STRONG HIGH SEAS

Strengthening Regional Ocean Governance for the High Seas

Opportunities and Challenges to Improve the Legal and Institutional Framework of the Southeast Atlantic and Southeast Pacific

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Abbreviations

ABMT	Area-based Management Tool
ABNJ	Areas Beyond National Jurisdiction
ABS	Access and Benefit Sharing
ACAP	Agreement on the Conservation of Albatrosses and Petrels
AIDCP	Agreement on the International Dolphin Conservation Program
APEI	Area of Particular Environmental Interest
ATLAFCO	Ministerial Conference on Fisheries Cooperation Among African States Bordering the Atlantic
AU	African Union
BBNJ	Biodiversity Beyond National Jurisdiction
BCC	Benguela Current Commission
BCLME	Benguela Current Large Marine Ecosystem
BWM Convention	International Convention for the Control and Management of Ships' Ballast Water and Sediments
CBD	Convention on Biological Diversity
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CECAF	Fishery Committee for the Eastern Central Atlantic
CIC	Centre Interrégional de Coordination/Interregional Coordination Centre for the Implementation of Regional Strategy for Maritime Safety and Security in Central and West Africa
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMM	Conservation and Management Measure
CMS	Convention on the Conservation of Migratory Species of Wild Animals
COP	Conference of Parties
COREP	Regional Fisheries Committee for the Gulf of Guinea
CRESMAC	Centre Régional de Securité Maritime de l'Afrique Centrale/Regional Maritime Safety Centre for Central Africa
CRESMAO	Centre Régional de Sécurité Maritime de l'Afrique de l'Ouest/Regional Maritime Safety Centre for West Africa
CPPS	Comisión Permanente del Pacífico Sur/Permanent Commission for the South Pacific
EBFM	Ecosystem-based Fisheries Management
EBSA	Ecologically or Biologically Significant Marine Area
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
ERA	Ecosystem Risk Assessment
FAD	Fish Aggregating Device
FAO	Food and Agriculture Organization
FCWC	Fishery Committee for the West Central Gulf of Guinea
GEF	Global Environment Facility
IATTC	Inter-American Tropical Tuna Commission
IBA	Important Bird and Biodiversity Area
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICRW	International Convention for the Regulation of Whaling
IGC	Intergovernmental Conference

IMMA	Important Marine Mammal Area
IMO	International Maritime Organisation
IOC-UNESCO	Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
ISA	International Seabed Authority
IUU	Illegal, Unreported and Unregulated (Fishing)
IWC	International Whaling Commission
KBA	Key Biodiversity Area
LME	Large Marine Ecosystem
MARPOL	International Convention for the Prevention of Pollution form Ships
MCS	Monitoring, Control and Surveillance
MGR	Marine Genetic Resources
MoU	Memorandum of Understanding
MPA	Marine Protected Areas
MSP	Marine Spatial Planning
MSY	Maximum Sustainable Yield
NEAFC	North East Atlantic Fisheries Commission
OLDEPESCA	Organización Latinoamericana de Desarrollo Pesquero/Latin American Organisation for Fisheries Development
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PrepCom	Preparatory Committee
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
PSSA	Particularly Sensitive Sea Area
REMP	Regional Environmental Management Plan
RFMA	Regional Fisheries Management Agreement
RFMO	Regional Fisheries Management Organisation
RFB	Regional Fisheries Body
RSP	Regional Seas Programme
SDG	Sustainable Development Goal
SEA	Strategic Environmental Assessment
SEAFO	South East Atlantic Fisheries Organisation
SOI	Sustainable Ocean Initiative
SPRFMO	South Pacific Regional Fisheries Management Organisation
SRFC	Sub-Regional Fisheries Commission
SSC	Scientific Sub-Committee
TAC	Total Allowable Catch
TAE	Total Allowable Effort
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEA	United Nations Environment Assembly
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFSA	United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
UNGA	United Nations General Assembly
VME	Vulnerable Marine Ecosystem
VMS	Vessel Monitoring System
WAEMU	West African Economic and Monetary Union
WCPFC	Western and Central Pacific Fisheries Commission
WSSD	World Summit on Sustainable Development

Executive Summary

The Southeast Atlantic and Southeast Pacific regions are both characterised by their high biological productivity, supported by important oceanic currents. Recognising the need to ensure conservation and sustainable use of this biodiversity, coastal States in these regions cooperate through regional organisations to improve ocean governance, including in Areas Beyond National Jurisdiction (ABNJ).

Within these two regions, members of the Permanent Commission for the South Pacific (CPPS) signed the 2012 Galapagos Commitment, in which they commit to promote coordinated action 'regarding their interests in living and non-living resources in ABNJ'; and in the Southeast Atlantic, member States of the Abidjan Convention requested that the Secretariat set up a working group to study all aspects of the conservation and sustainable use of BBNJ within the framework of the Convention.

This report is intended to provide a review of the relevant governance frameworks currently in place for the management of high seas biodiversity in these regions. The report uses the issues under discussion in the ongoing negotiations for a new legally binding BBNJ agreement under the United Nations, as well as selected Sustainable Development Goal (SDG) 14 targets, as a lens through which to assess progress towards conservation and sustainable use.

The report finds that considerable efforts have been made to advance conservation and sustainable use of BBNJ and that States have been active in addressing issues such as Illegal, Unreported and Unregulated (IUU) fishing, marine pollution as well as promoting scientific cooperation. Nonetheless, legal and implementation gaps remain that hamper efficient and effective management of ecosystems and resources in ABNJ. In particular, there is limited adoption of legally binding management measures outside those adopted in relation to fisheries, and little coordination between competent organisations.

When looking at the two regions in detail, the assessment showed that:

- Member States within the two regions are diverse in terms of culture, language and available capacity – this is particularly the case in the Southeast Atlantic region;
- There exists varied and uneven participation in regional and global agreements within both regions, making it difficult to fully address BBNJ issues without an adequate legal basis or, in the case of the Southeast Atlantic, also an institutional basis;
- Organisations within the regions have varying and non-comprehensive or limited mandates to address issues related to BBNJ;
- There is limited cross-sectoral cooperation within the regions, with individual organisations adopting their own principles, resolutions and recommendations for addressing BBNJ challenges.

Some preliminary ideas for options to strengthen the role of regional ocean governance for the high seas are offered, including:

- Advancing cross-sectoral cooperation and coordination between organisations to ensure the implementation of the ecosystem-based approach to manage marine resources and ensure conservation and sustainable use of BBNJ. Various options such as joint programmes, Memoranda of Understanding, and participation in events exist and could be a first step in building cooperation;
- Coastal States in the Southeast Atlantic and Southeast Pacific could choose to implement a common approach or policy for the region

on conservation priorities by championing flag State responsibility to impose regulations regarding areas or activities that are not currently covered by a competent management authority; impose stricter standards than required by a competent management authority; and provide regulation where the relevant RFMO or sectoral management body has not adopted measures;

- Challenges to cross-sectoral cooperation can be eased if more States in the regions become parties to the key international and regional agreements, including a future BBNJ agreement for BBNJ. Indeed, such participation may be seen as a priority, as this would provide a shared basis for common action;

- Coastal States could form coalitions to promote mutual interest in specific BBNJ-related issues within existing processes and in the negotiations for a new treaty;

- States could promote conservation and sustainable use of BBNJ by voicing their views and proposing management actions at global and regional fora. States could, for example, make efforts to advance ecosystem-based management within RFMOs by advocating that they put a greater emphasis on assessment of non-target species and management of bycatch;

- The expansion of efforts to coordinate on BBNJ issues by empowering regional seas programmes to consider ABNJ could support a coordinated, regional approach to conservation and sustainable management;

- A robust scientific basis and developed capacity for taking action could also be supported to ensure the establishment of conservation and management measures and ensure the complementarity of sectoral measures.

States could also consider that the negotiation of a new BBNJ agreement is an opportunity to bring coherence to a fragmented governance regime, provide additional support for improved cross-sectoral cooperation and allow for the establishment or strengthening of regional integration mechanisms. The negotiation of a new agreement, therefore offers a mode by which to support and achieve many of the above mentioned options for strengthening regional ocean governance.

1. Introduction

The Southeast Atlantic and Southeast Pacific regions are both characterised by their high biological productivity, supported by important oceanic currents. Recognising the need to ensure conservation and sustainable use of this biodiversity, coastal States in these regions cooperate through regional organisations to strengthen ocean governance, including in Areas Beyond National Jurisdiction (ABNJ) (often simply referred to as the 'high seas').

This report provides a review of the relevant governance frameworks currently in place for the management of high seas biodiversity in these regions and discusses the challenges and opportunities for advancing conservation and sustainable use. Building on this review, the report highlights important lessons learned and identifies some possible options for strengthening management and regional cooperation.[1]

The discussion in this report is structured around two important ongoing international processes: the ongoing negotiations within the United Nations (UN) for an international legally binding instrument on the conservation and sustainable use of marine biodiversity beyond national jurisdiction (BBNJ); and Sustainable Development Goal (SDG) 14. The BBNJ negotiations cover marine genetic resources (MGRs), area-based management tools (ABMTs), environmental impact assessments (EIAs), and capacity building and the transfer of marine technology, while selected SDG targets of particular interest to regional organisations provide a lens for discussion, namely: SDG 14 targets on marine pollution (14.1), management and protection of marine ecosystems (14.2) and Illegal, Unreported and Unregulated (IUU) fishing (14.4).

This report was prepared as part of the *Strengthening Regional Ocean Governance for the High Seas ('STRONG High Seas')* project, based on an extensive literature review, detailed analysis of legal and policy documents, engagement with stakeholders through regional workshops and expert opinion. It builds on previous studies, particularly in relation to the Southeast Pacific.[2] The report was reviewed by ocean governance experts and by members of the STRONG High Seas project Advisory Board. The report is targeted towards policy and decision-makers as well as others working on issues of ocean governance, particularly in the Southeast Atlantic and Southeast Pacific regions.

An in-depth description of the current global ocean governance framework is provided in Chapter 2, including a review of relevant international organisations. Chapter 3 provides an overview of the ecology and governance frameworks of these regions, Chapter 4 focuses on the abovementioned BBNJ elements and SDG targets. Chapter 5 assesses linkages to other regional organisations that do not have a mandate to work in ABNJ and how they can contribute to conservation and sustainable use. Finally, Chapter 6 discusses the results of these assess-

[1] In this report, an international organisation is defined as an organisation with an international scope. A regional organisation is defined as an organisation which can incorporate an international membership but operates regionally. A sectoral organisation is an organisation that has a clear sectoral mandate but which operates either regionally or internationally.

[2] See: Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415; Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635–671.DOI: http://doi.org/10.1163/15718085-12324051; UNEP-WCMC (2017). Governance of areas beyond national jurisdiction for biodiversity conservation and sustainable use: Institutional arrangements and cross-sectoral cooperation in the Western Indian Ocean and the South East Pacific. Cambridge (UK): UN Environment World Conservation Monitoring Centre. 120 pp.

ments and provides possible options for improving governance in the Southeast Atlantic and Southeast Pacific. Additional background information and detailed assessments are provided in the Annexes.

This report is part of a series of reports covering issues of ocean governance with a focus on the high seas of the Southeast Pacific and Southeast Atlantic. Further reports focusing on the Southeast Atlantic and Southeast Pacific will be published by the STRONG High Seas project on topics such as the ecological state of the high seas, socioeconomic importance of the high seas, options for management measures and recommendations for stakeholder engagement and capacity building in ocean governance. These reports will be made available through the STRONG High Seas project website.[3]

[3] Available at: https://www.prog-ocean.org/our-work/strong-high-seas/.

2. Ocean Governance

The legal framework for governance of the ocean is provided by, among various other instruments, the United Nations Convention of the Law of the Sea (UNCLOS).[4] UNCLOS, together with a wide-range of international and regional instruments, lays down the principles, rules, regulations, and norms for governing the uses of the ocean. This framework forms 'the international basis upon which to pursue the protection and sustainable development of marine and coastal environment and its resources'.[5] UNCLOS has been widely ratified and some of the provisions in UNCLOS reflect customary international law and are therefore applicable to both Parties and non-Parties of UNCLOS (see Figure 1).[6]

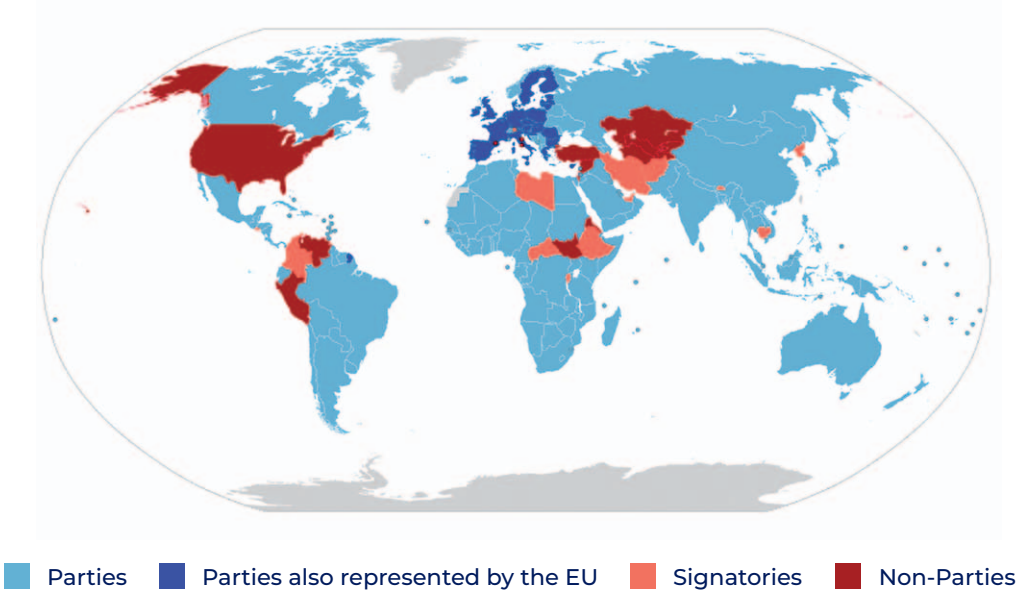


Figure 1: States Parties to UNCLOS[7] (Source: Wikimedia)

[4] *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, ATS 31 (entered into force 16 November 1994) ('UNCLOS'). A historical overview of the development of UNCLOS and related regimes and principles can be found for instance here: https://worldoceanreview.com/en/wor-1/law-of-the-sea/a-constitution-for-the-seas/ (accessed: December 2018).

