheries (COFI) – has adopted a wide range of fisheries instruments, both legally binding and non-legally binding. The two legally binding instruments are the Compliance Agreement and the Port State Measures Agreement.⁶⁸ The Compliance Agreement addresses the problem of reflagging and the need for flag state responsibility. The Port State Measures Agreement – which is not yet in force – establishes global minimum standards for measures taken by port states in order to combat illegal, unreported and unregulated (IUU) fishing.

Prominent among FAO's non-legally binding instruments is the CCRF, which complements the UNCLOS, the Compliance Agreement, and the UNFSA with more practical guidance on a broad range of fisheries management issues, including aquaculture development. The CCRF is complemented by Technical Guidelines for Responsible Fisheries,⁶⁹ Guidelines to Reduce Sea Turtle Mortality in Fishing Operations (2009), and four International Plans of Action (IPOAs), namely on:

⁶⁷ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, D.C., 3 March 1973. In force 1 July 1975, 993 *United Nations Treaty Series* 243; <www.cites.org>.

⁶⁸ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Rome, 22 November 2009. Not in force; <www.fao.org/Legal>.

⁶⁹ Available at <www.fao.org/fishery/code/en>. Noteworthy is Supplement 2 to the Technical Guidelines on "Fisheries management", entitled "The ecosystem approach to fisheries" (2003).

reducing incidental catch of seabirds in longline fisheries (1999); management of fishing capacity (1999); management and conservation of sharks (1999); and IUU fishing (2001).

Other key non-legally binding FAO fisheries instruments include the International Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries (2005), the International Guidelines on Deep-sea Fisheries in the High Seas (2008), the Recommendations on a Global Record of Fishing Vessels (2010), the International Guidelines on Bycatch Management and Reduction of Discards (2010), the Voluntary Guidelines for Flag State Performance (2013) and the Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (2014).

2.3.4. The global legal and policy regime for the conservation of marine biodiversity

The provisions in the UNCLOS – and its Implementing Agreements – relating to the protection and preservation of the marine environment and fisheries are complemented by a large number of global instruments and bodies aimed at the conservation of marine biodiversity in general, the conservation of specific marine species and habitats, and addressing specific threats to marine biodiversity.

The CBD and its Cartagena and Nagoya Protocols are the principal global instruments on the conservation of biodiversity in general. Article 22(2) of the CBD specifies that its Parties shall implement it with respect to the marine environment consistently with the rights and obligations of states under the law of the sea. Article 4 stipulates that the CBD is fully applicable to coastal state maritime zones, but beyond these zones only the CBD provisions on processes and activities carried out under the jurisdiction or control of states are applicable.

Conservation of biodiversity is one of the three objectives laid down in article 1 of the CBD, and is to be pursued in several ways, for instance by cooperation, identification and monitoring, *in-situ* and *ex-situ* conservation, and environmental impact assessments (EIA).⁷⁰ While article 5 on cooperation does not explicitly refer to the regional level, the 2010 Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets – adopted by the CBD's COP in 2010⁷¹ and endorsed at Rio+20⁷² – repeatedly highlight the need for regional implementation, targets and strategies. The Cartagena Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms (LMOs) resulting from modern biotechnology. The Nagoya Protocol aims to provide a legally binding framework to implement the provisions of the CBD on access to genetic resources and the fair and equitable use of benefits arising thereof.

⁷⁰ Arts 5, 7-9 and 14 of the CBD.

⁷¹ COP Decision X/2 (2010).

⁷² “The Future We Want”, note 8 *supra*, at para. 198.

As a framework convention, the CBD requires implementation efforts to tailor it to concrete issues and to set priorities. For this purpose, the COP – assisted among others by its Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) – has so far adopted seven Thematic Programmes as well as 19 Cross-Cutting Issues,⁷³ which are integrated into the Thematic Programmes. Progress within these is consolidated by means of the Decisions adopted by COPs. One Thematic Programme – namely “Marine and Coastal Biodiversity” – is of particular relevance for this paper and most, if not all, Cross-Cutting Issues as well. One of these is “Protected Areas” and has, among other things, culminated in the CBD’s work towards the identification of EBSAs.

As regards the conservation of specific species and habitats, the main global instruments are the CITES,⁷⁴ the CMS, the Ramsar Convention⁷⁵ (wetlands) and the World Heritage Convention.⁷⁶ International trade in species listed in the three Appendices to the CITES is subject to different restrictions. Parties to the CMS are required to conserve species listed in the two Appendices, and must take various measures for that purpose, including with respect to the species’ habitats. Article IV of the CMS requires “Range States” to conclude regional agreements for “migratory species which have an unfavourable conservation status” and are listed in Appendix II. The COPs of the CITES frequently highlight the need for regional cooperation and have also actively stimulated range states to cooperate on specific species.⁷⁷ Both the Ramsar Convention and the World Heritage Convention impose obligations with respect to the conservation and use of designated areas.

Finally, as regards specific threats to marine biodiversity, mention should be made of various global instruments relating to the intentional or accidental introduction of alien species. In addition to article 196(1) of the UNCLOS – briefly mentioned in subsection 2.3.2 – article 8(h) of the CBD requires parties to “prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species”. Invasive alien species is one of the Cross-Cutting Issues under the CBD and has culminated in a number of COP Decisions.⁷⁸ Several sectoral efforts exist as well, such as FAO’s Technical Guidelines on the “Precautionary approach to capture fisheries and species introductions” (1996) and the International Council for the Exploration of the Sea (ICES) Code of Practice on the Introductions and Transfers of

⁷³ Listed at <www.cbd.int>.

⁷⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, D.C., 3 March 1973. In force 1 July 1975, 993 *United Nations Treaty Series* 243; <www.cites.org>.

⁷⁵ Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, 2 February 1971. In force 21 December 1975, as amended. Consolidated text available at <www.ramsar.org>.

⁷⁶ Convention concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972. In force 17 December 1975; 11 *International Legal Materials* 1972; <www.unesco.org>.

⁷⁷ E.g. on sturgeons and paddlefish and Queen conch See, *inter alia*, Objective 1.6 of the CITES Strategic Vision: 2008-2020 (adopted by Resolution Conf. 16.3 (2013)); Resolution 12.7 (Rev. COP16) on “Conservation of and trade in sturgeons and paddlefish”, whose predecessor triggered the establishment of the Commission on Aquatic Bioresources of the Caspian Sea in 1992; and COP Decisions 16.141-16.146 on Queen conch.

⁷⁸ E.g. Decision VI/23 (2002), whose Annex contains the “Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species”.

Marine Organisms (2005). As regards international shipping, the IMO's 2004 Ballast Water Management Convention⁷⁹ (not yet in force) is aimed at minimizing the transfer of harmful aquatic organisms and pathogens by means of regulating the exchange or treatment of ballast water and sediments.

2.3.5. The global legal and policy regime for Ecosystem-Based Management

Neither the UNCLOS nor any other global instrument contains a legally binding obligation to pursue EBM. There are also no indications that such an obligation is currently part of customary international law. Non-legally binding commitments to pursue EBM have nevertheless been agreed by various global bodies and conferences, including the UNGA, the COP to the CBD, UNEP and Rio+20 (see section 1.3). In many instances, these commitments are complemented by specific guidance on implementation.

The institutional component relevant to EBM at the global level is currently very weak. While the substantive mandates of the UNGA and the COP to the CBD are sufficiently broad, they are not empowered to impose legally binding obligations on states.

3. Regional Oceans Governance Mechanisms

3.1. Introduction

The intention of this Chapter is to analyse relevant existing regional oceans governance mechanisms. This analysis is a synthesis that builds on the Annexes – which contain detailed information on these mechanisms – as well as on the case studies in Chapter 4. The reference to “bodies” in this Chapter is intended to comprise institutional and financial mechanisms or arrangements. Sections 3.2, 3.3 and 3.4 provide detailed overviews of the Regional Seas programmes, the RFBs and the LME mechanisms. Section 3.5 investigates cooperation and coordination between all three regional oceans governance mechanisms.

3.2. Regional Seas instruments and bodies

3.2.1. Introduction

Held in Stockholm in June 1972, the United Nations Conference on the Human Environment led to the creation of UNEP “to serve as a focal point for environmental action and coordination within the United Nations system”.⁸⁰ At its first session, UNEP made the oceans a priority action area.⁸¹ Its RSP was then initiated in 1974,⁸²

⁷⁹ International Convention for the Control and Management of Ships' Ballast Water and Sediments, London, 13 February 2004. Not in force, IMO Doc. BWM/CONF/36, of 16 February 2004.

⁸⁰ UNGA, Resolution 2997 (XXVII), of 15 December 1972.

⁸¹ UNEP, Report of the governing council on the work on its first session, 12-22 June 1973, United Nations, New York, 1973.

“as an action-oriented programme having concern not only for the consequences but also for the causes of environmental degradation and encompassing a comprehensive approach to combating environmental problems through the management of marine and coastal areas” (UNEP 1982). As of today, almost 150 states across 18 regions participate in the RSP.

3.2.2. Types of Regional Seas programme

There are different types of the Regional Seas programme (see Table 3 and Annex 1). Some are directly administered by UNEP which serves as a secretariat: that is the case in the East Asian Seas, Mediterranean, North-West Pacific, Western, Central and Southern Africa, Caspian Sea, Western Indian Ocean, and Wider Caribbean regions.⁸³ Others were developed independently but are associated with the UNEP RSP. Some of their regional activities are linked to the global RSP, which in turn acts as a platform for cooperation and coordination. The regions concerned include the Black Sea, North-East Pacific, Pacific, Red Sea and Gulf of Aden, ROPME⁸⁴ Sea, South Asian Seas and South-East Pacific regions. The RSP network also includes independent programmes which have not been established under the auspices of UNEP but which are invited to participate in the global meetings of the RSP. The UNEP RSP is also invited to participate in the respective meetings of these Regional Seas programmes. It concerns the Antarctic, Arctic, Baltic Sea and North-East Atlantic regions.

⁸² UNEP, Report of the governing council on the work on its second session, 11-22 March 1974, United Nations, New York, Decision 8(II).

⁸³ UNEP, through its Regional Office for Europe, serves on an interim basis as the secretariat of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), following a formal request by the respective Conference of Parties.

⁸⁴ The Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas of Bahrain, I.R. Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

Table 3: Regional Seas programmes

Type of Regional Seas programme	Main features	Regions concerned
UNEP administered Regional Seas programme	Secretariat, administration of the Trust Fund and financial and administrative services provided by UNEP.	Caspian Sea ⁸⁵ East Asian Seas Mediterranean North-West Pacific Western, Central and Southern Africa Western Indian Ocean Wider Caribbean
Associated Regional Seas programme	Secretariat not provided by UNEP. Financial and budgetary services managed by the programme itself or hosting regional organisations. UNEP support / collaboration were or are provided.	Black Sea North-East Pacific Pacific Red Sea and Gulf of Aden ROPME Sea South Asian Seas South-East Pacific
Independent Regional Seas programme	Regional framework not established under the auspices of UNEP. Invited to participate in regional seas coordination activities of UNEP through the global meetings of the RSP. UNEP is also invited to participate in their respective meetings.	Antarctic Arctic Baltic Sea North-East Atlantic

3.2.3. Substantive mandates and objectives

The Regional Seas programmes generally have an Action Plan that serves as the basis for regional cooperation. Moreover, 15 of them also have a framework convention complemented by issue-specific protocols.⁸⁶ As a basis for action, the convention typically provides general terms and conditions and an overall direction for states to follow. However important such principles may be, they usually remain insufficient and too imprecise to lead to decisive actions, and parties must therefore negotiate specific agreements in various domains.

The framework documents – i.e. the action plan and/or the framework convention – were mostly amended in the 1990s to integrate new principles of international law that

⁸⁵ On an ad interim basis, at the request of the COP.

⁸⁶ There are no framework conventions and protocols in the East Asian Seas, North-West Pacific and South Asian Seas regions. In Arctic, although there is no regional sea convention as such, a binding agreement on cooperation on marine oil pollution preparedness and response was adopted in May 2013.

emerged with the adoption of the CBD in 1992 and the entry into force of the UNCLOS in 1994. In the same way, the topics of regional protocols have expanded since the 1970s. In the first phase, legal instruments organising regional cooperation to combat pollution by oil and other harmful substances from ships (Mediterranean, 1976;⁸⁷ Western, Central and Southern Africa, 1981;⁸⁸ Red Sea & Gulf of Aden, 1982;⁸⁹ Caribbean, 1983;⁹⁰ Western Indian Ocean, 1985⁹¹), as well as reducing pollution from land-based sources and activities (Mediterranean, 1980;⁹² Black Sea, 1982;⁹³ South-East Pacific, 1983⁹⁴) were adopted. This dynamic gradually expanded to encompass biodiversity conservation, particularly through the creation of marine protected areas (Western Indian Ocean, 1985;⁹⁵ South-East Pacific, 1989;⁹⁶ Caribbean, 1990⁹⁷). While it was noted in 2002 that the regional approach had “been marked by a lack of consistency of the legal framework with the prospect of operating sustainable management programmes” (Vallega, 2002), Regional Seas protocols have, more recently and in a still limited way, taken on goals beyond the conservation of the marine environment and biodiversity, including socio-economic development. The first step in this new direction came with the 2008 adoption of the Mediterranean Protocol on Integrated Coastal Zone Management (ICZM),⁹⁸ and it is with a similar ambition that Western Indian Ocean states are currently negotiating an ICZM Protocol (Rochette and Billé, 2012b).

In terms of institutional structure, all Regional Seas programmes have at least a Secretariat (called RCUs for UNEP-administered the Regional Seas programmes). These mainly play an administrative and diplomatic role of coordination. In the case of the UNEP-administered Regional Seas programmes, there is a programmatic link. In its relationship with the regional seas conventions and action plans, UNEP promotes coherence of policies, enhanced cooperation and coordination as well as increased efficiency. The integration of UNEP work with the regional seas conventions and action plans in turn increases the overall effectiveness of the global environmental policy while at the same time supports an efficient delivery at the regional level. The Regional Seas Programme is embedded in the UNEP structure and programme of work, provides the global overview and world context in which the

⁸⁷ Protocol concerning cooperation in combating pollution of the Mediterranean sea by oil and other harmful substances in cases of emergency, 16 February 1976, replaced in 2002 by the Protocol concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean sea.

⁸⁸ Protocol concerning cooperation in combating pollution in cases of emergency, 23 March 1981.

⁸⁹ Protocol concerning cooperation in combating pollution by oil and other harmful substances in cases of emergency, 23 April 1978.

⁹⁰ Protocol concerning cooperation in combating oil spills, 24 March 1983.

⁹¹ Protocol concerning cooperation in combating marine pollution in cases of emergency, 21 June 1985.

⁹² Protocol for the protection of the Mediterranean Sea against pollution from land-based sources, 17 May 1980.

⁹³ Protocol on protection of the Black Sea marine environment against pollution from land-based sources, 21 April 1992.

⁹⁴ Protocol for the protection of the South-East Pacific against pollution from land-based sources, 23 September 1986.

⁹⁵ Protocol concerning protected areas and wild fauna and flora in the Eastern African Region, 21 June 1985.

⁹⁶ Protocol for the conservation and management of protected marine and coastal areas of the South-East Pacific, 21 September 1989.

⁹⁷ Protocol concerning specially protected areas and wildlife to the Convention for the protection and development of the marine environment of the Wider Caribbean Region.

⁹⁸ Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Madrid, 21 January 2008.

regions are inserted. Such a global framework furnishes the coherence needed for the regions to more easily insert themselves in the global seas and oceans structure and agenda, and thus better respond to the global ocean mandates while maintaining their regional specificities. As such, the different regional seas conventions and action plans continue to be shaped according to the needs and priorities of specific regions – as identified and decided by the relevant participating governments – while being part of a global UNEP Programme, whose overall and world strategy is ultimately defined by the UNEP governing body.

Some programmes also count on other institutional structures, which aim at providing states with assistance and support for the implementation of regional legal instruments, mainly the protocols to the framework conventions. In this regard, Regional Activity Centres (RACs) play a major role by carrying out three main tasks (Rochette and Billé 2012a):

1. Providing states with relevant data, through publications, white papers and reports, so that they can adopt science-based decisions;
2. Strengthening regional cooperation in a specific field, by organising conferences and workshops; and
3. Providing legal and technical assistance for the implementation of conventions, protocols and action plans.

However, for both political and funding reasons, not all Regional Seas programmes have established RACs. The regions most advanced in their use of RACs are the Mediterranean and Black Sea, each with six RACs, as well as the Caribbean and the Northwest Pacific, each with four RACs. Other institutional arrangements include the establishment of Working, Advisory Groups, or Specialised Committees aimed at supporting the work of the Secretariat and assist governments in the implementation of the relevant regional instruments (e.g. in the Arctic, Baltic Sea, Black Sea, West, Central and Southern Africa region, etc.).

The mandates of the Regional Seas programmes are quite similar, covering the protection and management of the regional marine environment in the broad sense, which includes the prevention and elimination of the pollution and the conservation of marine biodiversity. In some regions, the objective of achieving sustainable development within the region is also included, e.g. in the Arctic, East Asian Seas, Mediterranean and North-East Pacific.

The Antarctic regional system stands out as a special Regional Seas programme. The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) is considered by UNEP as an independent Regional Seas programme, however, it has two distinguishing features: its mandate, which covers fisheries management; and its Contracting Parties, which may include “any State interested in research or harvesting activities in relation to the marine living resources to which this Convention applies”

(Article XXIX). That is the reason why CCAMLR is sometimes also treated as a RFB (UNEP, 2001) and the recent developments within the Convention framework demonstrate that many states share this view. Indeed, during the Special Meeting of the Commission held in Bremerhaven, Germany, on 15 and 16 July 2013, discussions included the opportunity to establish time limits, or “sunset clauses”, for the two proposed MPAs in the Ross Sea and East Antarctic: these are tools often used by RFBs while the MPAs established within Regional Seas programmes never include this kind of provision. However, its linkages with the Antarctic Treaty System (ATS) and its objectives covering the wider conservation of marine living resources “set CCAMLR apart from the more traditional RFMOs with their emphasis on the harvesting of commercial target species”.⁹⁹

3.2.4. Geographical mandates

Most of the Regional Seas programmes have a geographical mandate restricted to areas within the jurisdiction of Contracting Parties. As of today, only four regional systems – namely the Antarctic, Mediterranean,¹⁰⁰ North-East Atlantic and South Pacific – have the specific mandate to develop activities in ABNJ (Druel et al. 2012). It is also worth noting that, in the South East Pacific; Member States of the Permanent Commission for the South Pacific (CPPS) met in Galapagos on 17 August 2012 and committed themselves to promote a coordinated action of Member States “regarding their interests on living and non-living resources in marine areas beyond national jurisdiction”.¹⁰¹ In the same way, Contracting Parties to the Abidjan Convention decided in 2014 to “to set up a working group to study all aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction within the framework of the Abidjan Convention”.¹⁰²

3.2.5. Participation

Participation in the Regional Seas programmes is so far restricted to the coastal states of the marine region and sometimes to regional economic groupings such as the European Union. As a “quasi-RFMO”, CCAMLR is however open to “any State interested in research or harvesting activities in relation to the marine living resources to which this Convention applies” (Article XXIX).

⁹⁹ CCAMLR Performance Review Panel, Report, 1 September 2008, p. 7.

¹⁰⁰ It is worth noting that the situation of the Mediterranean in this regard is particular since there is no point located at a distance of more than 200 nm from the closest land or island and therefore “any waters beyond the limits of national jurisdiction (high seas) would disappear if all the coastal States decided to establish their own exclusive economic zones” (Scovazzi 2011).

¹⁰¹ Permanent Commission for the South Pacific, VIII Meeting of Ministers of Foreign Affairs, Puerto Ayora, Galápagos, Ecuador, 17 August 2012.

¹⁰² Decision CP. 11/10. Conservation and Sustainable use of the Marine Biodiversity of the Areas Located beyond National Jurisdictions, March 2014.

3.3. Regional fishery instruments and bodies

3.3.1. Introduction

As noted in subsection 2.3.3, global fisheries instruments depend on implementation by states individually and collectively through (sub-) regional and bilateral cooperation. A large number of instruments and bodies have been created for that purpose. Table 4 below contains the bodies listed on FAO's webpages on RFBs on 2 July 2014¹⁰³ except inland waters-RFBs,¹⁰⁴ the IWC and the Agreement on the Conservation of Albatrosses and Petrels (ACAP).¹⁰⁵ This list contains a few more RFBs than those listed in Annex II to this paper.¹⁰⁶

A few observations are offered here. First, there is no generally accepted formal definition of RFBs or RFMOs. Inclusion on FAO's RFBs list can also not be regarded as multilateral recognition of a body's status as an RFB or RFMO. States and entities may therefore have different positions as to whether or not a regional body is an RFB or RFMO.

Second, CCAMLR and PERSGA are included on the FAO's RFBs list but are at the same time also regarded by UNEP as the Regional Seas programmes. The inclusion of PERSGA seems to be mainly motivated by the expectation that an MoU for Regional Cooperation in Management of Fisheries and Aquaculture in the Red Sea and Gulf of Aden is expected to be adopted within the framework of PERSGA (see also discussion further below).¹⁰⁷

Third, FAO's RFBs-list includes NAMMCO but not the Convention for the Conservation of Antarctic Seals (CCAS)¹⁰⁸ – which is part of the ATS – and the stand-alone Polar Bear Agreement.¹⁰⁹ This despite the fact that both regional marine mammal instruments pursue sustainable use as well as conservation, and both have culminated in Meetings of the Parties (MOPs), even though these were largely informal and have not occurred on a regular basis (Bankes 2013; Mossop 2013). The Arctic region also has several bilateral instruments and bodies that deal with sustainable use and conservation of marine mammals, including the Joint Commission (Bankes 2013).

¹⁰³ See the list at <www.fao.org/fishery/rfb/en>.

¹⁰⁴ The Commission on Aquatic Bioresources of the Caspian Sea (see note 77 supra) is not listed on FAO's RFB website either.

¹⁰⁵ Agreement on the Conservation of Albatrosses and Petrels, Canberra, 19 June 2001. In force 1 February 2004, 2588 *United Nations Treaty Series* 257 (2005); as amended, consolidated version at <www.acap.aq>. Consistent with the definition of RFB in subsection 1.2.2, the IWC has not been included because it is a global body and ACAP because it is not concerned with sustainable utilization of fish or marine mammals.

¹⁰⁶ Namely: the Joint Technical Commission of the Maritime Front (CTMFM); the Joint Norwegian-Russian Fisheries Commission (Joint Commission); the North Pacific Fisheries Commission (NPFC); and the Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden (PERSGA). The first version of Annex II was submitted in October 2012.

¹⁰⁷ Information kindly provided by A.S.M. Khalil (PERSGA) to E.J. Molenaar on 24 November 2013).

¹⁰⁸ Convention for the Conservation of Antarctic Seals, London, 1 June 1972. In force 11 March 1978, 1080 *United Nations Treaty Series* 176 (1978); <www.ats.aq>.

¹⁰⁹ Agreement on the Conservation of Polar Bears, Oslo, 15 November 1973. In force 26 May 1976; 13 *International Legal Materials* 13 <pbsg.npolar.no>.

Finally, in recent years some RFBs have updated their constitutive instruments or replaced them with new ones (e.g. the Inter-American Tropical Tuna Commission (IATTC) and the Northwest Atlantic Fisheries Organization (NAFO)). This process is currently still on-going for some RFBs, for instance the Indian Ocean Tuna Commission (IOTC)¹¹⁰ and the ICCAT.¹¹¹

¹¹⁰ See, *inter alia*, the Report of the 2011 IOTC Meeting (available at <www.iotc.org>), at 35 and 105; and UNGA Res 67/79, of 11 December 2012, para. 114.

¹¹¹ The ICCAT Working Group on Convention Amendment had its first meeting in July 2013 (information available at <www.iccat.int>).

