

Options for Addressing Regulatory and Governance Gaps in the International Regime for the Conservation and Sustainable Use of Marine Biodiversity in Areas beyond National Jurisdiction

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Executive Summary

In April, 2008, 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* (UNWG BBNJ) will convene to discuss a range of topics critical to the health of the 64% of the world ocean that lies in areas beyond national jurisdiction (ABNJ). One of the key items on the agenda will be “Whether there is a regulatory or governance gap, and if so, how it should be addressed.”

This paper, building on a complementary study that identifies several significant regulatory and governance gaps, highlights a variety of short- and medium- term options for addressing the identified gaps. These options are grouped as follows:

- **Option A:** Short term targeted actions to address specific gaps (e.g. United Nations General Assembly (UNGA) resolutions, codes of conduct, pilot initiatives, scientific studies, upgrading existing bodies);
- **Option B:** Reform or expansion of the existing legal and institutional framework at the regional level in response to the regulatory and governance gaps (e.g. expand or establish new regional seas agreements and Regional Fisheries Management Organisations (RFMOs), region specific agreements, protocols or annexes for unregulated activities, environmental impact assessment (EIA), etc);
- **Option C:** Development of new global sectoral or issue based instruments and other processes to address specific gaps (e.g. UNGA review process, global agreements for EIA and marine spatial planning, sector-specific agreements for unregulated activities, Port State Measures Agreements for fisheries and non-fisheries activities, an Intergovernmental Panel on Oceans);
- **Option D:** A new global comprehensive legally binding instrument to provide one integrated system for addressing all the identified regulatory and governance gaps (e.g. an agreement to implement Parts VII and XII of the United Nations

Convention on the Law of the Sea (UNCLOS) (ie UNCLOS Implementing Agreement)).

Drawing on these options, this paper recommends a practical approach of adopting a package of measures to address priority issues while building political support for more comprehensive action. A possible 11-point strategy follows:

1. **Adopt an UNGA Declaration on Principles for Oceans Governance in ABNJ** to create a common understanding and basis for application of modern environmental governance and conservation principles and tools;
2. **Adopt an UNGA Resolution on EIA** to ensure that all unregulated activities with a potential to impact marine biodiversity in ABNJ have appropriate scrutiny and oversight at the national and global levels.
3. **Develop a transparent UNGA-based review process** to enhance coordination and assess progress by States and relevant regional and global organizations (akin to that for the UNGA resolution 61/105 paragraphs on high seas bottom fisheries) or expand the remit of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), the UNWG BBNJ or UN-Oceans and appoint a UN Ombudsman.
4. **Build a strong UN Food and Agriculture Organization (FAO) Port State Measures Agreement** for fisheries activities with enhanced port-based enforcement and at-sea monitoring mechanisms and use it to establish standards transferrable to a compliance and enforcement regime that includes mechanisms and criteria for non-flag State enforcement for non-fisheries activities.
5. **Initiate pilot Marine Protected Area (MPA) projects** and enhance regional progress in bioregionalization and development of representative networks of MPAs in ABNJ to gain

experience and protect important areas and species while the global processes unfold.

6. **Promote the expansion of regional capacity** to comprehensively conserve biodiversity, protect the marine environment and manage resources at an eco-regional level, which may serve as the seed for regional oceans management organizations where none currently exist.
7. **Establish an Intergovernmental Panel on Oceans** to inform management as well as to inspire action by building a common understanding of the state of the global ocean. In addition to the ongoing process for Global Reporting and Assessment of the Marine Environment, efforts should more specifically focus on the open ocean and deep sea and on cumulative impacts, including climate change, from an earth systems level.
8. **Explore the principles of intergenerational and intragenerational equity** (fairness to present and future generations) in workshops and at the UN and consider mechanisms to incorporate them in modern oceans governance and as a way to constructively inform the debate on marine genetic resources (MGRs) of the international seabed Area.
9. **Negotiate a global EIA and strategic environmental assessment (SEA) instrument** to provide more detailed rules and procedures applicable to all processes and activities under national jurisdiction or control (including those involving nationals) with a potential to impact biodiversity in ABNJ, not just unregulated activities.
10. **Promote a global agreement for marine spatial planning**, which could serve a dual purpose of providing a framework for high seas MPAs and other biodiversity conservation measures as well as a formal mechanism for enhancing coordination and consistency of activities at the global and regional levels.
11. **Promote a new global comprehensive legally binding agreement** building on UNCLOS by continuously highlighting the need for and advantages of integrated and modern management and governance of ABNJ to supplement the

current fragmented and sectoral approach. Raising awareness of the ocean's importance and humanity's cumulative impacts should help States to recognize the need to efficiently and effectively confront 21st century challenges and threats if we are to safeguard the marine environment and biodiversity in ABNJ for the benefit of present and future generations.

List of Acronyms

ABNJ	areas beyond national jurisdiction
COP	Conference of the Parties
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
EIA	Environmental Impact Assessment
FAO	United Nations Food and Agriculture Organization
GEF	Global Environment Facility
IMO	International Maritime Organisation
IOC	Intergovernmental Oceanographic Commission
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
IUU	Illegal, unreported and unregulated (fishing)
MGRs	Marine Genetic Resources
MPA	Marine Protected Area
MOPs	Meetings of the Parties
NATO	North Atlantic Treaty Organisation
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
RFMO	Regional Fisheries Management Organisation
SEA	Strategic Environmental Assessment
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly
UNICPOLOS	United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea
UNWG BBNJ	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
VMS	vessel monitoring system

1 Introduction

1.1. Background and purpose of the study

The purpose of this paper is to identify options for addressing identified regulatory and governance gaps in the international regime for the conservation and sustainable use of marine biodiversity in ABNJ. This options paper complements and should be read in conjunction with *PAPER 1: Analysis of the Regulatory and Governance Gaps in the International Regime for the Conservation and Sustainable Use of Marine Biodiversity in ABNJ (Gap Analysis)*¹ *PAPER 3: Case Study on the Mid-Atlantic Ridge* and *PAPER 4: Elements of a Possible Implementation Agreement to UNCLOS for the Conservation and Sustainable Use of Marine Biodiversity in Areas beyond National Jurisdiction*. The four papers are intended to facilitate discussions at the second meeting of the UNWG BBNJ (and beyond), where one of the key items on the agenda will be “Whether there is a regulatory or governance gap, and if so, how it should be addressed.”