[5] United Nations General Assembly, *Report of the United Nations Conference on Environment and Development*, Conference on Environment and Development, A/CONF.151/26 (Vol. II) (13 August 1992) chapter 17 *('Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources')*, para 17.1.

[6] There are currently 168 Parties to UNCLOS and the UN General Assembly has regularly stressed its goal of universal participation in its resolutions on oceans and the law of the sea. However, it is important to note that, although UNCLOS is recognised as a fundamental international treaty on oceans and plays a leading role in the regulation of marine issues, not all States are Parties to this Convention. The following States have not ratified (* denotes States that have nonetheless signed): Afghanistan*, Andorra, Bhutan*, Burundi*, Cambodia*, Central African Republic*, Colombia*, El Salvador*, Eritrea, Ethiopia*, Holy See, Iran (Islamic Republic)*, Israel, Kazakhstan, Korea (People's Democratic Republic), Kyrgyzstan, Libya*, Liechtenstein*, North Korea*, Peru, Rwanda*, San Marino, South Sudan, Syrian Arabic Republic, Tajikistan, Turkey, Turkmenistan, United Arab Emirates*, the United States, Uzbekistan, and Venezuela. A chronological list of ratifications is available at: http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm (accessed: December 2018).

[7] Source: Wikimedia, available at: https://commons.wikimedia.org/wiki/File:United_Nations_Convention_on_the_Law_of_the_Sea_parties.svg (accessed: December 2018).

Under UNCLOS, the ocean is divided into jurisdictional zones, each with a different legal status and subject to different rights and obligations (see Figure 2). By determining a baseline based on their coastline, States can define a 200 nautical mile Exclusive Economic Zone (EEZ). They have the exclusive right to exploit, explore, conserve and manage all marine resources.[8]

Areas beyond national jurisdiction comprise: the water column, known as the 'high seas'; and the seabed, called 'the Area'.[9] On the high seas, UNCLOS applies the principle of *freedom of the high seas*, i.e. that 'the high seas are open to all states, whether coastal or land-locked', and ensures freedoms such as navigation, overflight, laying of submarine cables, building of artificial islands, fishing and scientific research.[10] In the Area, the principle of the *common heritage of mankind* applies, which entails, inter alia: shared ownership and management of the area and its mineral resources, the equitable sharing of benefits for current and future generations; and the responsibility of States, through the International Seabed Authority (ISA), to act on behalf of mankind as a whole, including future generations.[11]

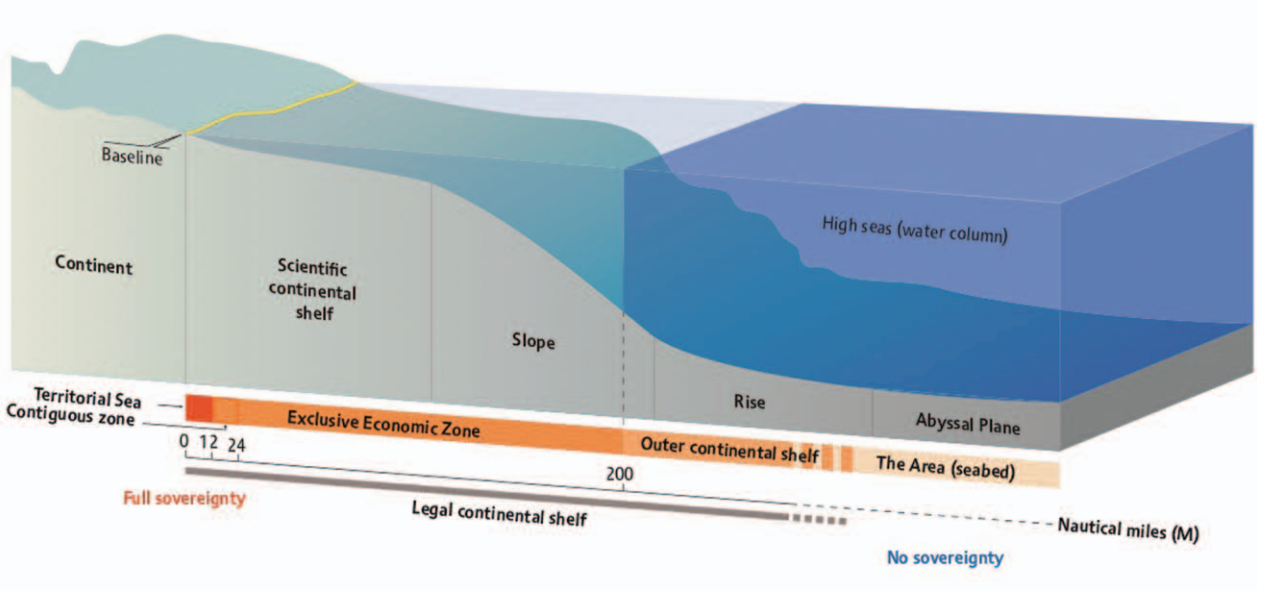


Figure 2: Maritime Zones under UNCLOS[12] (Source: Riccardo Pravettoni, GRID-Arendal [2010])

[8] UNCLOS, art. 56.

[9] UNCLOS, arts. 1 and 86. Under UNCLOS art. 76, States can furthermore claim an extended continental shelf up to 350 nautical miles or up to 100 nautical miles from the 2,500-metre isobath. In these cases, the extended continental shelf is part of the national jurisdiction of States whereas the water column above it is beyond national jurisdiction.

[10] UNCLOS, art. 87. UNCLOS makes exercise of these freedoms subject to a range of obligations and responsibilities to other States and to the marine environment. These freedoms have been further qualified by the development of international law through the imposition of new treaty obligations, for example in relation to fisheries under the UNFSA, and the application of modern legal principles, such as the precautionary principle.

[11] UNCLOS, arts. 133, 136 and 140; Jaeckel, A., Gjerde, K.M., Ardron, J.A., (2017). 'Conserving the Common Heritage of Humankind – Options for the Deep Seabed Mining Regime', Marine Policy 78, 150-157; Jaeckel, A., Ardron, J.A., Gjerde, K.M (2016). Sharing benefits of the common heritage of mankind – Is the deep seabed mining regime ready? Marine Policy, http://dx.doi.org/10.1016/j.marpol.2016.03.009.

[12] Source: Riccardo Pravettoni, GRID-Arendal (2010), available at: http://www.grida.no/graphicslib/detail/marittime-zones_e96c (accessed: December 2018).

2.1 Major Challenges in Ocean Governance

While UNCLOS establishes general rules for States to cooperate and puts forth the legal basis for the protection of the marine environment and the conservation of marine living resources on the high seas, it does not comprehensively address the conservation and sustainable use of high seas biodiversity.[13] The fragmented governance regime leaves numerous gaps and poses challenges to an integrated approach to the conservation and sustainable use of high seas biodiversity, notably:

- No comprehensive suite of overarching governance principles exists to guide decision-making, such as precaution, cooperation, accountability, transparency, intergenerational and intra-generational equity, the ecosystem approach, and stewardship;

- The current institutional framework is fragmented and lacks adequate mechanisms for global coordination, cooperation or coherence among existing regional and global competent organisations. Due to this fragmentation, not all human activities in ABNJ are adequately regulated; not all regions are fully covered; and some organisations exercise their mandate with limited reference to modern governance principles, such as the ecosystem approach, or transparent and inclusive decision-making processes;

- There is no global framework for area-based management tools (ABMTs) including marine protected areas (MPAs). MPAs and MPA networks are considered important tools for preserving and restoring ecosystem health and diversity; increasing ecosystem resilience and enhancing productivity. Global standards for sectoral and cross sectoral ABMTs and decision-making for globally legally binding MPAs are similarly lacking;

- Uncertainty surrounding the legal status of marine genetic resources (MGRs) in ABNJ including questions of sharing of benefits;

- Lack of global practicable criteria and standards for the implementation of general UNCLOS rules to conduct and report on environmental impact assessments (EIAs) and strategic environmental assessments (SEAs), under which human activities and their individual and cumulative pressures can be assessed in a comprehensive manner to inform decision-making;

- Limited capacity building and technology transfer, suggesting that the provisions in UNCLOS on this element are not adequately addressed or monitored. It is widely recognised that improved implementation mechanisms are needed; and

- Uneven spatial and species coverage by high seas fisheries management bodies has frequently been highlighted as a specific challenge, due to the primary focus of high seas fisheries management on regional level implementation. This has resulted in mixed regional fisheries management organisations (RFMOs) performance in implementing ecosystem-based management to sustain habitat, species and ecological integrity; gaps in spatial coverage as well as target species (sharks, squid); and IUU fisheries stemming in part from often poor domestic control over nationally registered and flagged vessels.[14]

[13] UNCLOS, arts. 117, 118, 119, 192, 194, and 197. For more details on the international legal framework for the conservation of high seas biodiversity, see for instance C. Durussel, 'Challenges in the Conservation of High Seas Biodiversity in the Southeast Pacific' (Doctor of Philosophy Thesis, University of Wollongong, 2015), http://ro.uow.edu.au/theses/4415/; UNEP-WCMC (2017). Governance of areas beyond national jurisdiction for biodiversity conservation and sustainable use: Institutional arrangements and cross-sectoral cooperation in the Western Indian Ocean and the South East Pacific. Cambridge (UK): UN Environment World Conservation Monitoring Centre. 120 pp.

[14] Gjerde, K., Boteler, B., Durussel, C., Rochette, J., Unger, S., Wright, G., 'Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction: Options for Underpinning a Strong Global BBNJ Agreement through Regional and Sectoral Governance', STRONG High Seas Project, 2018; See also Wright, G., Rochette, J., Gjerde, K. and Seeger, I., (2018). 'The long and winding road: negotiating a treaty for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction', IDDRI Studies N°08 (2018).

2.2 Sector-based Ocean Governance Framework

Human activities in ABNJ include fishing, shipping, and the laying of submarine cables and pipelines, with new activities potentially on the horizon, such as the exploitation of deep-seabed mineral resources. A number of agreements, conventions, international organisations and other regulatory bodies are in place for the management of these activities (see Figure 3). Measures adopted by regulatory bodies are binding on member States. However, ensuring compliance is challenging and exacerbated by the fact that these organisations are frequently under-resourced.

Fisheries: States cooperate through Regional Fisheries Management Organisations and Arrangements (RFMO/As).[15] Management measures of RFMOs/As are implemented pursuant to provisions in each organisations' foundational agreement, UNCLOS, the 1995 United Nations Fish Stocks Agreement (UNFSA),[16] the 1993 FAO Compliance Agreement,[17] the 2009 FAO Ports States Measures Agreement, which specifically targets IUU fishing,[18] as well as various binding and voluntary agreements, codes of conduct and plans of action adopted under the aegis of the United Nations Food and Agriculture Organization (FAO).[19] The UNFSA elaborates the requirements of UNCLOS for States to cooperate on a regional basis through RFMOs, and sets forth principles and obligations for, among other things, science and ecosystem-based approaches to management, precaution, and the protection of biodiversity in the marine environment. The International Whaling Commission (IWC) provides for the international regulation of whaling and the management of whale stocks.[20]

Shipping: Marine transportation is regulated by a number of conventions and agreements under the International Maritime Organization (IMO), with the International Convention for the Prevention of Pollution from Ships ('MARPOL'),[21] the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter ('London Convention') and its Protocol,[22] and the International Convention for the Control and Management of Ships' Ballast Water and Sediments ('Ballast Water Management Convention' or 'BWM Convention') being the key agreements with regard to protecting the marine environment.[23]

[15] RFMOs have a management mandate and a Secretariat operating under a governing body of member States, whereas Arrangements have no management authority and no formal institutional structure. See: http://www.fao.org/fishery/topic/16800/en (accessed: December 2018).

[16] *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, opened for signature 8 September 1995, ATS 8 (entered into force 11 December 2001).

[17] *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas,* opened for signature 29 November 1993, ATS 26 (entered into force 24 April 2003).

[18] *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, opened for signature 22 November 2009 (entered into force 5 June 2016).

[19] See especially: United Nations Food and Agriculture Organization, *Code of Conduct for Responsible Fisheries* (1995); United Nations Food and Agriculture Organization, 'International Plan of Action for the Management of Fishing Capacity' (1999); United Nations Food and Agriculture Organization, 'International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries' (1999); United Nations Food and Agriculture Organization, 'International Plan of Action for the Conservation and Management of Sharks' (1999); United Nations Food and Agriculture Organization, 'International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing' (2001).

[20] The IWC was established by *the International Convention for the Regulation of Whaling*, opened for signature 2 December 1946, ATS 18 (entered into force 10 November 1948) amended in 1956.

[21] *Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as modified by the Protocol of 17 February 1978*, opened for signature 26 September 1997, ATS 37 (entered into force 19 May 2005).

[22] *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, opened for signature 13 November 1972, ATS 16 (entered into force 30 August 1975); *Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972*, opened for signature 7 November 1996, 36 ILM 1 (entered into force 24 March 2006) amended in 2006.

[23] *International Convention for the Control and Management of Ships' Ballast Water and Sediments*, opened for signature 13 February 2004 (entered into force 8 September 2017). See also: *International Convention for the Safety of Life at Sea*, opened for signature 1 November 1974, 1184 UNTS 2 (entered into force 25 May 1980); *International Convention on Oil Pollution Preparedness, Response and Co-operation,* opened for signature 30 November 1990, ATS 12 (entered into force 13 May 1995).

