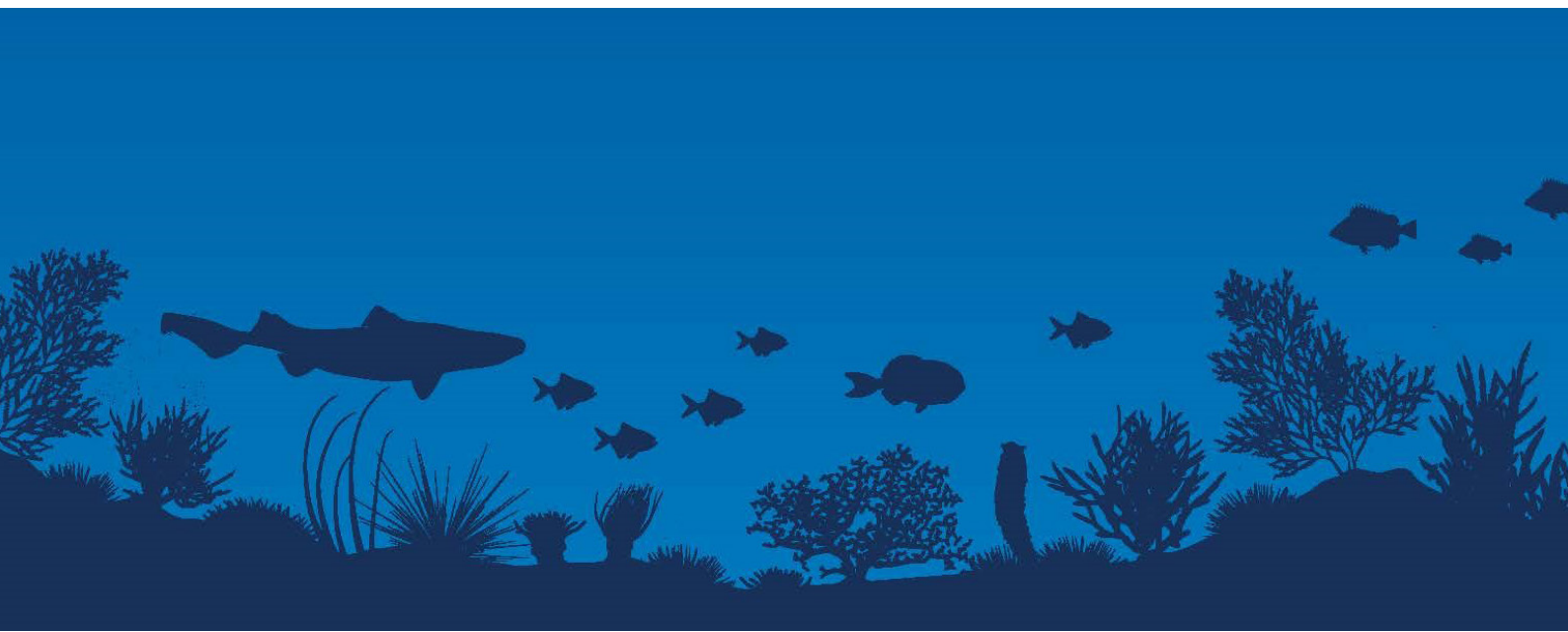




A Marine Spatial Planning Framework for Areas Beyond National Jurisdiction



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Background

This work has been undertaken as part of the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme jointly implemented Global Environment Facility (GEF) funded project entitled ‘Sustainable fisheries management and biodiversity conservation of deep-sea living resources and ecosystems in Areas Beyond National Jurisdiction’, known as the ABNJ Deep Seas Project. A key objective of the ABNJ Deep Seas Project is the recognition of the importance of healthy, fully functioning marine ecosystems for the sustainability of marine resources. One way of supporting sustainability in the marine environment is through effective marine spatial planning. This document explores options for undertaking cross-sectoral marine spatial planning in areas beyond national jurisdiction in support of the ABNJ Deep Seas Project objective. The intended audiences of this document are national and regional-level decision-makers (including those participating in high-level global negotiations), area-based planning practitioners and stakeholders in areas beyond national jurisdiction.

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List of acronyms and abbreviations

ABMT	Area-based management tool
ABNJ	Areas beyond national jurisdiction
BBNJ	Biological diversity of areas beyond national jurisdiction
CPPS	La Comisión Permanente del Pacífico Sur
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
GEF	Global Environment Facility
ICES	International Council for the Exploration of the Sea
ICZM	Integrated Coastal Zone Management
ILBI	International legally binding instrument
IMO	International Maritime Organization
ISA	International Seabed Authority
IWC	International Whaling Commission
MoU	Memoranda of Understanding
MPA	Marine Protected Area
MSP	Marine Spatial Planning
NEAFC	North-East Atlantic Fisheries Commission
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PICES	North Pacific Marine Science Organization
RSO	Regional Seas Organisation
SEA	Strategic Environmental Assessment
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNEP-WCMC	United Nations Environment Programme World Conservation Monitoring Centre
WIOMSA	Western Indian Ocean Science Association

List of figures and tables

Figure 1 *Levels of increasing interaction between sectors.*

Figure 2 *A) Pre-ILBI: cross-sectoral interaction (shown by the coloured arrows) is limited and as such coordination of activities between organisations (dark blue circles) is bilateral and limited to communication and cooperation;
B) ILBI: cross-sectoral interaction and coordination of activities among organisations is enhanced and achievable due to the legal framework in place (shown here as a light blue circle).*

Figure 3 *Key elements of the MSP framework (examples of guiding principles are shown in purple).*

Table 1 *Governance options in Table 2 is described using the listed components.*

Table 2 *The Pre-ILBI and ILBI governance options. Where details differ between a global or hybrid model for the ILBI in place, the column is divided and the two models described alongside one another in terms of ABMTs.*

Executive summary

The remoteness of areas beyond national jurisdiction (ABNJ) has traditionally provided this vast area of the marine realm a degree of protection from human activities. Yet technological advances in the second half of the 20th century have eased accessibility, resulting in an increase in the types, scale and intensity of human activities occurring in ABNJ. Such increases have the potential to have greater impact upon the marine environment and biological diversity in ABNJ.

Area-based planning is one way in which sectors operating in ABNJ can spatially plan their activities. However, such plans are often only applicable to their respective sector and do not necessarily take into account the activities of other sectors operating in the same area. Conflicts between human activities are likely to increase in number, or intensify through increased pressure on biodiversity and natural resources. It is essential to better understand every stage of these conflicts, from their creation to how they are managed. Although there are some examples of cross-sectoral area-based planning in ABNJ, these are generally the exception and such approaches are therefore fragmented in their coverage of this ocean space.

Marine spatial planning (MSP) is a type of area-based planning that can be used in a marine area to achieve ecological, economic and social objectives. It is generally well-established in national jurisdictions, with various regions providing guidelines on its use. Through the *ABNJ Deep Seas Project*, MSP has been identified as a type of cross-sectoral area-based planning that could be used in ABNJ in order to sustainably manage existing and future human activities whilst simultaneously protecting biodiversity. This is because MSP follows an ecosystem-based approach, is participatory with an emphasis on stakeholder engagement, follows the precautionary principle and is transboundary. These features are suitable to the characteristics of ABNJ.

To this end, a MSP framework for ABNJ, which considers the entire ecosystem, has been developed to promote the sustainable use of the marine environment and its resources, including biodiversity. The framework is presented in this report and is aimed at national and regional-level decision-makers (including those participating in international, high-level negotiations), area-based planning practitioners and stakeholders of ABNJ. The MSP framework is made up of various elements, each with associated activities that could potentially be undertaken. It should be noted that the framework presented here is a guide and is not prescriptive; its application will depend on the context and as such it is designed to be flexible and adaptable to meet differing needs.

The key challenge to undertaking MSP in ABNJ is the lack of a clear governance framework under which an ecosystem approach can be implemented to support the conservation and sustainable use of biodiversity. A new international legally binding instrument (ILBI) currently being negotiated under the United Nations Convention on the Law of the Sea (UNCLOS) (1982) will help to clarify governance arrangements in ABNJ and can provide a basis for sectors to engage in cross-sectoral area-based planning. However, negotiations are still ongoing and there are still uncertainties regarding the content of the new ILBI. For this reason, application of the MSP framework is explored under a scenario in which there is no ILBI in existence, and under a scenario where an ILBI does exist.

This MSP framework was explored at a workshop in each of the two pilot regions of the *ABNJ Deep Seas Project*; the South East Pacific and the Western Indian Ocean. These workshops gathered input from State Parties to each of the hosting Regional Seas Organisations, sectoral representatives, and technical and policy experts. The information collected, and the wider discussions at these workshops, influenced the design, development and content of the MSP framework.

A key finding was that although it is possible for MSP to be undertaken ABNJ in the absence of an

ILBI, it can only go so far in achieving its objective. The presence of an ILBI not only eases application of the MSP framework, but allows more to be achieved via MSP. This is possible because an ILBI provides an incentive and legal mandate to engage ABNJ stakeholders in cross-sectoral area-based planning. An ILBI allows for a management plan to be developed in collaboration with participating stakeholders and provides the means for implementation and enforcement for such plan. An ILBI can also encourage or require enhanced levels of interaction (for example, cooperation and coordination) between sectors, helping to support effective cross-sectoral area-based planning, such as MSP.

The use of MSP in ABNJ at present, whilst ongoing human activities are limited in their scope and intensity, provides an opportunity to test, adapt and improve MSP approaches to support more effective management and sustainable use of resources in ABNJ, particularly, in light of projected increases in human activities and associated impacts in ABNJ. This proactive, rather than reactive, approach may help to ensure that marine biological diversity in ABNJ can be better conserved and sustainably managed for future generations.

Résumé analytique

Traditionnellement, l'isolement des zones ne relevant pas de la juridiction nationale (ABNJ) constituait une certaine protection contre les activités humaines menées dans ces vastes aires marines. Pourtant, les innovations technologiques fleurissant depuis la seconde moitié du XX^e siècle ont facilité l'accès à ces zones, entraînant une multiplication et une intensification des activités humaines de nature et d'échelle diverses dans les ABNJ. Ce phénomène pourrait avoir des effets plus importants sur les écosystèmes marins et la biodiversité de ces zones.

La planification par zone est l'un des outils permettant aux secteurs opérant dans les ABNJ d'organiser leurs activités dans l'espace. Cependant, ces mesures de planification ne sont souvent applicables qu'à un secteur donné et ne prennent pas nécessairement en compte les activités des autres secteurs opérant dans la même zone. Les conflits entre les activités humaines vont probablement se multiplier ou s'intensifier sous l'effet de la pression accrue exercée sur la biodiversité et les ressources naturelles. Il est donc essentiel de mieux comprendre chaque étape de ces conflits, de leurs racines à leur gestion. Les quelques exemples de planification intersectorielle par zone dans les ABNJ font généralement figure d'exception. Ainsi, de telles approches n'offrent qu'une couverture morcelée de l'espace marin.

La planification spatiale marine (PSM) est un type de planification par zone pouvant s'appliquer aux aires marines en vue de la réalisation d'objectifs écologiques et socio-économiques. Ce procédé est généralement bien implanté dans les juridictions nationales sur la base des directives définies par les régions. Dans le cadre du projet de gestion durable des pêches et de conservation de la biodiversité des ressources et écosystèmes d'eaux profondes dans les zones ne relevant pas de la juridiction nationale (*ABNJ Deep Seas Project*), la PSM est apparue comme un outil de planification intersectorielle par zone à privilégier dans les ABNJ pour permettre une gestion durable des activités humaines présentes et futures, tout en protégeant la biodiversité. En effet, elle s'inscrit dans une approche écosystémique, transfrontalière, participative (axée notamment sur la mobilisation des parties prenantes) et conforme au principe de précaution. Ces propriétés sont adaptées aux caractéristiques des ABNJ.

À cette fin, un cadre de PSM dédié aux ABNJ, étudiant l'ensemble de l'écosystème, a été conçu en vue de promouvoir une utilisation durable du milieu marin et de ses ressources, notamment, la biodiversité. Le présent rapport, rédigé à l'intention des décideurs aux niveaux national et régional (notamment, ceux engagés dans les négociations internationales de haut niveau), des professionnels de la planification par zone et des parties prenantes des ABNJ, expose ce cadre de PSM. Le cadre s'articule autour de différentes composantes, chacune détaillant des pistes d'activités à entreprendre. Il convient de noter que le cadre présenté ici est un guide non prescriptif. Son application dépendra du contexte et, à ce titre, il est conçu pour être flexible et modulable en vue de répondre à différents besoins.

Le principal défi du déploiement de la PSM dans les ABNJ réside dans l'absence d'un cadre de gouvernance clair en vertu duquel une approche écosystémique pourrait être mise en œuvre à l'appui de la conservation et de l'utilisation durable de la biodiversité. La mise en place d'un nouvel instrument international juridiquement contraignant est actuellement négociée dans le cadre de la Convention des Nations Unies sur le droit de la mer (UNCLOS) (1982). Cet instrument contribuera à clarifier les modalités de gouvernance dans les ABNJ et posera les jalons d'une planification intersectorielle par zone. Cependant, les négociations sont toujours en cours, et des incertitudes subsistent quant aux dispositions de ce nouvel instrument. Par conséquent, l'application du cadre de PSM est envisagée selon deux scénarios possibles : l'un où il existe un instrument international juridiquement contraignant et l'autre où il n'en existe pas.

Ce cadre a été étudié lors de l'atelier tenu dans chacune des deux régions pilotes du projet *ABNJ Deep Seas*, à savoir, le Pacifique Sud-Est et l'océan Indien occidental. Ces ateliers ont recueilli les contributions des États parties à chacune des organisations maritimes régionales hôtes, des représentants sectoriels, ainsi que des experts techniques et politiques. Les informations recueillies et les discussions générales tenues lors de ces ateliers ont influencé la conception, le développement et le contenu du cadre de PSM.

L'une des principales conclusions établissait que, sans instrument contraignant, il serait bien plus difficile de parvenir à la pleine réalisation des objectifs de la PSM dans les ABNJ. L'adoption d'un instrument contraignant facilite non seulement l'application du cadre de PSM, mais permet également d'améliorer son efficacité. En effet, un cadre contraignant est une mesure incitative doublée d'un mandat légal pour garantir la mobilisation des parties prenantes des ABNJ à l'appui d'une planification intersectorielle par zone. Il permet d'élaborer un plan de gestion en collaboration avec les parties prenantes impliquées et fournit les moyens de sa mise en œuvre et de son application. De plus, il encourage ou exige des interactions plus poussées entre les secteurs (notamment en matière de coopération et de coordination) contribuant ainsi au soutien d'une planification intersectorielle par zone efficace telle que la PSM.

À l'heure actuelle, où la portée et l'intensité des activités humaines dans les ABNJ restent contenues, le cadre de PSM offre une occasion de tester, d'adapter et de renforcer les approches associées à la PSM au service d'une gestion plus efficace et d'une utilisation durable des ressources, notamment, à la lumière de l'intensification annoncée des activités humaines et de leurs effets dans ces zones. En privilégiant une approche proactive, plutôt que réactive, la diversité biologique marine des ABNJ pourra être mieux protégée et gérée de manière durable au profit des générations futures.

