



An International Instrument on Conservation and Sustainable Use of Biodiversity in Marine Areas beyond National Jurisdiction

Exploring Different Elements to Consider

PAPER V

**Understanding Area-based Management Tools and Marine Protected
Areas***

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* DISCLAIMER: The views expressed in this paper do not necessarily reflect those of the German Federal Agency for Nature Conservation or the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety.

1. Background

At the 2012 United Nations Conference on Sustainable Development (Rio+20), States committed themselves ‘to address, on an urgent basis, building on the work of the Ad Hoc Open-ended Informal Working Group and before the end of the sixty-ninth session of the General Assembly, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea.’¹ This commitment was recalled and reaffirmed by the United Nations General Assembly (UNGA) in its 67th and 68th session.² In its resolution 68/70, the UNGA also requested the United Nations Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (UN Working Group) to make recommendations to the UNGA ‘on the scope, parameters and feasibility of an international instrument under the Convention’.³ These recommendations shall help to prepare for the decision to be taken at the 69th session of the UNGA in 2015, whether to start the negotiation of an international instrument on the conservation and sustainable use of biodiversity in areas beyond national jurisdiction (ABNJ).

The International Union for Conservation of Nature (IUCN) in collaboration with different partners has prepared a series of policy briefs to provide technical input to the ongoing ABNJ discussions, and thereby support the UNGA decision-making process. As indicated in **Paper I**, one of the issues to be discussed under ‘parameters’ could be, among other things, area-based management tools (ABMTs), including marine protected areas (MPAs)⁴. In this context, the following **Paper V** aims to create a general understanding of ABMTs, and explain the differences between MPAs and marine spatial planning (MSP). **Paper VI** will then discuss various options and approaches for establishing and managing MPAs in ABNJ.

2. Understanding Area-based Management Tools

There is no universally accepted definition of ABMTs. However, they are generally understood to include spatial and non-spatial tools that afford a specified area higher protection than its surroundings due to more stringent regulation of one or more or all human activities.⁵

ABMTs can have different objectives, including:

- Preservation of important ecological, biological or geomorphologic processes;
- Conservation and management of species;

¹ UNGA resolution 66/288. ‘The future we want.’ UN doc. A/RES/66/288, of 11 September 2012. Paragraph 162.

² UNGA resolution 67/78. ‘Oceans and the law of the sea.’ UN doc. A/RES/67/78, of 11 December 2012. Paragraph 181. UNGA resolution 68/70. ‘Oceans and the law of the sea.’ UN doc. A/RES/68/70, of 9 December 2013. Paragraph 197.

³ UNGA resolution 68/70. ‘Oceans and the law of the sea.’ UN doc. A/RES/68/70, of 9 December 2013. Paragraph 198.

⁴ UNGA resolution 66/231. ‘Oceans and the law of the sea.’ UN doc. A/RES/66/231, of 24 December 2011. Annex (b). This refers to a process to ‘address the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology’.

⁵ Molenaar, E., Oude Elferink, A.G. (2009). ‘Marine Protected Areas in Areas Beyond National Jurisdiction: The pioneering efforts under the OSPAR Convention.’ Utrecht Law Review, Vol.5, Issue 1. P. 5-20.

- Protection of beautiful seascapes, cultural, archaeological, or historic sites;
- Recreation and public enjoyment;
- Separation of uses to prevent accidents, collisions or conflicts of use;
- Environmental monitoring and assessment; and
- Scientific research.⁶

Furthermore, they can be

- Sectoral (e.g. focusing on fishing, shipping, mining);
- Multi-sectoral; or
- Cross-sectoral (i.e. covering all human activities).⁷

For the purposes of this paper, ABMTs are divided into three main categories: sectoral tools, marine protected areas and marine spatial planning. Sectoral area-based tools traditionally aim to achieve better resource management, but may have some indirect or direct biodiversity benefits. MPAs prioritize conservation objectives and aim to achieve comprehensive management of a specific area.⁸ MSP aims to coordinate actions, separate conflicting uses and optimize the use of marine space to achieve sustainable development of the ocean and its resources.⁹

3. Sectoral Area-based Management Tools

Through several global and regional sectoral organisations, possibilities exist to provide enhanced protection to specific areas in ABNJ through the adoption of area-based management tools for the activities falling under their organisational mandate.