Seabed mining: Activities with regard to deep seabed mining in the Area are regulated by the International Seabed Authority (ISA), as established under Part XI of UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of UNCLOS.[24] The ISA oversees activities related to the exploration and exploitation of and equitable sharing of benefits from mineral resources in the Area, reviews applications for exploration and exploitation, conducts EIAs, and is responsible for ensuring the effective protection of the marine environment through the necessary measures, including by adopting rules and regulations for the prevention of marine pollution and damage to the marine environment and the conservation of natural resources.[25] The ISA is currently developing regulations for mineral exploitation.[26] These regulations will be complemented by the development of Regional Environmental Management Plans (REMPs).[27]

In addition to the above-mentioned organisations, a number of international conventions and organisations are relevant to the conservation and sustainable use of BBNJ, namely:

- The Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (IOC-UNESCO) for matters related to marine science and the transfer of marine technology;
- UN Environment, the global environmental authority under the United Nations;
- Agreements focused on the conservation of species of fauna and flora, notably: the Convention on Biological Diversity (CBD);[28] the Convention on Migratory Species (CMS);[29] and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);[30]
- Regional instruments, such as Regional Seas Programmes, and other regional initiatives, e.g. the Sargasso Sea Commission (though the competence and mandate of such instruments and initiatives to regulate activities in ABNJ is limited).[31]

Selected agreements relevant to the conservation and sustainable use of marine biodiversity in ABNJ are summarised in Annex I.

[24] UNCLOS, art. 137; United Nations General Assembly, *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982*, GA Res 48/263, 48th sess, Agenda Item 36, A/RES/48/263 (17 August 1994). See: http://www.un.org/depts/los/convention_agreements/texts/unclos/closindxAgree.htm (accessed: September 2018).

[25] UNCLOS, arts. 140, 145, and 147.

[26] Miller, K.A., et al. (2018) An Overview of Seabed Mining Including the Current State of Development, Environmental Impacts, and Knowledge Gaps. In Front Mar Sci 10 January 2018.

[27] *See: ISA (2018) 'Preliminary Strategy for the Development of Regional Environmental Management Plans for the Area', https://www.isa.org.jm/sites/default/files/files/documents/isba24-c3-e.pdf (December 2018).*

[28] *Convention on Biological Diversity, opened for signature 5 June 1992, ATS 32 (entered into force 29 December 1993). Although the CBD has no jurisdictional mandate for ABNJ – only, as outlined in CBD art. 4, in the case of processes and activities under the jurisdiction of its contracting Parties, it provides a broad cooperation obligation with regard to the conservation and sustainable use of marine biodiversity in ABNJ (art. 5).*

[29] *Convention on the Conservation of Migratory Species of Wild Animals, opened for signature on 23 June 1979, ATS 32 (entered into force 11 January 1983).*

[30] *Convention on International Trade in Endangered Species of Wild Fauna and Flora, opened for signature 3 March 1973, ATS 29 (entered into force 1 July 1975).*

[31] The Sargasso Sea Commission was established by the 2014 Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, which was initiated by the governments of the Azores, Bermuda, Monaco, UK and US. The objective of the Commission is to 'encourage and facilitate voluntary collaboration toward the conservation of the Sargasso Sea'. See: http://www.sargassoseacommission.org/.

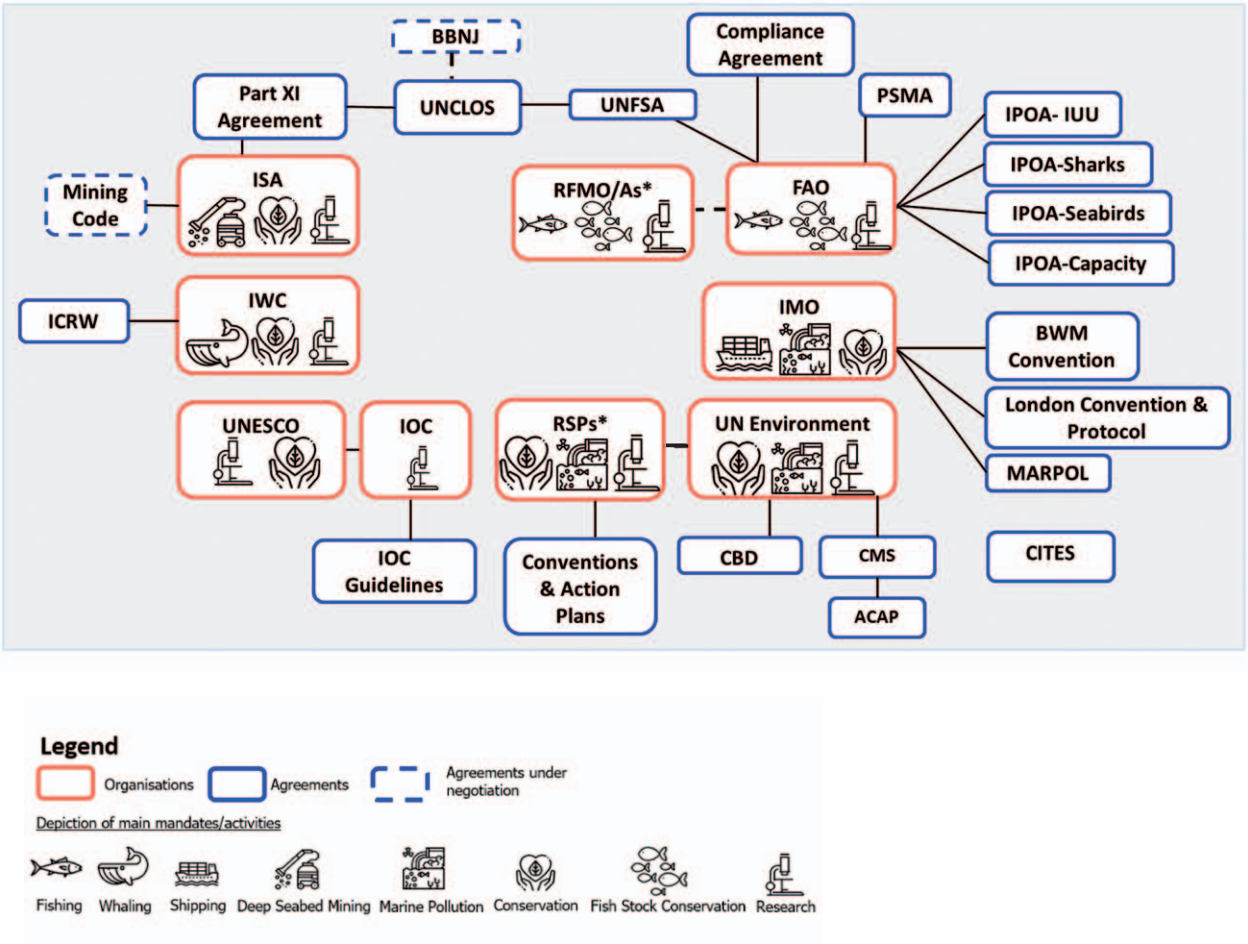


Figure 3: Main Organisations und Legal Agreements for the Conservation and Sustainable Use of BBNJ[32] (Source: IASS [2018])

[32] Icons made by Freepik (fishing, whaling, conservation, research), Mavadee (shipping), Surang (deep seabed mining, marine pollution) and Made by Made (fish stock conservation) from www.flaticon.com, licensed by http://creativecommons.org/licenses/by/3.0/ (accessed: December 2018). The asterisk denotes that some RFMO/As and RSPs do not have a mandate for ABNJ. The dotted lines towards the RFMO/As and RSPs denotes that some of them are established by the FAO/UN Environment, while other are independent. See Annex I for selected agreements relevant to the conservation and sustainable use of BBNJ. Soft law agreements included in this figure are: IOC-UNESCO, 'IOC Criteria and Guidelines on Transfer of Marine Technology (CGTMT)' (2003) ('IOC Guidelines'); United Nations Food and Agriculture Organization, 'International Plan of Action for the Management of Fishing Capacity' (1999) ('*IPOA-Capacity*'); United Nations Food and Agriculture Organization, 'International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries' (1999) ('*IPOA-Seabirds*'); United Nations Food and Agriculture Organization, 'International Plan of Action for the Conservation and Management of Sharks' (1999) ('*IPOA-Sharks*'); United Nations Food and Agriculture Organization, 'International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing' (2001) ('*IPOA-IUU*'). The BBNJ agreement is currently being negotiated under the UN and the Mining Code is being developed under the ISA.

2.3 Ocean Governance at the Regional Level

In addition to a robust global agreement, enhanced regional cooperation, particularly through cross-sectoral cooperation, has been highlighted as a key requirement for improving the conservation and sustainable use of high seas biodiversity.[33] UNCLOS provides that: 'States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features'.[34] The CBD and soft law instruments also call on regional cooperation for the protection of the ocean, taking into account the application of the ecosystem approach.[35]

Current regional organisations include those established to promote protection, conservation and sustainable development of the protection of the marine environment and regional marine scientific and technological centres under UNCLOS, and regional fisheries management organisations or arrangements for the management of highly migratory fish stocks, straddling fish stocks and discrete high seas fish stocks, or in the case of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the conservation of high seas living resources more generally.[36]

Regional ocean governance, i.e. 'efforts among countries to work together to manage their ocean, coasts, and marine resources',[37] is primarily conducted through: regional seas programmes (RSPs) and action plans; regional fisheries bodies (RFBs); political and economic communities; leader-driven initiatives; and Large Marine Ecosystems (LMEs).[38] However, only some of the RSPs and RFBs currently have a clear mandate to work in ABNJ. More recently, some initiatives have also focused on the conservation and management of ecologically important marine features in ABNJ, such as the Sargasso Sea Commission and the Costa Rica Dome initiative.

Regional seas programmes provide a forum for cooperation on the protection of marine and coastal environments and are generally structured around a founding convention, with subsequent conventions and protocols providing further frameworks for cooperation on specific issues and action plans, which may provide for environmental assessment, management and legislation, as well as institutional and financial arrangements. Since the inception of UN Regional Seas, RSPs have tended to focus on issues such as marine pollution and conserva-

[33] See for instance: Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635–671.DOI: http://doi.org/10.1163/15718085-12324051; Julien Rochette et al, 'The Regional Approach to the Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction' (2014) 49 *Marine Policy* 109; Elisabeth Druel et al, 'Governance of Marine Biodiversity in Areas Beyond National Jurisdiction at the Regional Level: Filling the Gaps and Strengthening the Framework for Action. Case Studies from the North-East Atlantic, Southern Ocean, Western Indian Ocean, South West Pacific and the Sargasso Sea' (IDDRI Study No 04/12, IDDRI, 2012).

[34] UNCLOS, art. 197.

[35] TCBD, COP 10, Decision X/2, 'Strategic Plan for Biodiversity 2011-2020 and Aichi Biodiversity Targets' (2010); UN Conference on Environment & Development, 'Agenda 21' (1992), Chapter 17 available at: https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf; UN Conference on Environment & Development, 'The Future We Want' (2012), para. 158, http://www.un.org/disabilities/documents/rio20_outcome_document_complete.pdf.

[36] UNCLOS, art. 118, 197 and 276; UNFSA, art. 8(1).

[37] Wright, G., Schmidt, S., Rochette, J., Shackeroff Theisen, J., Unger, S., Waweru, Y., Müller, A. (2017): Partnering for a sustainable ocean: The Role of Regional Ocean Governance in Implementing Sustainable Development Goal 14, Potsdam : PROG: IDDRI, IASS, TMG & UN Environment, 73 p. DOI: http://doi.org/10.2312/iass.2017.011, at p. 13.

[38] Large Marine Ecosystems are large marine regions that encompass coastal areas and the outer margins of major ocean current systems and are characterised by distinct oceanographic and biological parameters. LME is a concept developed by NOAA 'as a model to implement ecosystem approaches to assessing, managing, recovering, and sustaining LME resources and environments' (See: https://www.st.nmfs.noaa.gov/ecosystems/lme/index; accessed: December 2018). There are no LMEs in ABNJ as they are usually located within jurisdictional waters. Several GEF projects focus on LMEs and seek to work on strengthening the organisational structures and decision-making processes.

tion.[39] There are 18 RSPs, some administered by UN Environment, some administered by other regional organisations, and some that are independent.[40] Four regions are covered by a RSP with a mandate to work in ABNJ, namely: the North-East Atlantic (the OSPAR Commission); the Antarctic (CCAMLR); the Mediterranean (Barcelona Convention); and the South Pacific (Noumea Convention).[41]

Regional fisheries bodies are a mechanism through which States work together to manage one or more fisheries.[42] While these organisations vary in terms of their function and geographical and species coverage, they all have an important role to play in terms of regional collaboration and joint action in the conservation and management of fisheries and associated biodiversity.[43] Some organisations have only an advisory mandate and can therefore only provide guidance, adopt decisions, or decide on coordinating mechanisms that are not legally binding to their member States. In contrast, RFMOs have a management mandate and can adopt fisheries conservation and management measures that are legally binding upon their member States. Most fishing in ABNJ is managed at the regional level by States cooperating through RFMOs. RFMOs are divided into two categories: tuna RFMOs, which manage highly migratory fish stocks of tuna and tuna-like species, and non-tuna RFMOs, which manage other non-highly migratory fish stocks. Membership of RFMOs generally includes both coastal States from the region as well as distant water fishing States.[44]

Some RSPs and RFOs have sought to overcome longstanding sectoral divisions to enhance cooperation, for example through meetings under the Sustainable Ocean Initiative (SOI), but few of these efforts are formalised into memoranda of understanding (MoUs) or other arrangements.[45] In the Southeast Pacific, CPPS has signed a MoU with the Inter-American Tropical Tuna Commission (IATTC) and is in the process of signing a MoU with the South Pacific Regional Fisheries Management Organisation (SPRFMO).[46] In the Southeast Atlantic, the Abidjan Convention has for instance signed a MoU with the Commission for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) and with the Regional Commission of Fisheries of Gulf of Guinea (COREP).[47] Another example is the Collective Arrangement formalised between the OSPAR Commission and the North East Atlantic

[39] However, RSPs have no regulatory mandate in relation to fisheries management. This is the mandate of regional fisheries bodies.