Resumen

La lejanía de las zonas situadas fuera de la jurisdicción nacional tradicionalmente ha proporcionado a esta extensa superficie del ámbito marino un grado de protección frente a la actividad humana. Sin embargo, los avances tecnológicos producidos en la segunda mitad del siglo XX han facilitado su accesibilidad, lo que ha dado lugar a un incremento en los tipos, escala e intensidad de la actividad humana en estas zonas. Dichos aumentos cuentan con el potencial de provocar un mayor impacto en el medio marino y en la diversidad biológica de las zonas situadas fuera de la jurisdicción nacional.

La planificación zonal es uno de los recursos que los sectores que operan en estas zonas pueden utilizar para planificar sus actividades espacialmente. Sin embargo, dichos planes a menudo solo pueden aplicarse a su respectivo sector y no tienen en cuenta las actividades de otros sectores que operan en la misma zona. Es probable que los conflictos debidos a la actividad humana se incrementen en número, o se intensifiquen por la creciente presión en la biodiversidad y los recursos naturales. Es indispensable poseer un mejor entendimiento de cada una de las etapas de estos conflictos, desde su creación a su gestión. A pesar de que existen algunos ejemplos de planificación zonal intersectorial en las zonas situadas fuera de la jurisdicción nacional, estas son generalmente la excepción, y, por lo tanto, la cobertura de dichos enfoques de este espacio marítimo será fragmentada.

La planificación espacial marina es un tipo de planificación zonal que puede usarse en una zona marina a fin de alcanzar objetivos ecológicos, económicos y sociales. Por lo general, se encuentra bien establecida en la jurisdicción nacional, con varias regiones que proporcionan directrices para su uso. Mediante el Proyecto sobre Aguas Profundas en Zonas Situadas Fuera de la Jurisdicción Nacional, se ha definido la planificación espacial marina como un tipo de planificación zonal intersectorial que podría usarse en las zonas situadas fuera de la jurisdicción nacional con el fin de gestionar de forma sostenible la presente y futura actividad humana al mismo tiempo que se protege la biodiversidad. Esto se debe a que la planificación espacial marina aplica un enfoque basado en los ecosistemas, es participativa —en especial en lo que atañe a la participación de las partes interesadas—, sigue el principio de precaución y es transfronteriza. Estas características se adaptan a las de las zonas situadas fuera de la jurisdicción nacional.

Con este fin, se ha desarrollado una planificación espacial marina como marco para las zonas situadas fuera de la jurisdicción nacional que tenga en cuenta la totalidad del ecosistema, con el objeto de promover el uso sostenible del medio marino y sus recursos, especialmente la biodiversidad. El marco se presenta en este informe y está dirigido a los encargados de adoptar decisiones a nivel nacional y regional (en particular a aquellos que participan en negociaciones internacionales de alto nivel), a los profesionales de la planificación zonal y a las partes interesadas de las zonas situadas fuera de la jurisdicción nacional. El marco de la planificación espacial marina consta de varios elementos, cada uno de ellos asociado a actividades que podrían llevarse a cabo. Cabe señalar que el marco que aquí se presenta es una guía sin carácter prescriptivo; su aplicación dependerá del contexto y, como tal, está diseñada para ser flexible y adaptable a fin de atender a diferentes necesidades.

La principal dificultad para emprender una planificación espacial marina en las zonas situadas fuera de la jurisdicción nacional es la falta de un marco claro de gobernanza bajo el cual se pueda implementar un enfoque ecosistémico con miras a respaldar el uso sostenible y la conservación de la biodiversidad. Un nuevo instrumento internacional jurídicamente vinculante que se está negociando en estos momentos bajo la Convención de las Naciones Unidas sobre el Derecho del Mar (CNUDM) (1982) ayudará a clarificar los mecanismos de gobernanza en las zonas situadas fuera de la jurisdicción nacional, y podrá aportar una base para que los sectores participen en la planificación intersectorial zonal. Sin embargo, las negociaciones siguen en curso y sigue habiendo incertidumbre con respecto al contenido del nuevo instrumento internacional jurídicamente vinculante. Por esta razón, la aplicación del marco de la planificación espacial marina se está examinando con arreglo a una hipótesis en la que no existe un instrumento internacional jurídicamente vinculante, así como conforme a una posible situación en la que un instrumento internacional jurídicamente vinculante sí existe.

Este marco de la planificación espacial marina fue analizado en un taller en cada una de las dos regiones piloto del Proyecto sobre Aguas Profundas en Zonas Situadas Fuera de la Jurisdicción Nacional: el Pacífico Sudeste y el Océano Índico Occidental. Estos talleres recogieron aportaciones de los Estados Partes de cada una de las Organizaciones de los Mares Regionales anfitrionas, representantes del sector, y expertos técnicos y en materia de política. La información recopilada, así como los amplios debates en estos talleres, influyeron en el diseño, el desarrollo y el contenido del marco de la planificación espacial marina.

Una conclusión clave fue que, aunque es posible llevar a cabo una planificación espacial marina en zonas situadas fuera de la jurisdicción nacional en la ausencia de un instrumento internacional jurídicamente vinculante, esta no alcanzará la plena consecución de sus objetivos. La presencia de un instrumento internacional jurídicamente vinculante no solo facilita la aplicación del marco de la planificación espacial marina, sino que permite que se consigan más resultados mediante dicha planificación. Esto es posible debido a que el instrumento internacional jurídicamente vinculante aporta un incentivo y un mandato legal para la participación de las partes interesadas de las zonas situadas fuera de la jurisdicción nacional en la planificación zonal intersectorial. Un instrumento internacional jurídicamente vinculante permite el desarrollo de un plan de gestión en colaboración con las partes interesadas participantes, y proporciona los medios para la implementación y ejecución de dicho plan. Un instrumento internacional jurídicamente vinculante también fomenta —o requiere— mayores niveles de interacción (por ejemplo, cooperación y coordinación) entre sectores, a fin de ayudar a mantener una planificación zonal intersectorial efectiva, como la planificación espacial marina.

En estos momentos, mientras que la actividad humana en curso está limitada tanto en alcance como en intensidad, el uso de la planificación espacial marina en zonas situadas fuera de la jurisdicción local proporciona una oportunidad para probar, adaptar y mejorar la planificación espacial marina a fin de respaldar una gestión más efectiva y un uso sostenible de recursos en dichas zonas, en particular, en vista del incremento previsto de la acción humana y el impacto que esta lleva asociada a dichas zonas. Este enfoque proactivo, más que reactivo, puede contribuir a asegurar la conservación y gestión de la diversidad biológica marina en las zonas situadas fuera de la jurisdicción nacional para las generaciones futuras.

وقد استُكشِف إطار تخطيط الحيز البحري هذا في حلقة عمل عُقدت في المنطقتين التجريبتين ضمن مشروع أعماق البحار في المناطق الواقعة خارج نطاق الولاية الوطنية؛ جنوب شرق المحيط الهادئ وغرب المحيط الهندي. وقد جمعت حلقات العمل هذه مُدخلات من الدول الأطراف في كل منظمة من منظمات البحار الإقليمية المضيفة، وممثلين عن القطاعات، وخبراء فنيين، وخبراء في مجال السياسات. وقد كان للمعلومات التي جُمعت، والمناقشات الأوسع نطاقاً في حلقات العمل هذه، تأثيرٌ على تصميم إطار تخطيط الحيز البحري وتطويره وتحديث محتواه.

تمثَّلت إحدى النتائج الرئيسية في أن الاضطلاع بتخطيط الحيز البحري في المناطق الواقعة خارج نطاق الولاية الوطنية مع أنه ممكن في غياب صك دولي مُلزم قانوناً، إلا أنه محدود في تحقيق الهدف المتوخى منه. ولا يقتصر تأثير وجود الصك الدولي الجديد المُلزم قانوناً على تيسير تطبيق إطار تخطيط الحيز البحري فحسب، بل يسمح أيضاً بتحقيق مزيدٍ من الأهداف عن طريق تخطيط الحيز البحري. ويتسنى ذلك لأن وجود صك دولي مُلزم قانوناً يوفر حافزاً وولايةً قانونيةً لإشراك أصحاب المصلحة في المناطق الواقعة خارج نطاق الولاية الوطنية في جهود التخطيط الشامل لعدة قطاعات على أساس المناطق. فالصك الدولي المُلزم قانوناً يسمح بوضع خطة إدارية بالتعاون مع أصحاب المصلحة المشاركين ويوفر الوسيلة لتنفيذ تلك الخطة وفرض تطبيقها. ويمكن للصك الدولي المُلزم قانوناً أيضاً أن يشجّع على ظهور مستويات مُعززة من التفاعل أو يتطلّب وجودها (مثل التعاون والتنسيق) بين القطاعات، الأمر الذي يُساعد على دعم التخطيط الفعال الشامل لعدة قطاعات على أساس المناطق، مثل تخطيط الحيز البحري.

إن استخدام تخطيط الحيز البحري في إطار المناطق الواقعة خارج نطاق الولاية الوطنية في الوقت الحاضر - مع محدودية الأنشطة البشرية الجارية من حيث نطاقها وكثافتها - يوفر فرصةً لاختبار نُهج تخطيط الحيز البحري وتكييفها وتحسينها لدعم الإدارة الأكثر فاعليةً والاستخدام المستدام للموارد في المناطق الواقعة خارج نطاق الولاية الوطنية، ولا سيما في ظل الزيادات المتوقعة في الأنشطة البشرية والآثار المرتبطة بها في المناطق الواقعة خارج نطاق الولاية الوطنية. وهذا النهج الاستباقي، وليس القائم على رد الفعل، قد يُساعد على ضمان حفظ التنوع البيولوجي البحري في المناطق الواقعة خارج نطاق الولاية الوطنية وإدارته على نحو مستدام على نحوٍ أفضل من أجل الأجيال المقبلة.

موجز تنفيذي

إنَّ البُعدَ النَّائِيَّ للمناطق الواقعة خارج نطاق الولاية الوطنية قد أتاح تقليدياً لهذا المجال البحري الشاسع درجةً من الحماية من الأنشطة البشرية. بيدَ أنَّ التقدّمَ التكنولوجي في النصف الثاني من القرن العشرين قد سهّل الوصول إلى تلك المناطق، مما أدّى إلى زيادةٍ في أنواع الأنشطة البشرية الجارية في المناطق الواقعة خارج نطاق الولاية الوطنية، وفي حجمها وكثافتها. ولهذه الزيادة في الأنشطة القدرة على ترك تأثير أكبر على البيئة البحرية والتنوع البيولوجي في المناطق الواقعة خارج نطاق الولاية الوطنية.

يُعدُّ التخطيط القائم على المناطق إحدى الطرق التي تنتهجها القطاعات العاملة في المناطق الواقعة خارج نطاق الولاية الوطنية في تخطيط أنشطتها تخطيطاً مكانياً. غير أنَّ هذه الخطط لا تنطبق في كثيرٍ من الأحيان إلا على قطاعاتها ذات الصلة ولا تضع في اعتبارها بالضرورة أنشطة القطاعات الأخرى العاملة في المنطقة نفسها. ومن المرجح أن يتزايد التصارع بين الأنشطة البشرية من حيث العدد، أو أن يشتدَّ حدّةً من خلال الضغط المتزايد على التنوع البيولوجي والموارد الطبيعية. ومن الضروري أن نفهم على نحوٍ أفضل كل مرحلة من مراحل هذه الصراعات، ابتداءً من نشأتها وحتى طريقة إدارتها. ومع أنَّ هناك بعض الأمثلة على التخطيط المشترك بين عدة قطاعات في المناطق الواقعة خارج نطاق الولاية الوطنية، إلا أنها تشكّل استثناءً عموماً، وبذلك تكون مثل هذه المقرّبات مجزأة في تغطيتها لهذا الحيّز من مياه المحيط.

يُعدُّ تخطيط الحيّز البحري أحد أنواع التخطيط القائم على المناطق ويمكن استخدامه في منطقةٍ بحريةٍ ما لتحقيق أهداف إيكولوجية واقتصادية واجتماعية. ويحظى هذا التخطيط بأُسسٍ راسخة عموماً ضمن نطاق الولايات الوطنية، وتضع مناطق مختلفة مبادئ توجيهية بشأن استخدامه. ومن خلال مشروع أعماق البحار في المناطق الواقعة خارج نطاق الولاية الوطنية، حُدِّدَ تخطيط الحيّز البحري كنوعٍ من أنواع التخطيط الشامل لعدة قطاعات على أساس المناطق، ويمكن استخدامه في المناطق الواقعة خارج نطاق الولاية الوطنية من أجل إدارة الأنشطة البشرية الحالية والمقبلة على نحوٍ مُستدام مع حماية التنوع البيولوجي في الوقت نفسه. ويرجع ذلك إلى أنَّ تخطيط الحيّز البحري يتبع نهجاً قائماً على النظم الإيكولوجية، وهو تخطيط تشاركي يركّز على إشراك أصحاب المصلحة، ويتبع المبدأ التحوطي، وعابراً للحدود. وتُعدُّ هذه الميزات مناسبة لخصائص المناطق الواقعة خارج نطاق الولاية الوطنية.

وتحقيقاً لهذا الغرض، وُضِعَ إطار تخطيط الحيّز البحري للمناطق الواقعة خارج نطاق الولاية الوطنية، الذي يتناول النظام الإيكولوجي بأكمله، ابتغاءً لتعزيز الاستخدام المستدام للبيئة البحرية ومواردها، بما في ذلك التنوع البيولوجي. ويُعرض الإطار في هذا التقرير، وهو موجّه إلى صانعي القرارات على الصعيدين الوطني والإقليمي (من فيهم المشاركين في المفاوضات الدولية الرفيعة المستوى)، وممارسي التخطيط على أساس المناطق، وأصحاب المصلحة في المناطق الواقعة خارج نطاق الولاية الوطنية. ويتكون إطار تخطيط الحيّز البحري من عناصر مختلفة، ولكلٍّ منها أنشطة مرتبطة يمكن الاضطلاع بها. وتجدد الإشارة إلى أنَّ الإطار المعروض هنا هو استرشادي وليس إلزامياً؛ ويعتمد تطبيقه على السياق وبذلك فقد صُمِّمَ ليكون مرناً وقابلاً للتكييف من أجل تلبية الاحتياجات المختلفة.

يتمثل التحدي الرئيسي الذي يواجه الاضطلاع بتخطيط الحيّز البحري، في إطار المناطق الواقعة خارج نطاق الولاية الوطنية، في عدم وجود إطار واضح للحوكمة يمكن في إطاره تنفيذ نهج النظام الإيكولوجي لدعم حفظ التنوع البيولوجي واستخدامه المستدام. ومن شأن الصك الدولي الجديد الملزم قانوناً، الذي يجري التفاوض بشأنه حالياً بموجب اتفاقية الأمم المتحدة لقانون البحار (1982)، أن يساعد على توضيح الترتيبات الخاصة بالحوكمة في المناطق الواقعة خارج نطاق الولاية الوطنية، ويمكن أن يوفر أساساً للقطاعات للمشاركة في التخطيط الشامل لعدة قطاعات على أساس المناطق. ومع ذلك، لا تزال المفاوضات جارية ولا يزال هناك التباسٌ حول مضمون الصك الدولي الجديد الملزم قانوناً. ولهذا السبب، يُستكشف تطبيق إطار تخطيط الحيّز البحري في إطار سيناريوهين يوجد في أحدهما صك دولي ملزم قانوناً ولا يوجد في الآخر.