- The International Maritime Organisation (IMO) may more strictly regulate vessel discharges in certain areas through the designation of Special Areas under the International Convention for the Prevention of Pollution from Ships (MARPOL). The IMO can also designate Particularly Sensitive Sea Areas (PSSAs), in which specific measures can be used to control maritime activities, such as routing measures, strict application of MARPOL discharge and equipment requirements for ships, such as oil tankers, and installation of Vessel Traffic Services.¹⁰
- The International Whaling Commission (IWC) may establish whale sanctuaries, as it has already done in the Indian and Southern Oceans.¹¹
- With respect to seabed mining, the International Seabed Authority (ISA) may designate Areas of Particular Environmental Interest,¹² Preservation Reference Zones (where mining is prohibited to ensure representative and stable biota of the seabed in order to assess any

⁶ UN Secretary General. 2007. *Oceans and the Law of Sea.* UN doc. A/62/66/Add.2. Paragraph 117.

⁷ Molenaar, E., Oude Elferink, A.G. (2009). *Marine Protected Areas in Areas Beyond National Jurisdiction: The pioneering efforts under the OSPAR Convention.* Utrecht Law Review, Vol.5, Issue 1. P. 5-20.

⁸ Day J., et al. (2012). *Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas.* Gland, Switzerland: IUCN. P. 12.

⁹ Freestone, D. et al. (2010). *Draft Policy Brief on Improving Governance: Achieving Integrated Ecosystem-Based Ocean and Coastal Management.* Global Forum on Oceans, Coasts, and Islands, Global Oceans Conference, May 3-7, 2010. UNESCO, Paris. P. 8.

¹⁰ So far, no MARPOL Special Areas or PSSAs have been designated in ABNJ.

¹¹ Article 7 (a) and (b) of the Schedule to the International Convention for the Regulation of Whaling.

¹² Council of the International Seabed Authority. *Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone.* Document ISBA/18/C/22, of 26 July 2012.

changes in the flora and fauna of the marine environment), or Impact Reference Zones (to assess the effect of a contractor's activities on the marine environment).

- At the regional level, regional fisheries management organizations (RFMOs) generally have the competence to establish closed areas and/or to adopt effort and gear restrictions to enhance fisheries conservation and management. Some RFMOs but not all have the explicit mandate, as called for in the UN Fish Stocks Agreement,¹³ to adopt measures to protect biodiversity in the marine environment.

4. Marine Protected Areas

MPAs are not the same as no-take marine reserves. MPAs may have a variety of objectives and stringency in regulation, ranging from strictly protected scientific reserves and wilderness areas, to areas aiming to protect large scale ecological processes or particular species or habitats, to seascapes with low-level traditional or non-industrial use of natural resources compatible with nature conservation.¹⁴

There is no universally accepted definition of MPAs. The UNCLOS does not contain any formal definition of MPAs, but it contains in Part XII the general obligation of States to '*protect and preserve the marine environment*' (Article 192) through, in part, measures '*necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life*' (Article 194.5).

The most commonly used definition comes from IUCN, which defines a protected area as '*a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.*'¹⁵ Specifically, an MPA is understood as

- any area of intertidal or subtidal terrain,
- together with its overlying water and associated flora, fauna, historical and cultural features,
- which has been reserved by law or other effective means
- to protect part or all of the enclosed environment.¹⁶

To compare, the Convention on Biological Diversity (CBD) defines protected area as '*a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives*' (Article 2). Specifically, an MPA under the CBD is

- any defined area within or adjacent to the marine environment,
- together with its overlaying waters and associated flora, fauna and historical and cultural features,
- which has been reserved by legislation or other effective means, including custom,

¹³ Article 5 of the UN Fish Stocks Agreement.

¹⁴ Day J., et al. (2012). '*Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas.*' Gland, Switzerland: IUCN. P. 10.

¹⁵ Day J., et al. (2012). '*Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas.*' Gland, Switzerland: IUCN. P. 12.