[40] UN Environment-administered programmes: Caribbean Region, East Asian Seas, Eastern Africa Region, Mediterranean Region, North-West Pacific Region, Western Africa Region, and Caspian Sea. Programmes administered by other regional organisations: Black Sea Region, North-East Pacific Region, Red Sea and Gulf of Aden, ROPME Sea Area, South Asian Seas, South-East Pacific Region, and Pacific Region. Independent programmes are: Arctic Region, Antarctic Region, Baltic Sea, and North-East Atlantic Region. See: https://www.unenvironment.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/why-does-working-regional-seas-matter (accessed: September 2018).

[41] Note that the South-East Pacific regional seas programme under the Lima Convention (art. 1) can extend to high seas areas adjacent to CPPS' member States national waters when a risk of marine and coastal pollution exists.

[42] See: FAO Fisheries and Aquaculture Department, 'Regional Fishery Bodies' (FAO) http://www.fao.org/fishery/rfb/en (accessed: September 2018). Regional fisheries bodies are either established: a) under FAO's Constitution (based on Article VI or with more autonomy under Article XIV), b) outside FAO's framework but with FAO excercising depository functions; or c) outside FAO's framework.

[43] See for instance: M.J. Juan Jordá, H. Murua, H. Arrizabalaga, N.K. Dulvy, and V. Restrepo, 'Report card on ecosystem-based fisheries management in tuna regional fisheries management organizations,' *Fish and Fisheries 19*(2) (2018): 321–339; Crespo, G.O., & Dunn, D. 2016, 'A review of the impacts of fisheries on open-ocean ecosystems' ICES Journal of Marine Science, Volume 74, Issue 9, 1 December 2017, Pages 2283–2297, https://academic.oup.com/icesjms/article/74/9/2283/3855115.

[44] For information regarding membership of RFMOs covering the two regions discussed in this report, see Annex VI.

[45] See: https://www.cbd.int/soi/ (accessed: September 2018).

[46] Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415; Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635–671.DOI: http://doi.org/10.1163/15718085-12324051.

[47] See: https://www.ospar.org/site/assets/files/1357/13-12e_mou_abidjan_e.pdf and https://abidjanconvention.org/media/documents/press_speech/Press%20Release%20on%20MoU%20with%20COREP.pdf (accessed: December 2018).

Fisheries Commission (NEAFC), which establishes an informal mechanism for the two bodies to meet and share data and information regarding shared management objectives and common ocean space in the North-East Atlantic.[48]

Other regional initiatives for advancing governance of ABNJ have been led by coalitions of countries and organisations keen to conserve and manage ecologically important and sensitive marine features in ABNJ, such as the Sargasso Sea and the Costa Rica Dome.[49] These coalitions work through cooperation and collaboration among national governments, scientific institutions, and regional and international organisations.

2.4 Development of an International Legally Binding Agreement on BBNJ

Recognising the shortcomings in the current governance framework, States have been discussing the possible options for strengthening governance of ABNJ for over a decade. In 2015, the UN General Assembly (UNGA) passed a resolution to establish a preparatory committee (PrepCom) to make substantive recommendations to the UNGA on the possible elements of a draft text of a new instrument under UNCLOS on the conservation and sustainable use of marine biodiversity in ABNJ. In 2017, following four sessions of the PrepCom, the UNGA decided to convene an intergovernmental conference (IGC) to negotiate an international legally binding instrument. The first four rounds of negotiations took place in September 2018 at UN Headquarters in New York.[50] The elements forming the basis for negotiations were identified in 2011 (see Box 1) and are:

- Area-based management tools (ABMTs), including marine protected areas (MPAs);
- Environmental impact assessments (EIAs);
- Marine genetic resources (MGRs), including questions related to access and sharing of benefits; and
- Capacity building and the transfer of marine technology.[51]

These negotiations and any resulting instrument 'should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies'.[52] Consequently, the new agreement will depend on effective implementation frameworks both within marine regions and at the global level with regard to international rules, standards and recommended practices and procedures for States Parties to manage sectoral activities to foster biodiversity conservation and sustainable use in ABNJ. In this manner, the new agreement provides the opportunity to set the standards and principles to improve the coordination between and among existing global and regional institutions and to foster integrated management approaches.[53]

[48] See: https://www.ospar.org/about/international-cooperation/collective-arrangement (accessed: September 2018).

[49] See: Freestone, D., and Gjerde, K. 'Lessons from the Sargasso Sea: Challenges to the Conservation and Sustainable Use of Marine Biodiversity beyond National Jurisdiction' (2016), available at: http://www.un.org/depts/los/biodiversity/prepcom_files/Sargasso_Sea_Commission_Lessons_Learned.pdf (accessed: September 2018) and http://crdome.marviva.net/?page_id=1809&lang=en (accessed: September 2018).

[50] UNGA/RES/72/249 on an International legally binding instrument 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.

[51] UNGA/RES/69/292 on the development of an international legally binding instrument 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. See also: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/397/64/PDF/N1139764.pdf?OpenElement (accessed: September 2018).

[52] UNGA/RES/69/292 on the development of an international legally binding instrument 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, para. 3.

[53] Gjerde, K., Boteler, B., Durussel, C., Rochette, J., Unger, S., Wright, G., 'Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction: Options for Underpinning a Strong Global BBNJ Agreement through Regional and Sectoral Governance', STRONG High Seas Project, 2018.

Box 1: Elements for the Conservation and Sustainable Use of BBNJ

Area-based Management Tools, Including Marine Protected Areas

ABMTs have been described as comprising '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'.[54] Examples of such tools include: marine spatial planning (MSP), MPAs, Particularly Sensitive Sea Areas (PSSAs), Areas of Particular Environmental Interest (APEIs) and the closure of Vulnerable Marine Ecosystems (VMEs) to fishing.[55] As noted by UN Environment-WCMC (2018), these tools can be combined within a specific geographical area.[56]

Environmental Impact Assessments and Strategic Environmental Assessments

An EIA is defined by the Espoo Convention as a 'procedure for evaluating the likely impact of a proposed activity on the environment'.[57] Whereas an EIA is conducted at the project/activity level, SEA provides a broader assessment that aims to better understand proposed activities, impacts and future developments within an area or sector when developing policies, plans or programmes, or when considering new technologies and activities.[58] The obligation to conduct an EIA for activities that may have a significant impact on the marine environment of marine areas within and beyond national jurisdiction is part of customary international law.[59] However, there are currently no comprehensive global rules and regulations with regard to the application of EIAs or SEAs in ABNJ.

[54] T Greiber, K Gjerde, E Druel, D Currie and D Diz, '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' (2014). German Federal Agency for Nature Conservation, p. 1.

[55] A protected area is defined by IUCN as 'a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values'. Dudley, N. (Editor) (2008). Guidelines for Applying Protected Area Management Categories. Gland, Switzerland: IUCN. x + 86pp.

[56] UNEP-WCMC (2018). A review of area-based planning tools. What is the potential for cross-sectoral planning in areas beyond national jurisdiction? Technical document Produced as part of the GEF ABNJ Deep Seas Project. Cambridge (UK): UN Environment World Conservation Monitoring Centre. 71pp.

[57] Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991, in force 10 September 1997) ('Espoo Convention') 1989 *UNTS*, Art. 1.

[58] Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Kiev, 21 May 2003, in force 11 July 2010) ('Kiev Protocol') 2685 UNTS, Art. 2.6.

[59] R. M. Warner, 'Oceans beyond boundaries: environmental assessment frameworks' (2012) 27 (2) International Journal of Marine and Coastal Law 481-499 citing: International Tribunal of the Law of the Sea (ITLOS), Advisory Opinion on Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, 1 February 2011, p. 44, para. 145, see: http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/adv_op_010211.pdf. See also: UNCLOS, art. 206.

Marine Genetic Resources, including Access and Benefit Sharing

All species contain genetic material that can be of potential interest for biotechnological applications, such as in the field of pharmaceuticals, nutraceuticals, cosmetics, and biofuels. Especially species that live under extreme temperature, pressure or low-oxygen conditions can offer opportunities for new discoveries.[60] The CBD defines genetic resources as 'genetic material of actual or potential value', whereby genetic material is 'any material of plant, animal, microbial or other origin containing functional units of heredity'.[61] The definition applied to MGRs for the purpose of the new BBNJ agreement will need to be agreed on by States during the negotiations as this will determine which access and benefit-sharing (ABS) mechanism will need to be adopted.

Capacity Building and Transfer of Marine Technology

Capacity building is defined by the UN Economic and Social Council as a long-term and continuing 'process by which individuals, organizations, institutions and societies develop abilities to perform functions, solve problems and set and achieve objectives'.[62] Marine technology has been defined by the IOC as being 'instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean and coastal areas'.[63] Harden Davies (2017) highlights that this list can be extended to also include, amongst others, scientific training, research cruise participation, as well as research exchanges and cooperation.[64]

2.5 Linking the Global and Regional Levels

As outlined above, both the global and regional ocean governance levels form the current framework for ocean management. As highlighted by Gjerde et al. (2018), there is a need to improve cooperation across sectors and levels as well as increase convergence between these two levels to ensure effective conservation and sustainable use of BBNJ. A future BBNJ agreement will need to create the conditions and practical arrangements for effective cross-sectoral cooperation and coordination at both levels and ensure flexible and supportive provisions that can consider the needs of and build on the capacities

[60] M Vierros, C A Suttle, H Harden-Davies and G Burton, 'Who Owns the Ocean? Policy Issues Surrounding Marine Genetic Resources' (2016) 25(2) Limnology and Oceanography Bulletin 29–35.

[61] CBD, article 2.

[62] UN Economic and Social Council, *Definition of Basic Concepts and Terminologies in Governance and Public Administration*, E/C.16/2006/4, 5th session, Agenda Item 5 (5 January 2006), para. 33.

[63] IOC-UNESCO, 'Criteria and Guidelines on the Transfer of Marine Technology (CGTMT)/Critères et principes directeurs de la COI concernant le Transfert de Techniques Marines (CPTTM)', Paris, UNESCO, 2005. 68 pp. (IOC Information document, 1203), p. 9. See: http://unesdoc.unesco.org/images/0013/001391/139193m.pdf.

[64] H. Harden-Davies, 'Deep-sea genetic resources: new frontiers for science and stewardship in areas beyond national jurisdiction' (2017) 137 Deep-Sea Research Part 2: Topical Studies in Oceanography 504–513.

of specific regions and sectors.[65] Regional and sectoral governance mechanisms will likely play an important role in implementing the BBNJ agreement by providing expertise, capacity and lessons learnt. They will also play an important role in underpinning global standards by developing, implementing and enforcing regionally and sectorally-based agreements.[66] In this respect, strengthening regional ocean governance mechanisms will be essential.

2.6 International Process on Global Ocean Sustainability

In parallel to the development of a global legal agreement on BBNJ, the UNGA adopted in 2015 Resolution 70/01 on the 2030 Agenda for Sustainable Development, which sets out a global 'plan of action for people, planet and prosperity'.[67] It puts forward a set of 17 globally applicable SDGs with 169 underlying targets. SDG 14 is specifically dedicated to the conservation and sustainable use of the oceans, seas and marine resources for sustainable development. SDG 14 sets 10 targets (see Box 2), of which most reflect existing policy agreements, such as the 2002 World Summit on Sustainable Development (WSSD) or the CBD Aichi Targets.[68] The implementation of SDG 14 provides a unique opportunity to address complex sustainability issues that arise from the interaction of the wide array of SDGs that are at times contradictory. These important interactions, both positive and negative, between the SDGs cannot be considered in this report but will play an important role in determining how the regions can promote and further SDG 14.[69]

While the primary focus and nature of the BBNJ and SDG 14 processes are different and the scope of the SDG 14 process is broader than the BBNJ process, their overall objectives are similar (i.e. to reduce the negative impacts of human activities on the marine environment and to enhance the conservation and sustainable use of marine ecosystems and marine resources). In this regard, the SDGs and the BBNJ process are complementary. The interconnected package of issues under discussion in the BBNJ process and the unifying set of targets of SDG 14 present an opportunity to develop integration and cooperation between different sectors and competent organisations in an otherwise fragmented governance landscape.[70]

[65] Gjerde, K., Boteler, B., Durussel, C., Rochette, J., Unger, S., Wright, G., 'Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction: Options for Underpinning a Strong Global BBNJ Agreement through Regional and Sectoral Governance', STRONG High Seas Project, 2018.

[66] For more recommendations on how to underpin the global level through regional and sectoral governance, see Gjerde, K., Boteler, B., Durussel, C., Rochette, J., Unger, S., Wright, G., 'Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction: Options for Underpinning a Strong Global BBNJ Agreement through Regional and Sectoral Governance', STRONG High Seas Project, 2018.

[67] United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Resolution adopted by the General Assembly on 25 September 2015, GA Res 70/1, 70th session, Agenda Items 15 and 116, A/Res/70/1 (21 October 2015).

[68] The report of the WSSD can be found here: http://www.un-documents.net/aconf199-20.pdf (accessed: September 2018). More information on the CBD Aichi targets can be found here: https://www.cbd.int/sp/targets/ (accessed: September 2018).

[69] See for instance: Schmidt, S., Neumann, B., Waweru, Y., Durussel, C., Unger, S., Visbeck, M. (2017): SDG 14 – Conserve and Sustainable Use the Oceans, Seas and Marine Resources for Sustainable Development. – In: Griggs, D., Nilsson, M., Stevance, A., McCollum, D. (Eds.), A Guide to SDG Interactions: from Science to Implementation, Paris : International Council for Science (ICSU), p. 174–218.

[70] Unger, S., Müller, A., Rochette, J., Schmidt, S., Shackeroff Theisen, J., Wright, G. (2017): Achieving the Sustainable Development Goal for the Oceans. – IASS Policy Brief, 2017, 1.DOI: http://doi.org/10.2312/iass.2017.004.