Резюме

Удаленность районов за пределами действия национальной юрисдикции (РЗПНЮ) традиционно обеспечивала этим обширным морским акваториям определенную степень защиты от влияния деятельности человека. Однако во второй половине XX века в результате технического прогресса их доступность повысилась, что привело к увеличению числа видов деятельности человека в РЗПНЮ, расширению их масштабов и повышению их интенсивности. В результате воздействие на морскую среду и биологическое разнообразие в РЗПНЮ может значительно усилиться.

Одним из методов пространственного планирования секторальной деятельности в РЗПНЮ является зональное планирование. Однако зачастую такие планы применимы только в рамках соответствующего сектора и не всегда принимают во внимание деятельность других секторов, действующих в том же районе. По причине нарастающей нагрузки на биоразнообразие и природные ресурсы конфликты между различными видами деятельности человека могут активизироваться, а их число может расти. Крайне важно получить более глубокое понимание каждого этапа развития этих конфликтов, начиная с момента их возникновения и вплоть до принятия мер по их урегулированию. Несмотря на ряд положительных примеров межсекторального зонального планирования применительно к РЗПНЮ, они, как правило, являются исключением из правила, и поэтому охват этой части океанического пространства такими подходами оказывается неполным.

Морское пространственное планирование (МПП) — это один из видов зонального планирования, который может использоваться в том или ином морском районе для решения экологических, экономических и социальных задач. В пределах действия национальной юрисдикции этот подход реализуется достаточно широко, причем во многих регионах приняты руководящие принципы его использования. В рамках *Глубоководного морского проекта по РЗПНЮ* МПП было определено в качестве одного из методов межсекторального зонального планирования, который может быть использован в отношении РЗПНЮ, с тем чтобы обеспечить рациональное регулирование существующих и будущих видов деятельности человека при одновременной защите биоразнообразия. Это связано с тем, что процессы МПП основаны на экосистемном подходе, обеспечивают широкое участие с упором на привлечение к работе заинтересованных сторон, следуют принципу предосторожности и носят трансграничный характер. Указанные элементы вполне соответствуют основным параметрам РЗПНЮ.

Исходя из этого, в целях содействия устойчивому использованию морской среды и ее ресурсов, включая биоразнообразие, были разработаны рамочные основы МПП для РЗПНЮ, в которых экосистема рассматривается как единое целое. Эти рамочные основы представлены в настоящем докладе и предназначены для лиц, принимающих решения по вопросам РЗПНЮ на национальном и региональном уровнях (включая тех, кто участвует в международных переговорах на высоком уровне), специалистов-практиков по зональному планированию и других заинтересованных сторон. Рамочные основы МПП состоят из различных элементов, каждый из которых взаимосвязан с теми видами деятельности, которые потенциально могут осуществляться. Следует отметить, что рамочные основы, представленные в настоящем докладе, носят рекомендательный, а не директивный характер; их применение будет зависеть от конкретных условий, и в этом качестве они призваны обеспечить гибкость и приспособляемость при принятии решений, позволяющих удовлетворить различные потребности.

Ключевой проблемой осуществления МПП в отношении РЗПНЮ является отсутствие четко сформулированных руководящих принципов, позволяющих реализовать экосистемный подход к сохранению и устойчивому использованию биоразнообразия. В настоящее время в рамках Конвенции Организации Объединенных Наций по морскому праву 1982 года (КМП ООН) ведутся переговоры о новом международном юридически обязательном документе (МЮОД), который поможет уточнить руководящие принципы регулирования деятельности в РЗПНЮ и, как представляется, будет положен в основу участия различных секторов в межсекторальном зональном планировании. Однако переговоры все еще продолжаются, и в отношении содержания нового МЮОД по-прежнему существует неопределенность. По этой причине применение рамочных основ МПП рассматривается как для сценария, согласно которому МЮОД еще не принят, так и для сценария, согласно которому МЮОД уже введен в действие.

Рамочные основы МПП были подвергнуты детальному рассмотрению на семинарах-практикумах в двух экспериментальных регионах *Глубоководного морского проекта по РЗПНЮ* — юго-восточной части Тихого океана и западной части Индийского океана. В ходе этих рабочих совещаний государства-участники представили свои материалы соответствующей принимающей организации по региональным морям, представителям секторов, а также специалистам по техническим и политическим вопросам. Собранная информация и более широкие обсуждения на этих семинарах-практикумах оказали влияние на составление проекта, разработку и содержание рамочных основ МПП.

Одним из главных выводов является то, что хотя процесс МПП в отношении РЗПНЮ может быть осуществлен и в отсутствие МЮОД, обеспечить достижение поставленной цели в полном объеме будет невозможно. Наличие действующего МЮОД не только облегчит применение рамочных основ МПП, но и позволит при помощи МПП добиться большего. Это станет возможным, поскольку МЮОД станет стимулирующим фактором и правовым мандатом, обеспечивающим вовлечение соответствующих заинтересованных сторон в процесс межсекторального зонального планирования деятельности в РЗПНЮ. МЮОД позволит разработать план управления в сотрудничестве с участвующими заинтересованными сторонами и станет средством осуществления и обеспечения выполнения такого плана. Наряду с этим МЮОД может поощрять или требовать повышения уровня взаимодействия (например, сотрудничества и координации деятельности) между секторами или содержать соответствующее требование, что поможет оказать поддержку эффективному межсекторальному зональному планированию, такому как МПП.

В настоящее время, когда текущие виды деятельности человека в РЗПНЮ ограничены по своим масштабам и интенсивности, использование методов МПП в отношении РЗПНЮ открывает возможность апробировать, адаптировать и усовершенствовать подходы к МПП в целях оказания поддержки повышению эффективности управления и устойчивому использованию ресурсов в РЗПНЮ, особенно в свете прогнозируемого нарастания деятельности человека в РЗПНЮ и связанного с этим воздействия. Такой подход, подразумевающий принятие упреждающих, а не ответных мер, может способствовать обеспечению того, чтобы морское биологическое разнообразие в РЗПНЮ могло быть более эффективно сохранено и использовалось неистощительным образом на благо будущих поколений.

执行摘要

国家管辖范围以外区域（ABNJ）位置偏远，这一点在传统上为广阔的海洋区域提供了一定程度的保护，使其免受人类活动的影响。然而，20世纪下半叶的技术进步使人们更容易进入这些区域，从而导致这些区域的人类活动类型、规模和强度都有增加。这种增加有可能对这些区域的海洋环境和生物多样性产生更大的影响。

区域规划是在这些区域开展活动的各部门在空间上规划其活动的一种方式。然而，这些计划通常只适用于各自的部门，不一定会考虑在同一区域内开展活动的其他部门的活动。人类活动之间的冲突不仅在数量可能会增加，还可能因为对生物多样性和自然资源的压力增加而加剧。必须更好地理解这些冲突的每个阶段——从冲突的产生到冲突的管理方式。尽管有一些国家管辖范围以外区域中的跨部门区域规划的案例，但这些案例一般都属于特例，因此这些方法在海洋空间的覆盖方面是碎片化的。

海洋空间规划（MSP）是一种以区域为基础的规划，可用于在海洋区域实现生态、经济和社会目标。通常海洋空间规划在国家管辖区内较为完善，有各个区域提供其使用指南。通过国家管辖范围以外区域深海项目，海洋空间规划已被确定为一种可用于国家管辖范围以外区域的跨部门区域规划类型，以便可持续地管理现在和未来的活动，同时保护生物多样性。这是因为海洋空间规划遵循一种基于生态系统的方法，它具有参与性，强调利益攸关方的参与，遵循预防原则，并且是跨边界的。这些特征适合国家管辖范围以外区域的特点。

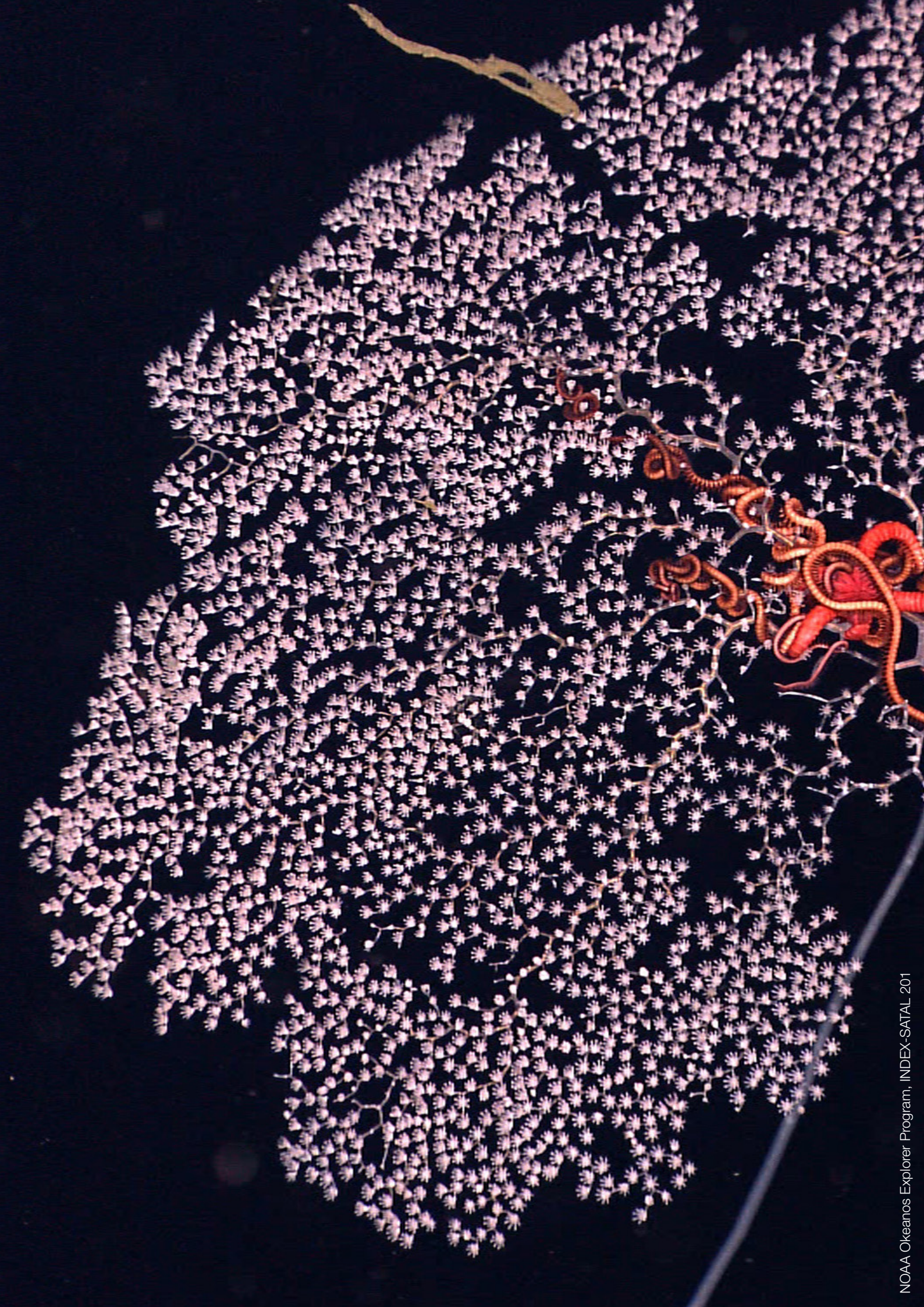
为此，一个考虑整个生态系统的国家管辖范围以外区域海洋空间规划框架已被制定，以促进对海洋环境及其资源（包括生物多样性）的可持续利用。本报告介绍了该框架，其目标读者对象是国家和区域层面的决策者（包括参与国际、高级别谈判的决策者）、区域规划从业者和国家管辖范围以外区域利益攸关方。海洋空间规划框架由多个要素组成，每个要素都与可能开展的活动有关。应当指出的是，这里介绍的框架是一个指南，不是规定性的；其应用将取决于环境，因此，该框架是灵活的，能适应不同的需要。

在国家管辖范围以外区域开展海洋空间规划的主要挑战是缺乏清晰的治理框架，通过生态系统的方式来支持对生物多样性的保护和可持续利用。目前，根据《联合国海洋法公约》（UNCLOS）（1982年）一项新的具有法律约束力的国际文书（ILBI）的谈判正在进行中，该文书将有助于澄清国家管辖范围以外区域的治理安排，并可为各部门从事跨部门区域规划提供依据。然而，谈判仍未结束，关于新的国际文书的内容仍存在不确定性。因此，本报告针对存在和不存在新的国际文书的情况下海洋空间规划框架的应用，进行了分别探索。

在国家管辖范围以外区域深海项目的两个试点区域，东南太平洋和西印度洋，举办的讲习班上探索了海洋空间规划框架。这些讲习班收集了每个主办区域海洋组织的各缔约国、部门代表以及技术和政策专家的意见。这些研讨会上收集的信息以及广泛的讨论影响了海洋空间规划框架的设计、开发和内容。

一个重要的发现是，尽管在没有新的国际文书的情况下，可以在国家管辖范围以外区域进行海洋空间规划，但在实现其目标上成果有限。如果存在新的国际文书，不仅会简化海洋空间规划框架的应用，还能够通过海洋空间规划实现更多的目标。这是因为新的国际文书能够为国家管辖范围以外区域的利益攸关方提供激励措施和法律授权，来参与跨部门区域规划。新的国际文书能够促成参与的利益攸关方合作来制定管理计划，并提供实施和执行此计划的手段，还能鼓励或要求各部门之间加强互动（例如，合作与协调），从而有助于支持有效的跨部门的区域规划，例如海洋空间规划。

鉴于国家管辖范围以外区域的人类活动和相关影响会增加的预计，虽然目前人类活动的范围和强度有限，在这些区域应用的海洋空间规划为测试、调整和改进海洋空间规划方法提供了机会，从而支持在这些区域更有效地管理和可持续利用资源。这种积极主动而非被动反应的方式，将有助于为子孙后代更好地保护和可持续地管理国家管辖范围以外区域的海洋生物多样性。



1 Introduction

This document explores how marine spatial planning (MSP) could be applied within areas beyond national jurisdiction (ABNJ). MSP is defined as: “a public process of analysing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process” (Ehler & Douvère, 2009). ABNJ describes the water column beyond Exclusive Economic Zones (EEZs) or beyond the territorial sea where no EEZ has been declared, as well as the seabed beyond the limits of the continental shelf, known as ‘the Area’ (Kimball, 2005).