Table 4: RFBs¹¹²

APFIC	Asia-Pacific Fisheries Commission	NAMMCO	North Atlantic Marine Mammal Commission
BOBP-IGO	Bay of Bengal Programme Inter-Governmental Organization	NASCO	North Atlantic Salmon Conservation Organization
CCAMLR	Commission on the Conservation of Antarctic Marine Living Resources	NEAFC	North-East Atlantic Fisheries Commission
CCBSP (COP)	Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea	NPAFC	North Pacific Anadromous Fish Commission
CCSBT	Commission for the Conservation of Southern Bluefin Tuna	NPFC*	North Pacific Fisheries Commission
CECAF	Fishery Committee for the Eastern Central Atlantic	OLDEPESCA	Latin American Organization for Fisheries Development
COMHAFAT	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean	OSPESCA	Central America Fisheries and Aquaculture Organization
COREP	Regional Fisheries Committee for the Gulf of Guinea	PERSGA**	Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden
CPPS	Permanent Commission for the South Pacific	PICES	North Pacific Marine Science Organization
CRFM	Caribbean Regional Fisheries Mechanism	PSC	Pacific Salmon Commission
CTMFM	Joint Technical Commission of the Maritime Front	RECOFI	Regional Commission for Fisheries
FCWC	Fishery Committee of the West Central Gulf of Guinea	SEAFDEC	Southeast Asian Fisheries Development Center
FFA	Pacific Islands Forum Fisheries Agency	SEAFO	South East Atlantic Fisheries Organization
GFCM	General Fisheries Commission for the Mediterranean	SIOFA (MOP)	Southern Indian Ocean Fisheries Agreement
IATTC	Inter-American Tropical Tuna Commission	SPC	Secretariat of the Pacific Community
ICCAT	International Commission on the Conservation of Atlantic Tunas	SPRFMO	South Pacific Regional Fisheries Management Organization
ICES	International Council for the Exploration of the Sea	SRFC	Sub regional Fisheries Commission
IOTC	Indian Ocean Tuna Commission	SWIOFC	Southwest Indian Ocean Fisheries Commission
IPHC	International Pacific Halibut Commission	WCPFC	Western and Central Pacific Fisheries Commission
Joint Commission	Joint Norwegian-Russian Fisheries Commission	WECAFC	Western Central Atlantic Fishery Commission
NAFO	Northwest Atlantic Fisheries Organization		

* To be established

**Once MoU for Regional Cooperation in Management of Fisheries and Aquaculture in the Red Sea and Gulf of Aden is adopted

¹¹² For more information on these RFBs see – apart from CTMFM, Joint Commission, NPFC and PERSGA - Annex II.

3.3.2. Types of RFBs

An analysis of the characteristics of the RFBs included in Annex II to this paper reveals significant differences between RFBs, among other things depending on whether they:

- (a) Establish a body with a management mandate that is empowered to impose legally binding management and conservation measures on its members (i.e. RFMOs such as WCPFC) or a body with an advisory mandate. Advisory bodies can either primarily provide scientific advice (e.g. ICES), primarily management advice, or both (e.g. CECAF). Some management advice can also relate to the development of fisheries (e.g. OLDEPESCA);
- (b) Have competence over specific target species (e.g. tuna (e.g. IATTC)), all “residual” target species within a specific geographical area (e.g. NEAFC), or specific target species within a loosely defined geographical area (e.g. CCSBT);
- (c) Are established within the framework of FAO or outside. RFBs established within the framework of FAO can either be based on article VI of the FAO Constitution¹¹³ (e.g. CECAF) or article XIV (e.g. IOTC). The differences mainly relate to issues of finance, mandate and autonomy whereby article XIV-bodies are more autonomous than the article VI-bodies;¹¹⁴
- (d) Establish an international organisation (e.g. CCAMLR) or another institutional body, for instance a COP or a MOP (e.g. CCBSP); and
- (e) Relate to marine fisheries (e.g. SEAFO) or inland waters fisheries. This paper, however, devotes no attention to inland waters-RFBs.

The distinctions highlighted under (a) between RFMOs and advisory RFBs are reflected in Table 5, which lists RFMOs, and Table 6, which lists advisory RFBs. There are currently 41 RFBs in total (Table 4), excluding inland waters-advisory RFBs. There are 21 RFMOs; Table 5 lists the 5 tuna RFMOs separate from the 16 non-tuna RFMOs, in order to reflect the discussion under (b) above. There are 20 advisory RFBs; Table 6 lists the three scientific advisory RFBs separate from the 17 management advisory RFBs.

¹¹³ Constitution of the Food and Agriculture Organization of the United Nations, Quebec City. Opened for signature and entered into force on 16 October 1945; <www.fao.org/Legal>.

¹¹⁴ Cited from <www.fao.org/fishery/topic/16918/en>.

Table 5: RFMOs

Tuna RFMOs	Non-Tuna RFMOs		
CCSBT	CCAMLR	NAFO	RECOFI
IATTC	CCBSP (COP)	NASCO	SEAFO
ICCAT	CTMFM	NEAFC	SIOFA (MOP)
IOTC	GFCM	NPAFC	SPRFMO
WCPFC	IPHC	NPFC*	
	Joint Commission	PSC	

* To be established

Table 6: Advisory RFBs

Science	Management			
ICES	APFIC	CPPS	NAMMCO	SEAFDEC
PICES	BOBP-IGO	CRFM	OLDEPESCA	SRFC
SPC	CECAF	FCWC	OSPESCA	SWIOFC
	COMHAFAT	FFA	PERSGA	WECAFC
	COREP			

Discussions as to whether or not a regional body classifies as an RFMO have arisen within CCAMLR. While it has been argued that CCAMLR is not an RFMO but a component of the ATS,¹¹⁵ there was broad agreement in 2002 that CCAMLR has “the attributes of an RFMO within the context of the UN and its subsidiary bodies”.¹¹⁶ Broad agreement also seems to exist among CCAMLR Members that CCAMLR’s competence is in principle limited to fishing, associated activities (e.g. transshipment and bunkering), and research, but does not extend to any other human activity.¹¹⁷ It seems that this understanding applies to other RFMOs as well, except for GFCM and NASCO, which also have competence to adopt legally binding conservation and management measures relating to aquaculture.¹¹⁸

¹¹⁵ Report of the 14th (1995) Annual CCAMLR Meeting, at p. 70 (para. 15.2).

¹¹⁶ Report of the 21st (2002) Annual CCAMLR Meeting, at p. 88 (para. 15.2). This notwithstanding, the Report of the 31st (2012) Annual CCAMLR Meeting, at p. 54 (para. 9.17) highlighted that “CCAMLR is a conservation organization and it is quite distinct from an RFMO”.

¹¹⁷ Art. II (1) of the CAMLR Convention (Convention on the Conservation of Antarctic Marine Living Resources, Canberra, 20 May 1980. In force 7 April 1982, 1329 *United Nations Treaty Series* 47 (1983); <www.ccamlr.org>)) stipulates that its objective is “the conservation of Antarctic marine living resources”, while Art. II (2) clarifies that “the term ‘conservation’ includes rational use”. The Preamble and many provisions indicate that CCAMLR’s competence is in principle limited to fishing, associated activities, and research (e.g. Arts II (3), V, VI, IX and XXIX (1)). Moreover, CCAMLR has taken measures to prevent impacts by fishing vessels and scientific research vessels on Antarctic marine living resources by adopting measures relating to maritime safety, vessel-source pollution and the introduction of alien species (see, e.g. CCAMLR Conservation Measures 26-01 (2009) and para. 6 of 91-04 (2011) and CCAMLR Resolutions 20/XXII (2003), 23/XXIII (2004), 28/XXVII (2008), 29/XXVIII (2009), 33/XXX (2011) and 34/XXXI (2012)). At the 2nd Special CCAMLR Meeting in July 2013, Bremerhaven, disagreement existed on CCAMLR’s mandate with respect to MPAs (Preliminary Report, paras 3.18 and 3.60).

¹¹⁸ So far, however, the GFCM has used this competence only incidentally (see Resolutions GFCM/36/2012/1 (containing “Guidelines”, therefore presumably non-legally binding) and GFCM/35/2011/6 (on reporting)). NASCO has adopted several extensive and detailed instruments - even though not legally binding - on the minimization of impacts from aquaculture, introductions and transfers, and transgenic (e.g. the 2003 Williamsburg Resolution (as amended; doc. CNL(06)48 (available at <www.nasco.int>))).

A similar argument could be made for other RFBs. For instance, one could argue that APFIC and RECOFI are “more than RFBs” because they do not just deal with fisheries but also with aquaculture. Similarly, ICES’ scientific advice can be commissioned by entities other than fisheries management authorities. Moreover, upon the adoption of the envisaged MoU for Regional Cooperation in Management of Fisheries and Aquaculture in the Red Sea and Gulf of Aden, PERSGA could be categorized as “more than a RFB” but also as “more than a Regional Seas programme”. While the former would not be incorrect, the latter would be more fitting because PERSGA was originally established to implement the Regional Seas programme for the Red Sea and Gulf of Aden. The CPPS can be used as a final example here: its evolution is more complex than that of PERSGA, thus it is not evident that classifying it as “more than a RFB” would be more fitting than “more than a Regional Seas programme”.

3.3.3. Substantive mandates and objectives

The substantive mandates and objectives of RFBs depend first of all on the type they belong to, as discussed in the previous subsection. Especially relevant are the discussions under (a) and (b) relating to the advisory nature or not of an RFB, and the target species within its mandate. The previous subsection also concluded that the mandates of most RFMOs are limited to fishing, associated activities (e.g. transshipment and bunkering) and fisheries related research, but that some RFMOs and advisory RFBs also deal with aquaculture.

Significant differences exist between the objectives of some of the older and the newer RFBs. While some of the older RFBs were exclusively aimed at the sustainable utilisation and conservation of target species; the objectives of the newest RFBs pursue an EAF. For example ICCAT focuses exclusively on the “populations of tuna and tuna-like fishes found in the Atlantic Ocean”¹¹⁹ while SPRFMO’s objective, pursuing an EAF, is as follows:¹²⁰

The objective of this Convention is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.

Other RFBs whose constitutive instruments explicitly stipulate an EAF include CCAMLR, NAFO, NEAFC, SEAFO and WCPFC.

¹¹⁹ International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966. In force 21 March 1969, 673 *United Nations Treaty Series* 63 (1969), as amended by Protocols adopted in 1984 and 1992, which both entered into force. Consolidated version at <www.iccat.int>.

¹²⁰ Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, Auckland, 14 November 2009. In force 24 August 2012; <www.southpacificrfmo.org>.

3.3.4. Geographical mandates

Considerable differences also exist in the geographical mandates of RFBs. To illustrate this in relation to RFMOs, three basic groups are distinguished as follows:

1. Both high seas and coastal state maritime zones.
This group includes the five tuna RFMOs and some non-tuna RFMOs, namely CCAMLR, GFCM, IPHC, Joint Commission and NASCO. As regards CCAMLR, a special regime exists for the coastal state maritime zones off sub-Antarctic islands.¹²¹ Also, as regards WCPFC, several Members take the view that its mandate does not extend to marine internal waters, territorial seas and archipelagic waters;¹²²
2. Only or mainly high seas.
Most non-tuna RFMOs belong to this group, namely CCBSP, NAFO, NEAFC, NPAFC, NPFC,¹²³ SEAFO, SIOFA and SPRFMO. NAFO and NEAFC distinguish between a “Convention Area” – which also includes coastal state maritime zones – and a “Regulatory Area” – which lies beyond coastal state maritime zones. The mandates of NAFO and NEAFC relate first of all to their Regulatory Areas but can be extended over coastal state maritime zones within their Convention Areas upon request by the relevant coastal state(s);¹²⁴ and
3. Only coastal state maritime zones.
CTMFM, PSC and RECOFI belong to this group.

3.3.5. Participation

States or entities (i.e. EU and Chinese Taipei) generally participate in RFBs as a coastal state or as a high seas fishing state/distant water fishing state (extra-regional state). The entitlement to participate as a coastal state is based on the occurrence of the relevant transboundary fish stock in that coastal state’s maritime zones. Entitlement to participate by non-coastal states can be based on the freedom of fishing on the high seas pursuant to article 116 of the UNCLOS or – with respect to straddling and highly migratory fish stocks – on a “real interest in the fisheries concerned” pursuant to article 8(3) of the UNFSA. As regards straddling and highly migratory fish stocks, coastal states can also fish for the relevant transboundary fish

¹²¹ See the Chairman’s Statement made upon adoption of the CAMLR Convention; included in the Final Act of the “Conference on the Conservation of Antarctic Marine Living Resources, Canberra, 7 - 20 May 1980”.

¹²² See paras 396-398 of, and Attachment J to, the Summary Report of WCPFC6; para. 174 of the Summary Report of WCPFC5; CMM 2008-01, para. 5 and CMM 2009-06, para. 3.

¹²³ To be established.

¹²⁴ Cf. Art. VI (8) and (10) of the 2007 Amendment (Lisbon, 28 September 2007. Not in force, NAFO/GC Doc. 07/4) to the NAFO Convention (Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, Ottawa, 24 October 1978. In force 1 January 1979, 1135 *United Nations Treaty Series* 369; <www.nafo.int>); arts 5 and 6 of the NEAFC Convention (Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries of 18 November 1980 (1285 *United Nations Treaty Series* 129).

stock in the adjacent high seas and thereby act in the same capacity as a high seas fishing state. Furthermore, a coastal state that participates in a RFB that manages straddling or highly migratory fish stocks, may authorize distant water fishing states that also participate in that RFB, to fish in that coastal state's maritime zones.

All this means that participation in RFBs in the first two groups discussed in the previous subsection is usually – except for IPHC, Joint Commission, NASCO and NEAFC – a mix of coastal states and high seas fishing states. Conversely, participation in the RFBs in the third group is limited to coastal states.

There are several other exceptions to these general rules. First, several RFBs have created a new participatory category that entitles states or entities to certain fishing opportunities and/or to engage in transshipment or bunkering, but not the right to participate in decision-making. This new participatory category is named cooperating non-member, cooperating non-contracting party or otherwise. Second, membership of CCAMLR is also open to states that have no desire to engage in fishing but are mainly interested in scientific research (and the conservation of Antarctic marine living resources).¹²⁵ Third, in view of the lack of a definition of the concept of “real interest” laid down in article 8(3) of the UNFSA, a state could argue its case for membership of an RFB on the basis of, for instance, concerns on impacts of fisheries, associated activities and fisheries related research on target and non-target species or the broader marine ecosystem. It is unclear whether membership of an RFB has ever been granted on this basis.

Finally, mention should be made here of the limited “openness” of many RFBs with competence over straddling, highly migratory and discrete high seas fish stocks. For instance, applications for membership of several RFBs is subject to approval by all (e.g. WCPFC) or most (e.g. NEAFC) existing members, and several RFBs have indicated that new members cannot expect allocations of fishing opportunities for “existing” fisheries (e.g. NAFO and NEAFC) (Serdy 2011; Lugten 2010; 26-27; Molenaar 2003).

3.3.6. Fisheries conservation and management measures

As noted earlier, global fisheries instruments often have a framework character and usually do not contain concrete fisheries conservation and management measures. Such measures are commonly laid down in (sub) regional or bilateral instruments or in the decisions adopted by their bodies. The most well known types of measures are:

- (a) Restrictions on catch and effort, for instance by setting the TAC and allocating the TAC by means of national quotas;
- (b) Designated species for which targeted fishing is prohibited;
- (c) Minimum size limits for target species;

¹²⁵ Cf. art. VII (2) (b) of the CAMLR Convention. Belgium, Germany, India, Italy and Sweden belong to this group.

- (d) Maximum bycatch limits, for instance in terms of the number of individuals (e.g. in relation to marine turtles and marine mammals) or as a percentage of the target catch;
- (e) Gear specifications, for instance, minimum mesh sizes, bycatch mitigation techniques (e.g. turtle excluder devices, bird-scaring lines); and
- (f) Temporal/seasonal or spatial measures (e.g. closed areas) aimed at avoiding catch of target species (e.g. 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).

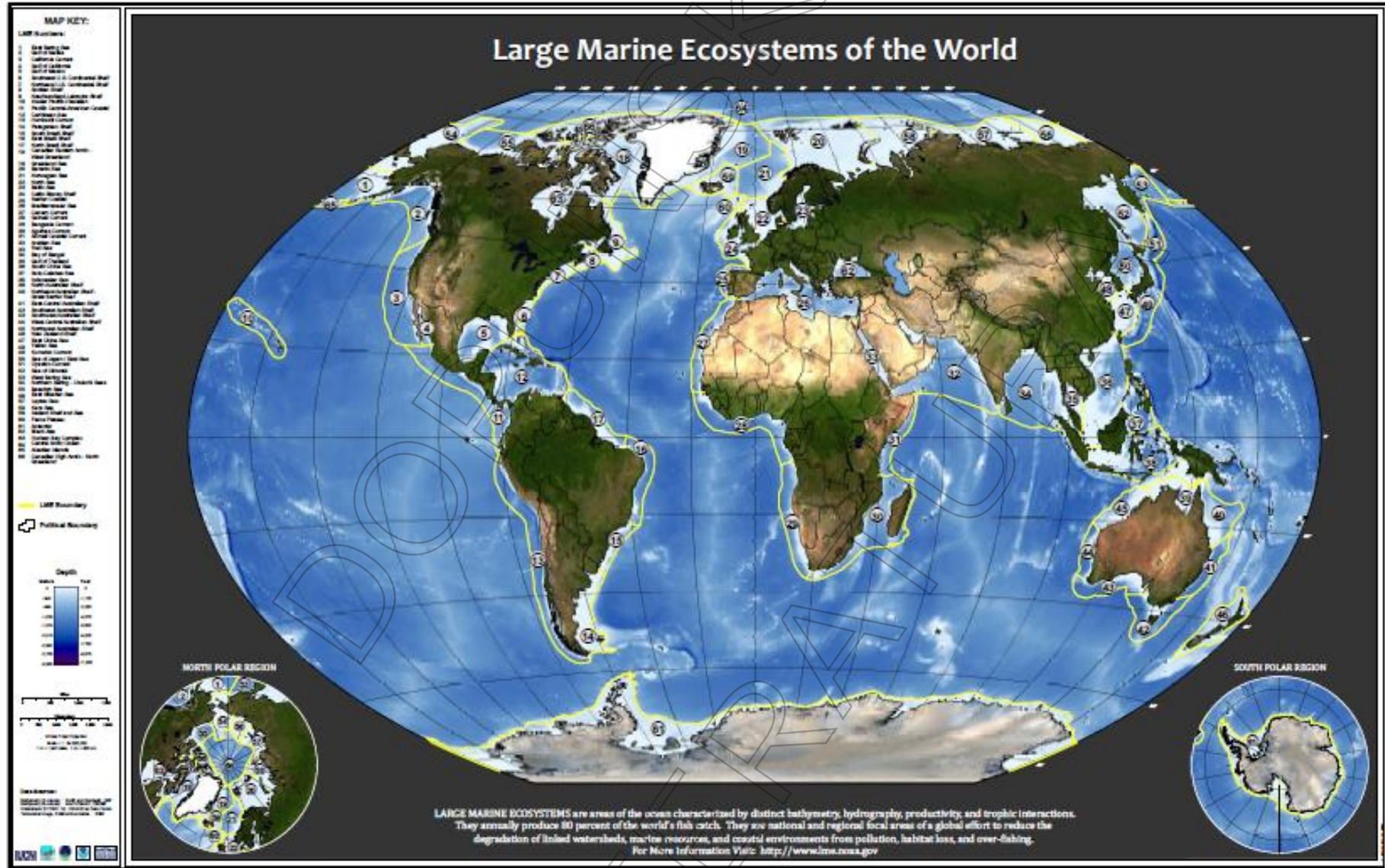
These are often complemented by measures aimed at ensuring compliance, for instance boarding and inspection schemes and port state measures.

3.4. LME mechanisms

3.4.1. Introduction

Based on a concept developed by NOAA, LME mechanisms aim at implementing the ecosystem approach to the marine and coastal environment, from knowledge to management. The US government has itself used this approach for its 10 LMEs since 1995, though it is the GEF that has been instrumental in implementing the LME concept as a basis for its engagement in the marine and coastal sub-component of its IW program. It is a *sui generis* approach, which makes it fundamentally different from the other GEF-funded activities where the GEF is the financial mechanism for the implementation of a global convention (Climate Change, Biodiversity, Desertification, Ozone, Chemicals). With regard to IW, the GEF decided to build its own vision and methodology making use of the LME concept and delimitation (see Figure 3). The total GEF funding for 21 LME projects in 110 countries amounts to US\$3.1 billion (Sherman 2013). A total of 36 TDAs and 30 SAPs have already been completed as of 2013.

Figure 2: The 66 LMEs



3.4.2. Types of LME mechanism

LMEs are based on ecological delimitations in the marine environment, and intend to bring together science and management of human activities (E.g. fisheries, logging, mining, oil and gas exploitation, urban sprawl) and their impacts (E.g. maritime and land-based sources of pollution). Since these are also addressed by a variety of regional and sectoral frameworks (such as Regional Seas programmes, RFBs, IMO, etc.), each LME project has to build *ad hoc* partnerships for the preparation of TDAs, SAPs and other activities. Such partnerships usually take the form of regional steering committees (these include governments, UN and donor agencies, as well as the Regional Seas programmes and, in some cases, RFBs) or national interministerial committees to ensure cross-sectoral coordination at the domestic level.

Three types of approaches have been tested to govern LMEs beyond their initial project cycle:

1. **Creation of a specific governance mechanism for the LME:** An example is the Benguela Current LME bringing together Angola, Namibia and South Africa. The Benguela Current Convention, signed by these three countries in March 2013, establishes the BCC – in existence since 2007 – as a permanent inter-governmental organisation. Its mandate covers marine waters under national jurisdiction and a large range of issues including pollution and fisheries. How it fits within the broader regional governance framework (especially the Abidjan Convention and relevant RFBs) remains to be defined. In the same vein the PEMSEA, originally a GEF/UNDP/IMO project on marine pollution initiated in 1993, gained legal personality as an international organisation in 2009, with a geographical scope covering 5 LMEs.
2. **Establishment of an LME Commission in the framework of an existing body:** This is the case with the Guinea Current Commission¹²⁶ (GCC) that will be established by the adoption and entry into force of a dedicated protocol under the Abidjan Convention. This raises a particular challenge with respect to fisheries, which are not part of the Abidjan Convention mandate.
3. **Cooperative governance:** A third case is found for instance in the Mediterranean, where existing international organisations (UNEP, the World Bank) are given the responsibility to implement the two SAPs (SAP-Bio and SAP-Med) in partnership with regional bodies (MAP, GFCM...). The proposed Western Indian Ocean Sustainable Ecosystem Alliance (WIOSEA) built in the context of the Agulhas and Somalia Current LME project (ASCLME) in cooperation with the South West Indian Ocean Fisheries Project (SWIOFP) is another innovative,

¹²⁶ An interim GCC was set up under the GCLME project. Its Ministerial Committee then agreed through the Abidjan Declaration that the interim commission would become the GCC through a protocol to the Abidjan Convention.

cooperative governance approach, taking into account existing organisations and their mandates.

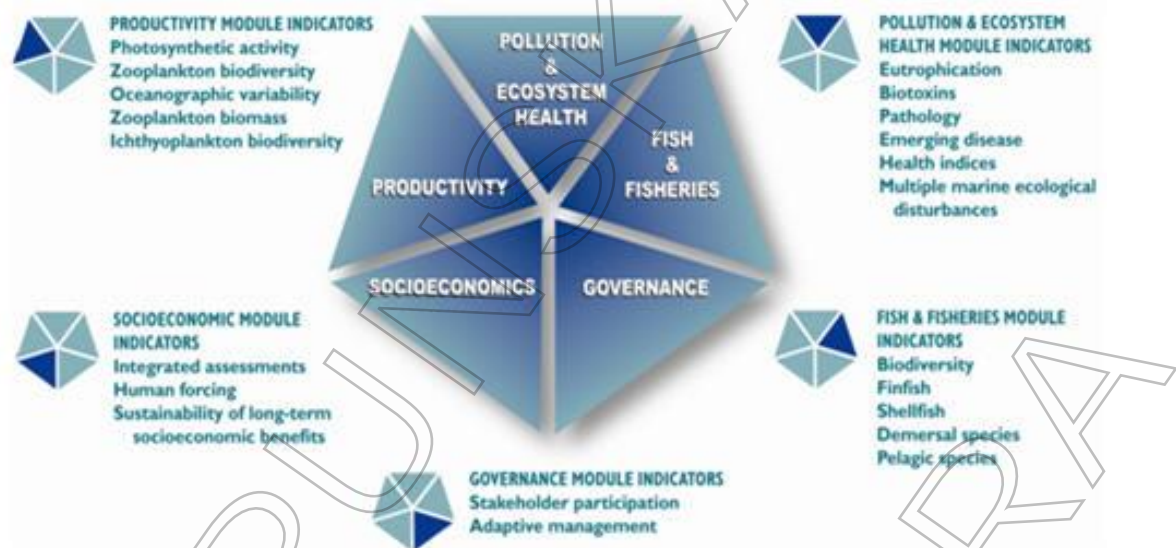
3.4.3. Substantive mandates and objectives

An important feature of the LME approach is the “use of a 5-module strategy for measuring the changing states of the ecosystem and for taking remedial actions towards recovery of degraded conditions within the LMEs. The 5 modules are focused on the application of suites of indicators measuring LME (1) productivity, (2) fish and fisheries, (3) pollution and ecosystem health, (4) socio-economics, and (5) governance” (Sherman and Hempel 2008, see Figure 3). The latter 2 indicators are sometimes qualified as “the human dimensions” of LMEs (Hennessy and Sutinen 2005). However it is widely acknowledged, “some modules received more attention than others, with the socioeconomics and governance module being the less developed” (Mahon et al. 2009. See also Bensted-Smith and Kirkman 2010).