Box 2: SDG 14 Targets

SDG 14.1	By 2025, prevent and significantly reduce **marine pollution** of all kinds, in particular from land-based activities, including marine debris and nutrient pollution
SDG 14.2	By 2020, sustainably **manage and protect marine and coastal ecosystems** to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans
SDG 14.3	Minimise and address the impacts of **ocean acidification**, including through enhanced scientific cooperation at all levels
SDG 14.4	By 2020, effectively regulate harvesting and end **overfishing, illegal, unreported and unregulated fishing and destructive fishing practices** and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics
SDG 14.5	By 2020, **conserve** at least 10 % of **coastal and marine areas**, consistent with national and international law and based on the best available scientific information
SDG 14.6	By 2020, prohibit certain forms of **fisheries subsidies** which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organisation fisheries subsidies negotiation
SDG 14.7	By 2030, increase the economic benefits to **Small Island developing States and least developed countries** from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism
SDG 14.A	Increase **scientific knowledge**, develop **research capacity** and transfer **marine technology**, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing States and least developed countries
SDG 14.B	Provide access for **small-scale artisanal fishers** to marine resources and markets
SDG 14.C	Enhance the conservation and sustainable use of oceans and their resources by implementing **international law** as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of The Future We Want

3. Ecology and Regional Governance of ABNJ

The assessment undertaken in Chapters 4 to 6 concentrates on the two focal regions of the STRONG High Seas project, namely the high seas of the Southeast Pacific and the Southeast Atlantic. For the purpose of this report, the Southeast Pacific is loosely defined as the Eastern side of the South Pacific Ocean, between Colombia and Chile. The Southeast Atlantic is loosely defined as the seas off the east coast of Africa, from Mauritania to South Africa (see Figure 4).

Both of these regions are ecologically important and biologically rich, supporting valuable economic activities such as fisheries.[71] Within these two regions, coastal States of the Southeast Atlantic and Southeast Pacific have expressed their interest in the conservation and sustainable use of BBNJ. Member States of the Permanent Commission for the South Pacific (CPPS) in the Southeast Pacific signed the 2012 Galapagos Commitment, in which they commit to promote coordinated action 'regarding

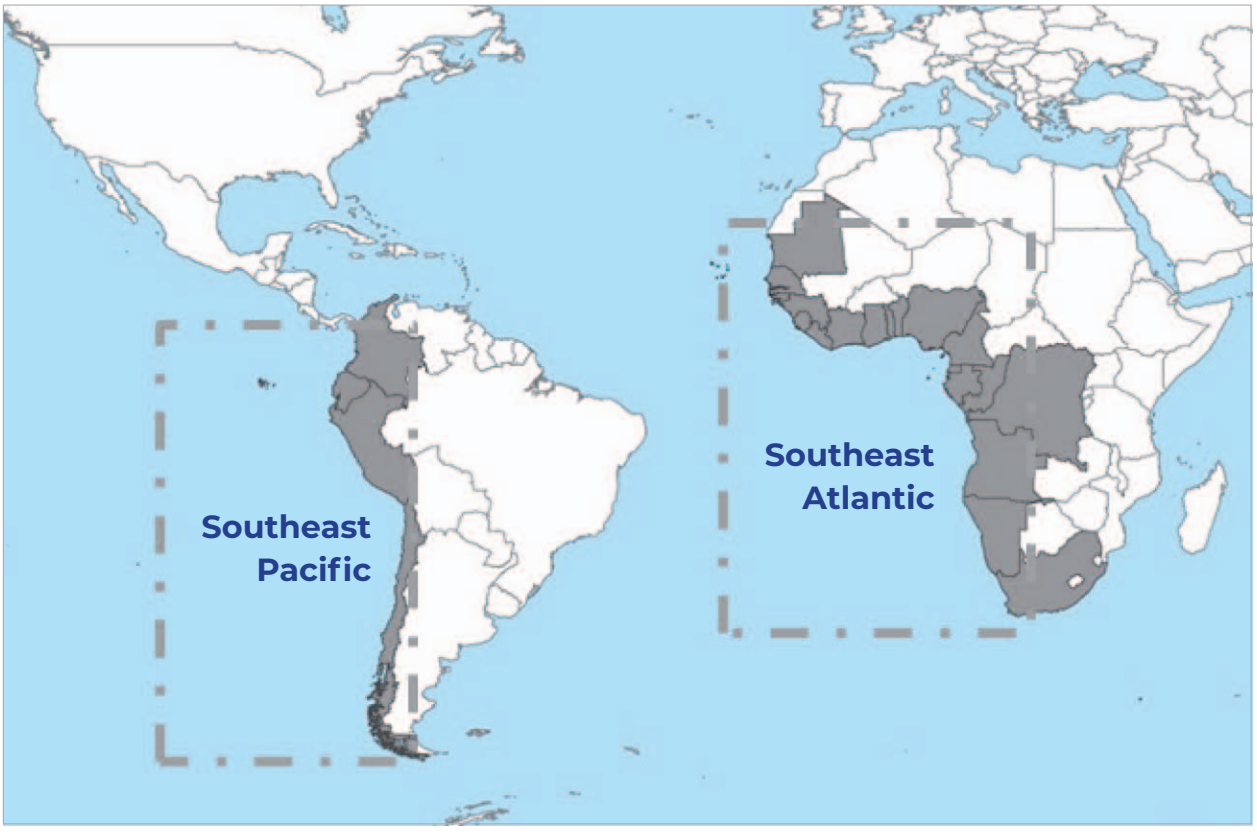


Figure 4: Focal Regions of the STRONG High Seas Project[72] (Source: IASS [2018])

[71] See sections 3.1 and 3.2 below.
[72] Credit: ESRI (2008): World countries 2008. ESRI Data & Maps.

their interests in living and non-living resources in ABNJ'.[73] In the Southeast Atlantic, member States of the Abidjan Convention requested that the Secretariat 'set up a working group to study all aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction within the framework of the Abidjan Convention, pursuant to UNCLOS and taking into account the process under way within the framework of the United Nations, and especially the work of the 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.'[74] In response, this working group was formally established within the Abidjan Convention as an ad-hoc working group to the Conference of Parties (COP) in June 2018 and will have its first meeting in 2019. Furthermore, a decision taken by the second meeting of the UN Environment Assembly (UNEA 2 in 2016) encourages 'the contracting parties to existing regional seas conventions to consider the possibility of increasing the regional coverage of those instruments in accordance with international law'.[75]

The BBNJ process and the SDG targets present opportunities for States to strengthen the ocean governance framework in their respective regions and thereby contribute to marine biodiversity conservation, sustainable development and economic growth. Because of the oceanographic and ecological connectivity, activities taking place in ABNJ oftentimes have an impact on coastal waters and vice versa. This means it is important to consider conservation efforts, the sustainable use of resources, address threats to the marine environment and develop adequate management of human activities both within and beyond national jurisdiction. Particularly, strengthened collaboration and cooperation between all relevant global, regional and sectoral organisations will be necessary to improve governance in the regions and is an important step to underpin, strengthen and develop the existing global ocean governance framework further and to achieve the conservation and sustainable use of BBNJ and the SDG targets.

[73] CPPS, Compromiso de Galapagos para el Siglo XXI, VII Reunion de Ministros de Relaciones Exteriores de la Comision Permanente del Pacifico Sur (Galapagos, 17 de agosto de 2012), Art. VIII.20; http://cpps.dyndns.info/cpps-docs-web/planaccion/docs2016/Mayo/compromiso-galapagos-siglo21.pdf. See Annex IV for a description of the CPPS.

[74] Abidjan Convention COP Decision CP.11/10. See section 5.1 of this report for a description of the Abidjan Convention.

[75] Outcome 2/10 of the second session of the United Nations Environment Assembly of the United Nations Environment Programme (23 to 27 May 2016), para. 13. jurisdiction, para. 3.

3.1 Southeast Atlantic

Key Messages:

- The Southeast Atlantic is characterised by various unique topographical and oceanographic features that support high levels of biodiversity;
- A large number of countries border the Southeast Atlantic region, with different cultures, languages and resources, as well as interests and needs, in terms of the conservation and sustainable use of BBNJ;
- Four regional fisheries bodies cover ABNJ in the Southeast Atlantic, namely ICCAT, CCSBT, SEAFO and CECAF. There is little cooperation between these four RFBs;
- Given CECAF's advisory mandate, a non-tuna RFB with a management mandate to cover the northern part of the Southeast Atlantic is missing.

The Southeast Atlantic is characterised by various topographical and oceanographic features, such as the Mid-Atlantic Ridge, which form a variety of habitats which support biodiversity in the region. The Mid-Atlantic Ridge is associated with a number of active hydrothermal fields and the formation of various valleys and basins.[76] These heterogeneous seafloor habitats are known to be associated with a high benthic diversity.[77] The Canary Current supports the upwelling of nutrient-rich, cold oceanic waters off the Canary Islands, leading to abundant pelagic and demersal fishery resources in the area. The Benguela Current carries cold, nutrient-rich water along the African coast from Cape Point in the south to the Angola-Namibia border in the north. It has a high level of primary productivity and is among the most productive in the world.[78] These currents create important ecosystems that are habitat to a variety of threatened and highly migratory species.[79] The northern part of the Benguela Current used to be characterised by high pelagic biodiversity but overfishing degraded this ecosystem to the point of 'jellification'.[80] Fish catches in the high seas areas of this region fluctuate strongly. This region is also characterised by a large number of coastal countries that all have different cultures, languages and resources as well as interests and needs in terms of the conservation and sustainable use of BBNJ.

[76] First United Nations World Ocean Assessment (Regular Process for Global Reporting and Assessment of the State of the Marine Environment, Including Socio-Economic Aspects), Chapter 36B.

[77] German CR, Ramirez-Llodra E, Baker MC, Tyler PA, and the ChEss Scientific Steering Committee. (2011). Deep-Water Chemosynthetic Ecosystem Research during the Census of Marine Life Decade and Beyond: A Proposed Deep-Ocean Road Map. PLoS ONE 6(8): e23259. https://doi.org/10.1371/journal.pone.0023259.

[78] Clearing-House Mechanism of the Convention on Biological Diversity. (2015). Ecologically or Biologically Significant Areas (EBSA). Benguela Upwelling System. Retrieved from https://chm.cbd.int/database/record?documentID=204083.

[79] Clearing-House Mechanism of the Convention on Biological Diversity. (2015). Ecologically or Biologically Significant Areas (EBSAs). Atlantic Equatorial Fracture Zone and high productivity system. Retrieved from https://chm.cbd.int/database/record?documentID=200105; Birdlife International. (2018). Marine IBA e-atlas. Retrieved from https://maps.birdlife.org/marineIBAs/default.html.

[80] This term is referring to the dominance of jellyfish following trophic level disturbance of removing large predators. Clearing-House Mechanism of the Convention on Biological Diversity. (2015). Ecologically or Biologically Significant Areas (EBSA). Benguela Upwelling System. Retrieved from https://chm.cbd.int/database/record?documentID=204083.

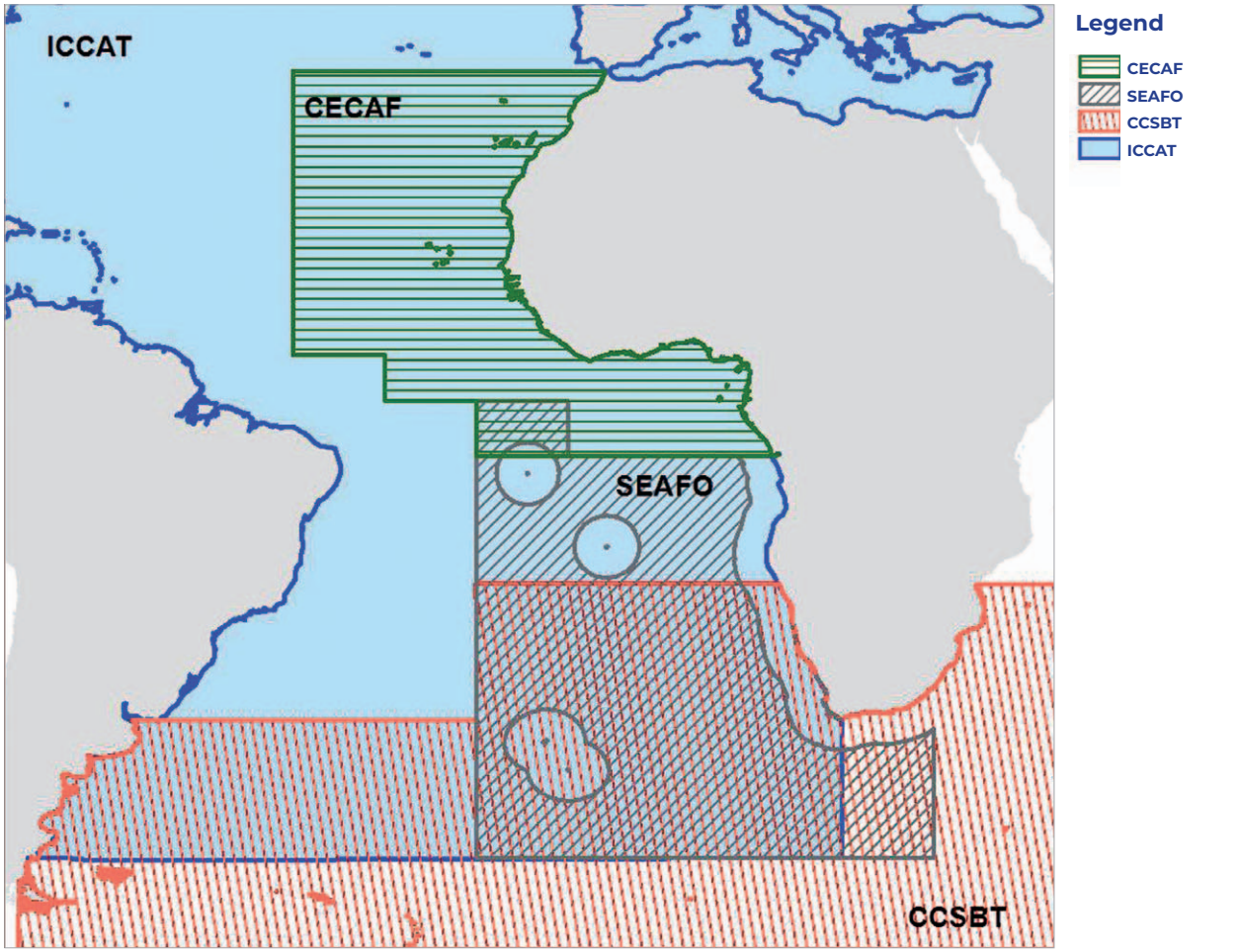


Figure 5: Geographical Scope of Regional Sectoral Organisations Covering ABNJ in the South-east Atlantic[81] (Source: Dr. Maria Dias and Dr. Ana Carneiro based on FAO data [2018])

[81] Map Source: Dr. Maria Dias and Dr. Ana Carneiro based on FAO data. See: http://www.fao.org/figis/geoserver/factsheets/rfbs.html (accessed: December 2018).