1.2. Approach of the Options Paper

For each identified gap, this paper explores a variety of means to address it (Part 2), looking specifically at the following options:

- **Option A:** Short term targeted actions to address specific gaps;
- **Option B:** Development of new global sectoral or issue based instruments and other processes to address specific gaps;
- **Option C:** Reform or expansion of the existing legal and institutional framework at the regional level in response to the regulatory and governance gaps;
- **Option D:** A new global comprehensive legally binding instrument to provide one integrated system for addressing all the identified regulatory and governance gaps (see the Annex for a description of the potential elements of the instrument).

The key advantages and disadvantages of each approach are discussed in Parts 3-5. Part 6 describes an 11-point strategy that incorporates elements from each of the above options to address priority areas while building international support for more comprehensive action to safeguard marine biodiversity and the environment in ABNJ.

¹ The Gap Analysis defines “*regulatory and governance gaps*” as follows: *Regulatory gaps*: substantive and/or geographical gaps in the international legal framework, i.e. issues which are currently unregulated or insufficiently regulated at a global, regional or sub-regional level. *Governance gaps*: gaps in the international institutional framework, including the absence of institutions or mechanisms at a global, regional or sub-regional level and inconsistent mandates of existing organizations and mechanisms. As noted in the Gap Analysis, issues can fall under both ‘gap’ categories. For example the absence of a RFMO results in the lack of a competent organization (governance gap) that can regulate fisheries in the region (regulatory gap).

2 Elements to fill identified regulatory and governance gaps

The Gap Analysis identifies regulatory and governance gaps in the current international regime for the conservation and sustainable use of marine biodiversity in ABNJ. To “fill” all of these gaps, a combination of elements is required.

2.1. Elements to fill the identified regulatory gaps

To fill the identified regulatory gaps, some mechanism (initiative, instrument, process or body) will be needed to address the following:

- 1) **Application of modern conservation principles:** An instrument or mechanism to ensure that modern conservation principles such as the ecosystem approach and the precautionary principle are incorporated and applied in all existing global and regional treaties or instruments relevant to ABNJ.
- 2) **Rules for unregulated activities (existing, new and emerging):** Detailed international rules and standards to implement modern conservation principles, building on the general obligations contained in treaties such as UNCLOS, Convention on Biological Diversity (CBD) and United Nations Fish Stocks Agreement (UNFSA): for existing activities where detailed rules are lacking (marine scientific research, bio-prospecting, laying of cables and pipelines and construction of various types of offshore installations); unregulated fisheries (e.g. some discrete high seas fish stocks, sharks); and new and emerging activities (e.g. ocean fertilization, climate change mitigation techniques, and potential construction and operation of floating energy and aquaculture facilities).
- 3) **Regulation of increasing impacts from traditional uses:** Improved regulation to manage increasing impacts from shipping and military activities (e.g. underwater noise, weapons testing) in line with modern conservation principles.
- 4) **Application of modern conservation tools:** Specific requirements for EIAs, monitoring and reporting and area-based measures building on the general obligations contained in treaties such as UNCLOS, CBD and UNFSA, as well as more modern tools such as networks of representative MPAs, SEAs², and marine spatial planning, to apply to the full range of ocean-based human activities in or having an effect on ABNJ.
- 5) **Compliance and enforcement:** Effective compliance and enforcement mechanisms at global and regional levels for all human activities and measures in ABNJ.
- 6) **Regional agreements:** Legally binding instruments to provide integrated global coverage at the regional level for fisheries and biodiversity conservation in ABNJ.
- 7) **Extended continental shelf/high seas water column:** Rules or a process to coordinate regulation of interactions between activities in the high seas water column and those on the extended continental shelf of coastal States.

² Strategic environmental assessment is the formalized, systematic and comprehensive process of identifying and evaluating the environmental consequences of proposed policies, plans or programmes to ensure that they are fully included and appropriately addressed at the earliest possible stage of decision-making on a par with economic and social considerations, while environmental impact assessment is a process of evaluating the likely environmental impacts of a proposed project or development (CBD COP decision VI/7).

2.2. Elements to fill identified governance gaps

Elements of modern oceans governance that are still lacking for ABNJ include:

- 1) **Coordination and cooperation:** Mechanisms to ensure coordination and cooperation within and across sectors, States, regions and institutions.
- 2) **Modern conservation principles and tools:** An institution or process to oversee and assist where necessary the development and application of modern conservation principles and management tools to all human activities in ABNJ.
- 3) **Modern environmental governance principles:** An institution or process to ensure the consistent application of modern environmental governance principles such as transparency, accountability, stakeholder participation and intergenerational and intragenerational equity.
- 4) **Scrutiny of new and emerging ocean uses:** An institution or mechanism to assess new and emerging uses of the oceans, in terms of the obligation to protect and preserve the marine environment and conserve and manage its biodiversity.
- 5) **Legal standing to represent international community interests:** Recognition of standing on the part of States and international organizations both on their own behalf and on behalf of the international community to pursue claims in international tribunals and other fora relating to safeguarding marine biodiversity and the environment in ABNJ.
- 6) **Compliance and enforcement:** An effective compliance and enforcement regime, including a legal framework for non-flag State enforcement at global and regional levels, for all activities and measures to protect the international communities' interest in safeguarding marine biodiversity and the environment in ABNJ.

- 7) **MGRs:** Clarity on the applicable regime relating to MGRs of the Area (concerning applicability or not of the common heritage of mankind principle and/or other equitable principles).

3 Addressing identified regulatory gaps through options A, B & C

The threats to the marine environment and biodiversity in ABNJ that have prompted international attention and the creation of the UNWG BBNJ are unlikely to diminish while States discuss whether or not an UNCLOS Implementing Agreement is the appropriate choice to manage these threats. There are clearly a range of approaches that can address priority threats, fill in some of the key gaps, and help build momentum towards comprehensive management and protection of ABNJ. Recognising that some key States may remain reluctant to support a comprehensive implementing agreement to UNCLOS, it should also be considered whether the same goals can be achieved, at least in part, through a combination of options A, B and C. The sections below highlight an array of options to address some of the major regulatory gaps.

3.1 Application of modern conservation principles

Such principles include, e.g., the ecosystem approach, the precautionary approach, user/polluter pays principle, conditional freedom of the seas (only States who cooperate should have access to the resources, cf UNFSA art. 8.4), stakeholder consultation, use of best available scientific information, application of best practices and best available technologies, integrated and adaptive management.