At present, cross-sectoral area-based planning is limited in ABNJ, with few examples in the North-East Atlantic, Eastern Central Pacific, the Mediterranean and the Southern Ocean regions (UNEP-WCMC & Seascope Consultants Ltd., 2019). As such, cross-sectoral area-based planning approaches are fragmented in their coverage of ABNJ. This is, in part, due to the absence of a clear and comprehensive governance framework that supports cross-sectoral planning in ABNJ, meaning that currently, differing sectoral mandates with varying geographical remits exist. There is also a lack of a mandate to conserve and sustainably use biodiversity in ABNJ. This is in part because the need for such a framework was not recognised until relatively recently, as the remoteness and inaccessibility of these distant marine spaces has traditionally provided a degree of protection from human activities. However, technological advances in the second half of the 20th century have eased accessibility, resulting in an increase in the types, scale and intensity of human activities occurring in ABNJ. The scale and intensity of human activities, such as deep-sea mining, cable-laying, shipping, deep-sea fishing and marine scientific research, as well as novel or emerging uses, are all set to increase in the coming decades. Such increases have the potential to have greater impact upon the marine environment and biological diversity in ABNJ. In recognition of the limitations of the current governance frameworks in ABNJ, the United Nations is facilitating negotiations for the development of a new international legally binding instrument (ILBI), which aims to support the conservation and sustainable use of marine biological diversity in ABNJ by strengthening the existing legal framework and enhancing global, regional and sectoral cooperation and coordination.

Area-based planning is one method for supporting the management of human activities to mitigate adverse interactions between different resource uses and biodiversity. Area-based planning can range from planning the use of a single resource or activity (single sector), through to integrated planning across multiple resources and/or activities (cross-sector). The latter is the focus of this report as marine ecosystems and resources in ABNJ are being increasingly used by multiple sectors, often within the same space.

Frameworks for cross-sectoral area-based planning within Exclusive Economic Zones (EEZs) are generally well established. Two examples include the ‘EU Recommendation on Integrated Coastal Zone Management (ICZM)’ (European Commission, 2002) and the ‘Step-by-Step Approach to Marine Spatial Planning’ developed by Ehler and Douvère (2009). In recent years, MSP in particular, has been increasingly considered as an appropriate means of coordinating different uses in the marine realm based on the principles under which it is undertaken, for example the ecosystem approach and participatory approach.

To date, MSP has predominantly been used in marine and coastal areas within EEZs that are often subjected to intense human activities. In recent years, there has been increasing recognition of the need for cross-sectoral area-based planning beyond EEZs and into ABNJ to respond to increases in human activities. In line with this, UNEP-WCMC undertook a study to assess area-based planning tools for use in ABNJ and identified MSP as a cross-sectoral tool that could potentially be used to support the conservation and sustainable use of marine biological diversity in ABNJ (UNEP-WCMC, 2018). As such, this document outlines an initial effort to describe a detailed MSP framework for ABNJ to support the conservation and sustainable use of biological diversity in ABNJ. The MSP framework aims to identify:

- **What** activities would need to be undertaken as part of the planning process;
- **How** the framework could work in ABNJ (based on lessons that can be extrapolated from experiences in EEZs and the current understanding of ABNJ);
- **Who** would need to be involved; and
- The aspects of **governance** that support or hinder the application of the MSP framework

2 Development of the framework

In order to consider a framework for MSP in ABNJ, it is important to learn from the existing work undertaken within national jurisdictions. To this end, the existing literature (including, Ehler & Douvère, 2009; UN Environment, 2018; UN Environment (*in press*)) has been reviewed and key elements of MSP and relevant guiding principles extracted.

In addition, a number of studies undertaken during the ABNJ Deep Seas Project (2014 – 2019) have explored potential influences on the area-based planning cycle, the context and conditions which exist in ABNJ, and the challenges of cross-sectoral planning. These studies resulted in a number of outputs, which together form a ‘tool box’ of information providing a basis for the development of the MSP framework (UNEP-WCMC, 2017; UNEP-WCMC, 2018; UNEP-WCMC & Seascope Consultants Ltd. 2019; UNEP-WCMC & Duke University Marine Geospatial Lab, 2019). Key findings from these outputs include:

- There are examples of area-based planning already underway in ABNJ, for example in the North East Atlantic, the Central Eastern Pacific and the Southern Ocean, demonstrating that it is possible.
- At present, single-sector area-based planning tools are used in ABNJ, individually or in combination with another, however cross-sectoral planning tools are not currently implemented. The lack of a comprehensive governance framework to enable cross-sectoral planning in ABNJ is a key challenge to the application of cross-sectoral area-based management tools, such as MSP.
- The oceans are inherently connected and recognise ecological boundaries, rather than administrative or legal boundaries. Ecosystems need to be considered as a whole and the lateral and vertical connectivity of the ocean recognised in order to effectively support the conservation and sustainable use of marine biological diversity in ABNJ.

These key findings were used to inform the development of the MSP framework for ABNJ.

Ehler & Douvère (2009) emphasise the need for setting principles for MSP to help guide the process and to assist decision-makers when making difficult decisions. In the context of this MSP framework, underlying principles such as the ecosystem approach, the precautionary principle, or the use of best-available scientific information, could be applied, as noted in the Biological Diversity Beyond National Jurisdiction (BBNJ) negotiations¹. In line with this, it has been recognised during the negotiations that the integration of cross-sectoral activities into an area-based planning or management process (for example, MSP) can help to improve transparency and recognition of ongoing sectoral activities and measures², in turn helping to support progress towards the objective of conservation and sustainable use of marine biological diversity in ABNJ.

¹ UNGA (2019). Draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. A/CONF.232/2019/6. Article 16(1).

² Ibid, Article 18(1)

2.1 Exploring the framework with stakeholders

The proposed MSP framework was explored at two workshops, one in each of the pilot regions of the ABNJ Deep Seas Project – the South-East Pacific and the Western Indian Ocean – in March and June 2019, respectively. The workshops gathered input from State Parties to the hosting Regional Seas Organisations of the project pilot regions (La Comisión Permanente del Pacífico Sur (CPPS) and the Nairobi Convention, respectively), representatives from various sectors (including the fishing, environment, tourism, mining, academia and research sectors), and technical and policy experts. In addition, due to the Nairobi Convention co-hosting its workshop with the Abidjan Convention (the Regional Seas Organisation of the South-East Atlantic), a unique experience was provided to gather input from a third Regional Seas Organisation.

The purpose was, firstly, to gather information on the regional perspectives on human activities and the socio-economic conditions in the two regions, as well as participants' understanding of area-based planning and how changes to governance of ABNJ may affect sectoral activities. The second purpose was to explore how the MSP framework could be applied under two different governance options, and identifying the advantages and challenges associated with each option. For example, participants explored how an area-based management plan could be developed and then implemented under each governance option, taking into consideration the institutional arrangement, the legal framework, capacity and data availability. This information and wider discussions at these workshops have significantly influenced the design, development and content of this MSP framework, in particular, the direct comparison between the governance options. The third purpose of the workshops was to build capacity in terms of knowledge and awareness of the evolving BBNJ governance landscape, and a better understanding of what area-based planning in ABNJ could look like.

3 Governance options

The exact nature of how MSP can be undertaken in ABNJ is dependent upon the governance arrangements in place. Currently, a key challenge to the use of MSP in ABNJ is the lack of a coordinated cross-sectoral governance option (UNEP-WCMC, 2018; Wright *et al.* 2018). At the global scale, a number of United Nations-led processes are under way to reduce human impact on ABNJ through improved coordination and cooperation, for example the reduction of marine pollution³, the creation of regulations for deep-sea mining⁴ and conservation and management of straddling and migratory fish stocks⁵. Furthermore, at the end of 2017, following a preparatory phase of more than ten years, the UN General Assembly (UNGA) decided to launch formal negotiations to create a new International Legally Binding Instrument (ILBI) under the UN Convention on Law of the Sea (UNCLOS), to conserve and sustainably use marine biological diversity in ABNJ (known hereafter as the ‘BBNJ process’)⁶. Negotiations on the text of a new ILBI are taking place via an intergovernmental conference, beginning in September 2018 and scheduled to end in 2020. As of July 2019, two sessions of the intergovernmental conference have been held thus far⁷, with a third scheduled to take place in August 2019.

The negotiations for this agreement will, among other things, consider ways in which to address global cooperation and coordination challenges and focus primarily on four topics (described as the ‘package deal’), as well as a number of ‘cross-cutting’ issues. These were identified in 2011 by the BBNJ Working Group⁸, relating to the conservation and sustainable use of marine biological diversity of ABNJ⁹:

- marine genetic resources, including questions on the sharing of benefits;
- measures such as area-based management tools, including marine protected areas;
- environmental impact assessments; and
- capacity-building and the transfer of marine technology.

At the time of writing, the outcome of the BBNJ process is yet to be determined. A zero draft of the instrument has been developed (as of 17 May 2019) and negotiations on the content are ongoing. The document presented here is most relevant to discussions around area-based management tools. The draft agreement text defines an area-based management tool as:

“a tool for a geographically defined area, other than a marine protected area, through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording high protection than that provided in the surrounding areas].”¹⁰

Although MSP is not noted explicitly in the text of the zero draft document, the negotiations have emphasised the need for “enhancing cooperation and coordination in the use of area-based management tools...”¹¹; “promot[ing] coherence and complementarity in the [establishment] [designation] of area-based management tools... through [existing] relevant legal instruments and frameworks and relevant global, regional and sectoral bodies...”¹², noting that this text has not yet been agreed and contains alternative language.

MSP can be used to facilitate cooperation and integration of sectoral activities to support the overarching objective of the ILBI. The development of MSP also has relevance to the ‘work package’ topics of environmental impact assessments and capacity-building and technology transfer, yet discussion of this is beyond the remit of this document.

³ UNEA Resolution 6/4 (2019)

⁴ ISA (2019). Mining Code. Available at: <https://www.isa.org.jm/mining-code>

⁵ UNGA (1995). UNGA A/CONF.164/37. Article 6.

⁶ UNGA resolution 71/249 (2018).

⁷ Statements by the President of the Conference at the closing of the first session (A/CONF.232/2018/7) and second session (A/CONF.232/2019/5).

⁸ Established under UNGA Resolution 59/24 (2004)

⁹ The issues were adopted under UNGA Resolution 66/231 (2011)

¹⁰ UNGA (2019). A/CONF.232/2019/6. Article 1(3)

¹¹ *Ibid.*, Article 14(a)

¹² *Ibid.*, Article 15(1)(a)

Given the international commitment to the BBNJ process, the governance arrangements in ABNJ under UNCLOS may evolve in the near future once an agreement has been fully negotiated. The ways in which conservation and sustainable use of biodiversity are integrated into the governance framework may change as the governance arrangements evolve, for example through the establishment of “[coordination and collaboration mechanisms] [consultation processes] at the [global] [and] [regional] level[s] to enhance cooperation and coordination among relevant legal instruments and frameworks and relevant global, regional and sectoral bodies with regard to area-based management tools...”¹³ or where there is no instrument in place to establish area-based management tools, “States Parties shall cooperate to establish such an instrument, framework or body and shall participate in its work...”¹⁴, or more broadly in relation to reducing gaps in ocean governance, “State Parties shall cooperate to establish new global, regional, and sectoral bodies, where necessary, to fill governance gaps”¹⁵.

As such, the means of undertaking MSP activities, as well as the ease with which these activities can occur, are likely to evolve in parallel. To account for this uncertainty, the MSP framework presented here has been considered under two different overarching governance options:

■ **Pre-ILBI:** No implementing agreement exists, with existing sectoral governance frameworks remaining in place and **no international legally binding instrument (ILBI)** for the conservation and sustainable use of marine biological diversity in ABNJ. However, some degree of cooperation between sectors does occur based on current processes and practices. This option could relate to the status quo at present or during the interim period of acceptance, ratification and implementation of a new ILBI.

■ **A new implementing agreement/ILBI in place:** This option considers a possible future situation in which a new **international legally binding instrument (ILBI) exists**, for the conservation and sustainable use of marine biological diversity in ABNJ. Existing global, regional and sectoral governance frameworks, as well as non-binding frameworks for activities such as marine scientific research and cable laying, remain in place and work in harmony with the new ILBI. This document explores two models for how the ILBI may be structured:

- **Global**
- **Hybrid**

The development of these two governance options first and foremost provides a mechanism to examine how the activities under a MSP process (i.e. those presented here in the framework) could be undertaken under different governance frameworks. In turn, this provides an insight into what aspects of governance are needed to support cross-sectoral MSP.

Secondly, given the cross-sectoral nature of MSP, consideration has been given to how sectors may be able to interact when planning their activities. Levels of interaction between sectors can vary significantly and interactions take place in a multitude of ways, influencing the ease with which cross-sectoral planning can occur. Levels of increasing interaction can be grouped into communication, cooperation and coordination (summarised in Figure 1).

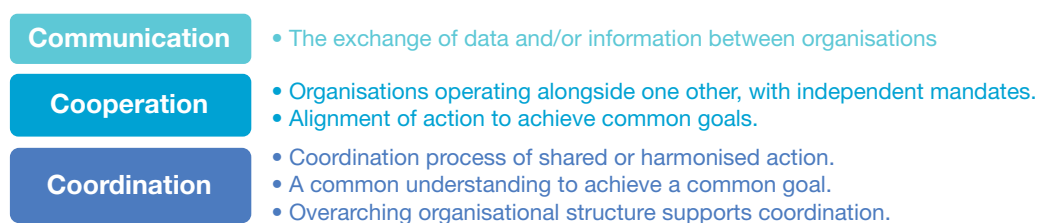


Figure 1: Levels of increasing interaction between sectors.

At present, existing governance arrangements in ABNJ (as represented in the **Pre-ILBI option**) only partially support cross-sectoral interaction and are not likely to facilitate high levels of interaction between sectors. This is in part because there is no dedicated coordination mechanism in place to encourage and support cross-sectoral engagement. Without an ILBI, cross-sectoral interaction is unlikely to progress towards coordination and is potentially limited in what it can achieve in terms of conservation and sustainable use of biodiversity in ABNJ.

¹³ UNGA (2019). A/CONF.232/2019/6. Article 15 (3)

¹⁴ Ibid., Article 15(2)

¹⁵ Ibid., Article 6(3)

The two proposed governance options can be used to explore which elements of the MSP process are dependent on the existence of specific aspects of a governance framework. Some elements of the process are likely to be possible under any governance framework, while others may require specific aspects of governance in order to be possible (see Table 2). For example, one element of an MSP process is implementation, yet without the legal mandate to implement MSP in ABNJ, this may not be possible. The two governance options are described in detail below according to different aspects of governance, alongside how cross-sectoral interactions between organisations could occur. The aim of these options is to encourage readers to explore the challenges and opportunities for MSP in ABNJ. As such, **the options are illustrative** and are not to be taken as recommended actions.

3.1 Governance option: Pre-ILBI

Currently in ABNJ, area-based planning and management is undertaken in a limited number of regions, but not comprehensively across the entire ocean. Generally, in ABNJ, cross-sectoral interaction and planning is sector-driven, often in line with sectoral priorities. Yet, in other situations, cross-sectoral interaction occurs for the purposes of conservation and sustainable use of biodiversity, for example in the North-East Atlantic (UNEP-WCMC & Seascope Consultants Ltd., 2019). Thus, the **Pre-ILBI** governance option draws inspiration from these examples. However, the option described here is not a replica of the current governance in any specific location, rather it illustrates the possibilities under a 'business as usual' situation in the absence of a new ILBI (i.e. whilst it is being negotiated or in the interim period prior to adoption, ratification and implementation of a new ILBI), using examples from existing processes.