The GEF Operational Strategy invites “nations sharing an LME [to] begin to address coastal and marine issues by jointly undertaking strategic processes for analysing science-based information on transboundary concerns, their root causes, and by setting priorities for action on transboundary concerns. This process is referred to as a Transboundary Diagnostic Analysis (TDA)... Countries then determine the national and regional policy, legal, and institutional reforms and investments needed to address the priorities, and based on the strategies prepare and initiate an LME wide Strategic Action Program (SAP). This allows sound science to assist policy making within a specific geographic location for an ecosystem-based approach to management that can be used to engage stakeholders” (Sherman and Hempel 2008).

The SAP therefore is a document that describes objectives on which participating countries collectively agree, as well as necessary actions by the countries and various organisations to achieve these objectives. It also addresses financial and governance issues both at the regional and national level. Most LME projects have already produced a TDA and SAP. LME projects may also include concrete activities such as demonstration projects, and capacity building for science, monitoring and management. In concrete terms, LME mechanisms develop activities on the five modules mentioned above, with emphasis on region-specific priority topics.

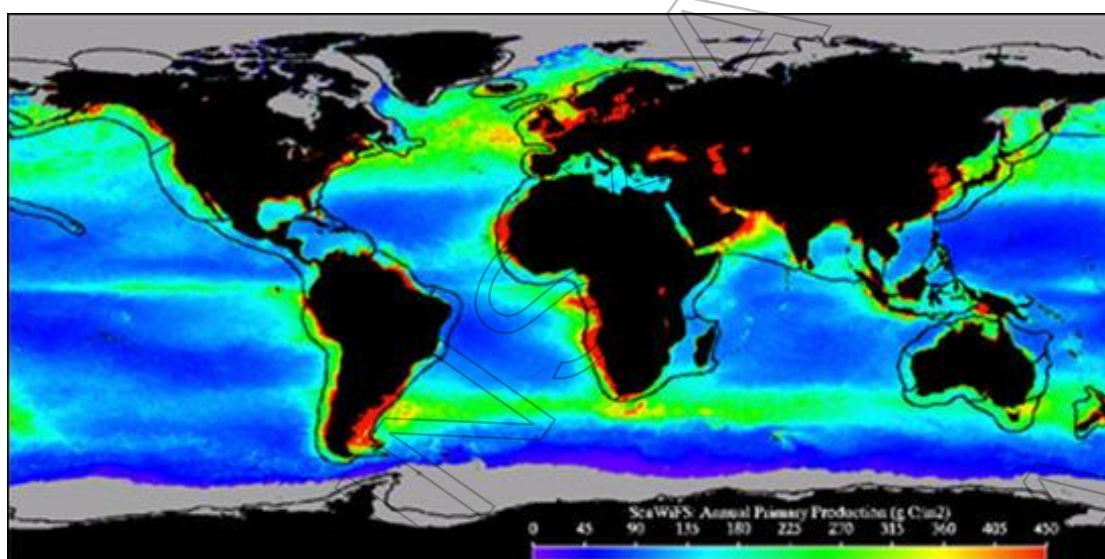
Figure 3: The five-module approach



3.4.4. Geographical Mandates

LMEs are relatively vast areas of oceans of approximately 200,000 km² or greater, adjacent to the continents in coastal waters where primary productivity is generally higher than in open ocean areas (see Figure 4). The physical extent of an LME and its boundaries are based on four linked ecological, rather than political or economic, criteria: (i) Bathymetry, (ii) Hydrography, (iii) Productivity, and (iv) Trophic relationships. Based on these criteria, 64 distinct LMEs have been delineated around the coastal margins of the Atlantic, Arctic, Indian and Pacific oceans.

Figure 4: Global map of average primary productivity and the boundaries of the 66 LMEs of the world¹²⁷



3.4.5. Participation

LME mechanisms are usually projects rather than organisations or agencies, so in general there is no formal membership or process to become a contracting party, in contrast to the Regional Seas programmes and RFBs. LME projects bring together coastal states of the LMEs, international agencies and regional bodies. In cases where a formal organisation was established (e.g. PEMSEA), membership included all relevant coastal states.

3.5. Cooperation and coordination between regional oceans governance mechanisms

3.5.1. Introduction

As this paper focuses on three types of regional oceans governance mechanisms – namely Regional Seas programmes, RFBs and LME mechanisms – cooperation and coordination can occur either among the same types of mechanisms or between different types of mechanisms. These different scenarios are listed below. In addition, some attention is devoted to cooperation and coordination between regional and global ocean governance mechanisms (discussed under subsection 3.5.8 below). For most of these seven scenarios, cooperation and coordination is often extensive and diverse. The information provided is therefore not intended to be comprehensive but attempts to identify the main types of cooperation and coordination and to illustrate these with some examples.

¹²⁷ Available at www.lme.noaa.gov.

3.5.2. Cooperation and coordination among Regional Seas Programmes

There are several formal and informal mechanisms aimed at ensuring cooperation and coordination between the Regional Seas programmes. First, the RSP is a long-term programme of UNEP that provides a framework for coordination and institutional support to the Regional Seas programmes. Furthermore, it provides programmatic support and assistance in the implementation of the conventions and action plans of the UNEP-administered regional seas programmes. Moreover, global meetings of the Regional Seas programmes are regularly organised, giving the opportunity for the regions to share their experiences and adopt Global Strategic Directions.¹²⁸ Some formal agreements have also been concluded between the Regional Seas programmes in order to collaborate on specific issues: that is the case, for instance, for the North-East Atlantic and West, Central and Southern African regions, and for the North-East Atlantic and the Baltic regions, which established MoUs.

Coordination and cooperation can also focus on specific issues, for instance the joint action by the OSPAR Commission, Helsinki Commission and the parties to the Barcelona Convention on ballast water exchange.¹²⁹ Finally, and more informally, experiences between the Regional Seas programmes are sometimes exchanged through the participation of staff members from one programme in meetings of another programme. For instance, a representative from UNEP PAP/RAC participated in 2011 in a meeting organised by the Nairobi Convention on coastal zone management, sharing the experience of the Barcelona Convention on the elaboration of an ICZM Protocol.

3.5.3. Cooperation and coordination among RFBs

Coordination and cooperation among RFBs is stimulated and encouraged by FAO, for instance through the Regional Fishery Body Secretariats Network (RSN) that it has been hosting since 2007 and the Meetings of RFBs that it hosted between 1999 and 2005.¹³⁰ Examples of regular meetings between RFBs are the so-called “Kobe process” involving the five tuna RFMOs, and joint meetings of the North Atlantic RFMOs. The five tuna RFMOs continue to meet, even though on a less formal basis.¹³¹ It is also common for RFBs to formalize cooperation with other RFBs by means of MoUs, to have standing agenda items on such cooperation, to accord each

¹²⁸ The global strategic directions for the Regional Seas programmes for 2013-2016 are listed at <www.unep.org/regionalseas/about/strategy/default.asp>.

¹²⁹ Joint Notice to Shipping from the Contracting Parties of the Barcelona Convention, OSPAR and HELCOM on “General Guidance on the Voluntary Interim Application of the D1 Ballast Water Exchange Standard by Vessels Operating between the Mediterranean Sea and the North-East Atlantic and/or the Baltic Sea” (Annex 17 to 2012 OSPAR Summary Record).

¹³⁰ Information available at <www.fao.org/fishery/rfb/meetings/en>.

¹³¹ As indicated by G. Lugten (FAO) in comments dated 26 March 2014 on an earlier version of this paper. The third meeting of the tuna RFMOs in 2011 made no decision on the continuation of the Kobe process (Chair’s Report of the Third Joint Meeting of the Tuna Regional Fisheries Management Organizations (Kobe III), La Jolla, California, USA, July 12-14, 2011 (available at <tuna-org.org>), p. 9. Also, while meetings of the North Atlantic RFMO group have occurred in the past (Lugten 2010; 25), none took place in recent years and none are currently also scheduled (information kindly provided by Stefán Ásmundsson (NEAFC) to E.J. Molenaar by email on 18 July 2013).

other observer status and to send designated representatives to each other's meetings.¹³² Finally, cooperation and coordination can also focus on specific issues, such as shared stocks¹³³ and fisheries in areas where two convention/regulatory areas overlap.¹³⁴

3.5.4. Cooperation and coordination between LME mechanisms

Cooperation, exchange of information and dissemination of good practices among LMEs occurs through four pathways. First is the annual Consultative Meeting on LMEs jointly organised by the IOC, IUCN and NOAA, which provides an opportunity to address issues of common interest for LME mechanisms. 15 such meetings have already taken place. Second are the bi-annual IW Conferences organised by the GEF Secretariat which are opportunities to present the state of implementation and results of GEF projects related to IW, including LME projects. Third is the GEF IW: LEARN website,¹³⁵ a platform which allows for exchanging, learning and providing resources between GEF IW projects, including LMEs. Fourth are *ad hoc* regional initiatives: in the North-East Atlantic, North Sea, Arctic and Baltic Sea, an ICES initiative on LME cooperation is carried out through the Working Group on Large Marine Ecosystems Best Practices (WGLMEBP) which operates under the Scientific Committee Steering Group on Regional Seas programmes (SSGRSP); in Africa the African LME caucus encourages collaboration and synergies between African LMEs and publishes a newsletter to exchange information and experiences.

3.5.5. Cooperation and coordination between Regional Seas Programmes and RFBs

Cooperation and coordination between the Regional Seas programmes and the RFBs “reflects the growing nexus between fisheries and environmental management... Underpinning this relation are the concepts and obligations of... international instruments which apply to both” (UNEP 2001). It is stimulated and encouraged by UNEP and FAO, for instance by means of UNEP's Global Strategic Directions for Regional Seas programmes.¹³⁶ It is an already longstanding concern as evidenced by its consideration at the 2000 UN Subcommittee on Ocean and Coastal Areas (SOCA) and the 2001 joint UNEP-FAO initiative. The latter led to a substantial report that provides various options to enhance cooperation and coordination between the Regional Seas programmes and the RFBs (UNEP 2001, p. 25). This Report recalls that the First Inter-Regional Programme Consultation (The Hague, 24-26 June 1998) [...] recommended that “agreements should be reached to incorporate the implications and concerns of the fisheries sector in the programmes”; (ii) the Second Global

¹³² Many examples of these are included in Annex III.

¹³³ E.g. pelagic redfish (*Sebastes mentella*) between NAFO and NEAFC. These two RFMOs are currently also considering to establish a joint NEAFC/NAFO working group to deal with technical issues (information kindly provided by Stefán Ásmundsson (NEAFC) to E.J. Molenaar by email on 18 July 2013).

¹³⁴ E.g. between CCAMLR and CCSBT in relation to fishing for southern Bluefin tuna in the CCAMLR Convention Area; between IATTC and WCPFC on tuna fisheries in the WCPFC/IATTC Overlap Area.

¹³⁵ www.iwlearn.net

¹³⁶ Listed under No. 3 at <www.unep.org/regionalseas/about/strategy/default.asp>.

Meeting on Regional Seas Conventions and Action Plans (The Hague, 5-8 July 1999), considered how to “address more effectively the issue of the sustainable management of fisheries” by “integrating environmental considerations into the fishery sector”.

Several Regional Seas programmes and the RFBs have formalized their cooperation by means of MoUs (e.g. the Nairobi Convention and SWIOFC), have standing agenda-items on cooperation, accord each other observer status and send designated representatives to each other’s meetings.¹³⁷ Finally, reference can also be made to the on-going cooperation and coordination between the various components of the ATS, in particular the Antarctic Treaty Consultative Meetings (ATCMs), the Committee on Environmental Protection (CEP) and CCAMLR. Even though these are all part of the ATS, close cooperation and coordination is still crucial due to their different mandates. This has among other things become evident during the course of CCAMLR’s efforts to establish a representative network of MPAs.¹³⁸

3.5.6. Cooperation and Coordination between Regional Seas Programmes and LME Mechanisms

Cooperation and coordination between Regional Seas programmes and LME mechanisms is stimulated and encouraged by UNEP, one of the GEF implementing agencies, for instance by means of its Global Strategic Directions for Regional Seas programmes.¹³⁹

Since its establishment, the GEF has addressed the IW component differently to the way it approaches global conventions such as the UNFCCC, the CBD, the United Nations Convention to Combat Desertification (UNCCD) or the POPs Convention. Formally, the GEF is not a financial instrument for the implementation of marine conventions. This is made very clear in the GEF fourth evaluation report: “Because the GEF does not follow guidance from conventions in IW, it has developed the focal area full strategy itself. In the other GEF focal areas, the main aim is to support countries in implementing the obligations of the conventions in national policies and strategies... In IW, the important first steps in the overall strategy are the TDA and SAP to create a basis for international cooperation, hopefully leading to binding agreements among governments to deal with urgent problems in the transboundary water systems they share” (GEF 2010). It is worth noting that existing binding agreements, especially the Regional Seas conventions and their protocols, are not mentioned here.

When it comes to SAP implementation, the GEF IW Strategy stipulates the following under Objective 1: “GEF will support further development and implementation of regional policies and measures identified in agreed SAPs, which through collaborative

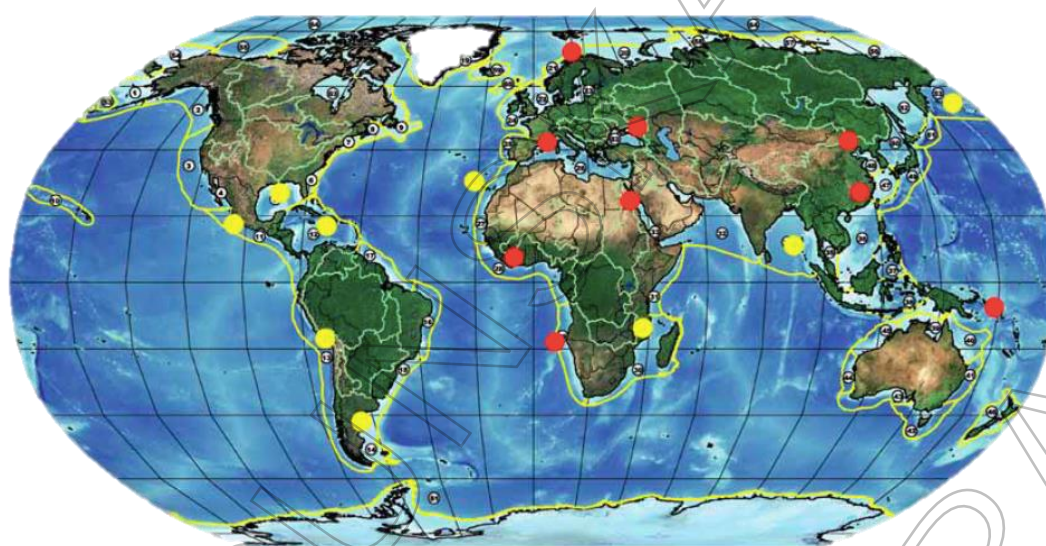
¹³⁷ Examples of relevant MOUs are those between NEAFC and OSPAR, and SPC and SPREP. See also the Decision by COP 10 of the Abidjan Convention on “Cooperation with Regional Fisheries Bodies (RFBs)” (Decision-/CP.10/15).

¹³⁸ See, *inter alia*, Scott 2013; 113-137 and the discussion on MPAs in note 117 *supra*.

¹³⁹ Listed under No. 3 at <www.unep.org/regionalseas/about/strategy/default.asp>.

action would promote sustainable functioning of already existing joint legal and institutional frameworks or help establish new ones”.

Figure 5: Map of GEF LME projects in Regional Seas (source: UNEP)¹⁴⁰



Red: Approved GEF-LME Projects in Regional Seas; Yellow: Projects in the preparation stage.

Sherman and Hempel (2008) mention the partnership that “links the global Regional Seas Programme, coordinated by UNEP, with the Large Marine Ecosystem approach... the joint initiative assists developing countries in using LMEs as operational units for translating the Regional Seas Programme into concrete actions”.¹⁴¹ Though at the beginning of the implementation of the IW component there was the opportunity to commence with a “clean slate”, this did not occur in practice (Figure 5). GEF-funded LME projects had to cope with the legal and political reality in countries involved which were also Contracting Parties either to an existing regional marine convention (e.g. the Barcelona or Abidjan Convention) or to an action plan with no legally binding instrument (e.g. Coordinating Body of the Seas of East Asia – COBSEA).

Cooperation therefore took different forms, from an integrated approach in the Mediterranean case to a cooperative approach in the GCLME case where, in spite of the establishment of a separate secretariat, the GCLME project was instrumental in strengthening the Abidjan Convention through the adoption of a Protocol on Land-Based Sources and Activities (LBSA) and an Emergency Protocol to the Convention. Examples of more uncertain cooperation and coordination between Regional Seas programmes and LME mechanisms include the (permanent but autonomous) BCC, which is supposed to cooperate with relevant organisations including both Regional Seas programmes and RFBs.¹⁴²

¹⁴⁰ http://www.unep.org/regionalseas/publications/brochures/pdfs/LMEs_brochure.pdf

¹⁴¹ Note that as the LME approach is not embodied by a particular organisation, there are questions as to whom UNEP is actually in partnership with.

¹⁴² Cf. Art. 18 of the Benguela Current Convention.

3.5.7. Cooperation and coordination between RFBs and LME mechanisms

Interactions between RFBs and LME mechanisms are necessarily more limited than between the Regional Seas programmes and the LME mechanisms for at least two reasons:

1. Legal: LMEs as delimited under NOAA guidance mainly consist of coastal states maritime zones. On the other hand, while some RFBs have geographical mandates covering coastal waters, mandates of most non-tuna RFMOs cover only or mainly high seas; and
2. Substantive: With most LME mechanisms being driven primarily by environmental concerns, RFBs and national fisheries authorities have not always been actively involved in LME discussions and decisions, despite fisheries often being the main issue at stake.

On the whole, LME mechanisms have mainly been oriented towards *sui generis* initiatives such as the BCC whose mandate covers fisheries. Nevertheless there has been some limited but tangible cooperation between LME mechanisms and RFBs, such as:

- Involving RFBs as partners in the coordinating process of LME projects: e.g. the Baltic Sea Fishery Commission (no longer operational) was involved in the Baltic Sea Regional Project and the GFCM in the GEF Mediterranean LME project;
- Supporting RFBs' projects (Tanstad 2013): for instance, the GEF South China Sea LME Project was instrumental in the decision of the Southeast Asian Fisheries Development Center (SEAFDEC) to establish regional fisheries refuges for transboundary fisheries management. In the Pacific, after the WCPFC entered into force,¹⁴³ the GEF funded the Pacific Islands Oceanic Fisheries Management Project (OFMP) that aimed to strengthen the capacity of small islands to implement fisheries management rules, especially WCPFC decisions. This project fits exactly with GEF's role as the financial instrument of the Rio conventions: it helps developing countries to comply with their international obligations in terms of environmental protection and the sustainable use of living resources. The same applies e.g. to the West Pacific East Asia Oceanic Fisheries Management Project (WPEAOFM).

¹⁴³ The establishment of the WCPFC is presented by GEF IW-Learn website as a result of the GEF IW programme ("GEF interventions are often associated with adopting regional conventions as a show of the government commitments to sustainability after the project ends. For example, the WCPFC resulted from GEF-IW waters"). In fact, the decision to launch the negotiation for the establishment of the WCPFC was taken in 1994, before the adoption of the IW component by the GEF.

In addition, FAO is currently co-implementing two LME projects (Bay of Bengal and Canary Current) and is, or has, been involved in different capacities in other LME projects.

3.5.8. Cooperation and coordination between regional and global oceans governance mechanisms

In view of the primacy accorded by the UNCLOS and its Implementing Agreements to certain global bodies (e.g. IMO and ISA), regional oceans governance mechanisms that pursue EBM within their geographical areas are required to cooperate and coordinate with these global bodies in order to safeguard the latter's primacy.

This has for instance led to the adoption of MoUs between the OSPAR Commission and the IMO and ISA. The need for such cooperation and coordination became among other things apparent due to the efforts of the OSPAR Commission to extend the OSPAR Network of MPAs into ABNJ in the North-East Atlantic. These efforts resulted in the "Madeira process" and the adoption of a "Collective arrangement between competent authorities on cooperation and coordination regarding the management of selected areas in Areas Beyond National Jurisdiction in the North East Atlantic".¹⁴⁴

Another example of cooperation between regional and global bodies involves the Sargasso Sea Alliance, which stimulates individual states and competent regional and global international organisations to cooperate, among other things towards the establishment of one or more cross-sectoral MPAs in the Sargasso Sea.¹⁴⁵

3.6. Analysis

3.6.1. Comparative analysis of key features of regional oceans governance mechanisms

Table 7 provides a summary of key features of regional oceans mechanisms.

3.6.1.1. Geographical scope

While there are frequent geographical overlaps between RFBs, overlaps in their species mandates are not so frequent and special arrangements are in such cases often made to ensure complementarity and avoid actual incompatibility or conflict.¹⁴⁶ The geographical scopes of Regional Seas programmes and RFBs have been determined by a mix of scientific and political considerations and opportunistically, rather than by

¹⁴⁴ The final version - adopted by NEAFC as well as the OSPAR Commission - is included in doc. OSPAR 14/103-Edoc. JL 13/5/1. The phrase "cooperation and coordination" was included in the title in order to clarify that there is no intention to engage in "joint management". The first meeting under the collective arrangement is scheduled for 2015.

¹⁴⁵ For more information see <www.sargassoalliance.org>.

¹⁴⁶ See note 134 supra. Another example concerns NEAFC and the Joint Commission, whose practices are largely complementary despite overlaps in their spatial and species mandates (for a discussion see Molenaar 2013; p. 256).

a systematic scheme to encompass all the oceanic regions of the world (Warner et al. 2013). By contrast LMEs were designed through a natural sciences approach, though this does not mean that these delimitations are the only possible ones from an ecological perspective.

3.6.1.2. *Mandates*

The substantive mandates of the Regional Seas programmes and the RFBs are largely complementary, which means cooperation and coordination is key if EBM is to be implemented. As noted by UNEP (2001), “none of the conventions deals with the management of fishery resources although a number of activities carried out in the framework of programmes associated with the conventions are directly or indirectly relevant, and may contribute to improved management of fishery”. For instance, fighting against marine and land-based pollution can favour fish stocks replenishment.

As with geographical scopes, pragmatism and *ad hoc* approaches are widespread to avoid overlaps and conflicts of mandates between regional ocean governance mechanisms. The Arctic Council is a useful example in this regard. Its spatial mandate extends to the undefined “Arctic” and its substantive mandate is almost unlimited as it relates to “common Arctic issues, in particular issues of sustainable development and environmental protection”.¹⁴⁷ A very large number of overlaps relevant to the law of the sea between the Arctic Council and other regional and global instruments and bodies can therefore be identified. Though these overlaps are real and result from the Council’s broad competence, they have not led to actual incompatibility or conflict with the output of other bodies with an overlapping mandate. In many instances, this was avoided because the Council simply did not exercise its competence. For example, while the Council has exercised its traditional monitoring and assessment role in relation to marine mammals and fish species, it has so far avoided becoming involved in Arctic fisheries management and conservation and management of marine mammals; among other things to avoid incompatibility or conflict with other instruments and bodies as well as the non-participation of key distant water fishing states and entities in the Arctic Council.

The issue is more problematic when it comes to LME mechanisms. Given that their substantive coverage include, in principle at least, sectors and issues covered by the regulatory mandates of regional and/or global organisations and conventions, LMEs can only overlap with existing governance mechanisms, except in areas where a geographical gap exists (a marine area where there is no RFB nor Regional Seas programme). In some cases, there is a risk of ineffectiveness since they were not designed with a clear governance component in mind.

¹⁴⁷ “Declaration on the Establishment of the Arctic Council, Ottawa, 19 September 1996” (available at <www.arctic-council.org>), art. 1(a), which contains the following footnote “The Arctic Council should not deal with matters related to military security”.