3.1.1 Option A: Short-term actions

1. **UNGA Declaration of Principles:** Adoption by the UNGA of a Declaration on Principles of Oceans Governance in ABNJ could establish a common understanding of modern conservation (and environmental governance) principles that should be applied by States and in all relevant global and regional bodies. It could catalyze progress by serving as a measure against which institutions could assess their existing mandates and practices, and as guidance to States in developing their national regulatory frameworks on responsible conduct of activities affecting ABNJ. It could also go a step further by spelling out consequences for failure to comply with the obligations of the declaration and criteria for their application.
2. **Acting within relevant organizations:** States could upgrade mandates within existing bodies to reflect modern conservation principles as well as to address intensifying impacts from traditional activities such as: shipping (International Maritime

Organisation (IMO) and through shipping industry bodies), military activities (North Atlantic Treaty Organisation (NATO), Western Pacific Naval Symposium, etc.), marine scientific research (Intergovernmental Oceanographic Commission (IOC)), fishing (FAO, RFMOs and Conferences of the Parties (COPs) to Convention on the Conservation of Migratory Species of Wild Animals (CMS), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and CBD) and new activities such as ocean fertilization (Meetings of the Parties (MOPs) to London Convention and London Protocol).

3.1.2 Option B: Reform or expansion of regional institutions

1. **Regional seas management:** Regional seas agreements could be developed or amended to help implement the environmental and conservation duties of States in ABNJ. The regional agreements could build on existing regional seas agreements and establish new ones where necessary, based on experiences in the Antarctic Treaty system, the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) and the Barcelona Convention.
2. **Fisheries:** In recent years there has been significant progress in RFMO reform and the creation of new RFMOs and arrangements to cover previously unregulated areas and fisheries. The upcoming UNGA review of the implementation of UNGA Res. 61/105 provisions on high seas bottom

fishing, and preparations for the reconvening of the UNFSA review conference (no later than 2011) could be used to stimulate further progress to ensure that mandates for ecosystem-based fisheries management are updated, all areas and fisheries are regulated, and independent performance reviews are carried out on a regular basis.

3.1.3 Option C: New instruments or processes for specific gaps

Transparent Review Process: The UNGA could also establish an ongoing process to review and monitor implementation of the UNGA Declaration and other relevant instruments by sectoral and regional bodies and States with respect to their activities (including those of their vessels and nationals) that may affect ABNJ. This could be done, for example, by formalizing the UNWG BBNJ, and /or expanding and revising the mandates of UN-Oceans and UNICPOLOS. There could also be a phased system of mutual evaluation/peer review based on precedents from other conventions and RFMOs.

3.1.4 Advantages and disadvantages

An UNGA Declaration would be able to clarify for ABNJ existing and emerging customary international law rules and principles and their application. It would progressively develop oceans governance standards without having to wait for the negotiation of a comprehensive legal instrument. By using or upgrading an existing process within the UN system to periodically review its implementation, States could avoid the need for a new administrative body. Nevertheless, instruments such as declarations may consume much time in drafting and yet not overcome the traditional hurdles of lack of implementation and uniformity of application unless supplemented with new reporting, monitoring, compliance and enforcement mechanisms. Delegates participating in UNGA resolution negotiations may lack specific expertise on the matter under deliberation, although this can change when stakes are high. Moreover, the UNGA resolution negotiation process and meetings of UN-Oceans are currently closed to civil society participation. Thus progress in environmental governance at the UN and other relevant bodies would need to occur at the same time.

A regional approach to conservation in ABNJ may be more manageable than a global process, involving fewer States with generally a more direct interest in the local resources and biodiversity. However, without some form of globally agreed goals, oversight and assistance, it may result in inconsistent progress, as some regions may be slower than others in building effective institutions. Also, States may not share the same interest in conservation and sustainable use, and traditional tensions between conservation on the one hand and fisheries and other maritime activities on the other hand may slow progress towards sustainable development in some regions. Moreover, without some form of global imprimatur or legal basis for imposing restrictions on non/third-parties, it may not necessarily address problems of non-compliance with regional agreements or with adopted measures such as MPAs.

3.2. Addressing specific unregulated activities

These activities include marine scientific research, bio-prospecting, laying of cables and pipelines and construction of various types of installations, unregulated fisheries (e.g. some discrete high seas fish stocks, sharks), and new and emerging activities (e.g. ocean fertilization, climate change mitigation techniques, and potential construction and operation of floating energy and aquaculture facilities).

3.2.1 Option A: Short-term actions

1. **Ocean fertilization activities:** Parties to the London Convention and London Protocol are considering whether ocean fertilization and related activities are consistent with the overarching aims and the precautionary approach of the agreements. They could be encouraged to ensure that such activities are allowed to proceed provided they are subject to stringent regulations to ensure that they are safe for the marine environment, and that those regulations are effective in the long term, and verifiable.
2. **Other climate change mitigation activities:** Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol could be charged with ensuring the

appropriate regulation of climate change mitigation technologies and markets (both voluntary offsets as well as carbon credits) to ensure that the necessary measures are taken to prevent harm to the marine environment and biodiversity, in conjunction with parties to the London Convention and Protocol and other relevant international bodies.

3. **Codes of Conduct:** Developing codes of conduct or guidance for each sector to address unregulated activities and linking these with funding requirements.
4. **UNGA Resolution on EIAs:** An UNGA resolution on EIAs could call on States to immediately implement EIA and notification and transparency requirements under UNCLOS, CBD, UNFSA and other instruments³ for all processes and activities affecting ABNJ which are under national jurisdiction or control (including with respect to nationals), and provide guidance on best practices.
5. **Fisheries:** The UNGA Resolution 61/105 paragraphs on high seas bottom fishing have stimulated significant progress in the formation of new RFMOs and interim arrangements to protect vulnerable deep sea fisheries and habitats. States might consider adoption of a similar process for other unregulated fisheries affecting highly vulnerable species either as catch or bycatch (e.g. many shark species).

3.2.2 Option B: Reform or expansion of regional institutions

1. **Development of sector-specific protocols or annexes:** The regional seas programmes could build on the example of the Antarctic Treaty and its Madrid Protocol, the OSPAR Convention and its five annexes, and the Barcelona Convention and its protocols, by developing a comprehensive agreement on regional oceans management for specific regions where none currently exist and/or a series of annexes or protocols to the main agreement that can provide detailed rules for unregulated

activities and measures for the conservation and sustainable use of marine biodiversity.

2. **Region-specific agreement on EIA:** An agreement specific to EIA (and SEA) might be adopted at the regional level even where a formal institution is lacking, to guide States in the development of national requirements for EIA, for example via a Global Environment Facility (GEF)-funded program.
3. **Fisheries:** Some progress is underway at the regional level for unregulated high seas (bottom) fisheries as a result of UNGA Resolution 61/105, but additional incentives may be required (i.e. another UNGA resolution) to catalyze time-limited action at the regional level for other unregulated fisheries.