Although BBNJ negotiations are ongoing, and there is a mandate to develop a new ILBI, adoption and ratification of the new instrument would not take place for several years. As such, this governance option has applicability for the foreseeable future, as well as providing guidance for what can be done in the interim whilst the ILBI is agreed and implemented. Given that the ILBI is currently being negotiated, it is assumed it will be successful and hence this non-ILBI governance option is named '**Pre-ILBI**'.

Under the **Pre-ILBI** option, organisations and other sectoral stakeholders (such as those undertaking marine scientific research or cable laying activities) operating in ABNJ undertake sector-specific area-based planning and management in line with their respective mandates, objectives and priorities. In the absence of an overarching cross-sectoral governance framework, regional platforms, such as Regional Seas Organisations, can be used to coordinate activities among sectoral organisations. If a common goal is identified via a cross-sectoral regional platform, organisations could cooperate to align area-based planning and management activities.

In some cases where organisations may wish to formalise cooperation or coordination, Memoranda of Understanding (MoU) could be established, as is the case between the Regional Seas Organisation OSPAR and a number of organisations, including the Regional Fisheries Management Organisation (RFMO) NEAFC, operating in the North-East Atlantic.¹⁶ The result would be a series of sector-specific measures that are complementary in nature and spatially overlapping. The overarching goals of different sectors would remain distinct, but certain aspects of these would be similar or identical, allowing sectors to aim for the achievement of mutually agreed or common goals. There is potential for both regional (e.g. Regional Seas Organisations, non-tuna RFMOs and tuna RFMOs) and global organisations (e.g. International Maritime Organization (IMO) and the International Seabed Authority (ISA)) to collaborate at the regional scale. However, as the current governance framework in ABNJ places no obligation on organisations to cooperate, and there is no comprehensive mechanism to support cooperation or coordination, the effectiveness of the process, as well as the scale of interaction, may be limited. Table 2 below summarises the components of the **Pre-ILBI** governance option.

National level coordination: States may support collaboration by being party to a Regional Seas Organisation or another regional entity. Beyond the regional scale, national level coordination between States is likely to be difficult as there is no overarching framework under this governance option to coordinate activities and ensure a consistent approach.

¹⁶ A list of OSPAR MoU and Cooperation Arrangements can be found here: <https://www.ospar.org/about/international-cooperation/memoranda-of-understanding>

3.2 Governance option: a new ILBI in place

The governance option in which **a new ILBI exists** has been developed using key outputs from the BBNJ process, which highlight discussions on enhancing cooperation and coordination in the use of ABMTs in ABNJ¹⁷. The scenarios are grounded in observations drawn from the current negotiations, such as the President's Aid to Negotiations and streamlined non-papers from the Preparatory Committee, summaries of the discussions which took place at the second session of the intergovernmental conference (IISD, 2019), and a zero draft text of the agreement released in May 2019¹⁸. This document does not aim to pre-empt the nature of a new ILBI, nor does it present a preferred future. Rather, it aims to encourage discussion using an illustrative governance option under which a cross-sectoral MSP framework can be hypothetically tested.

The negotiations at the Intergovernmental Conference have described various options for the governance arrangements of a new ILBI. Therefore, this document will present an illustrative governance option, drawing from the options discussed, to explore two different governance models: **global** and **hybrid**. Each will be discussed as part of the MSP testing process. The options presented here reflect different governance structures for the ILBI under which cross-sectoral interaction can occur.

Under the governance option **with an ILBI** in place, an institutional body with a dedicated mandate relating to biodiversity conservation and sustainable use, a scientific and technical advisory body or committee and a Secretariat are established. These bodies provide advice and technical support for sectoral activities, and also provide a decision-making and review function on matters relating to MSP. Decision-making will differ depending on the model of the ILBI i.e. if it is global or hybrid. Decisions could be made by a new global decision-making body or existing regional and sectoral organisations. Key obligations, principles and approaches are stipulated in the text of the ILBI, including international cooperation and coordination, the ecosystem approach, a science-based approach, the precautionary principle, and the application of an integrated approach. In regions where there is currently no regional organisation, one may have to be established in order to bridge gaps and ensure the ILBI has global coverage of ABNJ¹⁹. So as not to undermine existing area-based measures and to promote compatibility, the text of the ILBI sets out the relationship between ABMTs under the new instrument and those under existing relevant legal instruments.

Under this governance option, a dedicated coordination mechanism for MSP is established under the ILBI to support the alignment of sectoral activities and ABMTs²⁰. This involves:

- Promoting holistic and cross-sectoral approaches to ocean management as an objective of area-based management under the ILBI.
- Ensuring existing agreements and frameworks (regional and global) are not undermined, but complemented.
- Setting up a clearing-house mechanism²¹, including the establishment of an open-access web-based platform as an information and tools repository for information and knowledge exchange and coordination between global and regional organisations.

National Level Coordination: States may support collaboration through the development of a national-level working group to ensure a consistent approach to engagement with relevant conventions and organisations to which they are party.

These features and principles of the ILBI governance option will remain the same regardless of whether the model of the ILBI is **global** or **hybrid**, yet some of the details may differ, such as who has responsibility for certain actions. Table 2 below summarises the components of the ILBI governance option and indicates which components would remain the same or differ depending on the model of the ILBI.

¹⁷ These include the Preparatory Committee Chair's streamlined non-paper on elements of a draft text (2017) and the President's aid to negotiations A/CONF.232.2019/1* (2019).

¹⁸ UNGA (2019). A/CONF.232/2019/6

¹⁹ Ibid., Article 6(3)

²⁰ Ibid.

²¹ A mechanism established "to facilitate access to data, to create transparency, and to point up factors relevant to implementation of a convention" (Definition available at: <https://www.informea.org/en/terms/information-exchange>)

3.3 Summary

This section summarises the governance options described above. Each option is visually represented in Figure 2.

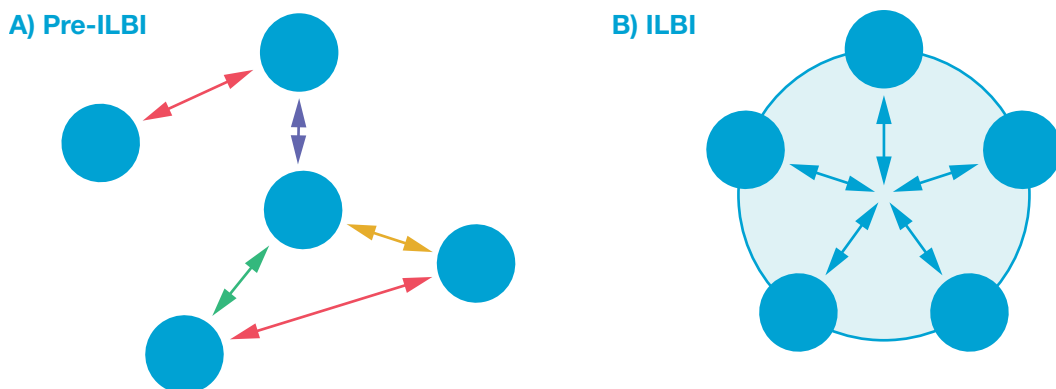


Figure 2: A) Pre-ILBI: cross-sectoral interaction (shown by the coloured arrows) is limited and as such coordination of activities between organisations (dark blue circles) is bilateral and limited to communication and cooperation; B) ILBI: cross-sectoral interaction and coordination of activities among organisations is enhanced and achievable due to the legal framework in place (shown here as a light blue circle).

The options are described in relation to different governance components, as set out in Table 1 below. The summary of the options is presented in Table 2, with differences between the Pre-ILBI and ILBI (including global and hybrid models) shown to allow comparison.

Table 1: Governance options in Table 2 is described using the listed components.

Governance component	Description
Institutional arrangement	Details the institutions that govern activities in ABNJ and their responsibilities.
Scientific and technical committee	Explains how scientific information is generated and used. Describes how decisions could be made under the governance framework.
Cross-sectoral forum	Describes the potential structure of a cross-sectoral MSP forum.
Area-based measures identification and implementation	Describes the types of area-based measures, for example, sector-specific or cross-sectoral measures.
Management plan	Illustrates how a management plan can be generated and implemented.
Compliance body	Describes a possible cross-sectoral compliance mechanism.
Applicability	Identifies which sectors the MSP process is applicable to.
Adaptive management cycle	Describes the process to adapt area-based measures in response to monitoring information.
Stakeholder mechanism	Describes how different sectors could be engaged or consulted in MSP processes.
Cross-sectoral interaction	Describes the level of cross-sectoral engagement possible within this particular governance option.

Table 2: The Pre-ILBI and ILBI governance options. Where details differ between a **global** or **hybrid** model for the ILBI in place, the column is divided and the two models described alongside one another in terms of ABMTs.

	Pre-ILBI	ILBI
Institutional arrangement	<ul style="list-style-type: none"> Sector-specific organisations supported by separate Secretariats. Some sectors have no central organisation to represent them (e.g. scientific research). No dedicated organisation for biodiversity. Non-binding agreements between sectoral organisations to cooperate. 	<ul style="list-style-type: none"> Existing regional and global sector-specific organisations remain. Key principles are included in ILBI e.g. international cooperation and coordination, ecosystem approach, science-based approach, precautionary principle, integrated approach. Principles in the ILBI provide clarity and a common vision for all State Parties across sectoral agreements when discussing issues of relevance to biodiversity conservation and sustainable use. Secretariat of the ILBI ensures coordination with other relevant Secretariats. New Conference of the Parties established. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <ul style="list-style-type: none"> Global decision-making body for biodiversity in ABNJ, for example, the COP. </div> <div style="width: 45%;"> <ul style="list-style-type: none"> Existing or new regional and sectoral decision-making bodies (broadening of mandates). Regional and sectoral bodies implementation of ABMTs under ILBI. Oversight for decision-making by global body. </div> </div>
Scientific and technical committee	<ul style="list-style-type: none"> Intergovernmental Oceanographic Commission (IOC) (recognised under UNCLOS as competent organisation in marine scientific research) provides scientific advice to States Parties. Regional intergovernmental marine science organisations, e.g. WIOMSA, provide scientific advice to sectoral organisations and member states in their respective regions. 	<ul style="list-style-type: none"> Provision of scientific and technical advice to the ILBI decision-making body and recommendations on area-based management tools. Coordination with other relevant legal instruments and frameworks and relevant global, regional and sectoral bodies and their international and regional scientific and technical committees via a working group. The working group enhances cooperation and coordination via sharing of relevant scientific information and providing consistent scientific advice. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <ul style="list-style-type: none"> Existing global body, such as IOC, or new biodiversity-focused Scientific and Technical Committee is established. Working Group established to facilitate coordination between the new Scientific and Technical Committee and existing Scientific and Technical Committees. </div> <div style="width: 45%;"> <ul style="list-style-type: none"> Existing committees form a Working Group to provide scientific advice e.g. those of the IWC/ICES/PICES/ISA/IMO, coordinated by the ILBI. </div> </div>
Cross-sectoral forum	<ul style="list-style-type: none"> Regional coordination platforms to discuss issues of common concern and allow cooperation and complementarity of actions across sectors. For example, the 'ABNJ Working Group' developed under the umbrella of CPPS or the collective arrangement between OSPAR and the NEAFC²². Regional platforms are geographically restricted (regional) and therefore have limited membership. 	<ul style="list-style-type: none"> Coordination mechanism established at the global level to enhance cooperation and coordination between relevant agreements and sectoral bodies. Integrated and cross-sectoral approach to ocean management. promoted as an objective of area-based planning and management. Distinct organisational activities are integrated or harmonised in ABNJ to address a particular issue, e.g. protection of a specific seabed feature and associated biodiversity.

²² The collective arrangement is a "formal agreement between legally competent authorities managing human activities in the Areas Beyond National Jurisdiction (ABNJ) in the North-East Atlantic" with the aim of "facilitating cooperation and coordination on area based management between legally competent authorities..."

<p>Cross-sectoral forum</p>	<ul style="list-style-type: none"> ■ MoU can be established to coordinate cross-sectoral planning. ■ Cooperation - an intermediate level of cross-sectoral interaction – allows sectors to agree and plan the management of activities in a balanced way, in order to address a particular issue of common concern in ABNJ. ■ Establishment of cross-sectoral regional platforms to encourage the exchange of information on sectoral activities, discussions on common interests or concerns and consideration of aligned/ coordinated area based planning measures. 	<ul style="list-style-type: none"> ■ New Secretariat supports facilitation of consultation on area-based planning and management, including use of ABMTs. ■ Clearing-house mechanism, including an open-access, web-based platform, identified or established as a central repository for information and tools. The platform facilitates information and knowledge exchange and coordination between sectors and regions. <hr/> <ul style="list-style-type: none"> ■ Sectoral and relevant regional agreements and bodies engage in coordination mechanism ■ Activities undertaken regionally and sectorally are reported to the COP. ■ A global body makes high-level decisions whilst establishing processes for cooperating and coordination with existing regional and sectoral bodies
<p>Area-based measures identification and implementation</p>	<ul style="list-style-type: none"> ■ Sector-specific ABMTs. ■ Complementary measures can be implemented via voluntary cooperation between sectors (non-comprehensive). ■ ABMTs can be spatially overlapping to enable biodiversity conservation and sustainable use objectives can be met by multiple sectors for a given area. 	<ul style="list-style-type: none"> ■ State Parties to sectoral organisations promote the adoption or implementation of ABMTs in support biodiversity conservation and sustainable use objectives. ■ Sector-specific ABMTs go through a process of recognition under new ILBI to foster coordination/alignment. <hr/> <ul style="list-style-type: none"> ■ Application of <i>global</i> overarching framework for the recognition, proposal and establishment of ABMTs, including MPAs. ■ <i>Global</i> coordination mechanism responds to and assists regional coordination mechanisms where these exist.
<p>Management plan</p>	<ul style="list-style-type: none"> ■ Voluntary cooperation for implementing management measures. ■ Complementary / aligned management plans possible. 	<ul style="list-style-type: none"> ■ Area-based management plans recognise other relevant sectoral activities. ■ Establishment of management plan for cross-sectoral alignment under the ILBI coordination mechanism. ■ Management plans set out institutional roles and responsibilities.
<p>Compliance body / committee</p>	<ul style="list-style-type: none"> ■ Sectors are self-governed. ■ Voluntary cooperation mechanisms established between sectors to support compliance. 	<ul style="list-style-type: none"> ■ Compliance is the responsibility of global, regional and sectoral bodies. <hr/> <ul style="list-style-type: none"> ■ ILBI compliance committee is established to review compliance of management measures and make recommendations based on monitoring and reporting. ■ The ILBI compliance committee supports large scale monitoring of activities to ensure compliance (e.g. satellite systems with trained personnel to share data/ information with other sectors). ■ <i>Existing</i> regional and sectoral compliance bodies are responsible for compliance. Existing bodies report to ILBI/ COP in relation to ILBI objectives.