Within the Southeast Atlantic, four regional fisheries bodies have a mandate to work in ABNJ, three of which are RFMOs with a management mandate. The International Commission for the Conservation of Atlantic Tunas (ICCAT) is a RFMO responsible for the management and conservation of tunas and tuna-like species in the whole of the Atlantic Ocean. ICCAT coordinates research on behalf of its members, including stock assessments, develops scientific-based management advice, provides a mechanism for Contracting Parties to agree on management measures, and produces relevant publications. Based on these assessments each year, ICCAT adopts conservation and management measures aimed at maintaining target stocks at levels that permit the maximum sustainable fish catch.[82]

The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is a RFMO with the mandate to manage and conserve southern bluefin tuna, generally occurring in waters between 30° and 50° south, so that this organisation covers the southern tip of the Southeast Atlantic region. This organisation also adopts conservation and management measures aimed at ensuring conservation and optimum utilization of southern bluefin tuna.[83] The other two regional fisheries bodies in the Southeast Atlantic region cover all living marine resources that are not tuna or tuna-like species.

The South East Atlantic Fisheries Organisation (SEAFO) is a RFMO that can adopt binding conservation and management measures on species such as alfonsino, orange roughy, oreo dories, pelagic armourhead, sharks, Patagonian toothfish and deep-sea red crab. This organisation only covers the southern part of the Southeast Atlantic region.[84]

The northern part of the region is covered by the Fishery Committee for the Eastern Central Atlantic (CECAF), a regional fisheries body, which geographical scope extends to both member States' EEZs and high seas areas. However, this organisation only has an advisory mandate, focusing mainly on research on fishery resources and capacity building of its member States, so that it is not in a position to adopt binding conservation and management measures.

The Southeast Atlantic region therefore is not fully covered from a fisheries management perspective, lacking a strong RFMO to cover the northern part of the region. There is also limited collaboration between these organisations, with only ICCAT and CCSBT having signed a MoU for cooperation. The main organisations and key legal agreements for the conservation and sustainable use of BBNJ in the Southeast Atlantic are shown in Figure 6.

These four regional fisheries bodies are used as the basis for the assessments in Chapter 4. However, there are other regional organisations working in the Southeast Atlantic region that, although not having a mandate to work in ABNJ, could play a role in this region. This includes for instance the Abidjan Convention, which only applies to marine areas within national jurisdiction. Such organisations could for instance play a role in bringing issues of conservation concern, such as declining and depleted species and habitats or marine pollution to the attention of RFBs, providing scientific data on such species, habitats and threats to the marine environment, strengthening ties between the different countries of the region, and building capacities. They are considered in Chapter 5. Chapter 6 includes a discussion on possible links between regional organisations without an ABNJ mandate and the four regional organisations with an ABNJ mandate outlined above.

[82] See: https://www.iccat.int/en/contracting.html (accessed: September 2018).
[83] See: https://www.ccsbt.org/en/content/home (accessed: September 2018).
[84] Source: http://www.seafo.org/About (accessed: September 2018).

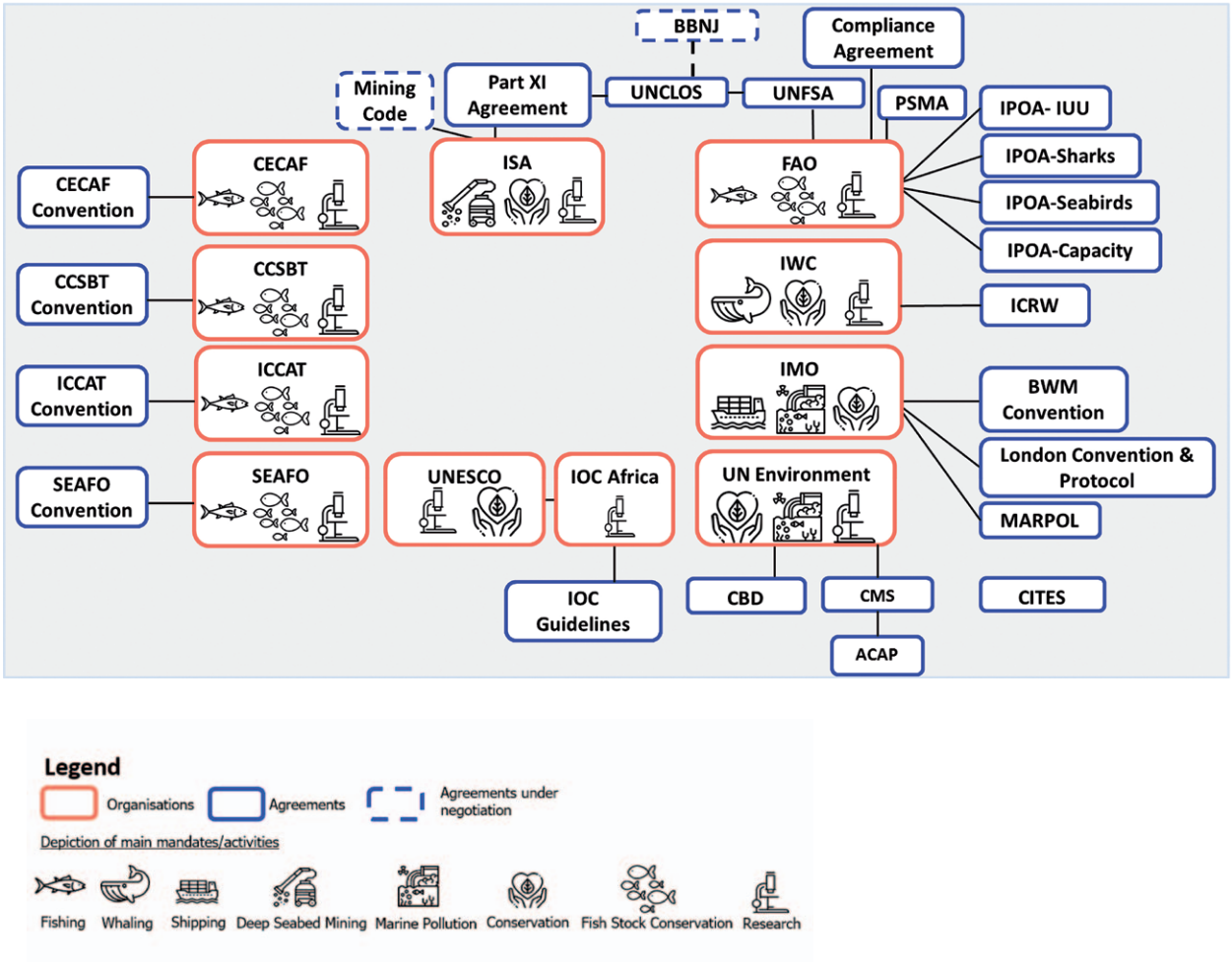


Figure 6: Main Organisations with a Mandate for and Legal Agreements Applicable to the Conservation and Sustainable Use of BBNJ in the Southeast Atlantic[85] (Source: IASS [2018])

[85] Icons made by Freepik (fishing, whaling, conservation, research), Mavadee (shipping), Surang (deep seabed mining, marine pollution) and Made (fish stock conservation) from www.flaticon.com, licensed by http://creativecommons.org/licenses/by/3.0/ (accessed: December 2018). Please note that this figure only aims to depict the main organisations with a mandate for and legal agreements applicable to the conservation and sustainable use of BBNJ in the Southeast Atlantic but it does not reflect the memberships and ratifications of Southeast Atlantic coastal States. See: Annex III for the memberships and treaty ratifications of Southeast Atlantic coastal States; Annex II for key Southeast Atlantic organisations; and Annex I for selected agreements relevant to the conservation and sustainable use of BBNJ. Soft law agreements included in this figure are described in the footnote of Figure 3.

3.2 Southeast Pacific

Key Messages:

- The Humboldt Current is one of the most productive current systems in the world, contributing to high levels of biodiversity in the Southeast Pacific. It produces around 10% of the global fish catch, yielding more fish per unit area than any other region;
- The Southeast Pacific is bordered by four coastal States: Colombia, Ecuador, Peru and Chile;
- Three organisations cover ABNJ in the Southeast Pacific, namely two RFMOs (IATTC, SPRFMO) and CPPS. In the case of CPPS, its jurisdictional mandate includes both the national waters of its member States as well as in some cases the adjacent high seas areas of the Southeast Pacific, although the extent and scope of this competence is not clearly legally defined or outlined;
- All three regional organisations have complementary mandates and geographical scopes but membership is quite different;
- Collaboration and cooperation between these organisations is limited to date, especially between the two RFMOs. CPPS has signed a MoU with IATTC and is in the process of signing a MoU with SPRFMO.

The Southeast Pacific region is characterised by a great variety of oceanographic features, creating a wealth of ecological features and hotspots for marine biodiversity. The region encompasses a number of areas of high primary productivity, such as the Equatorial High-Productivity Zone and the Humboldt Current, an area where high levels of species endemism can be found, especially around the islands of Galapagos, Rapa Nui, Juan Fernández and Desventuradas. Submarine volcanic ridges such as the East Pacific Rise and the Salas y Gómez and Nazca ridges create a great density of hydrothermal vents and seamounts in the region, which provide habitats to many highly specialised marine species.[86] Off the coasts of Chile and Peru, the Humboldt Current, the largest upwelling system in the world, brings cold, nutrient-rich water from the Antarctic to the surface. These nutrient-rich waters support some of the densest populations of fish found globally and provide food for a wide range of marine mammals, seabirds and marine reptiles.[87] The dynamics of the Humboldt Current vary significantly: during La Niña, stronger westward-blowing trade winds lead to a higher intensity of the current, and upwelling and productivity increase. In the years of El Niño, the trade winds decline or even reverse direction. These conditions reduce the production of plankton off the coast of Peru, leading to significant drops of communities of planktivorous fish, larger predatory fish, birds and mammals.[88] The Humboldt Current System produces around 10% of the global fish catch,

[86] https://chm.cbd.int/database/record?documentID=204100

[87] Spalding, M. D., et al. (2012) 'Pelagic provinces of the world: a biogeographic classification of the world's surface pelagic waters', Ocean & Coastal Management 60: 19-30.

[88] United Nations General Assembly (2016), 'The First Global Integrated Marine Assessment World Ocean Assessment I', available at: http://www.un.org/Depts/los/global_reporting/WOA_RegProcess.htm (accessed: September 2018).

yielding more fish per unit area than any other region.[89] Four coastal States border the Southeast Pacific region, namely Colombia, Ecuador, Peru and Chile.

There are two RFMOs with a mandate to work in ABNJ whose geographical scope cover the Southeast Pacific region in parts or entirely, namely the South Pacific Regional Fisheries Management Organisation (SPRFMO) and the Inter-American Tropical Tuna Commission (IATTC). In the case of the CPPS, its jurisdictional mandate includes both the national waters of its member States as well as in some cases the adjacent high seas areas of the Southeast Pacific, although the extent and scope of this competence is not clearly legally defined or outlined. Article 4 of the 2013 CPPS Statute states that CPPS has the competence to promote the conservation of marine living resources within the national jurisdiction of its member States and beyond, focusing especially on straddling and highly migratory fish stocks;[90] to foster active participation of its member States in the exploration and exploitation of non-living resources in ABNJ;[91] and to promote a holistic assessment of the natural resources and fisheries of the Southeast Pacific with a view to its economic development and sustainable use.[92] Under the 1981 Lima Convention, its jurisdiction extends to adjacent high seas areas affected by marine and coastal pollution.[93]

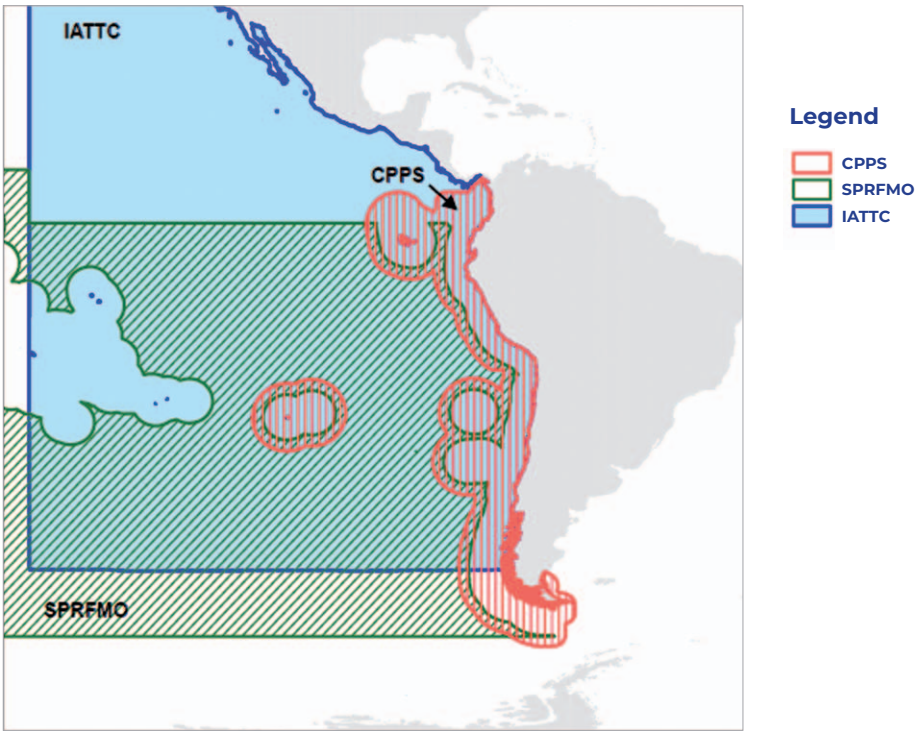


Figure 7: Geographical Scope of Regional Sectoral Organisations Covering ABNJ in the Southeast Pacific [94] (Source: Dr. Maria Dias and Dr. Ana Carneiro based on FAO data [2018])

[89] Salvatteci, R., et al. (2018) 'Multifarious anchovy and sardine regimes in the Humboldt Current System during the last 150 years', Global change biology, 24. Jg., Nr. 3, S. 105–1068.