3.2.3 Option C: New instruments or processes for specific gaps

1. **Activity specific instruments:** States could agree to develop a legally binding instrument for each unregulated activity or cluster of activities lacking an appropriate institutional home.
2. **Seabed activities assigned to ISA:** States parties to UNCLOS could agree to expand the mandate of the International Seabed Authority (ISA) under UNCLOS art. 145 so that it empowers the ISA to adopt appropriate rules, regulations and procedures for one or more other activities in the Area and not just those related to seabed mining activities.
3. **A global agreement on EIA and SEA:** States could develop an instrument providing detailed standards and procedures for EIA and SEA for activities that may impact ABNJ, based, *inter alia*, on the examples of the Espoo Convention and its Kiev Protocol and the Madrid Protocol to the Antarctic Treaty.
4. **Fisheries (UNFSA-type agreement):** States may need to develop a new global instrument (or adopt a protocol to the UNFSA) to ensure the consistent application of UNFSA principles, standards

³ Additional international instruments that already require environmental impact assessment before permitting a particular activity in marine areas include the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention) and its 1996 Protocol; the 1991 Antarctic Environment Protocol; the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its 2003 Protocol on Strategic Environmental Assessment (SEA Protocol); 1994 Agreement relating to Part XI of United Nations Convention on the Law of the Sea; the 1995 Fish Stocks Agreement; the 2000 International Seabed Authority regulations for exploration and exploitation for polymetallic nodules in the Area; and the 2004 International Convention for the Control and Management of Ship's Ballast Water and Sediments.

and institutional provisions to all unregulated fisheries in ABNJ (existing, new and emerging). UNGA Resolution 61/105 does not set rules for RFMO governance, and it does not apply to other unregulated fisheries, or new and emerging high seas fishing activities outside the remit of existing organizations.

3.2.4 Advantages and disadvantages:

Among the advantages of developing a series of voluntary codes of conduct for specific unregulated activities may be that it is sometimes easier to adopt more rigorous “best practice standards” incorporating modern norms in non-binding instruments than a legally binding instrument. However, without consideration of how they would be monitored or how participation would be encouraged (e.g. linkages with funding), they would not likely achieve the desired level of implementation. For example, the FAO International Plans of Action have not achieved significant implementation almost a decade after their adoption.

The advantage of a regional approach is that agreements may better reflect regional environmental conditions and national capacities. However, there is considerable risk of creating inconsistent results across different regions and/or for different industries affecting the global commons. It could also be a slow, expensive and labour intensive process if it requires creation of new regional institutions to address activities that may in fact be better regulated at the global level. A hybrid approach, incorporating global guidance and expectations with regional implementation may be the optimal solution.

The negotiation of legally binding activity-specific instruments could provide targeted progress on priority problems, be more manageable, quicker to achieve and more efficient in using industry expertise on specific topics than a more general instrument. However, special interest groups can be quite powerful in sector-specific negotiating processes and hence are able to weaken agreements or delay progress. A series of specific agreements also has a high long-term cost as each instrument must be negotiated separately, potentially overwhelming the capacity of States,

particularly developing States, to participate effectively. Moreover, this could exacerbate the current problems of the sectoral approach by producing inconsistent standards for environmental protection and biodiversity conservation in the different agreements. Thus a more general agreement, focusing on EIAs, may be more efficient and transparent.

The idea of mandating the ISA to regulate the environmental impacts of other seabed activities is not new, but may raise the debate as to whether the proceeds of such activities are or should be part of the Common Heritage of Mankind. It would also require amendment of Part XI of UNCLOS and the Part XI Implementing Agreement or the adoption of a new Implementing Agreement.

3.3 Applying area based measures and other modern conservation tools

– **Specific requirements for area-based measures and other modern conservation tools for the full range of ocean-based human activities in ABNJ** –

3.3.1 Option A: Short-term actions - Pilot MPA projects

1. States and other actors could continue to support ongoing bioregionalization processes at the global and regional level to provide the scientific basis for networks of representative MPAs in ABNJ as well as for ecosystem-based management.
2. Through upcoming meetings of the UNWG BBNJ (28 April-2 May 2008) and CBD COP9 (19-31 May 2008), States could agree on criteria for ecologically and biologically significant marine areas, threatened species and habitats in ABNJ and for representative networks of MPAs in ABNJ, based on those developed by the CBD Experts Workshop in the Azores, 2-4 October 2007.
3. Through informal partnerships, States could identify areas meeting the agreed criteria and establish pilot projects in ABNJ (i.e. agree to manage or restrain their vessels and nationals with respect to a specific activity or set of activities in the interest of biodiversity conservation) to gain experience with the process.

4. States could also develop partnerships with relevant sectoral and regional bodies to adopt compatible conservation measures for these areas through an UNGA resolution and/or through proposals in specific global and regional fora.

3.3.2 Option B: Regional agreements for MPAs and other conservation measures

States in a region could agree to develop an agreement (or protocols or annexes to regional seas agreements) with provisions for the establishment of MPAs and area-based biodiversity conservation measures, building on approaches from the Antarctic, the Northeast Atlantic and the Mediterranean.

3.3.3 Option C: New instruments or processes for specific gaps

1. **Global agreement for MPAs:** States could agree to develop a global instrument specifically focused on MPAs and other similar area-based measures in ABNJ, including criteria, procedures for identification, designation, management and enforcement. Such an agreement could build on the provisions of relevant conventions such as the Madrid Protocol to the Antarctic Treaty (Annex IV), the OSPAR Convention (Annex V), and the Barcelona Convention's Protocol on Specially Protected Areas while incorporating current best practices for compliance, monitoring and enforcement.
2. **Global agreement for marine spatial planning:** This agreement could establish a framework for marine spatial planning to facilitate implementation of ecosystem-based management in ABNJ. It could establish a global framework for planning at a range of levels, and could provide for overarching principles as well as coherence in the spatial designation and management of activities in ABNJ, integrating MPAs with other sector-based measures.

3.3.4 Advantages and disadvantages

Establishing pilot projects could provide protection to specific areas in ABNJ more quickly than waiting for the negotiation of a global instrument. However, without

an underlying legal agreement for such measures, it may prove difficult to establish effective mechanisms for management, compliance and enforcement and to enact compatible measures in other institutions governing activities in ABNJ that may have an effect on the MPA. That said, "a learning by doing" approach could come up with innovative solutions not apparent otherwise.