Applicability of ABMTs	<ul style="list-style-type: none"> ■ ABMTs binding upon States Parties to the respective sectoral agreements under which they were adopted. ■ Potential for cross-sectoral cooperation agreements (e.g. MoU) to prevent undermining of sector-specific measures or ABMTs. 	<ul style="list-style-type: none"> ■ New ABMTs established under the ILBI are Binding for all State Parties. ■ Existing sector-specific ABMTs remain applicable to respective sectors only. However, the ILBI can facilitate processes to encourage wider cross-sectoral cooperation. ■ Non-States Parties to the ILBI continue to be obliged to cooperate in accordance with UNCLOS or under customary law. 		
Adaptive management cycle	<ul style="list-style-type: none"> ■ Adaptation of the management plan in line with sectoral mandate and sector-specific priorities. ■ Cross-sectoral review mechanisms of the management plan possible through regional platforms, with input from global and regional Scientific and Technical Committees. 	<ul style="list-style-type: none"> ■ ILBI has adaptive management as a general principle. ■ ILBI provides guidance on adaptive management. <table border="1" data-bbox="738 510 1211 725"> <tr> <td data-bbox="738 510 970 725"> <ul style="list-style-type: none"> ■ A review of cross-sectoral ABMTs under the ILBI conducted by global coordination mechanism. ■ Review supported by ILBI Scientific and Technical Committee. </td> <td data-bbox="978 510 1211 725"> <ul style="list-style-type: none"> ■ Regional and sectoral bodies report on their review of ABMTs recognised under ILBI. </td> </tr> </table>	<ul style="list-style-type: none"> ■ A review of cross-sectoral ABMTs under the ILBI conducted by global coordination mechanism. ■ Review supported by ILBI Scientific and Technical Committee. 	<ul style="list-style-type: none"> ■ Regional and sectoral bodies report on their review of ABMTs recognised under ILBI.
<ul style="list-style-type: none"> ■ A review of cross-sectoral ABMTs under the ILBI conducted by global coordination mechanism. ■ Review supported by ILBI Scientific and Technical Committee. 	<ul style="list-style-type: none"> ■ Regional and sectoral bodies report on their review of ABMTs recognised under ILBI. 			
Stakeholder mechanism	<ul style="list-style-type: none"> ■ Engagement mechanism established by sectoral organisations. ■ Engagement with wider stakeholder community can be facilitated by cross-sectoral regional platforms. 	<ul style="list-style-type: none"> ■ The ILBI promotes and facilitates public participation in addressing conservation and sustainable use of BBNJ, in particular via mechanisms for a coordinated Environmental Impact Assessment (EIA) process across sectors. ■ Provision of visibility and transparency over sectoral activities, including via facilitating access to relevant publications and tools i.e. via a clearing house. ■ The ILBI provides general guidance on stakeholder engagement in relation to the identification, development and implementation of ABMTs. 		

4 MSP framework

This section explores the MSP framework, and highlights the key elements of the MSP process (Figure 3). As MSP is a management concept rather than a prescribed approach, the elements and activities outlined here are not prescriptive and can be used as a guide for undertaking MSP in ABNJ.

The key elements of the MSP process are individual, but interconnected parts of the management cycle. They have been synthesized from several existing models. The order in which these elements could be considered is not fixed, and will be dependent upon the situational context. As such, the MSP process is designed to be flexible and adaptable to specific contextual needs.

In the sections below, each element of the MSP process is described and **what** activities could be undertaken as part of that element are listed. The list of activities provides illustrative example activities that can be explored under each governance option and is therefore not exhaustive. More detail is then provided in relation to **who** could undertake such activities and **how** they could be undertaken, in **Pre-ILBI** and **ILBI** contexts.

The framework can be separated into two phases: the 'pre-planning' process and the 'planning cycle', as shown in Figure 3. Elements for each are described below respectively, and the enabling conditions that affect the planning process are also discussed. It should be noted that the process of undertaking MSP should be complemented by a Strategic Environmental Assessment (SEA). SEAs are an important tool for integrating environmental considerations into the preparation and adoption of 'Plans' and 'Programmes'²³. They provide a framework for the strategic assessment or consideration of environmental effects, alternatives and possible mitigation measures. SEAs are therefore important for ensuring that environmental considerations are incorporated into the preparation and adoption of marine spatial plans and in supporting the application of an ecosystem-based approach (Craik & Gu, 2019). As such, both processes are mutually informative, and pre-determined connection points between SEA and MSP can support effective transfer of information.



Figure 3: Key elements of the MSP framework (examples of guiding principles are shown in purple).

²³ 'Strategic Environmental Assessment', 2019. European MSP platform. Available at: <https://www.msp-platform.eu/faq/strategic-environmental-assessment-sea>

4.1 Pre-planning and cross-cutting elements

4.1.1 Identifying the objectives

Area-based planning often originates from the need to achieve sectoral or organisational objectives, for example, giving adequate consideration to the overall sustainability of current or future actions with regard to biodiversity conservation. Alternatively, planning may be undertaken to resolve existing issues or to proactively plan for future issues, for example in relation to emerging, and potentially conflicting activities in ABNJ. Other examples include the need for further consideration of specific biodiversity features within an area, such as deep sea coral, to respond to issues relating to marine ecosystem health, or the potential for planning in areas where there are overlapping activities that may not be fully compatible. Therefore, the objectives of the MSP process will be determined by the need for planning and the scale at which it is required, i.e. the geographic area in question. ABNJ is a vast space, so defining the objectives, geographic scope and relevant stakeholders is important to provide direction and clarity to secure buy-in (Pomeroy & Douvère, 2008). Finally, the specific objectives of the MSP process should be measurable, for example with clear indicators of progress, so that the achievement of desired results and the level of success can be easily determined.

Activities

■ Identification and prioritisation of issue and definition of specific area

In order to identify key issues that can be addressed via an MSP process, information needs to be collected in relation to the environment and human uses of a particular area (see also activities below). The scope/size of the MSP process needs to be appropriate/feasible and consideration should be given to existing measures, identification of relevant stakeholders and ensuring the biodiversity feature of interest is included in the planning space. For example, vertical zoning of the water column in terms of application of MSP measures may need to be considered in cases where extended continental shelf claims exist. In these cases, the seabed falls under national jurisdiction but the water column above does not. For example, Portugal has an extended continental shelf claim in the North-East Atlantic and has provided protection for a hydrothermal vent field situated on the seabed of its continental shelf. Furthermore, the water column above this area is a designated MPA under OSPAR (the Regional Seas Organisation for this region), meaning that this area has both vertical and lateral protection from the adverse impacts of human activities (UNEP-WCMC, 2018).

■ Identification of current ecological conditions

In order to ensure that a MSP process can effectively support biodiversity conservation and sustainable use, it is important to understand the underpinning biodiversity features and ecosystem processes, as well as their status, pressures, drivers and future projected changes. The ecological conditions will influence the benefits that various stakeholders are receiving from a particular area.

■ Identification of existing management measures, legal mandates, rights and obligations and sectoral activities

Undertaking this review will help to ensure that any new MSP activities do not undermine existing efforts by competent organisations and can bring together relevant sectors for cross-sectoral discussions. This review can also help to determine the existing obligations and rights set out under the legal and governance arrangements in place, such as those provided for under UNCLOS, so as to ensure they are not undermined. Collection of this information will also help to identify what activities are already being undertaken in an area, which may support the objectives of the MSP process, such as the conservation and sustainable use of biodiversity.

■ Defining and agreeing the objective of the MSP process

The objectives of an MSP process will depend upon why there is a need for MSP, for example balancing overlapping human activities or forward planning to address and mitigate future pressures. Objectives should be based on available information and evidence (for example information collected in the activities above). Objectives can be agreed via cross-sectoral engagement with relevant stakeholder to ensure buy-in. Clarity and agreement on the objectives, such as integrating biodiversity into existing area-based planning and management processes, is important to ensure long-term sustainability of activities in ABNJ.

Pre-ILBI

Currently, under the **Pre-ILBI** governance option, the lack of a coordinated cross-sectoral institutional arrangement means that there is no mechanism through which multiple sectors operating in ABNJ can easily come together to initiate a MSP process. Sectors could voluntarily agree to work together in ABNJ to achieve a common goal (for example through the establishment of a MoU), and there are examples in which this has occurred (UNEP-WCMC & Seascope Consultants Ltd., 2019). However, area-based planning and management activities would not be comprehensive across ABNJ and gaps in the existing governance framework (i.e. the lack of a coordination mechanism) may prove challenging to overcome (UNEP-WCMC, 2017).

A cross-sectoral regional platform, such as a Regional Seas Organisation, could provide a platform for different sectors to meet, such as through meetings or workshops, in order to identify objectives, undertake SEAs and initiate an MSP process. However, as there is no requirement for all sectors to participate in cross-sectoral regional platforms such as Regional Seas Organisations, not all sectors may engage. As such, the scope and effectiveness of planning processes coordinated in this way may be limited.

ILBI

With **an ILBI in place**, institutional arrangements exist to support users, and those with an interest in ABNJ, to engage in an MSP process. In the case of a **global ILBI**, this could be done through a newly established global Secretariat, whereby the goals, principles and standards are identical across all cases of MSP in ABNJ globally. In the case of a **hybrid ILBI**, a new global Secretariat may still be established, with existing regional cross-sectoral platforms, such as the collective arrangement in the North-East Atlantic²⁴, facilitating implementation, but with wider sectoral participation. Where such regional platforms do not exist, new ones could be established, guided and assisted by the global Secretariat where required.

The ILBI may have the mandate to identify objectives from the onset of an MSP process, for example through an established working group, with formal decisions taken by a dedicated body, such as a Conference of Parties (COP). With the institutional arrangement providing a platform for users and stakeholders of ABNJ to identify areas of common concern and discuss the objectives for an MSP process, the creation of a joint vision for how ABNJ are managed could be facilitated, providing clarity to all those engaged in the process.

4.1.2 Stakeholder engagement

The identification of relevant stakeholders will depend on the geographical location and scope of activities that are to be considered in the MSP process. The objectives of an MSP process, or those that drive a process and its stakeholders, may be social, economic and/or environmental. As such, input from a wide variety of stakeholders from across the globe may be required and a procedure to balance different interests will need to be agreed. This MSP framework is concerned with the conservation and sustainable use of marine biological diversity in ABNJ.

The social context in which MSP is carried out is an important consideration, as a range of social issues may directly or indirectly impact or influence a MSP process. Due to the proximity of humans, coastal management within national jurisdictions has made progress in incorporating social issues into management plans. One such example is through the acknowledgement of gender differences: men and women may use coastal and marine spaces in different ways and so have different impacts and influences upon the marine environment (Kleiber *et al.* 2015). Recognising and incorporating these differences into resource management plans, such as those resulting from a MSP process, is necessary to achieve effective management.

Despite the greater distances between ABNJ and human settlements, many different stakeholders still operate in— and rely on resources from— ABNJ, and thus continue to exert social influences on ABNJ. Gender has been shown to be a major component of natural resource management and therefore should be considered as part of MSP in ABNJ. De la Torre-Castro *et al.* (2017) describes a need for assessment of the ‘social landscape’ as well as the ‘ecological landscape’ in terms of gender and coastal management. Such assessments could be undertaken as part of a SEA process for ABNJ and then the results used to inform a MSP approach.

²⁴ OSPAR Agreement 2014-09 (updated 2018)

As sectoral activities increase in scope and intensity in ABNJ, competing uses of space and resources, and therefore potentially incompatible activities, may become more likely. Careful consideration of sectoral objectives and priorities will be required in such instances to ensure a balance of interests and sustainable resource use. Further still, the purpose of the BBNJ negotiations is the conservation and sustainable use of biodiversity, meaning sectors may naturally have to alter their current activities to meet this objective. Simultaneously, organisational engagement will need to be in line with each organisation's established processes and mandates. It will also be necessary to understand how the State Parties to various agreements wish to participate in a planning process.

In instances where different sectors are operating in the same area or exploiting the same resources, or where impacts are of concern, there may need to be a degree of compromise. If the relevant stakeholders are included and engaged from the beginning of the MSP process, it is more likely that an agreeable balance of activities and compromises can be reached without contention. This could involve coordination of consultation processes with a transboundary or joint SEA to identify and understand transboundary pressures or issues, identify issues or areas of common concern that should be prioritised, and the development of collaborative options or measures to address issues. Where this may not be possible, it is important to ensure a mediation or dispute resolution process is in place. See section 4.2.1 for further details.

Stakeholders should be enabled to engage and provide input to the MSP process from the very beginning when identifying the objectives, as well as voicing what they can expect from it. Encouraging ownership of the MSP process is likely to encourage increased compliance with any resulting measures associated with an area (Pomeroy & Douvère, 2008).

Activities

■ Identification of relevant stakeholders

There are currently few sectors operating in ABNJ and although technological advances are improving access to these areas, it is still a challenging environment in which to work. Identifying stakeholders should therefore, in theory, be relatively simple. However, the vast and highly connected nature of ABNJ means a wider range of distant stakeholders, such as States exercising various freedoms under UNCLOS²⁵, Non-Governmental Organisations (NGOs) or civil society, may also be relevant to a MSP process. Further still, the seabed is classified as the '*Common Heritage of Mankind*' under UNCLOS²⁶, meaning that everyone is a stakeholder, and given that ABNJ provides ecosystem services for everyone, it could be argued that everybody is therefore a stakeholder. This means identifying stakeholders of ABNJ can prove challenging as they may not all be immediately obvious. To ensure MSP processes are realistic in scope and ambition, various stakeholder considerations, including the need to engage with new or emerging stakeholders in future, are required.

Identification of stakeholders with the greatest relevance to the MSP process will depend on a variety of factors, including geographical location and/or scope of the area in question, which sectors are active in the area, biodiversity features to be considered and the potential management actions to be taken. This activity may be undertaken as part of the initial scoping exercise described in section 4.1.1, with consideration given to a wide variety of stakeholders to ensure a balanced representation of stakeholders in term of geographic location, sectoral interests, economic priorities and gender.

■ Development of a mechanism for stakeholder engagement

There should be a clear rationale for, and process through which, each stakeholder or group of stakeholders can engage with the MSP process, for example through consultations or regular meetings.

■ Identification of at what stage/s, and how, relevant stakeholders can provide input into the MSP process

To facilitate stakeholder buy-in, it can be important to establish and communicate the role of each stakeholder, how they can provide input to the process, what stage/s they can provide input and what they might expect from it. These will be context-specific and should be agreed upon with stakeholders. At this stage, it is useful to clarify stakeholder expectations so that the MSP process can deliver upon stakeholder needs and expectations can be managed.

²⁵ UNCLOS (1982). Article 87, 'Freedom of the high seas'

²⁶ Common heritage of mankind is defined as "a principle of international law which holds that defined territorial areas and elements of humanity's common heritage (cultural and natural) should be held in trust for future generations and be protected from exploitation by individual nation states or corporations" (InforMEA, 2019), and is stipulated in Article 136 of UNCLOS (1982).