[90] CPPS Estatuto, Art 4a.

[91] CPPS Estatuto, Art 4d.

[92] CPPS Estatuto, Art 4i.

[93] CPPS Marine Environmental Protection Convention, Art. 1.

[94] Map Source: Dr. Maria Dias and Dr. Ana Carneiro based on FAO data. See: http://www.fao.org/figis/geoserver/factsheets/rfbs.html (accessed: December 2018).

While both SPRFMO and IATTC have a mandate to manage fishery resources within the South Pacific and Eastern Pacific Ocean, respectively, CPPS is a strategic regional alliance among its member States and also the host Secretariat for the Regional Seas Programme for the Southeast Pacific.[95] They also overlap and cover together nearly the whole of the Southeast Pacific. This shows that these three regional organisations have both complementary mandates and geographical scopes.[96] Collaboration and cooperation between these organisations is limited to date, especially between the two RFMOs. CPPS has however signed a MoU with IATTC and is in the process of signing a MoU with SPRFMO.[97] The main organisations and key legal agreements for the conservation and sustainable use of BBNJ in the Southeast Pacific are shown in Figure 8.[98]

A further organisation operates in the region, but with a limited mandate within the national jurisdiction of its member States: the Organización Latinoamericana de Desarrollo Pesquero (OLDEPESCA; Latin American Organisation for Fisheries Development) is an intergovernmental organisation for regional cooperation on issues such as fisheries and aquaculture. This organisation is not taken into account in this report as it has not been operational in recent years.[99]

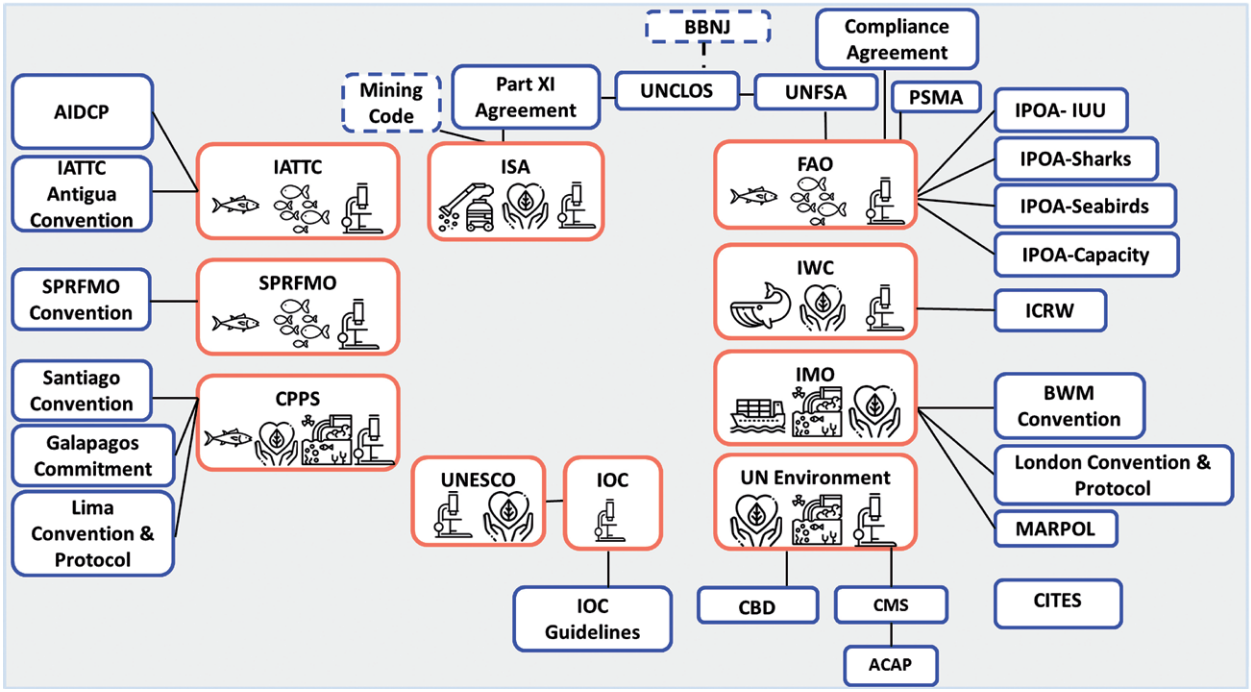
[95] CPPS is a strategic regional alliance among its member States with no management mandate. *CPPS Estatuto* art 4 gives CPPS the competency to promote the conservation of marine living resources beyond the national jurisdiction of its member States without mentioning to which extent this competency applies. Article 1 of the *Lima Convention* applies to areas within national jurisdiction and adjacent high seas areas that are impacted by marine pollution.

[96] State membership between SPRFMO and IATTC differs. A discussion on State membership in the Southeast Pacific can be found in Section 4.6.3 in Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415. See also: Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635-671.DOI: http://doi.org/10.1163/15718085-12324051.

[97] Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415; Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635-671.DOI: http://doi.org/10.1163/15718085-12324051.

[98] It is worth mentioning in this section that the LME Humboldt Chile-Peru project funded by GEF (2009–2016, with an extension in 2017-2018), although focusing on waters within national jurisdiction, sought to advance management in the Humboldt Current LME through a coordinated framework for improved governance and sustainable use of marine resources.

[99] See: http://www.fao.org/fishery/rfb/oldepesca/en (accessed: September 2018).



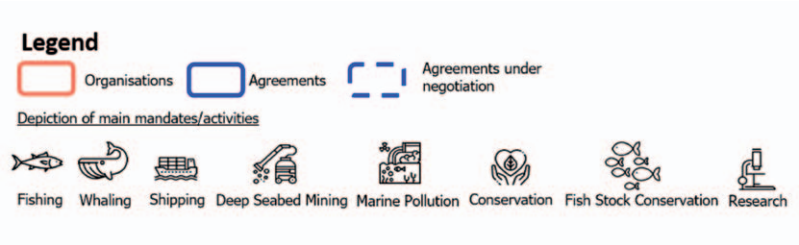


Figure 8: Main Organisations with a Mandate for and Legal Agreements Applicable to the Conservation and Sustainable Use of BBNJ in the Southeast Pacific[100] (Source: IASS [2018])

[100] Icons made by Freepik (fishing, whaling, conservation, research), Mavadee (shipping), Surang (deep seabed mining, marine pollution) and Made by Made (fish stock conservation) from www.flaticon.com, licensed by http://creativecommons.org/licenses/by/3.0/ (accessed: December 2018). Please note that this figure only aims to depict the main organisations with a mandate for and legal agreements applicable to the conservation and sustainable use of BBNJ in the Southeast Pacific but it does not reflect the memberships and ratifications of Southeast Pacific coastal States. See: Annex V for the memberships and treaty ratifications of Southeast Pacific coastal States; Annex IV for key Southeast Pacific organisations; and Annex I for selected agreements relevant to the conservation and sustainable use of BBNJ. Soft law agreements included in this figure are described in the footnote of Figure 3.

4. Conservation and Sustainable Use of Biodiversity in ABNJ in the Southeast Pacific and Southeast Atlantic

This section analyses the challenges and gaps faced by the Southeast Pacific and Southeast Atlantic regions in relation to the implementation of the four BBNJ elements and selected SDG 14 targets for the conservation and sustainable use of marine biodiversity in ABNJ, as well as the opportunities to strengthen the existing governance frameworks. This discussion may help to inform and underpin the development of a new global BBNJ agreement and progress towards the achievement of SDG 14.

The focus of this chapter is on the global and regional organisations that have a mandate to work in ABNJ. Some other organisations, such as regional economic or political organisations that have an interest in ABNJ or could potentially be important stakeholders in the regions for the conservation of BBNJ in the future, are addressed in Chapter 5.

4.1 BBNJ Element: Area-based Management Tools (ABMTs)

Key Messages:

- There is currently no global and cross-sectoral process for the establishment, implementation and enforcement of ABMTs in ABNJ, particularly MPAs. A new instrument on BBNJ could provide such a framework;
- Several sectoral organisations have established ABMTs within their Convention areas, including in ABNJ, but these measures are applicable only to State Parties to these organisations, and are not coordinated between organisations;
- Some global and regional organisations have designated MPAs in ABNJ, such as those adopted by the OSPAR Commission in the North-East Atlantic and by CCAMLR in the Southern Ocean. Again, these measures are applicable only to State Parties to these organisations and are limited in scope;[101]
- No PSSAs, IMO Special Areas, IWC Sanctuaries or APEIs are in place in ABNJ of either the Southeast Atlantic and Southeast Pacific;
- Only RFMOs in the Southeast Atlantic and Southeast Pacific have established ABMTs in ABNJ, such as VME closures or other area-based fisheries management measures. However, there is no coordination of ABMTs between different RFMOs, nor any legal obligation for RFMOs to cooperate to ensure that such measures are integrated and ecosystem-based.

[101] E.g. OSPAR does not have the mandate to manage most human activities in ABNJ, including fishing, shipping and seabed mining.

No global and cross-sectoral process currently exists for the establishment, implementation and enforcement of ABMTs in ABNJ, particularly MPAs. Several sectoral organisations have the mandate to establish area-based management measures within their Convention areas. They include, amongst other, Particularly Sensitive Sea Areas (PSSAs) adopted under the IMO,[102] Vulnerable Marine Ecosystems (VMEs) and Fisheries Closure Areas under RFMOs,[103] and Areas of Particular Environmental Interest (APEIs) under the ISA.[104]

These measures are currently established on an ad-hoc basis and are not coordinated amongst the different organisations. While it may not always be necessary for sectoral bodies to coordinate their management actions with other organisations, coordination will be especially relevant in cases where particular resources or ecosystems straddle jurisdictions or are under the management mandate of one or more competent organisations. In any case, it may be helpful to enhance information sharing among the different regional organisations in order to compare methodologies or considerations to be taken into account for the establishment of ABMTs and other management measures.

There is also no existing global framework for the establishment of marine protected areas. Current best available science suggests that MPAs are a crucial measure for biodiversity conservation and it is therefore widely acknowledged that ecologically connected networks of MPAs will be crucial for increasing resilience to climate change and sustaining high seas ecosystems.[105] To date, only a limited number of MPAs have been established in ABNJ.[106] Area-based management measures adopted by sectoral organisations and MPAs established by regional organisations are subject to the 'third party rule', meaning that only States that are members of organisation establishing management meas-

[102] PSSAs are 'area[s] that [need] special protection through action by IMO because of [their] significance for recognized ecological, socio economic, or scientific attributes, where such attributes may be vulnerable to damage by international shipping activities' (see: International Maritime Organization, *Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas*, Res A.982(24), 24th sess, Agenda Item 11, A/24/Res.982 (6 February 2006), para 1.2). To date, 17 PSSAs have been established within national jurisdiction. However, the criteria for designation of PSSAs are applicable beyond the territorial sea so that PSSAs could thus be established in ABNJ in the future (see: International Maritime Organization, *Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas*, Res A.982(24), 24th sess, Agenda Item 11, A/24/Res.982 (6 February 2006), annex art 4.3.)

[103] VMEs are defined as 'groups of species, communities or habitats that may be vulnerable to impacts from fishing activities' (see: http://www.fao.org/in-action/vulnerable-marine-ecosystems/background/en/, accessed: September 2018). UNGA Resolution 61/105 of 2006 requires competent RFMOs to adopt and implement measures to regulate bottom fisheries within their Convention areas in accordance with international law as well as the precautionary and ecosystem approaches and '[…] to close such areas to bottom fishing and ensure that such activities do not proceed unless conservation and management measures have been established' (see: United Nations General Assembly, 'Resolution adopted by the General Assembly on 8 December 2006', A/RES/61/105, 61st sess, Item 71 (b) (6 March 2007), para. 83b and 83c).

[104] In 2012, as part of its Environmental Management Plan for polymetallic nodule mining in the Clarion-Clipperton Zone, the ISA designated 9 APEIs where no mining is permitted (see: ISA Legal and Technical Commission, 'Environmental Management Plan for the Clarion-Clipperton Zone', Isba/17/Ltc/7, no. 194, 2011, 1-18; ISA, 'Decision of the Council Relating to an Enviornmental Management Plan for the Clarion-Clipperton Zone', 1833, no. 31363, 2012, 1-5). In addition, the ISA Mining Code requires the designation of 'impact reference zones' and 'preservation reference zones' for monitoring the impacts of seabed mining (See: https://www.isa.org.jm/mining-code/Regulations, accessed: September 2018).

[105] Callum M. Roberts et al., 'Marine Reserves Can Mitigate and Promote Adaptation to Climate Change.', *Proceedings of the National Academy of Sciences of the United States of America*, 2017, 201701262, https://doi.org/10.1073/pnas.1701262114. Ur Ussif Rashid Sumaila et al., 'Potential Costs and Benefits of Marine Reserves in the High Seas,' *Marine Ecology Progress Series* 345 (September 13, 2007): 305–10, https://doi.org/10.3354/meps07065; Kylie L. Scales et al., 'On the Front Line: Frontal Zones as Priority at-Sea Conservation Areas for Mobile Marine Vertebrates', *Journal of Applied Ecology*, 2014, https://doi.org/10.1111/1365-2664.12330; Arnaud Grüss et al., 'Conservation and Fisheries Effects of Spawning Aggregation Marine Protected Areas: What We Know, Where We Should Go, and What We Need to Get There,' *ICES Journal of Marine Science*, 2014, https://doi.org/10.1093/icesjms/fsu038; Alison L. Green et al., 'Designing Marine Reserves for Fisheries Management, Biodiversity Conservation, and Climate Change Adaptation', *Coastal Management* 42, no. February (2014), https://doi.org/10.1080/08920753.2014.877763; Daniela M. Ceccarelli and Leanne Fernandes, 'The Value of Offshore Marine Protected Areas for Open Ocean Habitats and Species.', 2017; Bethan C. O'Leary et al., 'Addressing Criticisms of Large-Scale Marine Protected Areas', *BioScience* 68, no. 5 (2018): 359–70, https://doi.org/10.1093/biosci/biy021.

