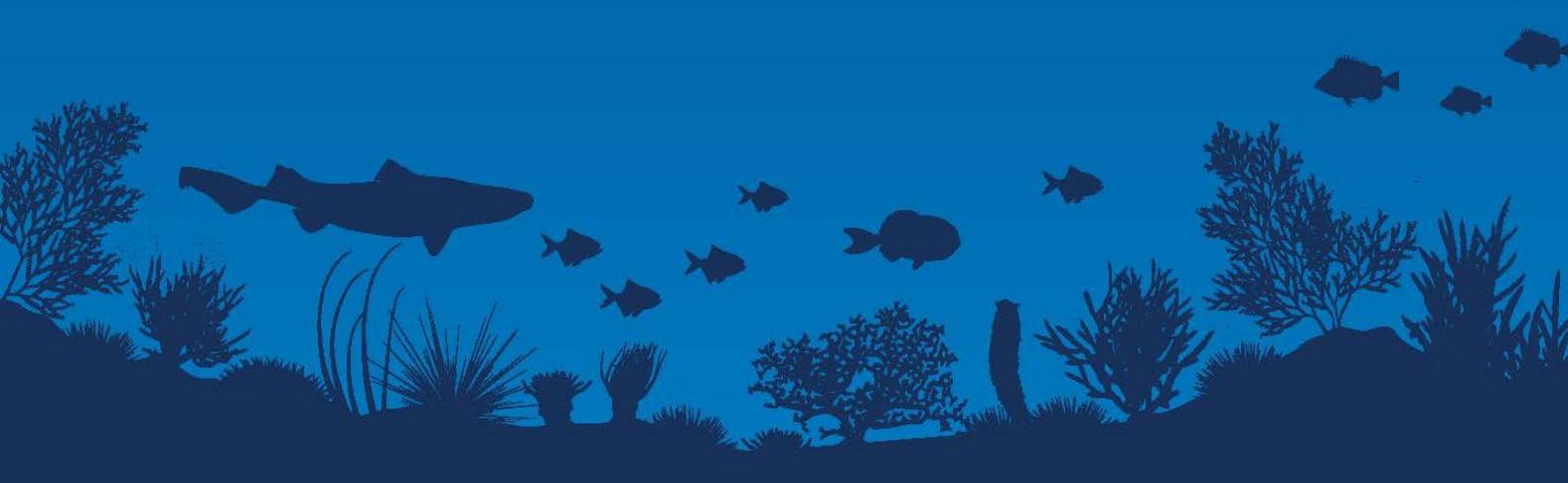




1. Regional cross-sectoral
planning in Areas Beyond
National Jurisdiction



Regional Cross-Sectoral Planning In Areas Beyond National Jurisdiction

Authors

Ruth Fletcher and Nina Bhola

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219 Huntington Road, Cambridge, CB3 0DL, United Kingdom
Telephone: +44 (0)1223 277314
Email: marine@unep-wcmc.org

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1. Introduction

This short paper provides an introduction to the project **“Sustainable Fisheries Management and Biodiversity Conservation of deep-sea living marine resources and ecosystems in the Areas Beyond National Jurisdiction”** (also known as the “ABNJ Deep Seas Project”). It focuses on component 4 of the project, which seeks to identify and test opportunities for coordinated approaches to biodiversity conservation in Areas Beyond National Jurisdiction. The paper will explain the focus of the project including its expected outcomes, the need for and importance of biodiversity conservation in Areas Beyond National Jurisdiction, and its expected policy recommendations.

2. The ABNJ Deep Seas Project

Project’s approach to delivering ‘efficient and sustainable deep sea fisheries and enhanced conservation of deep sea living resources’ is through the systematic application of an ecosystem approach.