Pre-ILBI

Under a **Pre-ILBI** governance option, the lack of an overarching institution or leading body for undertaking MSP limits the ability to identify stakeholders of the greatest relevance to a MSP process. Stakeholder identification may be limited by sectoral mechanisms, which may lack the necessary holistic overview to identify the broad range of stakeholders affected by the MSP process. Therefore, the process of stakeholder identification and engagement should be open and transparent to ensure that all stakeholders are correctly identified and have the opportunity to engage.

Engagement of stakeholders, and providing a means for input (for example via consultations or regular meetings), is important to ensure buy-in to the MSP process and to provide transparency. Without an ILBI, consultations are possible and there are examples, such as those undertaken by OSPAR and the IS²⁷. At present, however, the predominantly sector-specific nature of stakeholder engagement means there is no comprehensive mechanism to engage with the broad range of stakeholders likely to be relevant to a MSP process. Nor are there overarching procedures or standards for stakeholder engagement in ABNJ, meaning there is little consistency. In addition, some stakeholders may find it difficult to engage without additional capacity (for example to travel to locations for face-to-face consultations), a more formal institutional framework or a coordinating mechanism.

Another issue in the Pre-ILBI context is that the interests of States not engaged in activities in ABNJ are not well represented. For instance, fishing States decide measures through Regional Fishing Management Organisations (RFMOs), yet non-fishing States cannot participate even though they may have a conservation interest. This means that management of ABNJ is often guided by States currently operating in ABNJ.

ILBI

With **an ILBI in place**, the institutional arrangement may allow for the identification of stakeholders, including those which may not initially be apparent. If the ILBI followed a **global** model, a Secretariat to the new Agreement could provide the coordination role in which all relevant stakeholders could be identified. The global nature of this Secretariat could help to identify any stakeholders outside of the immediate geographic scope of MSP. One such example are stakeholders that are reliant on— or value— the biodiversity of a distant area and due to the inherent connectivity of the ocean may be affected by the MSP process (Popova *et al.*, 2019). To make the process transparent, the method for identifying stakeholders and those that are identified could be shared on a global website or a clearing-house mechanism through which experiences and lessons can be shared. It may also help in identifying wider stakeholders if this information is seen by groups or organisations that believe a MSP process may affect their operations or livelihoods.

Under a **hybrid** model, a regional organisation could support stakeholder identification and engagement with the assistance of the global Secretariat. The ILBI could provide a mechanism for stakeholders to be engaged through a variety of means, such as consultations or working groups, or in a more integrated manner such as the formulation of partnerships or agreements to cooperate. The regional mechanism should be designed to facilitate stakeholder engagement with those situated outside the region, as well as those located within. This could involve a lead regional organisation communicating and cooperating with counterparts in neighbouring regions. This type of cooperation may help to ensure a more consistent approach to MSP globally, with each regional organisation informed of—and involved in—other regional MSP processes, as necessary.

4.1.3 Leadership roles

The identification of a responsible entity to lead and guide a MSP process is important, as well as identifying the roles and responsibilities of different stakeholders in the process. Establishing responsibilities can help to create a sense of ownership and therefore secure stakeholder buy-in to the MSP process. In addition, upon completion of the MSP process, is important that a leading or coordinating entity has the legal status to drive, promote and support implementation of a management plan.

²⁷ In 2018, OSPAR agreed to seek wider input on the nomination of the 'North Atlantic Current and Evlanov Seamount MPA' in ABNJ (available [here](#)), and in 2019, the ISA held public consultations on its High Level Action Plan in 2019 (accessed [here](#)).

Activities

■ Identify who is responsible for leading and guiding the planning process

A leadership entity with a coordinating function that guides the MSP activities between stakeholders, is essential. All participating stakeholders may agree to identify a lead entity for an MSP process and the terms of reference under which they may participate. The lead entity will be responsible for ensuring that the MSP process is credible, for example that activities are identified and undertaken via an open, inclusive, informed and transparent process. From a leadership perspective, it may be beneficial for a lead entity to have a legal mandate to operate in ABNJ, as its primary role may be to coordinate and enable MSP activities in ABNJ under a planning process.

■ Define the roles and responsibilities of the stakeholders involved in the process

Ensuring relevant entities are involved will facilitate the planning process, clarify stakeholder roles, and help define the mechanism for approval of a management plan and support enforcement.

Pre-ILBI

Under the **Pre-ILBI** governance option, there is no organisation with the legal status and clear mandate to undertake MSP in ABNJ, nor is there an organisation that may easily extend its mandate to do so. If one organisation or sector established itself in a leadership role, the lack of an institutional framework to confirm its authority would mean that other sectors and organisations using the same space in ABNJ may not necessarily accept their leadership. As such, efforts to initiate an MSP process in such a way may not deliver meaningful results. Further still, single-sector organisations do not necessarily have experience in MSP and may not have the scientific or management capacity to undertake it.

ILBI

With **an ILBI in place**, a leading entity with a mandate to undertake MSP and support the implementation of associated activities could be identified. There are a number of options for leadership. Under a **global** model, an agreed global Secretariat could facilitate the MSP process, or under a **hybrid** model, a regional organisation could facilitate implementation of MSP with assistance from a global body. Alternatively, and under either model, an independent facilitation and coordination entity with MSP expertise, but no involvement in the ABNJ space, could take the leadership role. Under the new ILBI, it is possible that there would be a mandate for identifying leadership roles for undertaking MSP.

4.2 Planning Cycle

4.2.1 Participatory planning formulation

A participatory planning process involves stakeholders throughout in order to ensure their different needs are considered. Such a process can be useful in helping to ensure a balance between the objectives of different sectors, as well as biodiversity conservation and other interests, when undertaking an MSP process. Participatory planning also involves the collation — and inclusion — of relevant data and information in order to shape the MSP process and the development of a management plan. Irrespective of the institutional arrangement, a key challenge is the limited ecological, environmental and human activity data available for ABNJ, although a number of projects are helping to overcome these difficulties (for example, the ATLAS²⁸, MiCO²⁹ and SponGES³⁰ projects). In many instances, existing data may be sectoral and although there are various requirements for sharing of data that may relate to environmental effects³¹, many datasets remain restricted in their availability and use, especially including economic and sectoral activity data.

²⁸ See <https://www.eu-atlas.org/>

²⁹ See <https://mico.eco/>

³⁰ See <http://www.deepseasponges.org/>

³¹ The ISA has established MoU with [IOC-UNESCO](#), [International Cable Protection Committee \(ICPC\)](#) and [OSPAR](#) to encourage the sharing of relevant environmental data.

Activities

■ Develop a participatory planning process

A participatory planning process ensures the different needs are considered of all relevant stakeholders by involving them throughout the process, where appropriate. This helps to balance the objectives of different sectors when undertaking MSP.

■ Identify and incorporate relevant data sources into the planning process

To facilitate creation of a comprehensive management plan, data sources will need to be identified and a strategy developed for overcoming data gaps. Data required, may include: current and proposed activities in the area, spatial distribution, and economic benefits coming from the ecosystems underpinning of those activities (ecosystem services from habitats/species). Additionally, it may be possible for further data identification could be undertaken without direct participation from stakeholders, such as has happened on the ATLAS project (*pers comm.* 2019), in which scientists assembled the data and then presented this information to stakeholders.

■ Consider dispute resolution processes

The planning process is likely to require consideration of co-location and spatial compatibilities of different activities occurring within a given area. A mediation mechanism may be required if the situation occurs where two proposed overlapping activities are mutually incompatible and an agreement difficult to reach. Such a process may help to ensure a balance of needs and activities amongst sectors operating in the same space.

Pre-ILBI

Under a **Pre-ILBI option**, identifying relevant stakeholders and providing a means for their input can be challenging (as noted in Section 4.1.2), and as such, a participatory planning process may be difficult to facilitate. If it is not possible to identify all stakeholders and/or there is not a means for their input, it cannot be said that an MSP process is participatory throughout all of its stages.

Under this option there is no requirement for stakeholders to share data. Some organisations have agreements to share their data (for example, the ISA), however many of these agreements are voluntary and limited in scope. This is partly due to the lack of a means to share data, but also because a culture of transparency and proactive data-sharing does not yet exist for sectors operating in ABNJ. As such, sectors may embark upon individual, financially and capacity intensive campaigns seeking to acquire the same or similar data. Limited sharing and exchange of sectoral data between stakeholders can disadvantage stakeholders with less capacity for data collection, in particular in relation to informed decision making. Consequently, a lack of ecological and biodiversity relevant data for an area means that an organisation cannot adequately account for it in their activities, and thus conservation measures may be insufficient.

When conflict arises, mediation requires a designated independent body with the authority to address and resolve issues. With no ILBI in place, stakeholders are not obligated to resolve disputes, nor is there a process for identifying a body to do so. As such, conflict between stakeholders may arise and remain unresolved over a long period of time, likely hindering the progression of cross-sectoral planning and affecting the ability with which marine biological diversity can be adequately conserved and sustainably used in ABNJ.

ILBI

With **an ILBI in place**, an institutional arrangement that facilitates the identification of all stakeholders to the MSP process exists, as described in section 4.1.2. Identification of stakeholders and their individual relevance to specific stages of the MSP process means that each stakeholder can participate and contribute meaningfully towards the development of a management plan. There are a number of options for how this could be achieved. One example is the establishment of an online portal where information about the MSP process can be found, updates can be posted and stakeholders can provide feedback on proposed plans. However, it is recognised that some sectors may have certain confidential information they may not want to share. The portal could be complemented by physical stakeholder meetings occurring on an annual basis, for example, which could address any particular issues identified and help to strengthen relationships by allowing stakeholder to meet one another in person. Online mechanisms allow for

wide stakeholder participation, and as such help to generate stakeholder buy-in. Additionally, online fora help to ensure an open and transparent process, which reduces the chances of conflict or disagreement when management measures come to be implemented.

The ILBI could require or encourage States Parties, engaged in sectoral activities within ABNJ, to submit spatial and temporal data relating to biodiversity elements, as well as sectoral activity data to a scientific and technical body established under the ILBI, following the guidelines and standards they have set. The scientific and technical body could act as a data repository, providing quality assurance of the data, facilitating data availability to relevant stakeholders, and providing recommendations on area-based management actions based on analysis of available data, thus informing management plans. As a centralised data storage body, the scientific and technical body could also identify where there are gaps in data, helping to ensure that the precautionary principle can be applied until sufficient data is available.

An ILBI could provide the mandate for an independent and impartial body to address conflict and engage with the disputing parties via a dispute resolution process. This could be through the existing process under UNCLOS for the settlement of disputes³² or via a new process, developed using the UNCLOS process for inspiration.

4.2.2 Management plan development

The elements described in Section 4 thus far, are important building blocks in the development of a management plan for use in ABNJ. A management plan should set out an agreed objective (for example, conservation and sustainable use of biodiversity, see section 4.1.1) and a set of area-based management measures (interventions) for a particular area. A management plan is the essence of an MSP process, summarizing all key information, detailing how the area of concern will be managed and describing the actions to be undertaken to achieve the key goals and objectives. The plan could be a document that includes information on current activities, existing and future conditions, relevant stakeholders and types of information used/required. Types of information could include: the spatial location and range of activities occurring in ABNJ, relevant area-based designations, any compatibilities of activities between sectors, and relevant data on biodiversity features.

Activities

■ Develop/draft a management plan for area-based measures

The plan could set out the following:

- Key principles and approaches (including, but not limited to, a science-based approach, adaptive management, ecosystem approach, precautionary principle);
- Identification of the key biodiversity features, their status, and present and future pressures;
- Stakeholder engagement processes and requirements;
- Type of area-based management tool used (example include, but are not limited to, marine protected areas, exclusion zones, routing measures, fisheries closures);
- Process to identify and agree on appropriate area-based management tools;
- Specific policies and management interventions required and agreed responsible parties;
- Monitoring and enforcement procedures;
- Communication strategy to inform sectors if activities impinge on another; and
- Review and adaptation process (for example, frequency of review, how results will be used, communication of results).

Pre-ILBI

In a **Pre-ILBI** context, the issues previously noted in relation to the pre-planning cycle (Section 4.1) are likely to hinder the progression of an MSP process to such an extent that it may prove challenging to develop a management plan under which cross-sectoral area-based management can be implemented.

³² UN (2010). 'Settlement of Disputes'

ILBI

With **an ILBI in place**, the institutional arrangement allows for the MSP process to advance sufficiently for a management plan to be developed. Given the vast size of ABNJ, and the challenges in governing these areas, a management plan would need to be targeted for specific areas and issues, in line with MSP process objectives (Section 4.1.1). A series of inter-connected management areas, each with different, but complementary plans, may be necessary to take account of the large size of ABNJ.

Under a **global** model, a Scientific and Technical Committee could inform and advise a cross-sectoral forum, consisting of relevant stakeholders. The cross-sectoral forum could then, in collaboration and consultation with the Scientific and Technical Committee, formulate a management plan for a specific area under an MSP process, for example, the Western Indian Ocean or South East Pacific. A management plan could then be submitted for discussion and approval to the Contracting Parties, via the Secretariat of the ILBI. In this model, the cross-sectoral forum responsible for designing and coordinating MSP in ABNJ, can design individual, but complementary MSP processes for specific areas and so create a network of inter-connected MSP processes globally in ABNJ.

Alternatively, under a **hybrid** model, a global Scientific and Technical Committee could work with Regional Scientific and Technical Committees (established from existing regional organisations or conventions) to inform and advise the cross-sectoral forum established for each region. In turn, the cross-sectoral forum could develop the management plan to be submitted to Contracting Parties to the regional Conventions for approval. Under this model, the management plan could be developed by regional specialists who have expertise in that region, while also using the global perspective and knowledge of experts from outside the region.

4.2.3 Implementation and enforcement

Implementation involves converting spatial management plans into reality. This is a critical stage of a MSP process as it progresses the theoretical planning process into practical application. The measures outlined in a management plan, including area-based management measures or tools, are actioned by a responsible organisation - as detailed in the management plan. Enforcement measures are also operationalised by the responsible entity. Implementation and enforcement measures will, alongside various other factors, determine the results and outcome of a MSP process.

Activities

■ Implementation of measures associated with biodiversity conservation and sustainable use

The implementation process for measures, including area-based measures for the purposes of biodiversity conservation and sustainable use (such as MPAs, fisheries closures, routing measures), would be established in a management plan. The entity responsible for implementation is to be agreed by stakeholders and listed in the plan.

■ Management actions implemented by the responsible entity/entities

Management measures or actions are outlined in a management plan and responsible organisations specified. Management actions reflect the overall objectives of the planning process, and responsible entities are likely to be selected based on available capacity, relevant mandates or ability to contribute. For example, actions could include data gathering processes, sectoral management actions or communication of area-based management measures.

■ Enforcement

Enforcement is necessary to ensure that area-based management measures are not undermined and that stakeholders and their activities are compliant with the conditions of the management plan in a given area. This is so as to support progress towards the objectives of the MSP process. Enforcement responsibility, specific measures, and required capacity would be specified in the management plan.