A specific global instrument on MPAs or more broadly on marine spatial planning could provide these with a legally binding framework without having to address a wider range of issues. A global agreement could also support action at the regional level, by providing a global imprimatur to regional conservation measures and including mechanisms to encourage compliance by extra-regional States and non-parties. Such an agreement would clearly need to be consistent with UNCLOS, and could serve as a means to implement the environmental duties of part XII in the context of modern ecosystem-based and precautionary management approaches. However, a narrowly-focused instrument might not address some of the broader challenges to high seas governance.

3.4 Cumulative impact assessment

– A regime for assessment of cumulative impacts over time and across all the different sectors undertaking activities in ABNJ –

3.4.1 Option A: Support and expand scientific initiatives

It should be possible to build on the ongoing UNGA "Assessment of Assessments", the Census of Marine Life, the work of the IOC and on United Nations Environment Programme (UNEP) State of the Marine Environment Reports, but efforts are needed to encompass a more specific focus on ABNJ as well as a broader focus on the cumulative impacts of human-induced changes, including climate change, on the ocean from an earth systems level.

3.4.2 Option B: Establish or expand regional scientific advisory bodies

To better inform regional policy makers, it could be possible to expand the scope (both geographic and

substantive) of existing regional scientific advisory bodies such as the International Council for the Exploration of the Sea (ICES) (Northern Atlantic), the North Pacific Marine Science Organization (PICES) (Northwest Pacific) and the Scientific Committee on Antarctic Research (SCAR) and to provide advice to regional oceans management institutions on cumulative impacts in specific oceanic regions including ABNJ. Alternatively, new regional bodies could be established to perform similar functions.

3.4.3 Option C: Establish a permanent scientific body to comprehensively assess the state of the marine environment

A permanent intergovernmental process, akin to the Intergovernmental Panel on Climate Change (IPCC), could be established to synthesize current and evolving knowledge of the state of the global ocean, the present, cumulative and predicted future impact of human activities including climate change, and to formulate policy relevant advice to inform governments and intergovernmental bodies.

3.4.4 Advantages and disadvantages

Short term initiatives can advance existing knowledge, but may not be enough if the goal is a continuous stream of policy relevant advice. Regional scientific bodies are only now upgrading their ability to provide advice relevant to ecosystem-based management, but may not be able to expand their competence widely enough to include new geographic areas. New organizations might need to be developed, which raises the question of whether it could be more effective to have one global body or several regional bodies, or a combination of the two.

3.5 Coordinating extended continental shelf and high seas water column activities

– **A regime for coordinating regulation of interactions between activities occurring in the high seas water column and on the extended continental shelf of coastal States** –

3.5.1 Option A: Judicial clarification

States could be encouraged to use existing dispute settlement mechanisms (e.g. obtain an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS)) to clarify the rights and duties of coastal States engaging in activities on the extended continental shelf and those of States whose vessels operate on the high seas above.

3.5.2 Option B: Regional solutions

Provisions for coastal State and distant water State consultation could be built into existing regional agreements, and new ones could be developed. Ideally these would be based on globally agreed principles and duties; however initially, these may spring up as encountered regionally, and the lessons learned could form the basis of such overarching global principles and duties.

3.5.3 Option C: New instrument

A new instrument could be developed to clarify UNCLOS and CBD rights and duties to cooperate to protect and preserve the marine environment and to conserve and sustainably use biodiversity in ABNJ, with respect to the extended continental shelf of coastal States and the high seas water column above, based on e.g., the UNFSA compatibility provisions.

3.5.4 Advantages and disadvantages

Development of principles and mechanisms for resolving any disputes which may arise over the protection of the marine environment ahead of intensified activity to extract resources will decrease the risk of long-term harm to the environment and encourage biodiversity measures in these areas. Some coastal States may however perceive that by defining and clarifying their rights and duties over the extended

continental shelf it may limit their rights or freedom of action and distant water fishing states may feel the same about their freedoms in the high seas. However, as evidenced in Article 7 of the UNFSA, such an arrangement does not have to prejudice the sovereign rights of coastal States, but rather may provide for more coherent ecosystem-based results. Furthermore, other States may welcome such clarifications as validations of their rights.

3.6. Effective compliance and enforcement mechanisms at global and regional levels for all activities

3.6.1 Option A: Support and enhance the draft Port State Measures Agreement

Negotiation of a global Port State Measures Agreement is already underway under the auspices of the FAO. The agreement could be strengthened through the addition of robust measures for real-time monitoring, control and surveillance (e.g. linkage to the Global Record of Vessels, requirements for global vessel monitoring system (VMS) standards), harmonized compliance assessment measures (e.g. catch documentation and electronic information-sharing requirements) and requirements for cooperation to deter non-compliance and to coordinate enforcement measures (e.g. obligatory coordination of national and RFMO vessel and flag State blacklisting decisions).

3.6.2 Option B: Regionally coordinated enforcement

States can work through regional agreements and Memoranda of Understanding and relevant regional and global bodies to adopt more stringent environmental protection and resource conservation requirements and to promote collaborative enforcement efforts.

3.6.3 Option C: Compliance and enforcement agreement for non-fishing activities

To address non-fisheries activities (e.g. shipping, dumping, transport of hazardous material at sea) and area-based measures (e.g. MPAs), a second global instrument could establish uniform standards for port State control and enforcement of merchant shipping

and other high seas vessel-based activities (building on regional Memoranda of Understanding and the FAO Port State Control Agreement, once adopted). It could also clarify the legal framework for non-flag State enforcement to define when another State can take action to stop an activity in ABNJ either on its own behalf or on behalf of the international community, and set out the parameters by which the offending State's activities will be judged.

3.6.4 Advantages and disadvantages

A robust port State control agreement is essential to addressing current problems of IUU fishing at the global level, but it will not address current illegal activity and poor flag State control in other areas. Although some regions are covered by Port State Control memoranda of understanding which monitor and enforce marine pollution and safety of navigation standards, this network needs to be expanded. Clarification of the legal framework for non-flag State enforcement can serve as an effective incentive for compliance as the threat of sanctions may be enough to deter irresponsible behavior.

4 Addressing identified governance gaps through options A, B & C

To address the key governance gaps identified in the Gap Analysis, it may be possible to build governance reform elements into many of the measures identified above, for example, incorporating principles of good environmental governance, akin to the Almaty Guidelines of the Aarhus Convention, into the UNGA Resolution on Principles for Oceans Governance in ABNJ, and requirements for notification, public participation and transparency into rules for EIAs.