The Project seeks to develop, test and promote frameworks, processes, tools and best practices that can be applied to support planning and management for sustainable Deep Seas Fisheries (DSF) and biodiversity conservation in ABNJ, and to build individual and institutional capacity to deploy these. It aims to achieve this by working with the Regional Fisheries Management Organizations (RFMOs) and their contracting parties, relevant Regional Seas Programmes (RSPs) and their member states, and other competent authorities, such as the International Seabed Authority (ISA) and the International Maritime Organisation (IMO), as well as relevant industry partners and other stakeholders to pilot new approaches and solutions and transfer and disseminate best practice. Capacity building efforts include development and promotion of best practice guides, management and enforcement tools, and identification of Vulnerable Marine Ecosystems (VMEs) and Ecologically or Biologically Significant Marine Areas (EBSAs), enhancing data platforms for dissemination of information and experiences, and adaptation of area-based planning tools, with training in their use. The UN Food and Agriculture Organisation (FAO) is the lead Global Environment Facility (GEF) implementing Agency (IA) for the Project, responsible for the overall coordination and the reporting to GEF; UN Environment is the GEF co-implementing agency, responsible for project component 4, which is executed through the UN Environment-World Conservation and Monitoring Centre (UNEP-WCMC). The specific outcomes of the project include:

1. Enhancing legal and policy frameworks to support existing governance arrangements of the ABNJ (current international agreements and requirements);
2. Reducing the impacts on, and improving the protection of, VMEs and components of EBSAs;
3. Improving sustainable management practices for deep sea fisheries; and
4. Developing and testing methodologies and tools for multi-sectoral area-based planning for ABNJ.

3. Developing and testing multi-sectoral area-based planning methodologies for ABNJ

The most relevant component of the ABNJ Deep Seas Project for the Nairobi Convention is Component 4.

The aim of component 4 is how competent authorities concerned with different sectors involved with the deep seas could use area-based planning frameworks and tools in their decision-making. It aims to develop appropriate methodology and tools for area based planning that can be applied to ABNJ across multiple competent authorities and build capacity for these. Testing and demonstrating these tools in pilot regions is important. It should be noted that the aim of Component 4 is not to plan for the creation of formal Marine Protected Areas (MPAs) in ABNJ. It is to improve understanding, cooperation and capacity among competent authorities and stakeholders for the use of area-based planning methodologies in ABNJ. Lessons learned from these steps will then be used to inform the ongoing discussions, at the international level, on how to undertake planning in ABNJ. Component 4 has the following expected accomplishments:

- **Output:** Multi-sectoral marine area-based planning approaches, tools and good practices for use in deep-sea ecosystems in ABNJ developed, adapted and made available to all competent authorities
- **Output:** Inter-sectoral marine area-based planning tools for ABNJ tested and demonstrated in pilot regions and results captured and disseminated
- **Outcome (including information from components 1-3):** Improved area-based planning tools and information to assess potential multi-sectoral impacts (including cumulative impacts) to deep sea ecosystems and options to mitigate these available to regional marine planning processes, including Regional Seas Programmes and Regional Fishery Management Organisations.

4. Biodiversity Relevance

Why is biodiversity beyond national jurisdiction important to adjacent coastal states?

There are a number of reasons why biodiversity in ABNJ is of interest to coastal states. Ecosystem boundaries do not necessarily align with national waters of countries, or other political, economic and human-derived boundaries. Therefore areas within and outside national jurisdiction can be highly connected. Many species which transit through ABNJ, or spend significant portions of their lifecycle there, also have economic and cultural relevance to coastal states. The potential to receive benefits from species which transit between different jurisdictions requires transnational coordination, including considerations for ABNJ. The marine environment is fluid and dynamic by nature, meaning that impacts generated by any activity can move and affect areas far distant from the initial event. For example, single use plastics are found in the deepest ocean trenches. Evidence strongly suggests that connectivity plays a key role in maintaining the integrity and functionality of ecosystems and their associated services. As well as the later type of connectivity (between Exclusive Economic Zones and ANBJ), it is important to consider vertical connectivity (between the deep ocean and surface waters). The deep ocean contains unique and extraordinary species and habitats. In some deep sea areas, there are extreme environments which, by their isolated nature, contain distinctive species. Accounting and planning for unique marine habitats,

organism movements and their importance in maintaining the provision of services, is essential in developing robust and ecologically appropriate spatial plans and should be considered in effective area based planning efforts. **It is important to understand the connected nature of the marine environment and, therefore, to account for connectivity in marine area-based planning processes.**

5. Biodiversity Risk

Is biodiversity at risk in areas beyond national jurisdiction?