Pre-ILBI

With **no ILBI in place**, a key challenge to MSP is the implementation and enforcement of specific management actions. Implementation and enforcement are related to sectoral management actions, and are frequently only binding on countries party to specific agreements, for example, regional agreements such as the North-East Atlantic ‘collective arrangement’³³. In such instances, it is the Flag State’s³⁴ responsibility to ensure compliance with management actions. Should ABNJ stakeholders voluntarily engage in a MSP process and agree to proposed actions (it is recognised that this may be challenging), the lack of a binding agreement means that they are not obligated to implement associated measures and also may not have a legal mandate to enforce such measures. Alternatively, MoU between multiple sectors may be established. However, this does not guarantee that all relevant stakeholders will engage with the measures implemented and so the MSP process is limited in what it can achieve without an ILBI. Furthermore, the costs and technological challenges of monitoring ABNJ makes enforcement difficult. Without an ILBI, various freedoms set out in UNCLOS³⁵ make it unclear as to who would carry out enforcement and whether they would have the authority to do so.

ILBI

With **an ILBI in place**, measures resulting from a MSP process may be binding for all States Parties and sectors included in the process, and therefore measures set out in a management plan can be enforced. Failure to implement, adhere to or comply with, measures set out in a management plan, may result in punitive or non-punitive measures, depending upon what is stipulated in the plan.

Enforcement of management measures and identifying instances of non-compliance could be carried out using technologies, such as satellite tracking of shipping or fishing activities using Vessel Monitoring Systems (VMS) or Automatic Identification Systems (AIS) (Cremers *et al.* 2019). Although there are associated costs and challenges with such enforcement, an ILBI may provide for the identification of financial and technological resources to progress these elements of a MSP process.

4.2.4 Monitoring and evaluation

Monitoring of area-based management measures implemented under a marine management plan is a continuous data collection activity. Data collection requirements will depend upon a series of performance indicators stipulated in a management plan, so that progress towards the achievement of the MSP process objectives can be tracked. Information in relation to these indicators can be used to undertake an evaluation process, whereby it can be determined if the MSP process and its associated management measures are delivering upon the MSP process’s overall objectives. It is also important to closely track the status of the biodiversity features (such as those identified as ecologically important), as the status of such features is likely to be closely linked to the overall objectives of the MSP process.

Over time, monitoring and evaluation activities help to build a picture of successes or challenges faced throughout the MSP process. These lessons can be used to inform future MSP processes, for example, a management plan may face difficulties upon initial implementation whilst stakeholders become more familiar with management measures, and solutions to overcoming these challenges can be used to inform future plan implementation.

Activities

■ Monitoring of the biodiversity feature that is the subject of a management plan

Monitoring processes should be outlined in a management plan and the responsible entity identified. Data collected via monitoring activities should be relevant to management plan targets and objectives to ensure it is useful for evaluation of the plan and associated management measures.

■ Evaluation of the effectiveness of management actions

Evaluation activities are important to determine how well management measures are delivering upon the objectives of a management plan, and ultimately those of a MSP process. Comprehensive evaluation may involve the use of indicators to assess effectiveness, which will require sufficient data from monitoring processes.

³³ OSPAR Agreement 2014-09 (updated 2018)

³⁴ Article 94 of UNCLOS (1982) defines a ‘Flag State’ as “the country in which a vessel is registered” and stipulates the duties of the Flag State.

³⁵ UNCLOS (1982), Article 87, ‘Freedom of the high seas’

Pre-ILBI

At present with **no ILBI in place**, monitoring and evaluation of human activities and the environmental status of ABNJ are undertaken on a sectoral or ad-hoc basis, with limited coordination between sectors and organisations. Some scientific monitoring is encouraged and does occur, for example in seabed mineral exploration licence areas in the Clarion Clipperton Zone (ISA, 2013; Johnson & Ferreira, 2015) and as a requirement for RFMOs under FAO guidance of monitoring of Vulnerable Marine Ecosystems (FAO, 2009). Additionally, in some regions, independent organisations such as the International Council for the Exploration of the Sea (ICES) support member countries ensure sustainable use, by providing data and science-based advice to inform policy decisions. However, these practices are not comprehensive in geographic coverage and distribution, and often data for each sector or region is not collated in a centralised database, potentially making it difficult to access.

ILBI

With **an ILBI in place**, an organisation, such as a dedicated Scientific and Technical Committee, could work to undertake or facilitate more comprehensive monitoring and evaluation activities, providing the ILBI ensures adequate financial, technological and human capacity. Under the **global** model, this could be done by a newly established Scientific and Technical Committee with global coverage. Alternatively, under the **hybrid** model, existing sectoral and organisational scientific bodies could undertake monitoring activities in the region they operate in and provide information to a centralised database. The information can then be used to develop policy and management recommendations based on the best-available scientific information, which can be put forward to a decision-making body.

4.2.5 Review

A review process is important to ensure that area-based management measures implemented under a MSP process are appropriate and sufficient to address the issues for which they have been implemented. The review process should consider data and results collected via the monitoring and evaluation activities and propose adaptations to a management plan, or specific management measures, if it is deemed necessary.

Activities

■ Participatory process to review management measures or actions

Management plans may outline a process for review, indicating the frequency of review, responsible entity and if there are thresholds, which when exceeded will automatically require a review. An example of such could be, shock human pressures, such as that arising from oil spills or climate change pressures, which result in changes to species distribution within a shorter time frame than expected.

■ Adaptation of management measures or management plan

Using data and information collected via monitoring and evaluation activities, area-based management measures would be adapted as necessary, to ensure they deliver upon their objectives. For example, seasonal ship re-routing measures to mitigate impacts (such as, ship strikes or entanglement) on migrating marine species, can be adapted based on the results from monitoring activities relating to species migratory routes to ensure that ships can avoid these areas. The process for adapting management plans or management measures should be set out in the management plan itself, which may also outline how monitoring data are to be used.

Pre-ILBI

With **no ILBI in place**, the challenge of undertaking an MSP process, and the difficulties associated with each element discussed so far in section 4, means that undertaking a review of management measures with a view to adaptation may also prove challenging. The collection of sufficient, up-to-date data is key to undertaking a comprehensive and informative review, yet this can be difficult without a new ILBI (as discussed in section 4.2.4). There are some examples of management recommendations for MPAs in the High Seas which do include a process for monitoring and reporting on implementation, including those designated by OSPAR in the North East Atlantic³⁶. These processes are not yet well developed and implemented in such MPAs (OSPAR Commission, 2017), however relevant lessons relating to design and implementation of such processes can be extrapolated to inform future area-based planning or management processes.

ILBI

With a new **ILBI in place**, continuous monitoring of implemented management measures can generate data and information which would be collated by a dedicated Scientific and Technical Committee. Using available data, the Scientific and Technical Committee can assess progress towards agreed objectives of the MSP process and individual management measures. The Scientific and Technical Committee could then provide evidence-based advice to an established cross-sectoral forum on the review and adaptation requirements for a management plan or a specific management measure. The cross-sectoral forum may submit, science-based recommendations for adaptation of a management plan or specific measures to the Secretariat for distribution to States Parties for further discussion and approval.

4.3 Enabling conditions

4.3.1 Legal and governance frameworks

The legal and governance frameworks in place for a given area can enable or hinder the undertaking and implementation of a MSP process, as it determines what can, and cannot be done from a legal perspective. The legal framework can also provide legal backing or reinforcement for certain area-based measures, in turn influencing the outcomes and effectiveness of a MSP process. The legal framework plays an important role in influencing the majority of elements described above (see Sections 4.1 and 4.2). Governance frameworks, in terms of the different governance options proposed under Pre-ILBI and ILBI contexts are described above in Section 3 and throughout Sections 4.1 and 4.2. In this section, aspects of legality when undertaking an MSP process are briefly summarised.

Activities

■ Identify and review existing relevant legal frameworks and mandates of relevant organisations

It is important to understand how different organisations operate in ABNJ and what activities they can legally undertake, as this can affect whether a marine management plan (resulting from a MSP Process) can be implemented by all sectors. A review of existing mandates can help to identify relevant organisations with mandates relating to the objectives of a MSP process, for example biodiversity conservation or marine pollution, in order to identify areas of overlap. This can be important in ensuring existing efforts are not undermined by a new MSP process and that existing efforts can be complimented or supported.

■ Enforcement mechanisms need to be identified

It is beneficial for an area-based management plan to be enforceable under the relevant legal frameworks. In addition, sectoral organisations will each have different enforcement mandates, responsibilities and capacities under the current legal framework, and these should not be undermined.

³⁶ For example, [OSPAR Recommendations 2010/17, 2010/16 and 2012/1 on the Management of the Mid-Atlantic Ridge North of the Azores, Josephine Seamount and the Charlie-Gibbs North High Seas Marine Protected Areas, respectively.](#)

■ Communicate the existing legal framework to all relevant stakeholders

It is important to communicate the existing legal frameworks to all relevant stakeholders involved in a MSP process, in order to raise awareness of other sectors operating in the same area and to promote transparency between sectors. This can also be helpful in identifying gaps in the legal or governance frameworks within an area (for example if there are missing organisational mandates) with regard to addressing particular issues. This will also help manage the expectations of those involved.

Pre-ILBI

In the context of **no ILBI in place**, gaps in the legal framework hinder the ability to undertake a MSP process in ABNJ. For example, although there are provisions dedicated to environmental protection under UNCLOS³⁷ there is currently no requirement to ensure activities in ABNJ do not negatively impact biodiversity specifically. The legal frameworks under which stakeholders operate in ABNJ are complex, for example there are both global and regional organisations, each with different numbers and compositions of State Parties driving their activities and priorities. Some activities undertaken in ABNJ do not have a clear coordinating organisation, for example, cable laying activities are often represented by the ICPC - an industry membership organisation and therefore not state-led. Additionally, marine scientific research is not clearly represented by a single organisation but is championed by multiple organisations. However, there is limited coordination between these organisations, with much of this occurring on a voluntary basis.

The institutional structure of many of the global and regional organisations, operating in ABNJ under the Pre-ILBI governance option, requires States Parties to recognise, and agree to support action relating to a particular issue. Often, consensus is required from States Parties before action can be taken which can be difficult and timely to secure, thus potentially delaying action relating to issues of common concern.

ILBI

A new ILBI provides the legal framework for MSP processes to be undertaken. Upon the agreement and ratification of a new ILBI, States Parties can create national legislation to legalise MSP processes in ABNJ, in addition to the agreement being legally binding under UNCLOS. With this legal backing, implementation and enforcement of a MSP process and resulting management plan is likely to be easier. Improved ease of implementation of well-informed (using best available scientific information) management measures and enforcement activities increases the likelihood of the MSP process achieving its objectives.

4.3.2 Financial support

Sufficient financial resources are essential to undertaking and delivering an effective MSP process. Currently, MSP undertaken in EEZs, is funded primarily by the respective State, however, in some instances this may not be adequate and additional funding may be required. Financial support can come from other sources, including grants and donations from international and multi-national organisations, grants from foundations, partnerships with NGOs and funds from the private sector.

Pre-ILBI

Without an ILBI, there is no agreement between all relevant stakeholders to secure financial resources to support MSP processes in ABNJ. Sectors that engage in a MSP process on a voluntary basis could create a formal arrangement, whereby they contribute financial and in-kind support. However, ABNJ stakeholders are not obligated to engage in a MSP process, and as such, financial contributions will be limited to only those engaged.

³⁷ UNCLOS (1982). Part XII: 'Protection and Preservation of the Marine Environment'

ILBI

A new ILBI may set out an agreed approach to securing finances to support the undertaking of MSP processes in ABNJ, for example, securing funding via State contributions, as well as funds from intergovernmental organisations or public-private partnerships. The amount could be equal between all States or differ according to the economic context of each, for example, developing nations may contribute as much as wealthy nations. An agreement on the financial contributions from States to support MSP processes helps to ensure sustainable processes into the future. For example, if financial contributions change (for example in instances of changing governments, natural disaster or economic fluctuations), additional funds can be secured from alternative sources as necessary.

4.3.3 Capacity

Capacity varies between States, both in terms ability to engage with—and undertake— activities in ABNJ, and in terms of ability to participate in a MSP process. Less developed countries may often lack financial, technological and human capacity, and as such, are often at a disadvantage in terms of accessing data and information. Such countries may be limited in their ability to engage in a MSP process without additional capacity from elsewhere. Contrastingly, countries with higher capacity in the aforementioned areas (for example, more well economically developed countries) may be better equipped to engage fully in a MSP process, as long as there is political will. Disparities such as this may lead an imbalance of priorities and management, and so that a process may have unfair bias towards the needs of some stakeholders more than others. MSP processes can be used to address this issue via capacity-building and benefit sharing.

Pre-ILBI

In the context of **no ILBI in place**, States that have lower capacity, whether financial, technological or human, could be less able to engage in a MSP process than State with greater capacity. This means that without an ILBI, MSP in ABNJ is limited in its ability to fairly and equitably ensure the conservation and sustainable use of marine biological diversity in ABNJ.

ILBI

With **an ILBI in place**, there could be opportunities for capacity-building so that States with lower capacity, such as less-developed countries, can engage in a MSP process to the same extent as a country with higher capacity. This could be done through the establishment of a clearing-house mechanism³⁸. This could include an open-access web-based platform, which serves as a centralised location where State Parties can access information and tools. The platform could also provide a means for global and regional organisations to exchange knowledge and ensure coordination.

³⁸ UNGA (2019). [A/CONF.232/2019/6](#), Article 51

5 Conclusion and next steps

In the 21st century, as the human population and need for resources continue to rise, the race to meet these growing demands is well underway. The resources that can be found in ABNJ are attracting greater attention, and although human activities currently remain at a relatively low level, they have been steadily increasing and are predicted to increase further in the decades to come.

Looking ahead, a forward-thinking and proactive approach towards the use of ocean resources could be to actively manage resources across different sectors (cross-sector) to promote sustainable use and conserve deep sea ecosystems, before they are irreversibly damaged or depleted. To date, cross-sectoral area-based planning has occurred in ABNJ, but examples are limited to a few regions due to the difficulties in bringing different ABNJ stakeholders together. The ongoing BBNJ discussions present an opportunity to facilitate cross-sectoral management through the creation of an international legally-binding instrument (ILBI) for the conservation and sustainable use of marine biological diversity in ABNJ. This instrument will include an element dedicated to the use of area-based planning or management tools, such as MSP and will aim to encourage enhanced global, regional and sectoral cooperation to support the overarching aim. The agreement, ratification and implementation of a new ILBI in the coming years will alter the overarching governance framework for activities in ABNJ. Consequently, the way in which area-based planning and management (including MSP) could occur in ABNJ will also evolve.

In recognition of the evolving legal and governance landscape, this document has presented a flexible MSP framework and discussed its application under two governance scenarios. It was found that a new ILBI eases the application of the MSP framework through dedicated mandates and obligations to cooperate or coordinate in the undertaking of area-based planning and management and the sharing of data and information. It could also enhance the effectiveness of MSP in achieving objectives relating to the conservation and sustainable use of biodiversity in ABNJ. The development of the ILBI is therefore key to supporting the undertaking of MSP to support the conservation and sustainable use of the unique biodiversity found in ABNJ.



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ABNJ DEEP SEAS PROJECT

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

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

The Project aims to:

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



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