¹⁶ '*Protection of the Coastal and Marine Environment.*' 17th Session of the General Assembly of the IUCN. Resolution 17.38. Paragraph 2.b.

- with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings.¹⁷

The IUCN Guidelines for applying the IUCN Protected Area Management Categories to MPAs (2012) specify that in order for an area to qualify as a MPA, nature conservation must be the stated objective.¹⁸ 'Conservation' in the MPA context, according to the IUCN Guidelines, means *'the in situ maintenance of ecosystems and natural and semi-natural habitats and of viable populations of species in their natural surroundings. MPAs are to aim to protect all the features of conservation importance within their boundaries, including the overall health and diversity of the ecosystem and have a stated primary aim to this effect.'*

Spatial areas managed for any other objective that incidentally deliver nature conservation are therefore not generally classified as an MPA.¹⁹ Examples of the latter include:

- Fishery management areas with no wider conservation aim;
- Community areas managed primarily for sustainable extraction of marine products;
- Marine and coastal management systems managed primarily for tourism;
- Wind farms and oil platforms that incidentally help to build up biodiversity around underwater structures;
- Marine and coastal areas set aside for other purposes but which also have conservation benefit, such as military training areas, disaster mitigation, communication cable or pipeline protection, shipping lanes, etc.; or
- Large areas where certain species are protected by law across the entire region.²⁰

5. Marine Spatial Planning

As emphasized in the preamble to UNCLOS *'the problems of oceans space are closely interrelated and need to be considered as a whole'*. Marine spatial planning is a tool that can enhance integrated, ecosystem-based and anticipatory approaches to the marine environment as called for in Chapter 17 of Agenda 21. As a place-based approach to coastal and ocean management, MSP is an important tool for balancing economic development with conservation and ecosystem-based management goals by, among other things, reducing conflicts among marine users.²¹ MSP may also be thought of as a *'tool for improved decision-making with the objective to balance sectoral interests and achieve sustainable use of marine resources and provide stability and transparency.'*²² Thus, MSP involves

- an ecosystem-based, area-based, integrated, adaptive, strategic and participatory process that

¹⁷ Convention on Biological Diversity. (2004). *'Technical advice on the establishment and management of a national system of marine and coastal protected areas.'* CBD Technical Series No 13. P. 7. This definition was recognized at the seventh CBD Conference of the Parties in Decision VII/5: *'Marine and coastal biological diversity.'* Paragraph 18.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ban, Natalie C., et al. (2013). *'Better integration of sectoral planning and management approaches for the interlinked ecology of the open oceans.'* *Marine Policy* P. 11.

²² Freestone, D. et al. (2010). *'Draft Policy Brief on Improving Governance: Achieving Integrated Ecosystem-Based Ocean and Coastal Management.'* Global Forum on Oceans, Coasts, and Islands, Global Oceans Conference, May 3-7, 2010. UNESCO, Paris. P. 8.

- balances economic development with environmental conservation and
- utilizes spatial and non-spatial tools in order to achieve social and economic objectives.^{23 24}

It can incorporate and build on sectoral space-based management tools such as those described above, as well as MPAs and other sources of information on the ecological, biological, scientific, cultural significance of an area. It could, for example, also include any ecologically or biologically significant areas (EBSAs) described by the CBD as well as MPAs designated through regional seas agreements or at the global level.

6. Conclusions

In conclusion, ABMT are primarily spatial management tools (that may also employ non-space based tools), cover one or several sectors, include a variety of objectives, and encompass sector-specific tools as well as more comprehensive MPAs and MSP for a geographically defined area. While MPA designation is a marine spatial tool, MPAs are distinguished from other MSP tools in that their primary objective is nature conservation.

²³ Marine Spatial Planning Initiative. Online, Marine Spatial Planning (MSP). United Nations Educational, Scientific, and Cultural Organization (UNESCO). Available at www.unesco-ioc-marinesp.be/marine_spatial_planning_msp?PHPSESSID=gmfteu0nmkv17hstj6enc6prc6.

²⁴ Ban, Natalie C., et al. (2013). 'Systematic conservation planning: a better recipe for managing the high seas for biodiversity conservation and sustainable use.' Conservation Letters 00. P. 5.

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