The ocean provides human societies with valuable and diverse goods and services, including food (from fisheries and aquaculture), coastal protection, tourism, transportation and energy¹. Together, these are of significant economic, social and cultural importance. Marine ecosystems and biodiversity are, however, negatively impacted by human activities. Such activities, in turn, threaten the very processes and resources that support these goods and services²³. Furthermore, the anticipated effects of climate change will fundamentally reorganize marine communities⁴. As human uses of the ocean continue to grow at a rapid pace², including in the deep seas (e.g., deep-ocean fishing and seafloor mining)⁵ the need for better and more integrated planning of the use of the marine space and its resources is growing⁶⁷. **Such efforts come with significant challenges given that human management of the seas is based on administrative and jurisdictional delineations (i.e. national waters of countries), while ecological processes do not respect such boundaries.**

6. The relevance of the Law of the Sea

UNCLOS is a framework convention that includes provisions to address a number of different maritime activities, including shipping, mining, fishing, laying of cables and pipelines, marine scientific research and marine environmental protection.

Under the conditions established by the United Nations Convention on the Law of the Seas (UNCLOS) and other rules of international law, all coastal and land-locked States can exercise the freedom of the high seas,⁸ which comprise, *inter alia*:

- The freedom of navigation;
- The freedom of over flight;
- The freedom to lay submarine cables and pipelines;
- The freedom to construct artificial islands and other installations permitted under international law;
- The freedom of fishing; and
- The freedom of scientific research.

¹ See Harris and Tuhumwire, 2016 (https://www.researchgate.net/profile/Peter_Harris14/publication/291958124_Chapter_1_Introduction_-_Planet_Oceans_and_Life/links/56a795c608ae860e025577cf.pdf)

² See Halpern et al. 2012 (<https://www.nature.com/articles/nature11397>)

³ See Eassom et al. 2016

⁴ Pinsky et al. 2013 (<http://science.sciencemag.org/content/341/6151/1239>)

⁵ Ramirez-Llodra et al 2011 (<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0022588>)

⁶ Carneiro et al. 2017 (<http://nora.nerc.ac.uk/id/eprint/517721/>)

⁷ Baker et al. 2016 ()

⁸ Article 87 UNCLOS

The associated conditions include a **general obligation of states to protect and preserve the marine environment⁹ and to cooperate on a global and regional basis**, either directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with UNCLOS, for the protection and preservation of the marine environment.¹⁰

a. A new Implementing Agreement for ABNJ (the BBNJ Process)

A new Implementing Agreement, under UNCLOS, is being negotiated through the United Nations. The agreement will focus on the conservation and sustainable use of biodiversity beyond national jurisdiction (BBNJ).

The challenge of ensuring that marine biodiversity is effectively conserved in ABNJ has been part of extensive discussions for nearly 15 years. In 2004, the UNGA established a “*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*”, known as Biodiversity Beyond National Jurisdiction (BBNJ) Working Group” to explore these issues ([A/RES/59/24](#)). In 2015, the working group provided recommendations ([A/69/780*](#)) to develop a new legally-binding instrument for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with a particular focus on four overarching issues:

1. Marine Genetic Resources (including issues of benefit sharing);
2. Area Based Management Tools (including Marine Protected Areas);
3. Environmental Impact Assessments; and
4. Capacity building and the transfer of marine technology.

In the Rio Earth Summit outcome document, the “The Future We Want” importance of the conservation and sustainable use of marine BBNJ was recognised. Following the work done by the BBNJ Working Group, and the potential for increasing pressures in ABNJ, the UNGA adopted the BBNJ Working Group’s recommendation in Resolution 69/292 ([A/RES/69/292](#)) and decided to develop a new implementing agreement under UNCLOS for the conservation and sustainable use of BBNJ. Since 2015, four Preparatory Committee meetings have been held to explore and provide recommendations to the General Assembly on the elements of a draft text for a new instrument. On the 24th December 2017, the UNGA adopted Resolution 79/249 to convene an intergovernmental conference to “*consider the recommendations of the Preparatory Committee and to elaborate the text of an international legally binding instrument*” under UNCLOS ([A/RES/79/249](#)). The conference will occur over four sessions between 2018 and 2020, with the first session commencing from the 4-17 September 2018.