However, as indicated by the Gap Analysis, to fill the gaps in governance, a body or other mechanism would need to be charged with some or all of the following responsibilities:

- Enhance coordination and cooperation
- Oversee and assist in application of environmental governance norms and modern conservation principles and tools (coherency)
- Scrutinize new and emerging ocean uses for their consistency with modern conservation principles and provide a default regulatory mechanism where no relevant sectoral or regional body exists (consistency)

Legal tools and relevant bodies would also be needed to:

- Provide legal standing to States and international organizations to pursue claims in international tribunals and other fora relating to safeguarding marine biodiversity and the environment in ABNJ.
- Enable an effective compliance and enforcement regime for all activities in ABNJ, including a legal framework for non-flag State enforcement at global and regional levels.
- Provide clarity on issues relating to the equitable use of marine (genetic) resources for the benefit of present and future generations (inter- and intra-generational equity).

It may be possible to address these issues in an informal fashion, for example, using joint programmes of work and memoranda of understanding to enhance coordination and cooperation among and between institutions. But progress could be accelerated if these were complemented by a more formal approach.

4.1 Option A: Short-term actions

1. **UN Coordinating Mechanism:** The mandate of existing processes such as the UNICPOLOS, the UNWG BBNJ or UN-Oceans could be revised to: (i) serve as an intergovernmental steering committee to enhance coordination and cooperation among States as well as relevant inter-governmental organizations and bodies, industries and civil society; (ii) promote the coherence of United Nations system activities related to ABNJ (for example, through a systematic review of decisions, mandates and scope of related institutions and activities and their level of implementation); (iii) promote the development of memoranda of understanding and joint programmes of work between and among sectoral and regional bodies and existing multilateral environmental agreements (e.g. CBD, CMS, CITES); and (iv) review EIAs to ensure consistency with modern conservation norms.
2. **UN Ocean Ombudsman:** An independent ocean guardian could be appointed by the UN with a mandate to take up grievances concerning alleged non-compliance with international marine agreements or misuse of the oceans and their resources (The Ocean, Our Future, p.136). The ombudsman could supplement but not supplant existing recourse mechanisms, by receiving and investigating complaints from civil society and reporting his or her findings to the competent institutions with a view to resolving issues in a non-adversarial manner.
3. **UN Secretary General sponsored consultations on benefit-sharing concerning marine (genetic) resources:** Consultations mediated by the UN

Secretary General helped to lead to the agreement embodied in the Part XI Implementation Agreement, and could be used again to explore potential solutions to this controversial issue. Such a process might enable other ABNJ conservation-related issues to proceed without prejudice, if all States agree.

4.2 Option B: Updating regional agreements:

Coordination, cooperation, coherence and consistency could be enhanced at the regional level through the development among and between regional and global bodies of memoranda of understanding, joint programmes and plans of action. Regional seas bodies may need to expand their remit or be established to take on many of the new powers and activities. Navies and coastguards in adjacent coastal States could be invited to assist with surveillance and enforcement actions.

4.3 Option C: New instruments or processes for specific gaps

1. **Global Ocean Authority:** States could establish a permanent body (e.g. a Global Ocean Authority or Commission, an enhanced UN Secretariat, an UNCLOS COP empowered to deal with substantive issues, a Conference of Parties to an Implementing Agreement), or give the function to an expanded and empowered UN Environmental Agency, to ensure coordination and cooperation, consistency and coherence in relation to the governance of activities in ABNJ, based on modern principles of conservation and environmental governance.
2. **Enhanced Enforcement Authority:** To overcome the perennial problem of weak compliance and enforcement, the Global Ocean Authority could be specifically empowered (e.g. by the Port State Control regime described above) to ensure compliance and enforcement by all States and to adopt measures binding on all member States for dealing with recalcitrant States, similar to the

sanctions adopted by the UN Security Council under Chapter VII.⁴ Such measures might include closure of ports, denial of services, denial of flag State privilege to participate in a particular fishery for a period of time or in a certain place, etc.

3. **Agreement on Equitable Oceans Use:** As one means to implement the principles of inter and intragenerational equity, States could adopt an agreement on equitable use of resources and ocean services in ABNJ. As suggested by the 1998 Independent World Commission on the Oceans report, such an agreement could levy a (modest) fee or tax on profits derived from use of marine resources and services in ABNJ, to be used to enhance national and regional management capacity and to support science, conservation and remediation in ABNJ. This could build on Article 82 of UNCLOS regarding payments and contributions by coastal States with respect to exploitation of the extended continental shelf

4.4 Advantages and disadvantages

The governance reforms suggested here may address many of the key governance gaps but more work is needed to identify their advantages and disadvantages. A mix of global and regional reforms will likely be necessary, as focusing solely on regional approaches may not satisfy the interests of the broader international community in conserving biodiversity in ABNJ, but may be more efficient in the short term.

⁴ Chapter VII resolutions by the UN Security Council provide the international legal authority for forcible measures such as the sanctions regime that was enforced by member States against Iraq following the first Gulf War.

5 Option D: A new global comprehensive legally binding instrument

A new global comprehensive legally binding instrument building on the framework of UNCLOS (i.e., an UNCLOS Implementing Agreement) could:

- 1) provide the most direct route towards addressing all (or most of) the identified regulatory and governance gaps;
- 2) fix the current lack of cooperation and coordination, coherency and consistency across global, sectoral and regional regimes; and
- 3) confront some of the root causes of inadequate implementation of the current regime by providing the framework for comprehensive, cross-sectoral, integrated protection, modern management approaches and tools, as well as effective compliance and enforcement powers.

Potential elements of an Implementing Agreement are set forth in the Annex. The text below provides some commentary.

5.1 Principles

Concerns have been expressed that a new agreement should not bring in new principles of international law or new legal elements. However, even on this understanding there is scope to add value by adding substance to existing UNCLOS provisions, to improve coordination, and to clarify responsibilities to protect and preserve the marine environment of ABNJ based on modern developments. Moreover, just as the UNFSA was innovative in introducing the precautionary and ecosystem-based approaches to the UNCLOS framework for highly migratory and straddling fish stocks, a new agreement offers a chance to adopt international law principles that since UNCLOS have become or are emerging as customary international law and to clarify how these principles are to be used by the existing legal and institutional framework. One of the most important UNCLOS principles to reemphasize is that exercise of high seas freedoms is subject to the obligations and rules laid down in UNCLOS, including the obligations

to protect and preserve the marine environment, to conserve marine living resources, and to cooperate for these purposes. As stated in UNFSA, art. 8.4 only those States that cooperate should have access to the resources.

5.2 Potential activities to be covered

A new agreement could serve as an umbrella setting out guiding principles and duties with respect to all activities, uses and processes in ABNJ. It could also provide more detailed measures (through annexes or protocols) for specific tools (e.g. EIAs, SEAs, MPAs, marine spatial planning), and currently unregulated activities with standards for their implementation (e.g. bioprospecting, marine scientific research, cable- and pipeline laying, seabed and floating installations).