Table 7: Key features of regional oceans governance mechanisms

	Regional Seas programmes	RFBs	LME mechanisms
Geographical scope	Mostly coastal areas up to the limits of EEZ (with CCAMLR, Barcelona, OSPAR and SPREP conventions covering ABNJ).	Three groups: (1) both high seas and coastal state maritime zones; (2) only or mainly the high seas; and (3) only coastal state maritime zones.	Most in EEZ and territorial sea only; some in high seas.
Mandate	From pollution to protection of marine biodiversity. No mandate for activities covered by sectoral organisations such as IMO, ¹⁴⁸ ISA, FAO/RFBs.	Advisory or not. Specific (types of) species or “residual” within certain area. Mostly only one human activity, namely fishing (and associated activities); sometimes also aquaculture and/or research. Aimed at target species or EAF.	Multi-sectoral ecosystem-based assessment and management of LME goods and services.
Participation	Only coastal states (with the exception of the ATS).	Depending on spatial scope, either exclusively coastal states or both coastal states and extra-regional states (mostly distant water fishing states).	Only coastal states.
Institutional arrangements	Secretariat/RCU, COP/inter-governmental meeting. RACs in some, depending on relationship to UNEP.	Stand-alone bodies or FAO bodies. International organizations (with secretariat) or COPs/MOPs (commonly without secretariat).	Multi-agency partnership, under the leadership of an international organisation Very few institutions established (Benguela Current Commission + Guinea soon).

3.6.1.3. *Participation*

In case of differences in participation of regional oceans governance mechanisms – which is often the case – decisions of one mechanism may not be applicable to all participants in other relevant mechanisms. For instance, the Russian Federation is a

¹⁴⁸ However, many Regional Seas programmes have adopted Oil spills / Emergency protocols, which are also a topic in the framework of IMO’s mandate. In some cases, RACs have been created to deal with this issue and are run or supported by IMO.

Member of NEAFC, but not of the OSPAR Commission. Even though both bodies have essentially the same spatial mandate, decisions by the OSPAR Commission are not applicable to the Russian Federation.

3.6.1.4. *Institutional arrangements*

The variety of institutional arrangements reflects the fact that they are usually designed to match specific contexts and objectives. This applies equally to the Regional Seas programmes, the RFBs and the LME mechanisms.

3.6.2. Successes and challenges of existing regional oceans governance mechanisms

3.6.2.1. *Advantages of the regional approach in general*

It is often noted that “not every international environmental problem needs to be dealt with on a global level” (Alheritiere 1982), and the regionalisation of international environmental law has emerged as one of the most important legal trends in recent years. In terms of marine and coastal issues, it has mainly been taking place within the Regional Seas programmes, RFBs and more recently within LME mechanisms. Compared with the global approach of oceans management, the added value of regional oceans governance mechanisms can be summarised by the watchwords: “closer, further, faster”. Indeed, they first take the uniqueness of a marine ecosystem or a fish stock into account, applying appropriate legal and management tools. They go beyond general principles to fight specific threats to nearby marine areas – whether these are, e.g., oil spills from ships or land-based wastewater pollution – and manage specific regional fisheries. Moreover, regional arrangements can surpass global protection requirements. Last and more generally, the regional approach often makes cooperation easier and faster than does a global one, where more diverse stakeholders with more contrasted interests make negotiations thornier.

3.6.2.2. *Successes and challenges of the Regional Seas programmes*

Since it was launched in 1974, the UNEP RSP has been proven to be attractive. With 150 states participating across 18 regions, it one of the most comprehensive initiatives for the protection of the marine and coastal environment. Aimed at bringing together countries bordering a given ecosystem in concerted actions to protect the marine and coastal environment, the Regional Seas programmes are now well established in the oceans governance landscape. As noted in the Global Strategic Review of the Regional Seas Programme (Ehler 2006), “the RSP, its conventions and protocols, and action plans have provided a forum for equitable participation by Member States in management processes of major seas of the world. It has promoted the idea of a “shared sea,” and has helped place marine and coastal management issues on the political agenda and supported the adoption of environmental laws and regulations. For some Member States in some regions, the RSP is the only entry point for environmental concerns. It has encouraged and provided assistance for capacity

building for marine and coastal management”. Table 8 provides an overview of what Regional Seas programmes consider their most significant accomplishments.

The review further remarks, “substantial progress has been made over the past 30 years in addressing the problems of the world’s oceans through the Regional Seas Programme and other global agreements and activities. There is convincing evidence that better management in some areas has cleaned up beaches and bathing waters and made seafood safer to eat”. It is however difficult to precisely attribute observed progress in environmental conditions to a particular endeavour such as the RSP.

“Many of the problems identified decades ago have not been resolved, and some are worsening (...). Although many Regional Seas programmes have made a positive difference, many have failed to solve the problems they were designed to solve” (Ehler 2006). Several factors currently limit the effectiveness of the Regional Seas programmes in tackling marine and coastal challenges. Table 3 provides an overview of what Regional Seas programmes consider their main shortcomings.

The implementation of regional agreements is far from systematic and comprehensive. The most glaring example is the disconnection between the number of regional agreements aimed at preventing land-based pollution and the persistence, and even worsening, of the problem.¹⁴⁹ Many reasons, often cumulative, can explain this situation, including the lack of political will, political instability in some states or weak enforcement mechanisms. The First Inter-Regional Programme Consultation¹⁵⁰ identified “the lack of necessary interaction with the fisheries sector and other socio-economic sectors” as one of the “most fundamental problems hampering the implementation of the respective Regional Seas programmes” (UNEP, 2001).

¹⁴⁹ During the 1992 Earth Summit, States considered that land-based activities contributed to “70 per cent of marine pollution” (Agenda 21, Chapter 17, §17-18). It is now estimated that up to 80 per cent of marine pollution comes from land-based sources: United Nations General Assembly, Oceans and the law of the sea, Report of the Secretary-General, 11 April 2011, §154.

¹⁵⁰ The Hague, 24-26 June 1998.

Table 8: Major accomplishments of the Regional Seas programmes according to a self-evaluation (Ehler 2006)

Accomplishments of RS programmes	No. of programmes
Developing Regional/National Plans of Action for Land-Based Sources of Marine Degradation	12
Developing Oil Spill Contingency Plans	8
Completing a Regional Plan of Action	5
Reporting on State of Marine Environment	5
Implementing Ballast Water Programme	5
Monitoring Contaminants	5
Integrated Coastal Management Training	4
Integrated Water Resources Management Training	3
Marine Protected Area Plan	3
Public Awareness Programme	3
Focal Point for Coral Reef Activities	2
Habitat Degradation Plan	2

Although it is hazardous to generalise, many Regional Seas programmes are facing important financial shortfalls. In East Asia for instance, COBSEA's "financial situation continues to be critical, the core expenditures of the Secretariat are larger than that of the annual income from countries contributions to the Trust Fund and UNEP, as an interim emergency measure, pays for the difference".¹⁵¹ In the Mediterranean, a "serious financial deficit... had accumulated over the years":¹⁵² the contribution of the regional Trust Fund to the RACs' budget already dropped around 20% (Rochette and Billé 2012a) and an extended functional review of the regional system, suggesting options to achieve financial sustainability, was discussed during the last COP to the Barcelona Convention in December 2013.

¹⁵¹ Twenty-first Meeting of the Coordinating Body on the Seas of East Asia (COBSEA), Report of the UNEP Executive Director on the implementation of the East Asian Seas Action Plan 2009 -2012, Bangkok, Thailand, 26 March 2013, UNEP/DEPI/COBSEA IGM 21/3, §8: 8.

¹⁵² UNEP/MAP, Report of the 17th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, Paris (France), 8-10 February 2012, UNEP/DEPI/MED IG.20/8, 14 February 2012, §21.

In the same manner, 6 of the 10 Contracting Parties to the Nairobi Convention did not contribute to the Regional Trust Fund in 2012.¹⁵³ In the Wider Caribbean, despite “a significant improvement in payment” in 2012, there is still a “continued accumulation of arrears” which “negatively impacts on the ability of the Secretariat to coordinate its activities”.¹⁵⁴ This lack of adequate funding often holds up the implementation of agreements and activities.

As a result, and despite the adoption of several action plans and legal agreements, many Regional Seas programmes still have the same institutional framework as when they were created, with limited financial and human resources. Consequently, secretariats are almost completely occupied by administrative issues and are unable to provide the necessary coordination, assistance and support to states (Ehler 2006). This hampers crucial, higher level strategic and political work as well as the provision of technical and legal assistance – one of the reasons for weak implementation of some regional agreements (Rochette and Billé 2013).

Table 9: Major shortcomings of the Regional Seas programmes according to a self-evaluation (Ehler 2006)

Shortcomings of RS programmes	No. of programmes
Lack of Human/Financial Resources	8
Delays in Ratifying/Implementing Conventions and Action Plans	4
Lack of National Implementation	2
Inability to Deal with Fisheries-Environment Conflicts	2
Inadequate Enforcement and Compliance	2
Lack of Information Exchange and Coordination	2

Regardless of the level of support provided by the regional frameworks, implementation is largely in the hands of states. However a number of states face structural difficulties, especially in the developing world. In many cases public administrations, be they national or local, do not have the capacity or the means to design and implement strong environmental policies, hampering the effectiveness of

¹⁵³ UNEP, Seventh Meeting of Contracting Parties to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (Nairobi Convention), Financial Report and Budget, Maputo, Mozambique, 10-14 December 2012, 27 November 2012.

¹⁵⁴ UNEP/CEP, Report of the Executive Director on the implementation of the 2010-2012 work plan and budget of the Caribbean Environment Programme, Fifteenth Intergovernmental Meeting of the Action Plan for the Caribbean Environment Programme and Twelfth Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Punta Cana, Dominican Republic, 25-27 October 2012, UNEP (DEPI)/CAR IG.33/INF.4, 4 October 2012.

regional governance. Where states and administrations are relatively stronger, lack of coordination and even conflicting policies between sectoral policies are common obstacles to implementation. Last, national capacities have not always been fully utilised by regional bodies.

3.6.3. Successes and challenges of RFBs

RFBs have become the primary vehicle for the conservation and management of transboundary and discrete high seas fish stocks. As regards straddling and highly migratory fish stocks, this was confirmed by article 8(1) of the UNFSA. Acknowledgement of the key role of RFBs is among other things reflected in the efforts of the international community since the entry into force of the UNFSA to establish new RFMOs towards ensuring full coverage of the high seas with RFMOs.

The most recent negotiations to establish RFMOs related to the South Pacific, leading to the establishment of the SPRFMO, and the North Pacific, which is expected to result in the establishment of the NPFC in the near future. At the time of writing, the Arctic Ocean coastal states are also preparing for the signature of a declaration on central Arctic Ocean fisheries as well as the commencement of a broader process with the involvement of non-Arctic states and entities, aimed at the adoption of an instrument on central Arctic Ocean fisheries.¹⁵⁵ Gaps in full high seas coverage with RFMOs nevertheless remain, among other things in the Central and South-West Atlantic. Some regions also lack RFBs with a mandate over joint stocks, for instance in the Red Sea and the Gulf of Aden.¹⁵⁶

Other successes of RFBs are the proactive efforts of many RFBs to address the impacts of bottom fisheries on the marine environment and to more broadly consider impacts of fisheries on ecosystems as a whole – rather than just target species – and to also formally embrace the EAF by adjusting their constitutive instruments.

RFBs face a considerable number of challenges, which are listed below.¹⁵⁷ So-called “root challenges” are listed separate from other challenges. Some of these are more generic problems that international bodies are often confronted with. As the performance of RFBs has suffered and continues to suffer from all these challenges, various processes – including RFB performance assessments and revisions of the constitutive instruments of RFBs – have been and are undertaken to address these challenges.¹⁵⁸

¹⁵⁵ See the Chairman’s Statement on the “Meeting on Arctic Fisheries” held at Nuuk, Greenland, 24-26 February 2014, available at <naalakkersuisut.gl/en/Naalakkersuisut/Press-Statements/2014/02/Arktisk-hoejsoefiskeri>.

¹⁵⁶ See note 107 above.

¹⁵⁷ See; *inter alia*, UNGA Res 67/79, of 11 December 2012; “The Future We Want”, note 8 above, paras 168-173; and Lugten 2010; 7.

¹⁵⁸ RFBs that have undertaken such performance assessments have commonly made the reports available on their websites. See “The Future We Want”, note 8 above, at para. 172; and “Performance Reviews by Regional Fishery Bodies: Introduction, Summaries, Synthesis and Best Practices. Volume I: CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO, NEAFC” (FAO Fisheries and Aquaculture Circular No. 1072 (2012)).

3.6.3.1. Challenges

- Over-exploitation of target species and implementing a precautionary approach to fisheries management, among other things due to overcapacity and subsidies;
- Allocating fishing opportunities and the so-called “conservation burden” (Hanich and Ota 2013);
- Illegal, unreported and unregulated (IUU) fishing, including dealing with new entrants, monitoring, control and surveillance (MCS) and ensuring compliance;
- Scientific research, data gathering and data sharing on target species and on what is necessary to pursue EAF;
- Implementing EAF, among other things in relation to bycatch of non-target species (fish and non-fish; e.g. large-scale pelagic drift-nets); discarding of target and non-target species; impacts on benthic habitats; other unsustainable fishing practices (e.g. dynamite and cyanide fishing); and lost and discarded fishing gear and packaging material (ghost fishing);
- Cooperation and coordination with other RFBs;
- Limited budgets of RFB secretariats, where relevant; and
- Mandates of RFBs are inherently limited and do not allow them to deal with other human activities impacting on fisheries (e.g. coastal zone development, marine pollution (including marine debris) and global climate change) or even with some fisheries issues (e.g. subsidies).

3.6.3.2. Root challenges and problems

- Fish stocks are common resources that move around freely, unhindered by maritime boundaries;
- Similar to other transboundary issues, the conservation and management of transboundary fish stocks – and discrete high seas fish stocks – is constrained by the consensual nature of international law; meaning that states cannot be bound against their will. States are commonly reluctant to transfer powers to international bodies – in particular in the compliance domain – as these powers can also be used against them. This allows “free rider” states to benefit from weak international law and institutions. RFBs are no exception in this regard and are only as strong as their members allow them to be; and

- In particular developing states do not have sufficient resources (financial and otherwise) to discharge their international obligations and commitments.

3.6.4. Successes and challenges of LME mechanisms

Mahon *et al.* (2009) note that the LME concept had a global impact on how projects are developed and funded, and that it has “provided a rallying point for countries to cooperate in dealing with problems relating to the utilization of transboundary resources”.

LME mechanisms have been instrumental in strengthening regional ocean governance in several ways. First, they have generated significant advances in the scientific knowledge of the marine environment and a wealth of useable scientific information (Bensted-Smith and Kirkman, 2010). This has been the basis for the development of robust, comprehensive and accessible assessments through the TDAs. Second, they have invested a lot of resources in capacity building, which is urgently needed. For instance, more than 80 capacity building workshops were organized within the framework of the GCLME project (Susan and Honey 2013). Third, although sometimes competing with other regional bodies to find their “ecological niche”, LME mechanisms also stimulated regional cooperation to some extent, bringing together regional stakeholders for various meetings and occasioning discussions that would otherwise not have taken place. This may include RFBs and Regional Seas programmes, but also non-governmental actors. In that sense, LME mechanisms have served as regional platforms for exchange of views and experiences.

Although it is difficult to evaluate precisely, it seems that LME mechanisms may have played a catalysing role in some cases, especially by pushing the Regional Seas programmes towards more strategic and action-oriented processes, and by inciting RFBs to more explicitly and effectively take biodiversity into account and implement an EAF. For example SAP-Med and SAP-Bio in the Mediterranean led to internalization of these actions in the MAP and to a wider partnership of actors implementing these strategic action programmes. The CCLME project also supported action by the SRFC and CECAF.

On the other hand, LME mechanisms today face a number of crucial challenges, and the “modules” approach generates a range of problems, e.g. (Mahon et al. 2009):

- “[L]ack of clarity as to exactly what is contained in the modules. They appear to be mixed and have fuzzy boundaries”;
- “The compartmentalization in the LME approach implies that the science activities, especially the productivity module, stand-alone from governance, rather than in support of it”; and
- “It perpetrates the perception that governance cannot take place without first carrying out a great deal of scientific research”.

As noted by Bensted-Smith and Kirkman (2010), “most GEF LME projects invest predominantly in applied research, feasibility assessments, plans and management recommendations, and in training”. Funding for more concrete, game-changing activities leading to changes in actual practices has been scarcer, which is a limit especially in least developed countries where governance is weak and domestic sources of funding meagre. As of today multiple phases of GEF funding are usually needed.

Second, while proponents of the LME approach, notably the GEF Secretariat and NOAA, state that the projects are “country driven” (Sherman and Hempel 2008), they have nonetheless been criticized for a top-down approach in which neither states nor regional bodies really have a say. Their scientific basis, and hence the design of their boundaries, have been developed by NOAA’s scientists, while the progressive funding of LME projects by the GEF under its IW focal area follows a somewhat mechanical approach: the formal and procedural requirements and procedures, such as official endorsement by recipient countries, do not guarantee that national demand and ownership receive the attention and weight they deserve. For instance, the terminal evaluation of the GCLME project notes that “despite strong political support for the GCLME project and creation of the GCC, the evaluation has identified country cravenness and ownership as a weakness in this project, associated with lack of empowerment of national structures, and low visibility of the project in countries without a demonstration project or RAC” (Humphrey and Gordon 2012). Further, even when states are adequately involved, “the very large geographic scale and association with GEF lead LME programmes to concentrate on the national and regional levels of governance, without necessarily connecting to sub-national and local levels. Thus, while there have been successes in institutionalising transboundary cooperation, impact on the ground may be constrained by deficiencies in the rest of the multi-level, multi-sectoral governance system in each country, which LME projects rarely analyse or strengthen adequately” (Bensted-Smith and Kirkman, 2010).

Third, LMEs have so far materialized mainly through GEF projects. The issue of financial sustainability of the LME approach therefore needs to be raised. Duda and Sherman (2002) promote the periodic updating of TDAs and SAPs, and Sherman and Hempel (2008) affirm that “from year 1, the GEF supported projects move toward the goal of self-financing of the ecosystem assessment and management process by year 10”. Thus it is necessary to enquire what happens in practice once an LME project ends. While there is a tendency to follow up with second phases, it is not yet clear what the future of the LME approach is in regions where two consecutive GEF projects (lasting for 10 years) have already been funded. Given the nature of the GEF, successive funding phases cannot be a general answer to the financial sustainability issue. There is therefore a real risk of TDAs becoming obsolete after the completion of the GEF project. The necessary processes to update existing knowledge and analyses cannot be ensured in a systematic way if no governance mechanism is clearly established. This issue is even more serious in the case of SAPs, where the

responsibility to implement each action identified is usually not allocated to a particular agency or stakeholder.

A fourth challenge is therefore to identify who may take over once the TDA and SAP have been produced and the project terminated. Some issues addressed by TDAs and SAPs are handled by existing regional bodies whose mandates are fragmented and whose geographical scopes do not necessarily fit with LMEs delimitations (with some exceptions such as in the Mediterranean). Therefore, there may be a temptation to create new regional bodies with an integrated mandate that enables them to implement the ecosystem approach. Yet setting up new bodies through international political and legal processes is complex and may take many years, which is not necessarily compatible with the GEF project approach. The creation of the BCC shows that it is nevertheless possible, though planned funding by members will need to be scrutinized. The appropriation of the TDA by the Mediterranean Regional Seas programme is another interesting option.

The governance issue is fundamental because of the progressive shift from an essentially scientific approach primarily oriented towards the needs of NOAA, towards what is nowadays closer to an investment guide for a variety of international and national agencies (Bensted-Smith and Kirkman, 2010). The situation is therefore radically different from that of the Regional Seas programmes, where implementation of agreed action plans and work programmes is coordinated and monitored by an existing, designated secretariat or coordinating unit.

On the whole, the LME mechanisms offer a robust scientific basis for action but face critical governance and implementation challenges – the same challenges already faced by the Regional Seas programmes and the RFBs. The LME concept was developed and put forward by scientists (mainly oceanographers) who do not seem to have fully anticipated governance and policy issues. This explains the relative strength of scientific components over governance issues, and suggests that focus should be put on the latter in the coming years.

3.6.5. Conclusions

It should first be highlighted that regional oceans mechanisms are generally sector-specific. This is clearly the case for RFBs, which are sectoral by design, while Regional Seas programmes, however multi-sectoral in principle, are not competent over key economic sectors (notably fisheries, mining and maritime transport) and must coordinate with other competent international organisations such as FAO, RFBs, ISA and IMO. While LME mechanisms aim to be cross-sectoral, practically they often do not entail a governance component, or their competences are limited by the existence of competing international bodies at the global or regional level. In this context the implementation of EBM is challenging and cumulative impacts are usually not taken into account. The objectives of each mechanism can therefore be undermined by other sectors/human activities. Cooperation and coordination are thus crucial if integrated governance based on sectoral mechanisms is to be achieved. The

Madeira process initiated by the OSPAR Commission provides an example of how this may work.

Second, effectiveness of some regional oceans governance mechanisms is compromised by insufficient universal support. RFBs are an exception because the UNFSA recognizes them as the primary vehicle for regional fisheries management.

Third, there are high inter-regional discrepancies, with some regions covered by much more powerful governance mechanisms than others and with considerable differences in funding. There are therefore competitive (dis)advantages between regions, with no level playing field at the global level, and a frequent inability to effectively protect transboundary species and ecosystems or deal with transboundary impacts from bordering regions with less stringent regulations. Strong efforts in just a few regions will still not prevent loss of marine biodiversity at the global level.

3.7. Successes and challenges in cooperation and coordination between regional oceans governance mechanisms

It should first be underlined that despite the absence of a general framework and obligation to cooperate, in many cases cooperation and coordination between regional oceans governance mechanisms work quite well, which shows that it is at least possible. Moreover, in spite of the absence of an explicit strategy, LME mechanisms have entered this rather over-crowded governance arena without disturbing on-going efforts. Some of the Regional Seas programmes and the RFBs have even managed to strengthen their activities making use of GEF LME projects. However, the issue will have to be addressed much more explicitly by the GEF in the near future if synergies are to be fully exploited.

More generally, it is clear that the main challenge of cooperation and coordination lies in the fact that the three layers of governance investigated in this paper have been conceived and designed successively and independently from one another, not as the bundle of complementary tools that they should eventually become. As rightly identified by UNEP (2001), “another potential constraint is the lack of any existing coordination and cooperation within countries between national sectors (ministries) dealing with fisheries and environmental protection. In some cases they jealously guard their “mandates” and they even act as adversaries rather than partners”. As Ehler (2006) puts it, “from a management perspective, fish do not appear to live in the same sea as pollutants”.

Complementarity indeed does not mean that interests and logics necessarily converge at all times on all matters. For instance RFBs may be more likely to optimise economic interests; or the Regional Seas programmes may be most interested in protection of non-target species and benthic habitats; or RFBs may complain about the lack of attention and action from the Regional Seas programmes on land-based sources of pollution, which negatively affect fisheries. The protracted negotiations around the so-called Collective Arrangement between OSPAR and NEAFC show that

in practice such organisations often promote conflicting interests (Freestone et al., 2014). Here the absence of an obligation to cooperate and a clear framework to do so (beyond MoUs) is particularly problematic.

Finally, it must be recalled that RFBs and Regional Seas programmes are often individually weak mechanisms: they are short of resources to effectively implement their mandate, and states remain the key actors when it comes to concrete implementation of measures agreed at the regional level. Therefore, while cooperation and coordination are major issues, they should never overshadow the basic need to strengthen each mechanism for its own sake. For example, even if the mandate to lead SAPs implementation were to be given to an increasing number of the Regional Seas programmes, some would hardly have the means and capacity to do so effectively.

4. Case studies

4.1. East Asia Region

4.1.1. East Asian regional oceans governance mechanisms

4.1.1.1. *East Asian Regional Seas programmes*

Coordinating Body of the Seas of East Asia (COBSEA)

COBSEA is the coordinating body of the Action Plan for the Protection and Development of the Marine and Coastal Areas of the East Asian Region (the East Asian Seas Action Plan), adopted in 1981. Though it is a UNEP-administered Regional Seas programme, it was not established by an international convention. Its secretariat is based in Bangkok. Its members are Cambodia, China, Indonesia, Republic of Korea, Malaysia, Philippines, Singapore, Thailand and Vietnam.¹⁵⁹

COBSEA adopted in 2007 a New Strategic Direction for 2008-2012. During these five years, it focused on the thematic areas of marine and land-based pollution, coastal and marine habitat conservation and management and response to coastal disasters. COBSEA addressed these areas through four inter-linked strategies: information management; national capacity building; strategic and emerging issues; and regional cooperation. The work of the COBSEA Secretariat includes:

- Facilitation of the development and coordination of activities under the East Asian Seas Action Plan at national, sub-regional, regional and international levels in concert with other regional and international organisations;
- Acting as a supervisory body in the implementation and assessment of projects and activities carried out under the purview of the COBSEA; and
- Serving as a focus for collection and dissemination of information amongst member countries and between the EAS region and other regional seas and relevant international organizations.