7. Cross Sectoral Planning

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

⁹ Article 192 UNCLOS, and included in Part XII on Protection and Preservation of the Marine Environment

¹⁰ Article 197 UNCLOS

There are a number of sectors potentially active in Areas Beyond National Jurisdiction (ABNJ) including fishing, shipping and cable laying. In addition to these, mining concessions have been leased in a number of locations although, to date, mining is at the exploration stage. All these sectors have individual frameworks in which they are active. Fishing is managed regionally through RFMOs, shipping is supported by various Conventions under the IMO and mining areas are leased through the ISA. The challenge is that coordination between these sectors is limited. The need for coordination comes from the possibility that actions from one sector, may compromise the ability of another to fulfil their potential. Outside the jurisdiction of any single State government, sectoral area-based management tools can only be implemented in ABNJ under an appropriate intergovernmental authority or instrument. While UNCLOS provides the overarching legal framework for activities in ABNJ, including specific implementing agreements that bestow a management mandate upon key sectoral authorities in ABNJ (i.e. RFMOs for straddling fish stocks and ISA for deep sea mining), it does not provide any provisions related to the implementation of cross-sectoral area-based planning. Effective area-based planning in ABNJ is therefore reliant upon the coordinated involvement of institutions who have a mandate to implement area-based management measures (rather than general measures, e.g. methods, quotas or targets) in ABNJ. However, institutions with a purely (scientific) advisory or coordinating role can play an important role in catalysing or facilitating relevant processes.

Activities could be more effectively coordinated with cross sectoral area-based planning.

Although the remoteness and difficulty of exploiting the resources located in ABNJ has historically contributed to maintain their preservation, recent shifts in technological capacity and market opportunities eased the capacity of humans to expand their interest in ABNJ. This increasing interest has resulted in the development of different human activities, which all have the potential to generate significant threats to the marine species and ecosystems of the high seas. Threats include the over exploitation of resources, habitat degradation, pollution, exploitation of mineral resources, climate change and climate engineering, ocean acidification, and new human activities. Because of these threats, MSP in ABNJ is increasingly needed to ensure the sustainable use of natural resources and the resilience of marine ecosystems in these areas.

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

Currently, activities that are regulated through *global-scale* mandated area-based management tools in ABNJ are shipping (through the IMO), seabed mining (through the ISA). For both fisheries and environmental management there is no global-scale institution that has a mandate to establish area-based management tools, and ABNJ management is undertaken through regional instruments, namely the RFMO/As and, in some locations, the Regional Seas Conventions and Action Plans. Neither RFMOs nor Regional Seas Conventions and Action Plans have comprehensive global coverage in their regional organizations, and there remain large areas of ABNJ that are not under any sectoral management regime. In the case of Regional Seas Conventions and Action Plans, only some have the mandate to establish area-based planning measures in ABNJ.

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

With regard to establishing cross-sectoral cooperation, some institutions only respond to the general obligation to cooperate that is included in UNCLOS and their constituting agreements, while others have more specific cooperation mandates that are either included in their

constituting agreements (e.g. IMO), or received by their members (e.g. IWC). Intergovernmental organizations are member-driven organizations but the same Member State will usually be represented by different government departments within the relevant intergovernmental organizations. Interviewees suggested that there is insufficient communication or integrated policy established between government departments. Consequently, very little demand for cross-sectoral engagement emerges from Member States.

8. Supporting regional cross sectoral planning in ABNJ

In order to undertake regional scale cross-sectoral planning in ABNJ, the following conditions are likely to provide a supportive context:

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

9. Next Steps

The Science to Policy workshop in Durban South Africa will provide an opportunity to learn more on the following topics:

- Connectivity between EEZs and ABNJ;
- Case Studies of ABNJ planning from other Regions;
- Approaches for area-based planning (existing tools and potential for application of cross sectoral tools); and
- Capacity Assessment results – there will be an opportunity to guide future planned activities.



ABNJ DEEP SEAS PROJECT

The Sustainable Fisheries Management and Biodiversity Conservation of Deep Sea Living Resources in Areas Beyond National Jurisdiction Project (ABNJ Deep Seas Project for short) is a five year project supported by the Global Environment Facility, and implemented jointly by the Food and Agriculture Organization of the United Nations, and the United Nations Environment Programme. The UNEP project component is executed through the UNEP World Conservation and Monitoring Centre.

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

The Project aims to:

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

The ABNJ Deep Seas Project started in September 2015 and is one of four projects under the GEF Common Oceans Programme.

More information is available from www.commonoceans.org