5.3 Fisheries

Whether the agreement should cover fisheries activities will be a major point of dispute. Reforms of RFMOs are currently underway and Illegal, Unreported and Unregulated (IUU) fishing will hopefully be brought under control through a new agreement on Port State Control. However, an Implementing Agreement could add value in a number of ways, including: (1) providing a regulatory regime by default for areas where there are no (functioning) RFMOs or where they are not addressing biodiversity concerns; (2) providing for harmonized mandates and rigorous performance standards across sectors and regions; and (3) providing scope for external review by the global community representing a broader range of interests. An Implementing Agreement could also ensure that RFMOs become an effective part of regional oceans governance, by providing common overarching principles and objectives. If progress in fisheries reform continues based on modern environmental governance principles, it may be possible to achieve these goals through other mechanisms such as an inter-RFMO process, amending UNFSA, through FAO, etc.

5.4 Bioprospecting

Due to the different views as to whether MGRs of the Area are or should be part of the common heritage of mankind, there are suggestions to keep bioprospecting and its equitable issues on a separate track from a conservation-focused instrument. However, as a large block of States (the G77) could block progress on a new agreement should their views not be taken into account, there will be a need to find a way to accommodate these diverse positions. This provides an opportunity to elevate discussion to broader equitable principles, and to seek ways to enhance the “equitable and efficient” use of resources, as called for in the Preamble to UNCLOS. Such discussions would only be feasible, however, if supported by the States who would also like to see progress in conservation in ABNJ.

5.5 Minimum requirements/guidance for competent international and regional organizations

Minimum requirements could be a very important component of an Implementing Agreement. There is a widely recognized need for flexible, proactive and adaptive institutions; capable of precautionary and ecosystem-based management and science-based decisions using the best information available, based on modern governance norms. This will require standards for performance assessment and improvement.

5.6 Compliance and enforcement regime

For an Implementing Agreement to add true value, it will need to overcome traditional obstacles leading to weak compliance and enforcement. Thus an Implementing Agreement would need to have clear provisions requiring States to exercise adequate control of flag vessels, their beneficial owners, and their nationals (private and public), mechanisms for encouraging responsible flag State behaviour through performance assessments and through port State, trade, and other measures; provisions for non-flag State enforcement and joint monitoring, control, surveillance, compliance, and enforcement action; accompanied by clear criteria for determining whether States have met their international obligations for protection of marine biodiversity and clear articulation of the consequences for failure to do so.

5.7 Advantages and disadvantages

It may be more efficient to negotiate one instrument rather than a series of issue- or sector- specific and regional instruments, and to incorporate into one instrument all modern environmental governance and conservation norms and tools. Unlike UNCLOS, a comprehensive agreement could provide a regular process for performance review, revision, information exchange, mutual evaluation and updating to provide consistency as well as flexibility to respond to new issues and threats. Also it could support the creation of a modern system of compliance and enforcement utilizing new technologies and a tool-box of measures which are only inconsistently applied at present. As many regional activities are now conducted by global companies, a more global approach may now be timely. While a comprehensive agreement would not replace regional organizations, it could prevent duplication of effort and enhance exchange of best practices and information.

However, an Implementing Agreement could be costly and time-consuming to negotiate. Relying on it to address unregulated activities could delay progress in targeting the most harmful activities. Moreover, without rigorous mechanisms for compliance and enforcement, it would be subject to the same implementation problems as the current regime. Furthermore, it is currently opposed by some States who worry that a comprehensive agreement would have the effect of re-opening key provisions of UNCLOS. It may thus not achieve a substantial change if its proponents cannot alter the position of at least some of the key States. Finally, it is necessary to consider what happens if the agreement does not achieve universal acceptance, and what rules are binding before the agreement comes into force. Some may consider that regionalised responsibility for conservation and management measures with some global oversight may, at least in the interim, work more effectively, while discussing a comprehensive global approach envisaged in an ultimate Implementing Agreement. But this would require much more targeted assistance to regions that do not have pre-existing regimes for the conservation and sustainable management of biodiversity in ABNJ.

6 An 11-point Strategy that Incorporates Elements of A, B, C & D

An UNCLOS Implementing Agreement would appear to be the most direct route towards the goal of achieving comprehensive, cross-sectoral, integrated protection of the marine environment and conservation and sustainable management of marine biodiversity in ABNJ. However, given the current lack of political will on the part of some States to commit to such an instrument, the most feasible approach may require instead a series of smaller steps and tools, utilizing short term, strategic action to achieve progress as well as build political will for more comprehensive solutions.

Based on the options raised and discussed above, an 11-point strategy would include the following short term and medium term actions:

- 1) **Adopt an UNGA Declaration on Principles for Oceans Governance in ABNJ** to create a common understanding and basis for application of modern environmental governance and conservation principles and tools.
- 2) **Adopt an UNGA Resolution on EIAs** to ensure that all unregulated activities with a potential to impact marine biodiversity in ABNJ have a minimum level of scrutiny and oversight at the national and global levels. Such a resolution could call on all States to immediately implement existing EIA, notification and transparency requirements with respect to processes and activities under national jurisdiction or control (including with respect to nationals), particularly for new and emerging activities and for ongoing activities that are expanding in area or effort.
- 3) **Establish a transparent UNGA-based review process** to enhance coordination and to assess progress by States and relevant regional and global organizations in implementing the two new UNGA resolutions (akin to that for the UNGA resolution paragraphs on high seas bottom fisheries) or expand the remits of UNICPOLOS, the UNWG BBNJ or UN-Oceans and appoint a UN Ombudsman.
- 4) **Support a comprehensive FAO Port State Control Agreement** with strong port based enforcement and at-sea monitoring mechanisms to tackle the pervasive problem of IUU fishing. This would include real-time monitoring, control and surveillance (e.g. linkage to the Global Record of Vessels, requirements for global VMS standards), harmonized compliance assessment measures (e.g. catch documentation and electronic information-sharing requirements) and requirements for cooperation to deter non-compliance and to coordinate enforcement measures (e.g. obligatory coordination of national and RFMO vessel and flag State blacklisting decisions). Such an agreement could also serve as a precedent for developing an enforcement and compliance regime for non-fisheries activities.
- 5) **Initiate a series of pilot MPA projects** to gain experience in the water with the costs and benefits of integrated oceans management at the small scale level, and to protect ecologically and biologically significant areas and species through MPAs and other conservation measures. Experience in bioregionalization and development of representative networks of MPAs can be gained by expediting work in regions such as the Mediterranean, the Northeast Atlantic and the Antarctic.
- 6) **Promote the expansion of regional capacity** to comprehensively conserve biodiversity, protect the marine environment and manage resources at an eco-regional level, which may serve as the seed for regional oceans management organizations where none currently exist.
- 7) **Support and expand scientific initiatives** to understand the state of the global ocean, as scientific information and understanding are essential to inspire action as well as inform management. In addition to the ongoing “Assessment of Assessments”, efforts need to encompass both a more specific focus on the ocean in ABNJ as well as a broader focus on the impacts of climate change

on the ocean from an earth systems level. This could be the basis for an **Intergovernmental Panel on Oceans**.