Besides some limited activities supported by UNEP and the Swedish International Development Cooperation Agency (SIDA), and a small secretariat established thanks to member countries contributions, COBSEA has helped raising funds for a number of regional projects, but appears to be one of the weakest Regional Seas programmes, to the point that Bensted and Kirkman (2010) qualify its very existence as “tenuous”. Its website has not been updated for many years.¹⁶⁰

Northwest Pacific Action Plan (NOWPAP)

¹⁵⁹ Australia joined in 1994 and later withdrew.

¹⁶⁰ www.cobsea.org

The Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Northwest Pacific Region (the Northwest Pacific Action Plan, NOWPAP) was adopted in 1994 by four states, namely the China, Japan, the Republic of Korea and the Russian Federation, as a UNEP-administered Regional Seas programme. Its overall goal is “the wise use, development and management of the coastal and marine environment so as to obtain the utmost long-term benefits for the human populations of the region, while protecting human health, ecological integrity and the region’s sustainability for future generations”. The implementation of NOWPAP is financed mainly by contributions from the Members, which are all developed or emerging countries or countries with economies in transition.

The Intergovernmental Meeting (IGM), convened annually, is the high-level governing body of NOWPAP that provides policy guidance and makes decisions. At the Sixth Intergovernmental Meeting, the NOWPAP Members agreed in principle to establish a co-hosted NOWPAP Regional Coordinating Unit (RCU) in Toyama, Japan, and in Busan, Republic of Korea, established in November 2004.¹⁶¹

The RCU directs and promotes NOWPAP activities, and has overall responsibility for the implementation of Member decisions regarding the operation of the Action Plan. The RCU maintains close contact with, and supports the work of, the RACs. Establishing cooperative relationships with other international organisations is also an important mission of the RCU.

NOWPAP member countries established four RACs in 2000-2002:

1. The Special Monitoring and Coastal Environment Assessment RAC (CEARAC, Toyama, Japan);
2. The Data and Information Network RAC (DINRAC, Beijing, China);
3. The Marine Environmental Emergency Preparedness and Response RAC (MERRAC, Daejeon, Republic of Korea); and
4. The Pollution Monitoring RAC (POMRAC, Vladivostok, Russian Federation).

The NOWPAP Regional Oil Spill Contingency Plan was adopted in 2003. The Memorandum of Understanding on Regional Cooperation regarding Preparedness and Response to Oil Spills in the Marine Environment of the Northwest Pacific Region was signed in 2004/2005. The NOWPAP Regional Action Plan on Marine Litter was adopted in 2007.

¹⁶¹ The NOWPAP Members reached an agreement regarding responsibilities for both the Toyama and Busan Offices at the Seventh Intergovernmental Meeting.

4.1.1.2. East Asian RFBs

Southeast Asian Fisheries Development Center (SEAFDEC)

SEAFDEC is an autonomous inter-governmental body established in 1967 by the Agreement Establishing the Southeast Asian Fisheries Development Center. The Agreement was amended in 1968 and 1994.¹⁶² The mandate of SEAFDEC as endorsed by the 41st Meeting of the SEAFDEC Council is “to develop and manage the fisheries potential of the region by rational utilization of the resources for providing food security and safety to the people and alleviating poverty through transfer of new technologies, research and information dissemination activities”. It covers all fishery resources in the high seas, national waters and inland waters of member countries in Southeast Asia and contiguous high sea areas.¹⁶³

SEAFDEC comprises 11 Member Countries: Brunei Darussalam, Cambodia, Indonesia, Japan, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

The Center operates through the Secretariat located in Bangkok, Thailand, is mandated to coordinate and oversee the general policy and planning of the Center, and act as the focal point for channelling and implementing the decisions and resolutions of the SEAFDEC Council of Directors. The Secretariat has four Technical Departments: Training; Marine Fisheries Research; Aquaculture; Marine Fishery Resources Development and Management. The Council of Directors is the decision-making body of SEAFDEC and meets annually; each member country is represented on the Council by one Director. The Secretariat also organises regular SEAFDEC meetings to obtain directives and guidance from the Member Countries on the operation of the organization, as well as regional technical consultations and meetings on issues as recommended by the Member Countries. SEAFDEC activities are guided by its Program Framework, adopted in April 2009,¹⁶⁴ and the Plan of Action on Sustainable Fisheries for Food Security for the Asian Region towards 2020, adopted in 2011.¹⁶⁵

¹⁶² See

www.ecolex.org/ecolex/ledge/view/RecordDetails;document_Agreement%20establishing%20the%20Southeast%20Asian%20Fisheries%20Development%20Center.html?DIDPFDSI?id=TRE-000587&index=treaties .

¹⁶³ <http://www.fao.org/fishery/rfb/seafdec/en>

¹⁶⁴ <http://www.fao.org/fishery/rfb/seafdec/en>

¹⁶⁵ <http://www.seafdec.org/index.php/publications/finish/47-outputs-from-the-asean-seafdec-conference/176-resolution-and-plan-of-action-on-sustainable-fisheries-for-food-security-for-the-asean-region-towards-2020>

Asia-Pacific Fishery Commission (APFIC)

The Asia-Pacific Fishery Commission (APFIC) is an FAO Article XIV advisory body. Its purpose is to promote the full and sustainable use of living aquatic resources through economically viable and environmentally sustainable policies, practices and operations and finding solutions to emerging regional fisheries issues that affect the member countries. This is done through awareness raising, policy formulation and advice, promoting sustainable fisheries management tools, preparing studies on the status and trends of the fish resources, implementing projects and training and building partnerships. The mandate includes marine, fresh and brackish water species, including coastal and high seas stocks.

The FAO regional Office for Asia and the Pacific (RAP) based in Bangkok, Thailand hosts the Secretariat for the APFIC, while the FAO Senior Fisheries Officer (based at RAP) is the Secretary of the Commission. The Commission's biennial session is complimented with the Regional Consultative Forum Meeting (RCFM), attended by government officials of the member countries, project staff, regional and intergovernmental fisheries bodies, and other UN organizations. The deliberations and recommendations of the RCFM feed into the decision-making and prioritization processes of the APFIC session.

APFIC's area of competence is the Asia-Pacific area, including the Bay of Bengal. It has 21 contracting governments: Australia, Bangladesh, Cambodia, China, France, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Sri Lanka, Timor Leste, Thailand, United Kingdom, United States, and Vietnam.¹⁶⁶

4.1.1.3. East Asian LME mechanisms

The East Asia region is home to 5 LMEs:¹⁶⁷ Yellow Sea, South China Sea, Sulu Celebes Sea, East China Sea, and Indonesia Sea.

Yellow Sea Large Marine Ecosystem (YSLME)

The first phase of the GEF YSLME project, entitled "Reducing Environmental Stress in the yellow Sea Large Marine Ecosystem", was approved in 2002 and implemented by UNDP. It focused on transboundary issues and aimed at achieving ecosystem-based, environmentally sustainable management and use of the YSLME and its watershed by reducing development stress and promoting sustainable exploitation of the ecosystem. The areas of activity included making fishing more sustainable, curbing pollution, protecting biodiversity and building capacity for ecosystem-based

¹⁶⁶ <http://www.apfic.org/modules/tinycontent/index.php?id=27>

¹⁶⁷ The region is however at the crossroads of 14 LMEs: LME #34: Bay of Bengal, LME #36: South China Sea, LME #37: Sulu-Celebes Sea, LME #38: Indonesian Sea, LME #39: North Australian Shelf, LME #40: Northeast Australian Shelf/Great Barrier Reef, LME #41: East-Central Australian Shelf, LME #42: Vietnam Shelf, LME #43: South west Australian Shelf, LME #44: West-Central Australian Shelf, LME #45: Northwest Australian Shelf, LME #47: East China Sea, LME #48: Yellow Sea, LME #49: Kuroshio Current.

management. Involving China, the Republic of Korea and Japan, it delivered a TDA and SAP. A distinctive characteristic is a coordination mechanism, known as the Yellow Sea Partnership, gathering UNDP and 12 other organisations, including non-governmental organisations (NGOs) and international bodies.

The GEF Council approved the second phase of the YSLME project in November 2012. The Project Framework Document submitted by UNDP was entitled “Reducing Pollution and Rebuilding Degraded Marine Resources in the East Asian Seas through Implementation of Intergovernmental Agreements and Catalysed Investments”. It will receive a GEF project grant of USD 20 million of which the YSLME project will receive USD 8.2 million.

South China Sea and Gulf of Thailand

The UNEP/GEF LME project entitled “Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand” (SCSLME project) involved 7 coastal states bordering the South China Sea (Cambodia, China, Indonesia, Malaysia, Philippines, Thailand, and Vietnam). Planning commenced in 1996, the project became fully operational in February 2002, and ended in 2009. A consensus on the TDA and SAP was reached in 2002 but three more years were spent further developing the SAP by forming national committees responsible for the four components of the project: loss and degradation of coastal habitats; over-exploitation of fisheries; land-based pollution; and inadequate regional coordination.

Sulu-Celebes Sea

The UNDP/GEF “Sulu-Celebes Sea Regional Fisheries Management” project involves Indonesia, Malaysia and Philippines. It aims to improve the condition of fisheries and their habitats in the Sulu-Celebes Sea (Sulu-Sulawesi Marine Ecoregion) through an integrated, collaborative and participatory management at the local, national and tri-national levels. The goal of the project is to have economically and ecologically sustainable marine fisheries in the region for the benefit of communities who are dependent on these resources for livelihood and for the global community who benefit in the conservation of highly diverse marine ecosystems and its ecosystems services. The five expected outcomes of the project are:

1. Achievement of a regional consensus on transboundary priorities and their immediate and root causes by updating an earlier Transboundary Diagnostic Analysis (TDA) for the region and focusing on unsustainable exploitation of fisheries;
2. Agreement on regional and national legal, policy and institutional reforms for improved fisheries management through the formulation of a Strategic Action Program (SAP); this will build on the existing Conservation Plan for the Sulu-Sulawesi Marine Ecoregion;

3. Strengthening of institutions and introduction of reforms to catalyse implementation of policies on reducing overfishing and improving fisheries management. The primary target for institutional strengthening is the Sulu-Sulawesi Marine Ecoregion Tri-National Committee and its Sub-Committees, in particular the Sub-Committee on Sustainable Fisheries;
4. Increased fish stocks of small pelagic through the implementation of best fisheries management practices in demonstration sites; and
5. Capture, application and dissemination of knowledge, lessons and best practices within the region and other LMEs.

The project began in June 2010 with the Project Management Office located at the National Fisheries Research and Development Institute-Bureau of Fisheries and Aquatic Resources, Quezon City, Philippines.

East China Sea

The East China Sea LME has not yet been the subject of a GEF LME project and therefore does not have a TDA or SAP.

Indonesia Sea

The Indonesia Sea LME has also not yet been the subject of a GEF LME project.

Partnerships in Environmental Management for the Seas of East Asia (PEMSEA)

PEMSEA is a partnership arrangement involving various stakeholders of the Seas of East Asia, including national and local governments, civil society, the private sector, research and education institutions, communities, international agencies, regional programmes, financial institutions and donors. It is the regional coordinating mechanism for the implementation of the Sustainable Development Strategy for the Seas of East Asia.

Originally a GEF/UNDP/IMO project on marine pollution prevention initiated in 1993 (hence not an LME project *per se*), later supported by consecutive phases of GEF funding, PEMSEA eventually gained legal personality as an international organisation in 2009. This formally solves the sustainability issue related to the original project approach, but does not provide means for PEMSEA's financial sustainability beyond the third phase of GEF support.

The objectives of PEMSEA are to:

- Strengthen consensus among partners on approaches and strategies for addressing the identified threats to the environment and sustainable development of the Seas of East Asia;

- Build confidence among partners through collaborative projects and programmes;
- Achieve synergies and linkages in implementing the SDS-SEA among partners; and
- Reduce in-country and regional disparities in capacities for sustainable coastal and ocean development and management.

Geographic coverage includes the LMEs of the East Asian region (Yellow Sea, East China Sea, South China Sea, Sulu Sea, Celebes Sea and Indonesian Sea). They are semi-enclosed with a total sea area of 7 million km², a coastline of 234,000 km and a total watershed area of about 8.6 million km².

As a summary, Table 10 identifies the main features of the regional oceans governance mechanisms in the East Asian Region.

Table 10: Main features of the regional oceans governance mechanisms in the East Asian Region

	Name	Contracting Parties / Participating Countries	Status	Mandate	Geographical coverage
Regional Seas Programmes	COBSEA	Australia, Cambodia, China, Indonesia, Republic of Korea, Malaysia, Philippines, Singapore, Thailand, Vietnam	UNEP-administered Regional Seas programme	East Asian Seas Action Plan Strategic Direction for 2008- 2012: marine- and land-based pollution, coastal and marine habitat conservation and management and response to coastal disasters.	East Asia Seas Region
	NOWPAP	China, Japan, Republic of Korea, Russian Federation	UNEP-administered Regional Seas programme	Northwest Pacific Action Plan Overall goal: "the wise use, development and management of the coastal and marine environment so as to obtain the utmost long-term benefits for the human populations of the region, while protecting human health, ecological integrity and the region's sustainability for future generations". Regional Oil Spill Contingency Plan Memorandum of Understanding on Regional Cooperation regarding Preparedness and Response to Oil Spills in the Marine Environment of the	Marine environment and coastal zones from about 121 degree E to 143 degree E longitude, and from approximately 33 degree N to 52 degree N latitude

				Northwest Pacific Region Regional Action Plan on Marine Litter	
Regional Fishery Bodies	SEAFDEC	Brunei Darussalam, Cambodia, Indonesia, Japan, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam	Autonomous inter- governmental body	Develop and manage the fisheries potential of the region by rational utilization of the resources for providing food security and safety to the people and alleviating poverty through transfer of new technologies, research and information dissemination activities.	All fishery resources in the high seas, national waters and inland waters of member countries in Southeast Asia and contiguous high sea areas.
	APFIC	Australia, Bangladesh, Cambodia, China, France, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Sri Lanka, Timor Leste, Thailand, United Kingdom, United States, Vietnam	FAO Article XIV advisory body	Promote the full and sustainable utilization of living aquatic resources through economically viable and environmentally sustainable policies, practices and operations and finding solutions to emerging regional fisheries issues that affect the member countries.	Asia-Pacific area, including the Bay of Bengal

Large Marine Ecosystem mechanisms	YSLME	China, Republic of Korea, Japan	UNDP / GEF project 2002-2007 2 nd phase about to start	Achieving ecosystem-based, environmentally sustainable management and use of the YSLME and its watershed by reducing development stress and promoting sustainable exploitation of the ecosystem.	Marine and coastal areas of the China, Republic of Korea, Japan
	South China Sea and Gulf of Thailand LME	Cambodia, China, Indonesia, Malaysia, Philippines, Thailand, and Vietnam	UNEP/GEF LME project 2002-2009	Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand	Coastal and marine areas of Cambodia, China, Indonesia, Malaysia, Philippines, Thailand, and Vietnam
	Sulu-Celebes Sea LME	Malaysia, Philippines, Indonesia	UNDP / GEF LME project 2010- ?	Improve the condition of fisheries and their habitats in the Sulu-Celebes Sea (Sulu-Sulawesi Marine Ecoregion) through an integrated, collaborative and participatory management at the local, national and tri-national levels.	Coastal and marine areas of Malaysia, Philippines, Indonesia
	PEMSEA	Brunei Darussalam, Cambodia, PR China, DPR Korea, Indonesia, Japan, Lao PDR, Malaysia, Myanmar, Philippines, Republic of Korea, Singapore, Taiwan, Thailand, Timor-Leste and Vietnam	International organisation since 2009	Regional coordinating mechanism for the implementation of the Sustainable Development Strategy for the Seas of East Asia	The LMEs of the East Asian region: the yellow Sea, East China Sea, South China Sea, Sulu Sea, Celebes Sea and Indonesian Seas

4.1.2. Cooperation and coordination between East Asian regional oceans governance mechanisms

4.1.2.1. *Cooperation and coordination between East Asian Regional Seas programmes and RFBs*

While little information is available on this issue, it is worth noting that NOWPAP members have explicitly requested that NOWPAP RCU not get involved in fisheries issues, thus there is little incentive for NOWPAP to work more closely with SEAFDEC and APFIC.

4.1.2.2. *Cooperation and coordination between East Asian Regional Seas programmes and LME mechanisms*

The institutional complexity in the region translates into a cooperation and coordination deficit between the two Regional Seas programmes and the LME mechanisms. For instance PEMSEA's geographical definition of the Seas of East Asia is different from that of COBSEA. In addition, despite NOWPAP and YSLME having worked in collaboration, the envisaged creation of a Yellow Sea Commission is a challenge to NOWPAP who will have to find and negotiate its role in this new institution.

In the case of the GEF South China Sea LME project, COBSEA played a key role in securing USD 32 million grants but was hardly involved at the beginning, although cooperation seems to have increased as the project was implemented. Nevertheless, the final report of the SCSLME project mentioned that COBSEA may take responsibility for oversight of the implementation of the SAP, though no concrete plans were put in place (Bensted and Kirkman, 2010).

4.1.2.3. *Cooperation and coordination between East Asian RFBs and LME mechanisms*

An example of good cooperation is the concept of “fisheries refugia” (Paterson et al. 2013) developed and promoted by the SCSLME project, in partnership with FAO and SEAFDEC, culminating in the publication of regional guidelines for their establishment as part of the ASEAN/SEAFDEC regional guidelines for implementing FAO's CCRF.

4.1.3. Lessons learned and conclusion

The East Asian region is a telling example of organisational complexity with regard to regional ocean governance. The two Regional Seas programmes and two RFBs are complemented with a high density of LMEs, some of them still being purely ecological concepts while others have been the subject of a GEF LME project producing a TDA and SAP. Furthermore, some GEF projects covered two LMEs with one not being part of the region in the PEMSEA sense (like the South China Sea and Gulf of Thailand LME project), while PEMSEA was originally a GEF coastal management project and not an LME project, and eventually became an additional international organisation. The potential Yellow Sea Commission, emerging from the YSLME project with NOWPAP and RFBs pre-existing, is an additional example of questionable addition of layers of institutions.

The East Asian region also shows that TDAs and SAPs are liable to abandonment where there is no second phase planned for a GEF LME project. The South China Sea and Gulf of

Thailand LME project based its sustainability strategy on the assumption that once information would be available and an action plan ready, implementation would follow. This did not materialize, especially not within the framework of a weak Regional Seas programme such as COBSEA.

4.2. West, Central and Southern Africa Region

4.2.1. West, Central and Southern Africa regional oceans governance mechanisms

4.2.1.1. *The Regional Seas programme for Western, Central and Southern Africa*

The Convention for cooperation in the protection and development of the marine and coastal environment of the West and Central African Region was adopted in 1981. It was amended in 2008 to include the Republic of South Africa, and was renamed the Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region (the Abidjan Convention). A Protocol concerning cooperation in combating pollution in cases of emergency was adopted in 1981, and entered into force in 1984, and a Protocol concerning the Cooperation in the Protection and Development of the Marine and Coastal Environment from LBSA in the Western, Central and Southern Africa Region was adopted in June 2012.

The region went through a period during which implementation of the Convention and the protocol were held up by a number of factors, mostly relating to a lack of adequate funding and political commitment. The Convention has since been revitalized and several activities are currently being undertaken, including a project to elaborate a new protocol dedicated to the prevention of the pollution from offshore oil and gas activities.

The Abidjan Convention applies to the waters within the jurisdiction of regional states,¹⁶⁸ from Mauritania to South Africa. 16 countries have ratified the Convention to date: Benin, Cameroon, Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Nigeria, Senegal, Sierra Leone, Republic of Congo, South Africa and Togo.

4.2.1.2. *RFBs*

Fishery Committee for the Eastern Central Atlantic (CECAF)

The Fishery Committee for the Eastern Central Atlantic (CECAF) was established in 1967, by Resolution 1/48 adopted by the FAO Council. As a body created under Article VI (2), of the FAO constitution, CECAF has only an advisory mandate. In spite of this, CECAF has, throughout its history, not only studied the fisheries and the fished stocks in its area of competence, but has also formulated and recommended specific management measures to be implemented by its members. The Secretariat is provided by the FAO Regional Office for Africa, based in Accra, Ghana. The Convention applies to the Eastern Central Atlantic between Cape Spartel and the Congo River, covering both waters under national jurisdiction and high seas.

CECAF is composed of a Committee and a scientific sub-committee (SSC) that should meet alternately every two years. The SSC is supported by several *ad-hoc* working groups,

¹⁶⁸ Article 1.

supported through extra-budgetary funding. Although technical working groups have continued to meet in recent years, the Committee and SSC have not met since 2011 due to budgetary and institutional constraints. Despite its current institutional problems, throughout history CECAF has played an important role in regional cooperation and capacity development for fisheries management in the West African region, providing catch statistics through FAO, advice on the state of stocks and fisheries, harmonized management measures etc.

CECAF has 34 members, including 22 regional coastal states – Angola, Benin, Cameroon, Cape Verde, Congo, Congo Democratic Republic, Côte d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mauritania, Morocco, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Spain and Togo – and 11 states from outside the region – Cuba, France, Greece, Italy, Japan, Republic of Korea, Netherlands, Norway, Poland, Romania and the United States – and the EU.

The Sub Regional Fisheries Commission (SRFC)

The Convention establishing the Sub Regional Fisheries Commission (SRFC) as an advisory body was adopted in 1985 to harmonize the long-term policies of Member States in the preservation, conservation and exploitation of the fisheries resources for the benefit of the respective populations and to strengthen cooperation among members.¹⁶⁹ The Permanent Secretariat, based in Dakar, Senegal, is the executive body in charge of the implementation of the decisions taken by the Conference of Ministers.

SRFC has developed legally binding agreements to which the members have individually become signatory parties, e.g. in relation to minimum standards for access agreements, which contains also binding measures in relation to fisheries management in general.

The Convention applies to the marine waters under national jurisdiction of the 8 Contracting Parties: Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal, and Sierra Leone.¹⁷⁰

Fishery Committee for the West Central Gulf of Guinea (FCWC)

The Fishery Committee for the West Central Gulf of Guinea (FCWC) was established in July 2006. The Convention for the Establishment of the Fishery Committee was then adopted in 2007 and a Secretariat, based in Tema, Ghana, was established in 2008.

The Convention applies to the marine waters under national jurisdiction of the 6 Contracting Parties – Liberia, Togo, Nigeria, Ghana, Côte d'Ivoire, and Benin¹⁷¹ – and to all living marine resources, without prejudice to the management responsibilities and authorities of other competent fisheries management organizations or arrangements in the area.¹⁷²

Regional Fisheries Committee for the Gulf of Guinea (COREP)

Established by the Convention concerning the regional development of fisheries in the Gulf of Guinea adopted in June 1984, the Regional Fisheries Committee for the Gulf of Guinea

¹⁶⁹ <http://www.fao.org/fishery/rfb/srfc/en>

¹⁷⁰ <http://www.fao.org/fishery/rfb/srfc/en>

¹⁷¹ http://www.fcwc-fish.org/index.php?option=com_content&view=category&layout=blog&id=104&Itemid=483

¹⁷² <http://www.fao.org/fishery/rfb/fcwc/en>

(COREP) aims at collecting scientific data and harmonizing fisheries policy and legal frameworks of parties.

The Convention applies to the national waters and inland waters of the 7 Contracting Parties: Angola, Cameroon, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, São Tomé and Príncipe.¹⁷³

Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic (ATLAFCO)

The Atlantic Regional Convention for Fisheries Cooperation establishing the Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic (ATLAFCO) was adopted in July 1991 in order to promote and strengthen the regional cooperation on fisheries development and the coordination and harmonisation of efforts and capacities of stakeholders for the conservation and exploitation of fisheries resources. The Secretariat is based in Rabat, Morocco.