- 8) **Explore the principles of intergenerational and intragenerational equity** with a view to developing a mechanism to address them as part of modern oceans governance. Such a mechanism could serve to protect the interests of future generations in a healthy and biodiverse marine environment that can continue to provide ecosystem goods and services in the years to come. It could include a fund, based on a small percentage of the profits derived from ocean uses, to enhance national and regional oceans management and conservation capacity in ABNJ, and support conservation and research activities. This may provide an avenue to constructively approach the debate over seabed MGRs in ABNJ, while permitting progress on conservation.
- 9) **Negotiate a global EIA and SEA instrument** applicable to all processes and activities under national jurisdiction or control (including those involving nationals) with a potential to impact biodiversity in ABNJ, not just unregulated activities. The global instrument could provide more detailed rules and procedures for the duties set forth in UNCLOS and the CBD as well as incorporate modern principles and best practices.
- 10) **Promote development of a global agreement for marine spatial planning**, which could serve a dual purpose of providing a framework for high seas MPAs and other biodiversity conservation measures as well as a formal mechanism for enhancing coordination and consistency of activities at the global and regional levels.
- 11) **Promote a new global comprehensive legally binding agreement** building on UNCLOS by highlighting the advantages of integrated, comprehensive and modern management and governance of ABNJ over a fragmented array of sector- and issue-specific agreements and multilateral processes and tools that may hamper States' ability to efficiently and effectively confront 21st century challenges and threats to the marine environment and biodiversity in ABNJ.

The outcome will of course depend on the political will of nations, but already we have seen rapid progress on a number of key threats to biodiversity in ABNJ. As States, scientists, industry and civil society become more aware of the risks posed by escalating activities to vital marine ecosystem goods and services in ABNJ, their voices can help generate support for an ambitious vision for high seas governance.

Annex: Potential elements of an Implementing Agreement

1. Potential Objectives
 - Protection and preservation of the marine environment;
 - Conservation and sustainable use of marine biodiversity;
 - Efficient and equitable use of the resources in ABNJ ensuring the rights of current and future generations are not compromised;
 - Through the application of integrated, precautionary and ecosystem based management approaches and tools to safeguard marine biodiversity and the environment in ABNJ for the benefit of present and future generations
2. Potential Scope
 - To cover geographic areas beyond national jurisdiction (high seas & the Area), and
 - Address activities and processes under the jurisdiction or control of States (including nationals) with the potential for impacts on marine environment and biodiversity in ABNJ (both within and beyond national jurisdiction).
3. General principles
 - Protection and preservation of the marine environment;
 - Conservation and sustainable management of biodiversity;
 - Sustainable and equitable use of marine resources for the benefit of present and future generations (inter- and intra-generational equity);
 - Conditional freedom of activity on the high seas;
 - Cooperation;
 - Precautionary approach;
 - Ecosystem approach based management approaches;
 - Polluter/user pays principle;
 - Use of best available scientific and other technical information;
4. Key conservation approaches and tools
 - Common heritage of mankind for seabed (mineral) resources;
 - Common concern of humanity regarding marine biodiversity;
 - State responsibility for the actions of their nationals;
 - Transparency and accountability;
 - Stakeholder participation;
 - Principle of common but differentiated responsibilities (e.g. London Protocol).
5. Minimum requirements/guidance for competent international and regional organizations
 - Flexible, proactive and adaptive institutions;
 - Precautionary and ecosystem-based management;
 - Science-based decisions using the best information available;
 - Standards for performance assessment and improvement.
6. Monitoring, control, surveillance, compliance and enforcement
 - Adequate control of flag vessels (both merchant and sovereign immune vessels), their beneficial owners, and nationals (natural persons and corporations);
 - Enforcement of responsible flag State behaviour through performance assessment and through port State, trade based and other measures;

- Provisions for mutual assistance or joint monitoring, control, surveillance, compliance, and enforcement;
 - National or international authority with standing to raise claims relating to protection of the marine environment and biodiversity in ABNJ;
 - Clear stipulation of criteria for determining whether States have met their international obligations to safeguard the marine environment and biodiversity in ABNJ and clear articulation of the consequences of any failure to do so.
7. Potential functions of an institutional mechanism
- Enhancing coordination and cooperation within and across sectors;
 - Ensuring the consistent and coherent application of modern conservation principles, approaches and tools as well as principles of good environmental governance (e.g., transparency, accountability, stakeholder participation and equitable use of resources) by existing and any new global, sectoral and regional organizations;
 - Providing a default mechanism for regulation of activities where there is no relevant organization and/or no conservation and management measures in place (e.g. marine scientific research, bio-prospecting, laying of cables and pipelines and construction of various types of installations and any new or emerging activities (e.g. geo-engineering, climate change mitigation and adaptation techniques));
 - Assessing existing and emerging uses of the oceans, in terms of the obligation to protect and preserve the marine environment and its biodiversity.
8. A scientific body or process akin to the IPCC to enable cumulative impact assessment and monitoring of the health of the oceans as well as mechanisms for cooperation and capacity building in marine scientific research in ABNJ.
9. Clarification of the relationship of the global framework to regional agreements.
10. Clarification of the rights and duties of States vis a vis the international community and future generations.
11. Consideration of rights, duties and interests of developing States, including capacity building and cooperation.
12. Clarification of the rights and duties of coastal States and distant water States with respect to activities on and above the extended continental shelf.
13. Dispute settlement provisions, including the option of advisory opinions from the ITLOS, and standing to bring actions on behalf of the international community.
14. Annexes/Protocols on:
- Environmental impact assessment;
 - Strategic environmental assessment;
 - Protected species and habitats;
 - Area protection and management;
 - Marine genetic resources;
 - Climate change mitigation activities;
 - Undersea pipeline and cable laying;
 - Marine scientific research.
- With the possibility of further annexes as required.

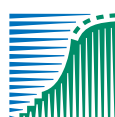


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