The Convention applies both to high seas and waters under national jurisdiction. Contracting Parties are Angola, Benin, Cameroon, Cape Verde, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Morocco, Mauritania, Namibia, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone and Togo.¹⁷⁴

Other RFBs

Beyond the abovementioned RFBs, there are also organisations that have a specific mandate in areas of high seas bordering national waters of West, Central and Southern African countries – including the SEAFO, the WECAFC, and the ICCAT.

4.2.1.3. LME mechanisms

Guinea Current Large Marine Ecosystem (GCLME)

Launched following a pilot phase that ended in 1999, the GCLME project was funded by the GEF and implemented by UNEP and UNDP from 2003 to June 2012.¹⁷⁵ Aimed at combating depletion of living resources and coastal area degradation in the region covering Angola, Benin, Cameroon, Republic of Congo, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea Bissau, Liberia, Nigeria, São Tomé and Príncipe, Sierra Leone and Togo, the project had 5 components:

1. Finalizing the SAP and developing sustainable financing mechanism for its implementation;
2. Recovery and sustainability of depleted fisheries and living marine resources including mariculture;

¹⁷³ <http://www.fao.org/fishery/rfb/corep/en>

¹⁷⁴ <http://www.comhakat.org/def.asp?code langue=23&info=1062&his=1>

¹⁷⁵ “The project was intended to be implemented over five years. It was extended four times, with the final extension to June 2012 leading to an operational phase of seven and a half years. The project was suspended between 2007 and 2008 as a result of irregularities” (Humphrey and Gordon 2012).

3. Planning for biodiversity conservation, restoration of degraded habitats and developing strategies for reducing coastal erosion;
4. Reducing land and sea-based pollution and improve water quality; and
5. Regional coordination and institutional sustainability.

The LME covered the EEZ of the participating countries.¹⁷⁶

An Interim Commission of the Guinea Current Large Marine Ecosystem (ICGCLME) was established in 2006 and a Regional Coordinating Unit created to serve as a Secretariat. Six Regional Activity Centres (RACs), addressing marine productivity, fisheries, environmental information management, pollution, risk, and oil spill contingency and emergency response, were also created. However, the final evaluation of the LME project highlighted “the weak performance of RACs” and, more broadly, identified “country drivenness and ownership as a weakness in this project, associated with lack of empowerment of national structures, and low visibility of the project in countries without a demonstration project or RAC” (Humphrey and Gordon 2012).

In order to continue the efforts made during the project, the Ministerial Committee of the ICGCLME decided in May 2012 to establish the Guinea Current Commission (GCC) by a protocol to the Abidjan Convention. In this context, Contracting Parties to the Abidjan Convention adopted in 2012 Decision CP/10.14, urging the Secretariat of the Convention, in collaboration with UNEP, FAO, UNDP, UNIDO and any interested Parties, to begin preparations, and with the support of the eventual GCLME SAP Implementation Project, and develop a draft protocol establishing the GCC.

Canary Current Large Marine Ecosystem (CCLME)

Funded by the GEF and implemented by FAO and UNEP, the CCLME project is operational for five years (2007-2016) in seven participating countries: Cape Verde, Guinea, Guinea Bissau, Mauritania, Morocco, Senegal and The Gambia. The project has 3 components:¹⁷⁷

1. “Multi-country process and frameworks for understanding and addressing priority transboundary concerns”, which will lead to the elaboration of a TDA;
2. “Strengthened policies and management, based on improved knowledge and demonstration actions, to address priority transboundary concerns on declining marine living resources of the CCLME”, which mainly deals with fisheries management (shared small pelagic stocks in North West Africa; shrimp trawling; migratory coastal species of importance to artisanal fisheries); and
3. “Strengthened knowledge, capacity and policy base for transboundary assessment and management of habitat, biodiversity and water quality critical to fisheries”, includes demonstration projects on MPAs and mangrove restoration actions.

¹⁷⁶ GCLME, Transboundary Diagnostic Analysis, February 2006.

¹⁷⁷ <http://www.canarycurrent.org/about/proj-components>

The CCLME extends from the Atlantic coast of Morocco to the Bijagos Archipelago of Guinea Bissau and westwards to the Canary Islands (Spain), corresponding approximately with the EEZs of the coastal states.¹⁷⁸

A Regional Coordinating Unit based in Dakar, Senegal, is responsible for the coordination of the project and the implementation of the work plan, both at regional and national levels.

Benguela Current Large Marine Ecosystem (BCLME)

Funded by the GEF and implemented by UNDP and the United Nations Office for Project Services (UNOPS), the project “Integrated Management of Benguela Current Large Marine Ecosystem (BCLME)” was implemented from 2000 to 2007 in Angola, Namibia and South Africa. The global objectives of the project were:

- Recovering and sustaining depleted fisheries;
- Restoring degraded habitats; and
- Reducing land and ship-based pollution by establishing a regional management framework for sustainable use of living and non-living resources in the region.

Specific activities included an assessment of mining and drilling impacts, the development of mariculture, the protection of vulnerable species and habitats, the improvement of water quality,¹⁷⁹ and fisheries (in particular through assessment of mortalities caused by longline fishing gear on non-target species), which were a major focus of the project.¹⁸⁰

This project led to the creation of the Benguela Current Commission (BCC) in 2007, with the mandate to promote the integrated management, sustainable development and protection of the regional ecosystem. The BCC institutional arrangement includes: (i) a Ministerial Conference, which is the decision-making body; (ii) a Management Board, consisting of national delegations from Angola, Namibia and South Africa which coordinates and advances the common interests of the three countries; (iii) a Secretariat, based in Swakopmund, Namibia; and (iv) an Ecosystem Advisory Committee, which provides the best available scientific, management, legal and other information.

Adopted on 18 March 2013, the Benguela Current Convention established the BCC as a permanent intergovernmental organisation, the first to be based on a LME concept. The Convention comprises the waters within sovereignty and jurisdiction of the three Contracting Parties.¹⁸¹ The mandate of the BCC is very broad, covering all human activities, aircrafts and ships likely to have adverse impacts on the environment.¹⁸²

As highlighted in Table 10 below, there are 3 LMEs, 1 Regional Seas programme and 5 RFBs in the Western, Central and Southern African Region. The respective mandates of the Regional Seas Programme and the RFBs are clearly identified and separated: RFBs deal with

¹⁷⁸ Canary Current Large Marine Ecosystem (CCLME), Project Document. Available at: http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.learn.net%2Fwww-projects%2F1909%2Fproject_doc%2Fclme-project-document%2Fat_download%2Ffile&ei=1JKoUsWEJ8uU7QahoyHICg&usq=AFOjCNEzvD88b_zzOufNfpRxA0DTamFS0A&sig2=oB0oxHby382tCSkSyogpZA&bvm=bv.57799294,d.ZGU

¹⁷⁹ <http://www.ao.undp.org/BCLME%20Project.htm>

¹⁸⁰ <http://www.benguelacc.org/index.php/en/about/the-history-of-the-bcc/the-bclme-programme>

¹⁸¹ Article 3-1.

¹⁸² Article 3-2.

fisheries and the Abidjan Convention with environmental issues. LME mechanisms have a wider scope, addressing both environmental protection and fisheries issues. In some cases, they even have ambitions similar to those of an RFB; for instance, the IGCC had the objective to “promote the harmonisation of policies and the legal framework for fisheries legislation and fisheries management plans”,¹⁸³ typical of an RFB mandate.

¹⁸³ GCLME, Strategic Action Programme, September 2008.

Table 11: Main features of the regional oceans governance mechanisms in the Western, Central and Southern African Region

Regional Seas programme	Abidjan Convention	<p>The Convention applies from Mauritania to South Africa. Contracting Parties are: Benin, Cameroon, Côte d'Ivoire, Gabon, Gambia (The), Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Nigeria, Senegal, Sierra Leone, Republic of Congo, South Africa and Togo.</p>	<p>UNEP administered Regional Sea programme</p>	<p>A Protocol on combating pollution in cases of emergency</p> <p>A Protocol Concerning Pollution from Land-Based Sources and Activities</p> <p>A project to develop a Protocol on offshore oil and gas activities</p> <p>Several activities in various areas, including biodiversity preservation, adaptation to climate change, capacity building, etc.</p>	<p>Waters within national jurisdiction of Contracting Parties</p>
Regional Fishery Bodies	CECAF	<p>22 coastal states – Angola, Benin, Cameroon, Cape Verde, Republic of the Congo, Congo Democratic Republic, Côte d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mauritania, Morocco, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Spain and Togo –</p> <p>11 non-coastal states – Cuba, France, Greece, Italy, Japan, Republic of Republic of Korea,</p>	<p>An advisory body</p>	<p>All living marine resources</p>	<p>High seas and waters within national jurisdiction</p>

		Netherlands, Norway, Poland, Romania and the United States – and the EU			
	SRFC	Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal, Sierra Leone	A management body.	Marine fisheries resources.	Waters within national jurisdiction of Contracting Parties
	FCWC	Liberia, Togo, Nigeria, Ghana, Côte d'Ivoire, Benin	A management body	All living marine resources	Waters within national jurisdiction of Contracting Parties
	COREP	Angola, Cameroun, Republic of the Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, São Tomé and Príncipe	A management body	All living marine resources	Waters within national jurisdiction of Contracting Parties
	ATLAFCO	Angola, Benin, Cameroon, Cape Verde, Republic of the Congo, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Morocco, Mauritania, Namibia, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone and Togo	A management body	All living marine resources	High seas and waters within national jurisdiction
Large Marine Ecosystems	GCLME	Angola, Benin, Cameroon, Republic of the Congo, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Ghana,	A project funded by the GEF and implemented by UNEP and UNDP from 2003 to June 2012 Proposal to establish the Guinea Current	Wide range of activities, from biodiversity preservation, habitats restoration and sustainable use of fisheries.	Waters within national jurisdiction of participating countries

		Guinea, Guinea Bissau, Liberia, Nigeria, São Tomé and Príncipe, Sierra Leone and Togo	Commission (GCC) by a protocol to the Abidjan Convention		
	CCLME	Cape Verde, Guinea, Guinea Bissau, Mauritania, Morocco, Senegal, The Gambia	A project funded by the GEF and implemented by UNEP and FAO (2007-2015)	Diverse components, embracing various environmental issues including biodiversity conservation and fisheries management	Waters within national jurisdiction of participating countries
	BCLME	Angola, Namibia, South Africa	A project supported by the GEF from 2000 to 2007 A intergovernmental organisation – the BCC – established by a Convention adopted in 2013	All human activities likely to have adverse environmental impacts	Waters within national jurisdiction of Contracting Parties

4.2.2. Cooperation and coordination between regional oceans governance mechanisms

4.2.2.1. *Cooperation and coordination between the Abidjan Convention and RFBs*

The Abidjan Convention has established formal and informal relations with RFBs and seeks to strengthen the collaboration with these organisations. During its 2012 COP, Contracting Parties to the Abidjan Convention decided:

1. “To give a priority role to the Regional Fisheries Bodies (RFBs) to work together with the Secretariat of the Abidjan Convention, in the elaboration and implementation of sustainable fisheries management policies, programmes and projects;
2. To strengthen coordination and cooperation with the RFBs whose competence areas overlap with or are adjacent to that of the Abidjan Convention to achieve common goals in relation to ecosystems supporting sustainable use of natural resources, by:
 - Participating in the meetings of RFBs and facilitating participation of RFBs in relevant meetings of the Abidjan Convention;
 - Exploring fields of cooperation (e.g. environmental policies and legislation; ecosystem approach; data collection and information sharing and exchange; capacity building; marine protected areas; illegal, unreported and unregulated fishing etc.);
 - Concluding MOUs with the different RFBs”¹⁸⁴

4.2.2.2. *Cooperation and coordination between LME mechanisms and the Abidjan Convention*

The 3 LMEs cover the whole geographical area of the Abidjan Convention. Since 2 of them – GCLME and BCLME – were initiated in a period during which the Abidjan Convention was not very active due to the constraints explained above, the African states bordering the Atlantic Ocean supported LME projects as tools for the revitalization and the successful implementation of the Regional Seas programme.¹⁸⁵ This particular situation explains that many relations have been built between the LME mechanisms and the Abidjan Convention.

In particular:

- One of the key objectives of the GCLME project was to encourage effective implementation of the Abidjan Convention and its Protocol concerning cooperation in combating pollution, in cases of emergency; the IGCC provided regional communication to coordinate efforts to control marine pollution, minimize impacts and promote cost-effective solutions.¹⁸⁶ Furthermore, the participating countries wish to establish the Guinea Current Commission by a protocol to the Abidjan Convention, which demonstrates the ambition to build strong synergies between the two bodies.
- The Abidjan Convention is an executing agency of the CCLME project; the Abidjan Convention Secretariat therefore supported the project preparation. Moreover, a key component of the CCLME project is to “develop a sustainable legal framework based on the combined foundation of SRFC and the Abidjan Convention, thus bringing together the fisheries and environmental sectors of the coastal states of the

¹⁸⁴ Decision CP.10/15.

¹⁸⁵ GCLME, Strategic Action Programme, September 2008.

¹⁸⁶ GCLME, Strategic Action Programme, September 2008.

CCLME”.¹⁸⁷ To that purpose, the activities are implemented in close collaboration with the SRFC (component 1 and 2 of the project) and the Abidjan Convention Secretariat (component 3).¹⁸⁸

- In the BCLME, the project supported “the funding of a number of projects within the BCLME Region” (Currie et al. 2007) and promoted the implementation “of the convention by the BCLME countries” (Cooke 2008). Furthermore, the newly created BCC has the ambition “to develop cooperative relationships and may enter into agreements with organisations that can contribute to its work”.¹⁸⁹

4.2.2.3. Cooperation and coordination between LME mechanisms and RFBs

LME projects have developed cooperation and coordination with some RFBs present in the region. In particular:

- The final evaluation of the GCLME project highlighted that the project “has played a contributing role in developing regional fishery agreements (Output 2.4) including assisting in negotiations, endorsement and ratification for sustainable use of fisheries resources. A series of MoUs have been signed with regional fisheries organisations (2011) such as Regional Fisheries Committee for the Gulf of Guinea (COREP) and Fishery Committee for the West Central Gulf of Guinea (FCWC)” (Humphrey and Gordon 2012);
- In the CCLME, components 1 and 2 of the project are implemented “in close collaboration with the SRFC” and CECAF;¹⁹⁰ and
- The final evaluation of the BCLME project noted that the relationship between the project and “SEAFO appears to have been maintained... SEAFO is a young organisation and BCLME has been helpful in providing information and the basis for extension of the large marine ecosystem approach into the SEAFO area. SEAFO expects to collaborate actively with the BCC in the future” (Cooke 2008).

Collaboration between LME mechanisms and CECAF is more difficult. A 2011 Performance Review of CECAF indeed recommended “a more structured coordination between CECAF and the other RFBs as well as the major on-going field projects (GCLME, CCLME) in order... to avoid duplication of efforts... undesirable competition and to prevent the waste of resources”.¹⁹¹

4.2.3. Lessons learned and conclusions

As highlighted by the 2012 CECAF performance review, the lack of cooperation and coordination between RFBs remains a matter of concern in the Western, Central and Southern African Region: strengthening the cooperation between fisheries bodies, whatever their status, should therefore be considered as a regional priority.

The cooperation between RFBs and the Abidjan Convention seems to be on track, as demonstrated by the 2012 Decision of the Abidjan Convention Contracting Parties to work

¹⁸⁷ FAO/GEF Project Document, Protection of the Canary Current Large Marine Ecosystem (CCLME)

¹⁸⁸ http://www.canarycurrent.org/about/copy_of_project-structure-1

¹⁸⁹ Article 18 of the Benguela Current Convention.

¹⁹⁰ http://www.canarycurrent.org/about/copy_of_project-structure-1

¹⁹¹ Fishery Committee for the Eastern Central Atlantic, Twentieth Session, CECAF performance review, 2012, 33p.

together with these organisations and develop fields of cooperation: competent organisations must now make this cooperation effective through formal mechanisms and joint activities, especially by creating linkages between fisheries management and biodiversity conservation.

The ecosystem approach, as promoted by LME mechanisms, is widely recognised and taken into account by RFBs and the Abidjan Convention. The GCLME has proven useful in the process of revitalising the Abidjan Convention, especially in the field of oil spills, land-based pollution and mangroves conservation. The CCLME has also established collaborations both with the Abidjan Convention and SRFC. The decision to create the GCC within the Abidjan Convention framework through a protocol to the convention is a positive approach in terms of governance and will certainly facilitate the creation of synergies between both mechanisms. Last, modalities of cooperation between the Abidjan Convention and the BCC, created as an independent intergovernmental organisation, remain to be worked out.

4.3. Mediterranean Region

4.3.1. Regional Oceans Governance mechanisms in the Mediterranean

4.3.1.1. *The Regional Seas programme: the Mediterranean Action Plan*

Establishment

The first United Nations Conference on the Human Environment, held in Stockholm in 1972, led to the creation of UNEP, through Resolution No. 2997 of the UNGA. During its first sessions, UNEP made the oceans a priority action area and advocated the adoption of a regional approach, specifically mentioning the Mediterranean Sea.¹⁹² It is in this context that the Mediterranean Action Plan (MAP) was drawn up in 1975 and the Convention for the protection of the Mediterranean Sea against pollution adopted on 16 February 1976 in Barcelona, Spain (Barcelona Convention). The Convention was ratified by 16 states¹⁹³ and entered into force on 12 February 1978.

From the mid-1990s, changes in the international policy framework further to the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, and to the entry into force of UNCLOS in 1994, led the Mediterranean states to consider adjusting the cooperation system (Scovazzi, 1996). In 1995, the Action plan for the protection of the marine environment and the sustainable development of the coastal areas of the Mediterranean (MAP Phase II) was then adopted to replace the Mediterranean Action Plan of 1975.¹⁹⁴ The same year, the Convention was also amended and renamed Convention for the protection of the marine environment and the coastal region of the Mediterranean. Contracting Parties currently include the EU and all Mediterranean coastal states.¹⁹⁵

Geographical coverage and participation

According to its Article 1(1), the geographical coverage of the amended Convention includes “maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses”. Article 1(2) states, “the application of the Convention may be extended to coastal areas as defined by each Contracting Party within its own territory” and Article 1-3 that “any Protocol to this Convention may extend the geographical coverage to which that particular Protocol applies”. These articles therefore make possible the development of regional actions from coastal zones to areas beyond national jurisdiction (ABNJ).¹⁹⁶

¹⁹² UNEP, Governing Council Decision 8 (II), 11-22 March 1974.

¹⁹³ Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Spain, Syria, Tunisia, Turkey and Yugoslavia.

¹⁹⁴ Following Decision IG.21/16 Assessment of the Mediterranean Action Plan, adopted during COP 18 held in Istanbul, Turkey, a process has been launched to assess MAP Phase II.

¹⁹⁵ Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Montenegro, Slovenia, Spain, Syria, Tunisia and Turkey.

¹⁹⁶ The situation of the Mediterranean Sea is particular in that there is no point located at a distance of more than 200 nautical miles from the closest land or island. Therefore, “any waters beyond the limits of national jurisdiction (high seas) would disappear if all the coastal States decided to establish their own exclusive economic zones (EEZ)” (Scovazzi, 2011). Despite an increasing phenomenon of jurisdictionalisation, this is not the case so far: there is still ABNJ in the Mediterranean Sea.

Legal framework

The Convention reflects the signatory states' acknowledgement that the Mediterranean Sea is a "common heritage"¹⁹⁷ and that specific rules must be adopted to protect it. As a framework Convention, it provides general obligations and an overall direction for countries to follow: for instance, it binds Contracting Parties to "individually or jointly take all appropriate measures... to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment".¹⁹⁸

However important such general obligations are, they remain insufficient and too general to lead to decisive actions. This is why the Parties are required to negotiate and adopt "protocols, prescribing agreed measures, procedures and standards for the implementation of this Convention".¹⁹⁹ Today, seven sectoral protocols translate the principles set out in the Convention in various strategic fields (Table 12):

- Dumping;
- Prevention and emergency;
- LBSA;
- Specially protected areas and biodiversity;
- Offshore activities;
- Hazardous wastes; and
- ICZM.

¹⁹⁷ Preamble.

¹⁹⁸ Article 4-1.

¹⁹⁹ Article 4-5.

Table 12: The Mediterranean legal framework

Framework Convention	Convention for the protection of the Mediterranean Sea against pollution, adopted in 1976, entered into force in 1978, amended in 1995 and renamed Convention for the protection of the marine environment and the coastal region of the Mediterranean.
Dumping Protocol	Protocol for the prevention of pollution in the Mediterranean Sea by dumping from ships and aircraft, adopted in 1976, entered into force in 1978, amended in 1995 and recorded as the Protocol for the prevention and elimination of pollution in the Mediterranean Sea by dumping from ships and aircraft or incineration at sea (not yet in force).
Prevention and emergency	Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency, adopted in 1976, entered into force in 1978 and replaced in 2002 by the Protocol concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea (entered into force in 2004).
Land-based sources and activities (LBSA)	Protocol for the protection of the Mediterranean Sea against pollution from land-based sources, adopted in 1980, entered into force in 1983, amended in 1996 and recorded as the amended and recorded as the Protocol for the protection of the Mediterranean Sea against pollution from land-based sources and activities (entered into force in 2008).
Specially protected areas and biodiversity	Protocol concerning Mediterranean specially protected areas, adopted in 1982, entered into force in 1986 and replaced in 1995 by the Protocol concerning specially protected areas and biological diversity in the Mediterranean (entered into force in 1999).
Offshore activities	Protocol for the protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil, adopted in 1994 and entered into force in 2011.
Hazardous Wastes	Protocol on the prevention of pollution of the Mediterranean Sea by transboundary movements of hazardous wastes and their disposal, adopted in 1996 and entered into force in 2008.
ICZM	Protocol on integrated coastal zone management in the Mediterranean, adopted in 2008 and entered into force in 2011.

Institutional structure

The COP, held every two years, is the decision-making body of the MAP. During the COPs Contracting Parties review the implementation of the Convention and the protocols.

The daily work of the Mediterranean system is coordinated by a Secretariat, known as the MAP Coordinating Unit (MEDU). In 1982 a Host Country Agreement was signed between Greece and UNEP, providing for the Secretariat to be hosted in Athens. It performs diplomatic, political and communication roles, organises major meetings, coordinates programmes and supervises the RACs.

The Mediterranean is the most advanced region in the use of RACs, with 6 RACs instituted to date:

1. The Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), created in 1976 and based in Valletta, Malta;
2. The Priority Action Programme Regional Activity Centre (PAP/RAC), created in 1977 and based in Split, Croatia;
3. The Blue Plan Regional Activity Centre (BP/RAC), created in 1979 and based in Nice, France;
4. The Specially Protected Areas Regional Activity Centre (SPA/RAC), created in 1985 and located in Tunis, Tunisia;
5. The Sustainable Consumption and Production Regional Activity Centre (SCP/RAC), created in 1996 and based in Barcelona, Spain; and
6. The Information and Communication Regional Activity Centre (INFO/RAC) created in 2005 and based in Rome, Italy.

The creation of a RAC is formalised by an agreement or MoU between UNEP and the host national government. The procedure of developing a work programme and budget approval involves the MEDU, national focal points (NFP) and the COP. All RACs share a common objective, namely helping Contracting Parties to implement the Convention and protocols. Beyond this common mission, RACs are highly diverse in terms of legal status, financial and human resources (Table 13)

The Mediterranean Sea institutional framework also includes an advisory body: the Mediterranean Commission on Sustainable Development (MCSD). Composed of representatives of the 22 Contracting Parties as well as 15 rotating representatives from local authorities, business community and NGOs, the MCSD is a think tank for promoting sustainable development in the Mediterranean basin. It coordinated the preparation of the Mediterranean Strategy on Sustainable Development (MSSD), which was adopted by the Contracting Parties in 2005. Following a decision adopted at COP 18, held in December 2013 in Istanbul, Turkey, the MSSD is currently under revision.²⁰⁰

A Compliance Committee was created in 2008 during COP 15, held in Madrid, Spain.²⁰¹ It is an official subsidiary body of the Convention and its protocols. The Compliance Committee aims to provide advice and assistance to Contracting Parties on compliance with their obligations under the Convention and its protocols, and to generally facilitate, promote, monitor and secure such compliance.

²⁰⁰ Decision IG.21/11 Review of the Mediterranean Strategy on Sustainable Development (MSSD), proposed by the MCSD Steering Committee.

²⁰¹ Decision IG 17/2: Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols.

Last, the MED POL Programme is responsible for the follow up work related to the implementation of the LBSA, Dumping and Hazardous Wastes protocols. In particular it assists Mediterranean countries in the formulation and implementation of pollution monitoring programmes, including pollution control measures and the drafting of action plans aiming to eliminate pollution from land-based sources.

Funding

MAP's activities are primarily financed by the Contracting Parties through their contributions to the Mediterranean Trust Fund (MTF). Other sources of funding to support specific projects and activities include voluntary contributions from the EU, UN agencies, and the GEF. A 2012 study identified the various sources of funding for the RACs functioning and activities (Rochette and Billé, 2012): these include allocation from the MTF, in-kind contributions from the hosting government (premises, operational costs, etc.) and resources from multilateral and bilateral partners.

MAP's core funding for the biennium 2014-2015 amounts to €12,891,880: €11,081,142 come from the MTF, €1,197,138 from EU voluntary contributions and £613,600 Euros from a Greek host government contribution.²⁰² Further external funding secured in December 2013 for the programme of work amounts to €5,268,379.²⁰³

²⁰² By comparison, the budget was €12,839,880 for the biennium 2012-2013.

²⁰³ UNEP MAP, Report of the 18th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols Istanbul (Turkey), 3-6 December 2013, Annex III: MAP Programme of Work and Budget for the 2014-2015 biennium.

Table 13: Main features of the Mediterranean Regional Activity Centres²⁰⁴

Name	Date of creation	Location	Working Area	Legal status	Annual budget (2012)	Staff (2012)
REMPEC	1976	Valletta, Malta	Marine pollution	International organization	US\$1,300,000	12, seconded staff included
PAP/RAC	1977	Split, Croatia	ICZM	Non-profit, public institution with legal personality	US\$1,800,000	9
BP/RAC	1979	Nice, France	Foresight	Non-profit, non-governmental association	US\$3,400,000	25, seconded staff included
SPA/RAC	1985	Tunis, Tunisia	Coastal and marine protected areas	Non-profit, public institution with legal personality	US\$1,300,000	12, seconded staff included
SCP/RAC	1996	Barcelona, Spain	Cleaner production	Hosted by the Catalan Waste Agency, an entity of public law	US\$2,800,000	11
INFO/RAC	2005	Rome, Italy	Information, communication, awareness raising	Not available	Not available	Not available

²⁰⁴ Source: Rochette and Billé, 2013.

Successes and challenges

On the eve of its 40th anniversary, the MAP has established itself as one of the most dynamic Regional Seas programmes. The overall legal framework is among the most comprehensive in the Regional Seas family. It is also one of the few that makes the creation of high seas MPAs possible (Rochette et al., 2014) and establishes common rules and principles for the management of coastal zones (Rochette et al., 2012). Moreover, while many Regional Seas programmes still have the same institutional framework they had when they were created, the Mediterranean institutional structure expanded over the last decades. RACs, in particular, have proven their added-value, particularly by (i) providing states with relevant data, through publications, white papers and reports, so they can adopt science-based decisions; (ii) strengthening regional cooperation in a specific field, by organising conferences and workshops; and (iii) providing legal and technical assistance for the implementation of conventions and protocols, acting as “lungs” to keep the regional legal agreements alive (Rochette and Billé, 2013).

The MAP nonetheless faces important challenges. First, diplomatic tensions between Mediterranean states regularly freeze regional cooperation. Second, the implementation of the Convention and its protocols is far from comprehensive and systematic.²⁰⁵ Many reasons, often cumulative, can explain this situation, including the lack of political will, funding issues, political instability in some states, lack of capacity and weak enforcement mechanisms – all weaknesses in the enabling conditions for an effective implementation of legal instruments. Last, the regional system is experiencing a financial crisis, due to a “serious deficit that had accumulated over the years”.²⁰⁶ “Austerity measures” were taken in recent years, such as the drop of 20% in the MTF contribution to RACs activities (Rochette and Billé, 2012),²⁰⁷ as well as the adoption of a Resource mobilisation strategy.²⁰⁸ Even though the situation is improving, the MTF currently “remains in a vulnerable position”.²⁰⁹ During COP 18, it was decided to create a “working capital reserve” within the MTF, aimed at ensuring “continuity of operations in the event of a temporary shortfall of cash as well as to provide for potential losses on exchange”.²¹⁰

²⁰⁵ During COP 18 for instance, the Compliance Committee expressed its concern related to the failure of many Contracting Parties to submit national reports on their implementation of the Convention and its protocols: UNEP MAP, 18th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols Istanbul (Turkey), 3-6 December 2013, Activity report of the Compliance Committee (2012-2013 biennium), UNEP(DEPI)/MED IG.21/8.

²⁰⁶ Report of the 17th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols Paris (France), 8-10 February 2012, UNEP(DEPI)/MED IG.20/8.

²⁰⁷ Report of the 17th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols Paris (France), 8-10 February 2012, UNEP(DEPI)/MED IG.20/8.

²⁰⁸ Decision IG.20/13 Governance, Annex III.

²⁰⁹ Decision IG.21/17MAP Programme of Work and Budget for the 2014-2015 biennium.

²¹⁰ Decision IG.21/15 Financial Regulations and Rules and Procedures for the Contracting Parties, its subsidiary bodies and the Secretariat of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean – Annex Financial Rules and Procedures for the funds of the Barcelona Convention.

4.3.1.2. Regional fishery bodies

Two RFBs have competence in the Mediterranean Sea: GFCM and ICCAT.

GFCM

Establishment

The constitutive instrument of the GFCM was adopted in 1949 but has been amended several times.²¹¹ The 38th Session of the GFCM (2014) adopted an amended GFCM Agreement that reflects the progressive development of international fisheries law (2014 GFCM Agreement).²¹² The GFCM was established pursuant to Article XIV of the FAO Constitution and is therefore one of the FAO-RFBs. As an RFMO the GFCM is empowered to impose legally binding conservation and management measures on its Members.

Mandate

In terms of target species, the GFCM has competence over all “living marine resources”,²¹³ but as regards tuna and tuna-like species occurring within the GFCM’s regulatory area and the fisheries that target these, it has so far deferred to ICCAT by endorsing the latter’s decisions.²¹⁴ In addition to fish target species, it has also exercised competence over non-fish target species such as coral.²¹⁵ The GFCM’s efforts aimed at the conservation of non-target fish species (e.g. sharks and rays), marine mammals, seabirds, sea turtles and deep sea benthic habitats - by regulating fishing activities - clearly show that it pursues a precautionary and a *de facto* ecosystem approach to fisheries. This is also reflected in the Preamble as well as Article 5 of the 2014 GFCM Agreement, entitled “General Principles”. Finally, the GFCM is one of the few RFMOs with competence to adopt legally binding conservation and management measures relating to the sustainable development of aquaculture.²¹⁶

²¹¹ Agreement for the establishment of a General Fisheries Council for the Mediterranean (Rome, 24 September 1949. In force 20 February 1952, 126 United Nations Treaty Series 239); Agreement for the Establishment of the General Fisheries Commission for the Mediterranean, as amended last in 1997 and in force on 29 April 2004 for those states that have accepted the amendments. Consolidated version available at <www.gfcm.org>.

²¹² The 2014 GFCM Agreement is included in GFCM Report No. 38, at Appendix E. It was not yet in force at the time of writing.

²¹³ Art. 2(2) of the 2014 GFCM Agreement.

²¹⁴ See the *Compendium of GFCM Decisions* (doc. COC:VII/2013/Inf.6), section 1.4 “ICCAT Recommendations relevant to the Mediterranean”.

²¹⁵ *Ibid.*, e.g. Rec. CM-GFCM/36/2012/1 “On further measures for the exploitation of red coral in the GFCM Competence Area”.

²¹⁶ Art. 2(2) of the 2014 GFCM Agreement. See also the *Compendium of GFCM Decisions*, note 214 *supra*.

Geographical coverage and participation

The geographical competence of the GFCM extends to all marine waters of the Mediterranean Sea and the Black Sea,²¹⁷ thus comprising both high seas and coastal state maritime zones. This is unlike most non-tuna RFMOs, whose spatial competence is commonly limited to the high seas. There are currently 24 Members of the GFCM, including the EU.²¹⁸ Among these, Japan is the member from outside the region. Three Mediterranean Sea coastal states or entities are not Members: Bosnia and Herzegovina, Palestine and the United Kingdom. Three Black Sea coastal states are not Members: Georgia, the Russian Federation and Ukraine. In view of the exclusive competence of the EU in the domain of the conservation and management of marine capture fisheries, EU Member States are not generally Members of RFMOs where they are already represented by the EU. The GFCM is one of the exceptions in this regard (Molenaar 2002, 159-161). Finally, similar to many other RFMOs, the GFCM has created the status of “cooperating non-Contracting Party”.²¹⁹

ICCAT

Establishment

The ICCAT was established pursuant to the 1966 ICCAT Convention.²²⁰ In 2013, the ICCAT Working Group on Convention Amendment began its task of ensuring that the progressive development of international fisheries law would be incorporated in the ICCAT Convention by means of amendments. Its second meeting was held in 2014. In contrast to the GFCM, ICCAT is a “stand-alone” RFB that has not been established under the framework of the FAO.

Mandate

In terms of target species, the competence of ICCAT is limited to tuna and tuna-like species. As one of the five tuna-RFMOs, the ICCAT has exercised competence over around 30 tuna and tuna-like species occurring in the ICCAT Convention area. In view of the exclusive competence of the Commission for the Conservation of Southern Bluefin Tunas (CCSBT) over southern Bluefin tuna throughout their migratory range, the ICCAT defers to this body with respect to southern Bluefin tuna and fisheries targeting these in the ICCAT Convention area. As noted above, the GFCM defers to the ICCAT as regards tuna and tuna-like species occurring within the GFCM’s regulatory area and the fisheries that target these there. Even though the Preamble to the ICCAT Convention still embraces a target-species mandate, during recent years the ICCAT has been gradually taking more and more ecosystem considerations into account; for instance on sharks, seabirds and sea turtles.²²¹ It seems

²¹⁷ Art. 3(1) of the 2014 GFCM Agreement. The existing GFCM Agreement refers to “the Mediterranean and Black Sea and connecting waters” in the Preamble.

²¹⁸ Albania, Algeria, Bulgaria, Croatia, Cyprus, Egypt, EU, France, Greece, Israel, Italy, Japan, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Romania, Slovenia, Spain, Syria, Tunisia and Turkey.

²¹⁹ See REC.MCS-GFCM/30/2006/5 “Criteria for obtaining the status of cooperating non-contracting party in GFCM area” included in the Compendium of GFCM Decisions, note 214 supra. While this status does not seem to have been granted explicitly to any state so far, the three Black Sea coastal states are regarded as having this status (based on email by N. Ferri (FAO) to E.J. Molenaar on 16 September 2014).

²²⁰ International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966. In force 21 March 1969, 673 *United Nations Treaty Series* 63 (1969), as amended by Protocols adopted in 1984 and 1992, which both entered into force. Consolidated version at <www.iccat.int>.

²²¹ See the *Compendium. Management Recommendations and Resolutions Adopted by ICCAT for the Conservation of Atlantic Tunas and Tuna-Like Species*, (2014 version; available at <www.iccat.int>), under BYC.

therefore likely that the newly amended ICCAT Convention will contain a precautionary and (*de facto*) ecosystem approach to fisheries.

Geographical coverage and participation

The geographical competence of the ICCAT extends to “all waters of the Atlantic Ocean, including the adjacent Seas”.²²² Both the Caribbean Sea and the Mediterranean Sea are generally accepted to be included in the ICCAT Convention area. Also, as a reference to maritime zones is not included, both high seas and coastal state maritime zones are covered. There are currently 49 Members of the ICCAT, including the EU.²²³ A considerable number of these are states from outside the region, both developing and developed. As noted above, EU Member States generally refrain from joining RFMOs where they are represented by the EU, but a general exception allows them nevertheless to become Members in respect of their territories that are not subject to the EU’s Common Fisheries Policy (Molenaar, 2002).²²⁴ In view of the enormous geographical extent of the ICCAT Convention area, a considerable number of states with coasts in the region are not yet Members. Two of these - El Salvador and Suriname - currently have the status of Non-Contracting Party, Entity or Fishing Entity with the ICCAT. Bolivia and Chinese Taipei (Taiwan) currently have this status as well.

²²² Article 1 of the ICCAT Convention.

²²³ Albania, Algeria, Angola, Barbados, Belize, Brazil, Canada, Cape Verde, China, Curaçao (Netherlands on behalf of), Côte d’Ivoire, Egypt, Equatorial Guinea, EU, France (St. Pierre et Miquelon), Gabon, Ghana, Guatemala, Guinea, Honduras, Iceland, Japan, Republic of Korea, Liberia, Libya, Mauritania, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Panama, Philippines, Russian Federation, St. Vincent & the Grenadines, São Tomé and Príncipe, Senegal, Sierra Leone, South Africa, Syria, Trinidad and Tobago, Tunisia, Turkey, United Kingdom (Overseas Territories), United States, Uruguay, Vanuatu and Venezuela.

²²⁴ France and the United Kingdom have become Members on this basis. Curiously, Curaçao is also listed as a Member in its own right even though it is part of the Kingdom of the Netherlands. This suggests that the Netherlands should have become a Member in respect of Curaçao.

4.3.1.3. The Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem (MedPartnership)

Establishment

Launched in August 2009,²²⁵ the 6-year MedPartnership project is a continuation of and builds upon a previous GEF project run by UNEP/MAP from 1997 to 2005, which led to the Transboundary Diagnostic Analysis for the Mediterranean (TDA-MED) adopted in 1997 and updated in 2005,²²⁶ and to the elaboration of two Strategic Action Programs (SAPs): (i) a SAP to address pollution from land-based activities (SAP-Med), adopted in 1997²²⁷; and (ii) a SAP for the conservation of Mediterranean marine and coastal biological diversity²²⁸ (SAP- Bio), adopted in 2003.

MedPartnership aims to ensure a coordinated and strategic approach to catalyse the policy, legal and institutional reforms, and the investments necessary to reverse the degradation trends affecting the Mediterranean LME, including its coastal habitats and biodiversity.²²⁹ Specifically, the MedPartnership has the following objectives:²³⁰

- Assist countries in the implementation of the SAPs and National Action Plans (NAPs) to reduce pollution from land-based sources, and preserve the biodiversity and ecosystems of the Mediterranean from degradation;
- Support countries in the implementation of the ICZM Protocol;
- Leverage long-term financing; and
- Ensure through the Barcelona Convention and MAP systems the sustainability of activities initiated within the project beyond its specific lifetime.

Geographical coverage and participation

The Project is being carried out in the following GEF eligible countries and entities: Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Lebanon, Libya, Morocco, Montenegro, Palestine, Syria, Tunisia and Turkey.

Components and activities

Technical and policy support is led by UNEP/MAP (the “Regional Project”), while project financing is led by the World Bank (the “Investment Fund Project”).

The Regional Project, which includes 134 activities and 78 demonstration projects in the 13 participating countries (Galbiati, 2014), is composed of four components:

1. Integrated approaches for the implementation of the SAPs and NAPs: ICZM, Integrated Water Resources Management (IWRM) and management of coastal aquifers;
2. Pollution from land based activities, including Persistent Organic Pollutants (POPs): Implementation of SAP-Med;

²²⁵ The project started 15 months after approval by the GEF CEO.

²²⁶ GEF, MAP, Transboundary Diagnostic Analysis for the Mediterranean Sea, 2005.

²²⁷ UNEP, MAP, Strategic Action Programme to address pollution from land-based activities, MAP Technical Reports Series N° 119, Athens, 1998.

²²⁸ UNEP MAP, RAC/SPA, Strategic Action Programme for the Conservation of biological diversity in the Mediterranean Region, Tunis, 2003.

²²⁹ Source: <http://www.unepmap.org/index.php?module=content2&catid=001026>

²³⁰ Source : <http://www.themedpartnership.org/med/pfpublish/p/doc/11cc8045a0127468effc426640f9e259>

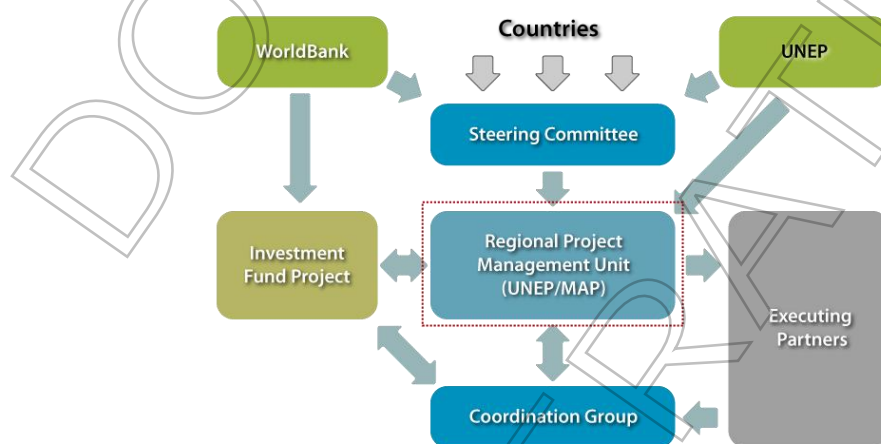
3. Conservation of biological diversity: Implementation of SAP-Bio and related NAPs; and
4. Project coordination, NGO involvement, replication and communication strategies, management.²³¹

The Investment Fund Project, led by the World Bank and co-financed by the GEF, aims to accelerate transboundary pollution reduction, improve water resources management, and biodiversity conservation measures in priority hotspots (locations with high pollution or degradation levels) around the Mediterranean Sea. Established in 2007, it first funded three projects.²³² In 2009, the Investment Fund evolved into a larger-scale program, the Environmental Mediterranean Sustainable Development Programme (Sustainable MED) that aims to incorporate environmental management into the economic development agenda of Southern and Eastern Mediterranean countries. Sustainable MED helps attract additional investments to address priority hot spots in the Mediterranean, as well as facilitate future interventions in other areas, such as solid and hazardous waste management, land degradation, biodiversity and climate change.

Institutional frameworks

The MedPartnership's institutional structure is composed of several organisations and structures (Figure 6).

Figure 6: MedPartnership institutional structure



The Project Management Unit (PMU) is located in UNEP/MAP, Athens, Greece.

²³¹ UNEP, GEF Project document, Project identification.

²³² See: <http://www.themedpartnership.org/med/pfpublish/p/doc/9de104b33ac991a38e7c5ee41758b231>

The Regional Project is led by UNEP/MAP and executed by 11 organisations, namely: FAO; Global Water Partnership - Mediterranean (GWP-Med); Mediterranean Information Office for Environment, Culture and Sustainable Development (MIO-ECSDE); PAP/RAC; SCP/RAC; INFO/RAC; SPA/RAC; MEDPOL; UNESCO International Hydrological Programme (UNESCO/IHP); United Nations Industrial Development Organization (UNIDO); and WWF Mediterranean Programme Office (WWF MedPO).

The Strategic Partnership Steering Committee (SPSC) acts as the main policy body overseeing the execution of the project. It meets annually and is composed of the MedPartnership NFPs from all GEF-eligible countries, representatives of the implementing agencies (UNEP and the World Bank) and the executing agency (UNEP/MAP), the GEF Secretariat, the co-executing agencies and the EU, the Project Manager, the President of the Bureau of Contracting Parties to the Barcelona Convention, major donors and one NGO representing a network of NGOs in the Mediterranean. The SPSC is co-chaired by the President of the Bureau of the Barcelona Convention and the Coordinator of UNEP/MAP.

The Strategic Partnership Coordination Group (SPCG) is responsible for the overall coordination of the MedPartnership, in particular ensuring effective exchanges and synergy between the Regional Project and the Investment Fund Project. It comprises the MAP Coordinator; representatives of the GEF Secretariat; the Project Manager of the Regional Project; representatives of FAO, UNIDO, INFO/RAC and UNEP/GEF Coordination Office; World Bank-GEF Regional Coordinators and World Bank Task Managers.

Funding

The total cost of the project amounts to US\$47,488,700, including US\$12,591,000 from the GEF and US\$35,597,700 of co-financing from various sources (MTF, EU, MAVA Foundation, FFEM, participating countries, etc.).

Successes and challenges

Beyond its cooperation and coordination with MAP activities (see 3.2), one of the main success of the MedPartnership is the wide range of issues the project aims to address, e.g. climate variability and change, ICZM, MPAs, Polychlorinated Biphenyls (PCBs) disposal, etc. According to the MedPartnership Project Manager, “major results have been achieved already, in developing ICZM strategies, and joint River Basin and groundwater management plans, in the industries that have successfully reduced their resource uses (energy and water) and pollution loads, in the inventories of PCBs now established, in a number of new MPAs created and increased capacity of existing MPAs, in terms of management plans and tools” (Galbiati, 2014).

An evaluation conducted in July 2013, however, highlighted the “weaknesses in project design and preparedness... important challenges faced by the PMU and project partners during implementation of the project... delays and interruption of activities as a result of insecurity associated with the Arab Spring... the shortfall in funding for the Strategic Partnership Investment Fund which created some disappointment among partners... the lack

of coordination at country level with little progress on the establishment of country support programmes and interministerial committees” (Table 14).²³³

Table 14: Summary of ratings based on performance criteria²³⁴

Criterion	Rating
A. Attainment of project objectives and results	Moderately Satisfactory
1. Effectiveness (See A3)	Moderately Satisfactory
2. Relevance (See A2)	Satisfactory
3. Efficiency (See A4)	Moderately Satisfactory
B. Sustainability of project outcomes (See B1)	Moderately Likely
1. Socio-political	Moderately Likely
2. Financial	Moderately Likely
3. Institutional framework	Likely
4. Environmental	Likely
C. Catalytic role (See B2)	Satisfactory
D. Stakeholder involvement (See C3)	Moderately Satisfactory
E. Country ownership / drivenness (See C4)	Moderately Unsatisfactory
F. Achievement of outputs and activities (See A1)	Moderately Satisfactory
G. Preparation and readiness (See C1)	Moderately Satisfactory
H. Implementation approach (See C2)	Moderately Satisfactory
I. Financial planning and management (See C5)	Moderately Satisfactory
J. Monitoring and Evaluation (See C7)	Moderately Satisfactory
1. M&E Design	Moderately Satisfactory
2. M&E Plan Implementation	Moderately Satisfactory
3. Budgeting and funding for M&E activities	Moderately Satisfactory
K. UNEP & UNIDO Supervision and backstopping (See C6)	Moderately Satisfactory

²³³ Mid Term Evaluation of the UNEP GEF Project: Strategic Partnership for the Mediterranean Large Marine Ecosystem – Regional Component: Implementation of Agreed Actions for the Protection of the Environmental Resources of the Mediterranean Sea and its Coastal Areas (“MedPartnership”), July 2013.

²³⁴ Source: Mid Term Evaluation of the UNEP GEF Project: Strategic Partnership for the Mediterranean Large Marine Ecosystem – Regional Component: Implementation of Agreed Actions for the Protection of the Environmental Resources of the Mediterranean Sea and its Coastal Areas (“MedPartnership”), July 2013.

4.3.1.4. *The Union for the Mediterranean*

Establishment

The Union for the Mediterranean (UfM) was launched on 13 July 2008 at the Paris Summit,²³⁵ as a continuation of the Euro-Mediterranean Partnership (Euro-Med) also known as the Barcelona Process, established in 1995. The UfM is a multilateral partnership aiming at increasing the potential for regional integration and cohesion among Euro-Mediterranean countries. In this sense, it constitutes a framework for political, economic and social relations between the EU and the Southern and Eastern Mediterranean countries. It is inspired by the goals set out in the 1995 Barcelona Declaration, namely working towards the creation of an area of peace, stability, security and shared economic prosperity, as well as full respect of democratic principles, human rights and fundamental freedoms, and promotion of understanding between cultures and civilisations in the Euro-Mediterranean region.

Geographical coverage and participation

The UfM comprises the 28 EU Member States, the European Commission and 15 other Mediterranean countries. The 43 members states are: Albania, Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Jordan, Latvia, Lebanon, Lithuania, Luxemburg, Malta, Mauritania, Monaco, Montenegro, Morocco, Palestine, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Syria, The Czech Republic, The Netherlands, The United Kingdom, Tunisia and Turkey. The League of Arab States also participates in all UfM meetings.

Activities

The mandate and mission of the UfM Secretariat were defined in the 2008 Paris and Marseille Declarations²³⁶ as well as in the statutes adopted on 3 March 2010. The mandate of the UfM Secretariat focuses on identifying, processing, promoting and coordinating regional projects that enhance and strengthen cooperation and positively impact the lives of citizens. The Paris Declaration identifies 6 priority areas, three of which deal with marine and coastal issues: (i) De-pollution of the Mediterranean; (ii) Maritime and land highways; (iii) civil protection initiatives to combat natural and man-made disasters.²³⁷

A number of projects are currently developed under the component “Water and environment” of the UfM. They specifically aim at protecting the marine environment and implementing the Horizon 2020 initiative to depollute the Mediterranean.²³⁸

²³⁵ Joint Declaration of the Paris Summit for the Mediterranean, Paris, 13 July 2008.

²³⁶ Final Statement, Marseille, 3-4 November 2008.

²³⁷ The other priority areas identified by the Paris Declaration are alternative energies, higher education and research, business Initiative.

²³⁸ See: <http://ufmsecretariat.org/environment-water/>

Institutional structure

The members of the UfM meet on a regular basis at the level of Senior Officials from the Ministries of Foreign Affairs of the 43 countries, EU institutions and the League of Arab States. The Senior Officials Meetings (SOMs) oversee and coordinate the UfM work. They approve the budget and the work programme of the Secretariat. They also discuss the project proposals submitted by the Secretariat for approval and endorsement. Senior Officials take decisions by consensus.

The meetings of the UfM are chaired by a co-presidency, one from the EU and the other from the Mediterranean. The co-presidency applies to all levels: summits, ministerial meetings, and officials' level meetings. The EU assumed its co-presidency of the UfM after the decision of the Council of EU Ministers of Foreign Affairs on 27th February 2012. Jordan has assumed the other co-presidency role since June 2012.

A headquarters agreement for hosting the Secretariat was signed between the UfM and the Government of Spain on 4th May 2010, granting the Secretariat the privileges and immunities of an international organisation under Spanish law. Located in Barcelona, the Secretariat receives the project proposals and ensures that every project strive to contribute to the stability and peace in the whole Euro-Mediterranean region, maintains the legitimate interests of any member of the UfM, takes into account the principle of variable geometry and respect the decision of member countries involved in an ongoing project when it is subject to further development. The Secretariat is currently composed of approximately 60 staff members.

Since the Secretariat is not a financial institution and thus does not grant loans or finance projects directly, its added-value lies in the support it extends to promoters in developing financing plans to secure funds, in establishing a solid network of partners among donors, financial institutions and private sponsors and in approaching, together with promoters, potential partners. Some of UfM financial partners include: the Arab Gulf States, the European Commission, the European Investment Bank, the Government of France, the Government of Norway, the Intesa SanPaolo Spa, the Spanish Agency for International Development Cooperation, the Swedish International Development Agency, and the UniCredit Spa.²³⁹

Funding

The UfM Secretariat's operational budget amounts to around €6 million. It is financed up to 50% by the European Commission and, for the other half, by contributions from its member states.

Successes and challenges

The UfM has the great ambition of building bridges between the EU and the Southern and Eastern Mediterranean, and consolidating the cooperation between the 43 participating countries. The 2008 Paris Declaration also has the merit of integrating the degradation of the environment among the common challenges facing the Euro-Mediterranean region.

²³⁹ <http://ufmsecretariat.org/partners/>

It is however important to note that, despite the labelling of several projects, including the flagship “De-pollution of the Mediterranean Sea Initiative”, the UfM cannot be considered as an organization specifically focusing on environment, but as an institution whose wider mandate includes environmental issues.

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Table 15: Main features of the regional oceans governance mechanisms in the Mediterranean Sea

	Name	Contracting Parties / Participating Countries	Status	Mandate	Geographical coverage
Regional Seas programmes	MAP	Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Montenegro, Slovenia, Spain, Syria, Tunisia and Turkey, and the European Union	UNEP-administered Regional Seas programme	Protection of the marine environment and the sustainable development of the coastal areas of the Mediterranean.	From coastal zones to areas beyond national jurisdiction.

Regional Fishery Bodies	GFCM	Albania, Algeria, Bulgaria, Croatia, Cyprus, Egypt, EU, France, Greece, Israel, Italy, Japan, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Romania, Slovenia, Spain, Syria, Tunisia and Turkey	Non-tuna RFMO established under Article XIV of the FAO Constitution	To ensure the conservation and sustainable use, at biological, social, economic and environmental level, of living marine resources, as well as the sustainable development of aquaculture in the Area of Application (Art. 2 of the 2014 GFCM Agreement).	All marine waters of the Mediterranean Sea and the Black Sea (Art. 3(1) of the 2014 GFCM Agreement); thus comprising both high seas and coastal state maritime zones.
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	<p>ICCAT</p>	<p>Albania, Algeria, Angola, Barbados, Belize, Brazil, Canada, Cape Verde, China, Curaçao (Netherlands on behalf of), Côte d'Ivoire, Egypt, Equatorial Guinea, EU, France (St. Pierre et Miquelon), Gabon, Ghana, Guatemala, Guinea, Honduras, Iceland, Japan, Republic of Korea, Liberia, Libya, Mauritania, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Panama, Philippines, Russian Federation, St. Vincent & the Grenadines, São Tomé and Príncipe, Senegal, Sierra Leone, South Africa, Syria, Trinidad and Tobago, Tunisia, Turkey, United Kingdom (Overseas Territories), United States, Uruguay, Vanuatu and Venezuela.</p>	<p>Stand-alone tuna RFMO</p>	<p>Conservation of the resources of tuna and tuna-like fishes (Preamble to the 1966 ICCAT Convention)</p>	<p>All waters of the Atlantic Ocean, including the adjacent seas; including Caribbean Sea and Mediterranean Sea and comprising both high seas and coastal state maritime zones.</p>
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LME mechanism	MedPartnership	Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Lebanon, Libya, Morocco, Montenegro, Palestine, Syria, Tunisia and Turkey	GEF Project 2009 – 2015	Reverse the degradation trends affecting the Mediterranean Large Marine Ecosystem, including its coastal habitats and biodiversity.	Marine and coastal environment of the 16 participating countries.
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<p>Other regional mechanism</p>	<p>UfM</p>	<p>Albania, Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Jordan, Latvia, Lebanon, Lithuania, Luxemburg, Malta, Mauritania, Monaco, Montenegro, Morocco, Palestine, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Syria, The Czech Republic, The Netherlands, The United Kingdom, Tunisia and Turkey</p>	<p>A multilateral partnership</p>	<p>Identifying, processing, promoting and coordinating regional projects, which are in line with the principles and rules of international law, and that enhances and strengthens cooperation and positively impacts the lives of citizens.</p>	<p>The Euro-Mediterranean region, including the Mediterranean Sea.</p>
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4.3.2. Cooperation and coordination between the Regional Oceans Governance mechanisms in the Mediterranean

4.3.2.1. *Cooperation and coordination between the Mediterranean Action Plan and relevant RFBs*

Cooperation and coordination between MAP and GFCM

The longstanding and successful cooperation and coordination that has existed between UNEP-MAP and the GFCM was formalized in 2012 by means of a MoU. This MoU complements an earlier MoU between the GFCM and UNEP/RAC-SPA. Key meetings of these bodies are also attended by representatives of the other bodies. A recent and specific example of successful cooperation and coordination is the multi-year process on area-based management, which culminated in 2013 in the adoption of a GFCM Resolution on area-based fisheries management.²⁴⁰

Cooperation and coordination between MAP and ICCAT

In contrast with the extensive cooperation and coordination between the MAP and the GFCM, the authors could not find documentation that indicates ongoing cooperation and coordination between the MAP and the ICCAT.

4.3.2.2. *Cooperation and coordination between the Mediterranean Action Plan and the Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem (MedPartnership)*

The 2014 UNEP White Paper on regional oceans governance gives examples of disconnection between activities conducted within the Regional Seas programmes and the LME mechanisms.

In the Mediterranean, however, LME mechanisms have been instrumental in strengthening regional oceans governance and supporting MAP activities. For instance, previous LME projects led to the elaboration of SAPs that were adopted by Contracting Parties to the Barcelona Convention. Today, the MAP Regional Coordinating Unit is the executive agency of the MedPartnership project, whose activities are therefore highly connected with those of the MAP. In particular, the MedPartnership supports the implementation of the LBSA, ICZM, Specially Protected Areas and biodiversity protocols.

Cooperation and coordination between the Regional Seas programme and the LME project in the Mediterranean can therefore serve as a model for these two types of regional oceans governance mechanisms.

²⁴⁰ Resolution GFCM/37/2013/1 “on area based management of fisheries, including through the establishment of Fisheries Restricted Areas (FRAs) in the GFCM convention area and coordination with the UNEP-MAP initiatives on the establishment of SPAMIs”.

4.3.2.3. *Cooperation and coordination between relevant RFBs and the Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem (MedPartnership)*

The authors could not find documentation that indicates ongoing cooperation and coordination between the relevant RFBs and the MedPartnership and also did not receive a response to a request for information on this issue from the MedPartnership Project Manager.

4.3.2.4. *Cooperation and coordination between the Union for the Mediterranean and the other regional organisations*

Through its component “Water and environment” and its “De-pollution of the Mediterranean Sea initiative”, the UfM has strong and natural links with activities conducted by the MAP. Acknowledging this link, these two organisations signed in 2013 a MoU aiming to provide a framework of cooperation on pollution prevention and control of Mediterranean coastal and marine waters, as well as on sustainable development.²⁴¹ The May 2014 UfM Ministerial Meeting on Environment and Climate Change, held in Athens, Greece, recalls the importance of strengthening cooperation and synergies with the MAP. The UfM and the MedPartnership also have connected activities and relations. In particular, the UfM Secretariat is member of the MedPartnership Steering Committee.

The UfM and GFCM do not currently have a specific agreement, however the UfM Secretariat is currently considering opportunities to cooperate.²⁴²

²⁴¹ Decision IG.21/14 Cooperation Agreements.

²⁴² Personal communication from the UfM Secretariat.

4.3.3. Conclusion

The Mediterranean Sea is a semi-enclosed sea that is connected to the Atlantic Ocean in the west by means of the Strait of Gibraltar, to the Indian Ocean and its adjacent seas in the south-east by means of the Suez Canal, and to the Black Sea and its adjacent waters in the north-east by means of the so-called “Turkish Straits”. These connections make the Mediterranean Sea a crucial crossroads for international navigation; thus involving not only vessels flying the flag of Mediterranean states but of a large number of non-regional states as well. The need to take due regard of the rights and interest of non-regional states (e.g. the right to fish on the high seas) also ensues from the fact that the Mediterranean Sea still has high seas pockets, even though coastal states could remove these through establishing 200 nm maritime zones.

As the Mediterranean Sea is categorized as a semi-enclosed sea, Article 123 of the UNCLOS imposes on Mediterranean coastal states that are parties to the UNCLOS a commitment (“should”) and several qualified obligations (“shall endeavour”) to cooperate. Even without these, however, regional cooperation is common sense. Pollution originating from rivers ending up in the Mediterranean Sea or from incidents at sea will often have transboundary impacts. Moreover, many - if not most - of the fish stocks occurring in the Mediterranean Sea are transboundary. In view of these and other characteristics, semi-enclosed seas like the Mediterranean Sea have been identified as separate LMEs early on and are obvious candidates for ecosystem-based management.

The Mediterranean Sea has a longstanding, comprehensive and sophisticated framework for regional marine cooperation. The MAP (and its associated Barcelona Convention and protocols) is among the oldest and most advanced of the UNEP Regional Seas programmes and acted as a pioneer in many issues. The two relevant RFBs - the GFCM and the ICCAT - both apply to the entire Mediterranean Sea and together they cover all fish species (non-tuna and tuna). The mandates of the MAP and the relevant RFBs have gradually become wider. The former has moved from the protection and preservation of the marine environment against pollution towards ecosystem-based management across most sectors and the latter from target fisheries management towards an ecosystem approaches to fisheries management. Moreover, the activities conducted within the MedPartnership project aim to support and complement those developed within the MAP, and the UfM also seeks to synergise with Mediterranean and European initiatives. As a result, the cooperation and coordination between these regional oceans governance mechanisms is both deeply ingrained and extensive.

Despite all these advances and other accomplishments, major weaknesses remain in ensuring implementation and compliance. A range of problems contribute to this situation, including the current economic crisis in many states, the lack of a level playing-field caused by fact that the northern Mediterranean coastal states are more developed than the southern Mediterranean coastal states and last, but certainly not least, the various Mediterranean coastal states that have become increasingly unstable in recent years due to armed conflict. Resolving these critical problems is likely to bring more and larger sector- and issue-specific gains - even though perhaps relatively localized - than advances in ecosystem-based management. This is nevertheless no excuse to continue efforts to achieve these latter advances.

5. Options for regional oceans governance mechanisms

5.1. Preliminary remarks

The aim of this concluding Chapter is to provide recommendations and options towards applying EBM to regional oceans governance. This means making the existing system more coherent, effective and efficient, including by a better use of scarce available resources (human, financial, logistical, etc.). This may be done through:

- Strengthening existing regional oceans governance mechanisms;
- Creating new regional oceans governance mechanisms (including to replace existing ones) as necessary; and
- Enhancing cooperation and coordination between existing as well as new mechanisms.

In doing so, the following considerations should be taken into account:

- Inter-sectoral conflicts at the local, national and regional levels remain, despite calls to coherence and synergy;
- Regional oceans governance consists of highly heterogeneous arrangements, making globally integration difficult. Indeed, this heterogeneity even challenges the potential utility of general recommendations;
- This variety is inherent to the governance system and the way it was built over time, adapted to the specificities of contexts and the multiplicity of concerns and objectives addressed;
- This also reflects the fragmentation of competences at the national level. It is therefore not only incumbent upon regional oceans governance mechanisms to act to improve coherence, but also upon national governments;
- Neither inter-sectoral conflicts nor institutional complexity are transitory problems to eliminate on the road to integrated governance. They are key patterns of the context in which recommendations are to be made and action is to be taken;
- Additional fragmentation, duplication and overlaps should be avoided as much as possible;
- Raising awareness and building stronger and wider constituencies are essential; and
- The ecosystem approach should be the driver of all efforts to rationalise the system.

We first draw the attention on three strategic dead-ends that we believe should be avoided in the future, before providing some recommendations for positive action.

5.2. To be avoided in the future

- **Bypassing existing regional oceans governance mechanisms in cases where they are deemed weak or at least unable to deliver change.**
While it can be considered a pragmatic approach in terms of output delivery, experience already demonstrates that this does not lead to strong outcomes. The last fifty years of international development cooperation show that bypassing inefficient administrations has been a constant temptation of a wide range of donors (see e.g. Olivier de Sardan 1995). Not only does it fail to strengthen governance mechanisms, it

actually weakens those that are not supported, making them more difficult partners to work with;

- **Developing action plans without seriously considering future implementation issues, means, resources and actors.**

This is true of all governance mechanisms including Regional Seas programmes and LME mechanisms, which have sometimes adopted action plans without sufficient consideration for implementation requirements and governance coherence; and

- **Passively or actively maintaining weak regional oceans governance mechanisms while claiming the importance of the regional approach to ocean governance.**

Independently from, or rather in conjunction with, coordination efforts to avoid duplication and competition for scarce resources, existing mechanisms need to be strengthened in their capacity to execute their mandate and deliver change.

5.3. The way forward

5.3.1. Revise the mandates of key players

There is a need to progressively revise the mandates of various regional oceans governance mechanisms so as to improve synergies, complementarities and coherence in the international oceans governance regime as a whole. Depending on specific cases this will require:

- Promoting residual mandates in case no other competent international body exists, allowing new and emerging issues to be addressed. The OSPAR Commission provides an example;
- Broadening mandates of RFBs to facilitate EAF;
- Broadening mandates of Regional Seas programmes to ensure EBM, while taking account of the mandates of existing international bodies (including RFBs and relevant global bodies such as IMO and ISA); and
- Filling gaps, e.g. in the coverage of ABNJ.

5.3.2. Strengthen the functioning of individual mechanisms

- The shortcomings of regional oceans governance mechanisms are no reason to further weaken them, but to strengthen them; and
- Broadening or simply revising the mandates of existing mechanisms may actually be useful only if these mechanisms are strengthened at the same time. For instance, expanding the mandate of an underfunded and understaffed Regional Seas programme to ABNJ is pointless.

5.3.3. Promote informal cooperation and coordination arrangements

As noted above, the complexity of regional oceans governance is grounded in history and regional contexts, and reflects the diversity of views, concerns and stakeholders in a pluralistic manner. It may thus only be simplified at its margins: the dream of having a simple

governance system with single regional bodies managing the marine environment, its resources and its biodiversity within boundaries that fit those of ecosystems may be seductive, but is unlikely to come to fruition in the foreseeable future. Therefore, the recommendations of this report to improve coherence and efficiency of the system are to:

- Develop informal mechanisms rather than strive for formal reorganisations:
 - For instance merging the Regional Seas programmes and the RFBs into so-called the Regional Oceans Management Organisations (ROMOs) cannot be a generally applicable pathway. While it may be the way forward in a few very specific cases, there are a number of issues: (i) geographical scopes and participation are too heterogeneous; (ii) national administrations in charge are often separate with different constituencies and diverging logics (usually environmental protection and fisheries development); (iv) inter-sectoral conflicts which are currently visible between fisheries management and environmental protection mechanisms would become less visible but would not necessarily be solved;
- The case of the BCC established in 2007, is interesting but should not be taken as a model: it matches a specific context (e.g. a region already having large Regional Seas programme). Its generalisation when regional mechanisms already exist would contribute to the proliferation syndrome. In any case it should be kept in mind that besides the three types of regional oceans governance mechanisms that are examined in this report, there are plenty other mechanisms, some including non-state actors, ranging from regional programmes such as the *Programme Régional Côtier et Marin* (PRCM) in West Africa, regional initiatives such as the Coral Triangle Initiative, regional environmental projects funded by a variety of donors besides the GEF, regional fisheries projects such as SWIOFP in the Indian Ocean, sub-regional agreements such as the Pelagos Sanctuary in the Mediterranean, etc. Trying to fully integrate the governance system formally rather than functionally is therefore a pipe dream.

Box 1 below provides UNEP's 2001 recommendations for improved coordination between RFBs and Regional Seas Conventions which remain valid today.

5.3.4. Where next for LME mechanisms?

The future of LME mechanisms requires specific attention. Many LMEs are GEF projects, which raises concerns as to their sustainability, even when second or third phases are planned or underway. At the same time, an increasing number of originally GEF-supported LME projects give birth to formal and perennial organisations such as the would-be GCC, the BCC or the PEMSEA. While this answers the sustainability issue, it raises other concerns about the niche they may occupy in the future.

As Christie et al. (2009) put it: “starting the boundary designation from a natural science perspective is questionable from a program feasibility perspective unless governance institutions are to be redesigned along ecological principles – an unlikely outcome”. Given that there is no significant sectoral gap in mandates of existing, more formal mechanisms, any governance responsibility that may be given to, or claimed by LME mechanisms, risks leading to more overlaps and inefficiencies. Bensted-Smith and Kirkman (2010) say that “notwithstanding the early success of BCC and the fact that geographic boundaries are not

identical, one could ask whether the GEF LME projects should invest in strengthening existing the Regional Seas secretariats and building links between relevant institutions, rather than creating new inter-governmental commissions”.

Whereas the added value of LME mechanisms with regard to TDAs and SAPs is widely acknowledged, the governance dimension of LME mechanisms needs further consideration. The GEF, and perhaps NOAA given its key role, should develop and adopt an explicit and comprehensive strategy with regard to LME governance, in cooperation with important partners such as UNEP, UNDP, FAO and others. While outlining this strategy goes beyond the objectives of this report, some guiding principles are worth considering:

1. Governance, and its knowledge needs, should be first and drive scientific assessments in an iterative process, rather than being perceived as a logical end-product of the assessment process. As Mahon et al. (2009) state: “if successful informed intervention is the ultimate test of the usefulness of the approach, then the investigation must be designed and integrated to feed into the intervention”;
2. LME mechanisms may form a platform for scientific assessments, capacity building and on-the-ground interventions, but these should be operated under existing regional oceans governance frameworks wherever possible (e.g. the Mediterranean);
3. When a new international organisation is deemed necessary to implement the LME approach in a sub-geographic area of a Regional Seas programme, it may be established under this framework as it will be the case for the GCC under the Abidjan Convention;
4. Although considered a flagship governance outcome of the LME approach, replication of the BCC scenario should be based on a detailed and context-specific governance gap analysis rather than being considered a generally applicable pathway. In any case such commissions need to build working-relationships with other regional oceans governance mechanisms;
5. LME mechanisms should be used primarily as catalysers of much needed changes in existing regional oceans governance mechanisms, as has been the case in the Western, Central and Southern Africa region;
6. To allow a clearer governance strategy to be developed, terms and concepts should be clarified promptly. A certain level of confusion has been noticed on organisational matters in the LME literature, which is grounded in the governance weaknesses of the LME approach. For instance, Sherman and Hempel (2008) mention the “partnership between UNEP and the LME approach”, without making it clear how an international organisation can partner with an approach. Another example is that cooperation and coordination between the Regional Seas programmes, the RFBs and the LME mechanisms is reviewed here, but in parallel the IOC of UNESCO is investigating the complementarity of LMEs, Integrated Coastal Management and MPAs within the framework of a GEF project. It is not clear how LMEs, which are ecosystems by definition and often GEF projects in practice, can perform numerous roles at the same time, i.e.: organisations comparable with the Regional Seas programmes and the RFBs; an approach (Sherman and Hempel 2008); and management instruments, comparable to MPAs. This adds some confusion to an already complex governance

system, a result of the nature of LMEs, what they are made for and how they relate to formal bodies and mechanisms, and a lack of clarity over the function they serve.

Box 1: UNEP's 2001 recommendations for improved coordination between RFBs and Regional Seas Conventions (UNEP 2001, p. 25)

“The following concrete suggestions are made for options that may lead to an enhanced cooperation on ecosystem-based fishery management:

- Formalise the observer status of the Regional Seas programmes at the meetings of the governing bodies of the RFBs and their technical subsidiary organs, and *vice versa*.
- Exchange data and information available at the level of RFBs and RSCs that may be of mutual interest.
- Establish joint advisory panels and organise joint technical meetings on subjects of mutual interest, as is presently the case between Helsinki and OSPAR Commissions and ICES.
- Create formal agreements (e.g. memoranda of understanding) between relevant RSCs and RFBs specifying the scope and modalities of cooperation.
- Seek association and cooperation with the regional components of global programmes providing data and information relevant to ecosystem-based fishery management, such as GOOS and GPA/LBA.
- Design and implement joint programmes between the RFBs and the RSCs taking fully into account the respective mandates, objectives and scope of the RSCs and the RFBs.”

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Glossary

Body

Generic term that comprises the various institutional entities established by regional oceans governance mechanisms, for instance an intergovernmental organization (e.g. Commission), a Meeting of the Parties (MOP), or a Conference of the Parties (COP).

Coastal state, flag state and port state

The terms “coastal state”, “flag state” and “port state” refer to different capacities in which states can act. Depending on the capacity, a state has different rights and obligations under international law. Most states will act in more than one capacity and many in all.

A state acts in its capacity as a flag state with respect to ships that it has given its own nationality (its flag). When a state acts in its capacity as a coastal state, it does so in relation to its own maritime zones. This could be in relation to foreign activities - which are thus also subject to the jurisdiction and control of foreign flag states - or in relation to its own activities, including by vessels flying its own flag. In the latter scenario, a state essentially acts as both a coastal and a flag state - for instance regulation by Namibia of fishing by Namibian vessels in Namibia's own EEZ. The notion of the port state refers to action taken by a state against foreign vessels in one of its ports, e.g. a Namibian vessel in a port in South Africa, for a variety of purposes, e.g. non-compliance with fishing or pollution regulations. States also have rights and obligations with respect to activities undertaken by their nationals (both natural and juridical).

Ecosystem approach

A strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way.²⁴³

Ecosystem-based management (EBM)

In EBM, the associated human population and economic/social systems are seen as integral parts of the ecosystem. Most importantly, EBM is concerned with the processes of change within living systems and sustaining the services that healthy ecosystems produce. EBM is therefore designed and executed as an adaptive, learning-based process that applies the principles of the scientific method to the processes of management (UNEP 2006; 15).

Ecosystem approach to fisheries (EAF)

An approach to fisheries management that strives to balance diverse societal objectives by taking account of the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries (FAO 2003; 14).

Governance

The structures, functions, processes, and organizational traditions that have been put in place within the context of a program's authorizing environment to define and achieve objectives in an effective and transparent manner (IEG-World Bank 2007; 71).

Large marine ecosystem (LME)

²⁴³ Secretariat of the Convention on Biological Diversity (2004), The Ecosystem Approach. CBD Guidelines, p. 6. Available at: <http://www.cbd.int/doc/publications/ea-text-en.pdf>