[106] The Pelagos Sanctuary in the Mediterranean, the South Orkney Islands and Ross Sea MPAs in the Southern Ocean under CCAMLR, and a network of 7 high seas MPAs in the North-East Atlantic under OSPAR.

ures are subject to them. These shortcomings in the governance framework for ABNJ make it challenging to effectively conserve and sustainably use marine biodiversity in ABNJ and contribute to the achievement of agreed goals and targets.

Ecologically or Biologically Significant Marine Areas (EBSAs), as well as other important biological areas, such as Key Biodiversity Areas (KBAs), Important Bird and Biodiversity Areas (IBAs) or Important Marine Mammal Areas (IMMAs) can be used as a source of scientific information for the establishment of ABMTs for the conservation and sustainable use of marine biodiversity in ABNJ.[107] Marine Spatial Planning (MSP),[108] which is more of a process but can lead to the adoption of an array of ABMTs that looks at multiple use and conservation goals, could also be considered in the future and its legal application extended to ABNJ.[109]

4.1.1 ABMTs in the Southeast Atlantic

Apart from the RFMOs, no other sectoral organisation has established ABMTs in the Southeast Atlantic. There are therefore no PSSAs or IMO Special Areas, Sanctuaries by the International Whaling Commission (IWC) or APEIs in place in ABNJ of the Southeast Atlantic. A proposal for a South Atlantic Ocean Sanctuary has been recurrently submitted to the IWC but has yet to achieve the majority of votes necessary.[110]

ICCAT's work has generally focused on the management of tuna stocks, in particular through the setting of fishing quotas for members and developing recovery plans for overexploited stocks.[111] ICCAT has adopted area and time closures as well as restrictions on fish-aggregating devices (FADs) in certain circumstances, for instance to protect juvenile fish.[112] ICCAT also has a prohibition in place for purse seiners to discard tropical tunas.[113] ICCAT also has several resolutions in place for the conservation of by-catch species, such as shark species, seabirds and sea turtles.[114] No reference to ecosystem-based management is made in the ICCAT Convention though in 2015, ICCAT adopted Resolution 15–11, calling upon the Commission to apply an ecosystem-based approach to fisheries management.[115] In 2016, ICCAT adopted a resolution on ecosystems that are important and unique for ICCAT species.[116] This resolution requests ICCAT's Standing Committee on Research and Statistics to examine the information available on the trophic ecology of pelagic ecosystems that are of importance to species covered under the

[107] See for instance: https://www.cbd.int/ebsa/, https://www.birdlife.org/worldwide/programmes/sites-habitats-ibas-and-kbas and https://www.marinemammalhabitat.org/activities/immas/ (accessed: September 2018).

[108] MSP is defined by the IOC as 'public process of analyzing 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' (see: Ehler, C. & Douvere, F. 2009. Marine Spatial Planning: a step-by-step approach toward ecosystem-based management. Intergovernmental Oceanographic Commission and Man and the Biosphere Programme, http://unesdoc.unesco.org/images/0018/001865/186559e.pdf, accessed: September 2018).

[109] See the 2018 study by UN Environment-WCMC for a review of existing area-based planning tools and their support of cross-sectoral based planning for the conservation and sustainable use of marine biodiversity in ABNJ (UNEP-WCMC (2018). A review of area-based planning tools. What is the potential for cross-sectoral planning in areas beyond national jurisdiction? Technical document Produced as part of the GEF ABNJ Deep Seas Project. Cambridge (UK): UN Environment World Conservation Monitoring Centre. 71pp).

[110] See: https://iwc.int/sanctuaries (accessed: September 2018).

[111] ICCAT has management resolutions for bigeye, yellowfin, skipjack, bluefin and albacore tuna, swordfish and billfishes. See: https://www.iccat.int/en/RecRes.asp (accessed: September 2018).

[112] See for instance: ICCAT, 'Recommendation by ICCAT on a Multi-Annual Conservation and Management Program for Tropical Tunas' (Resolution 16-01, 2017). ICCAT has also established an ad hoc working group on FADs, see: ICCAT, 'Recommendation by ICCAT to Establish an Ad Hoc Working Group on Fish Aggregating Devices (FADs)' (Resolution 16-02, 2017).

[113] ICCAT, 'Recommendation by ICCAT on Prohibition on Discards of Tropical Tunas Caught by Purse Seiners' (Resolution 17-01, 2018).

[114] See: https://www.iccat.int/en/RecRes.asp (accessed: September 2018).

[115] ICCAT, 'Resolution by ICCAT Concerning the Application of an Ecosystem Approach to Fisheries Management' (Resolution 15–11, 2015).

[116] ICCAT, 'Resolution by ICCAT on Ecosystems that are Important and Unique for ICCAT Species' (Resolution 16–23, 2016).

ICCAT Convention. A strategic research plan is also in place, which includes some activities to advance towards an ecosystem-based fisheries management (EBFM) approach.[117]

CCSBT has a management procedure in place that takes into account the precautionary approach to determine its member and cooperation non-member States' total allowable catch (TAC) for three-year intervals. This TAC also allows for some flexibility in cases where member States have not used the whole TAC to carry the quota forward to the next year.[118] In the overall 3-year TAC set, CCSBT also includes a Research Mortality Allowance quota as well as a quota to account for IUU fish catches in the Convention area.[119] The use of large-scale driftnets to catch or harvest southern bluefin tuna is prohibited throughout the Convention area, in line with longstanding commitments in UNGA resolutions.[120]

To date, SEAFO has closed twelve known or representative areas of VMEs to fishing (see Chapter 4.6.1 of this report for more information).[121] It has also adopted a TAC for certain fish and crab species within its Convention area, for which the fisheries has to be closed when these TACs have been reached.[122] It further prohibits the use of gillnets and the catch of deep water sharks, and has bycatch management measures in place for seabirds, sea turtles and sharks.[123]

CECAF's role in the region is to 'establish the scientific basis for regulatory measures leading to the conservation and management of marine fishery resources' by studying and reviewing the state of these resources and 'to provide advice for the adoption of regulatory measures' for consideration by member States or by relevant regional management organisations.[124] This organisation therefore has no management mandate but may be able to provide scientific information relevant to other regional organisations that could, amongst others, support the establishment of ABMTs.

Despite the establishment of fisheries closure areas and adoption of yearly TACs, there has not been any cooperation, coordination or exchange between these RFMOs when considering the establishment of ABMTs in the Southeast Atlantic. It is relevant to highlight also that 44 EBSAs, many of which span over large areas

[117] ICCAT (2015a) 'Report for biennial period, 2014–15. Part I (2014)' – Vol. 2 – SCRS, International Commission for the Conservation of Atlantic Tunas, Madrid, Spain.

[118] See: CCSBT, 'Resolution on the Total Allowable Catch and Future Management of Southern Bluefin Tuna' (2009); CCSBT, 'Resolution on the Adoption of a Management Procedure' (2011); CCSBT, 'Resolution on the Allocation of the Global Total Allowable Catch' (2017); CCSBT, 'Resolution on Limited Carry-forward of Unfished Annual Total Allowable Catch of Southern Bluefin Tuna' (2017).

[119] See: https://www.ccsbt.org/en/content/total-allowable-catch (accessed: September 2018).

[120] E.g. UNGA Resolutions 44/225 and 45/197, concerning large-scale pelagic drift-net fishing and its impact on the living marine resources of the world's oceans and seas. See: CCSBT, 'Resolution on Large-scale Driftnet Fishing' (2016).

[121] Only the Valdivia Bank South Area is closed to all fishing gears except for pots and longlines. See: SEAFO 'Conservation Measure 30/15 on Bottom Fishing Activities and Vulnerable Marine Ecosystems in the SEAFO Convention Area' (adopted in December 2015, in force in February 2016). As noted above, the UNGA bottom fisheries resolutions require non-tuna RFMOs to close VMEs to bottom fishing where there is a risk of significant adverse impacts from bottom fishing, as opposed to closing representative areas. See UNGA Resolution 61/105 on Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (2006) A/RES/61/105, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/500/73/PDF/N0650073.pdf (accessed: December 2018).

[122] SEAFO 'Conservation Measure 32/16 on 'Total Allowable Catches and Related Conditions for Patagonian Toothfish, Deep-Sea Red Crab, Alfonsino, Orange Roughy and Pelagic Armourhead for 2017 and 2018 in the SEAFO Convention Area' (adopted in December 2016, in force in February 2017).

[123] SEAFO 'Recommendation 2/2009 on Banning of Gillnets'; 'Recommendation 1/2008 on Banning of Deep-Water Shark Catches'; 'Conservation Measure 04/06 on the Conservation of Sharks Caught in Association with Fishieries Managed by SEAFO' (adopted in October 2006); 'Conservation Measure 14/09: To Reduce Sea Turtle Mortality in SEAFO Fishing Operations'; 'Conservation Measure 25/12: On Reducing Incidental By-catch of Seabirds in the SEAFO Convention Area'.

[124] CECAF, 'Appendix E: Revised Terms of Reference of the Fishery Committee for the Eastern Central Atlantic (CECAF)' in 'Amendments of the Statutes of the Fishery Committee for the Eastern Central Atlantic' (CL 124/REF), available at: http://www.fao.org/fishery/docs/DOCUMENT/cecaf/CECAFstatutes_amend_CL124.pdf (accessed: September 2018).

of ABNJ, were identified at a regional workshop organised by the CBD in 2013. As already mentioned in this report, the CBD has no jurisdictional mandate for ABNJ, only in the case of processes and activities under the jurisdiction of its contracting Parties.[125] Therefore, the EBSAs identified at this workshop for ABNJ have not been considered further for ABNJ.[126]

4.1.2 ABMTs in the Southeast Pacific[127]

No sectoral organisation apart from the RFMOs have established ABMTs in the Southeast Pacific. There are therefore no PSSAs or IMO Special Areas, IWC Sanctuaries or APEIs in place in ABNJ of the Southeast Pacific.

Both SPRFMO and IATTC have legally-binding provisions on the adoption of conservation and management measures for fishery resources in their respective Convention areas.[128] In the case of SPRFMO, States are obligated to take measures to ensure that populations of non-target and associated or dependent species are maintained or restored and measures to protect marine ecosystems and habitats, including VMEs, where fishery resources and other non-target, associated and dependent species occur.[129] The SPRFMO Commission can identify areas where fishing is allowed and where fishing closure areas are necessary, as well as determine periods during which fishing can take place.[130] It sets quotas for TAC for the Chilean Jack Mackerel fisheries in its Convention area.[131] The Commission furthermore prohibits the use of largescale pelagic driftnets and deep water gillnets, places bycatch management measures in place for seabirds and bottom fishing closures for the protection of VMEs, as well as prohibits bottom fishing in its Convention area unless vessels have undertaken an assessment of their potential bottom fishing impacts.[132]

IATTC has to adopt TACs and total allowable effort (TAE) for the fishery resources managed in its Convention area to maintain or restore them at levels able to produce the maximum sustainable yield (MSY),[133] as well as conservation and management measures to maintain or restore populations of dependent, associated, or same ecosystem species that are likely to be affected by fishing activities.[134] To date, IATTC has established fishery closures and restrictions for its yellowfin, bigeye, and skipjack tuna fisheries,[135] as well as specific conservation measures for bluefin tuna, silky sharks, oceanic whitetip sharks, mobulid rays, seabirds, and sea turtles.[136] IATTC has also

[125] CBD, arts. 4 and 5.

[126] See: https://www.cbd.int/ebsa/ and https://www.cbd.int/meetings/EBSA-SEA-01 (accessed: September 2018).

[127] This section draws and builds on previous analyses by Durussel et al. 2017; see: Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635–671.DOI: http://doi.org/10.1163/15718085-12324051.

[128] SPRFMO, Art. 20; IATTC, Art. VII.1c.

[129] SPRFMO, arts. 20.1c and 20.1d.

[130] SPRFMO, arts. 20.2d and 20.2e.

[131] SPRFMO 'Conservation and Management Measure for *Trachurus murphyi*' (CMM 01–2018, 2018).

[132] SPRFMO, 'Conservation and Management Measure for the Management of Bottom Fishing in the SPRFMO Convention Area' (CMM 03–2018, 2018), Arts. 8b, 10, and 22; SPRFMO, 'Conservation and Management Measure for Gillnets in the SPRFMO Convention Area' (CMM 08–2013, 2013); SPRFMO, 'Conservation and Management Measure for minimising bycatch of seabirds in the SPRFMO Convention Area' (CMM 09–2017, 2017).

[133] IATTC, arts. IV and VII.1c.

[134] IATTC, art. VII.1f.

[135] IATTC, 'Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean during 2018-2020 and Amendment to Resolution C-17-01' (C-17–02, 2017).

[136] IATTC, 'Amendment to Resolution C-16-08 on a Long-Term Management Framework for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean' (C-18–02, 2018); IATTC, 'Measures for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean, 2019 and 2020' (C-18–01, 2018); IATTC, 'Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark *(Carcharhinus falciformis)*, for the years 2017, 2018, and 2019' (C-16–06, 2016); IATTC, 'Resolution on the Management of Shark Species' (C-16–05, 2016); IATTC, 'Resolution on the Conservation of Mobulid Rays Caught in Association with Fisheries in the IATTC Convention Area' (C-15–04, 2015); IATTC, 'Resolution to Mitigate the Impact on Seabirds of Fishing for Species Covered by the IATTC' (C-11–02, 2011); IATTC, 'Resolution to Mitigate the Impact of Tuna Fishing Vessels on Sea Turtles' (C-07–03, 2007); IATTC, 'Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area' (C-11–10, 2011).

adopted a resolution on the collection and reporting of information on FADs. Based on this data, the Commission can make recommendations on the adoption of management measures for affected stocks, including methods for limiting the capture of small bigeye and yellowfin tuna associated with fishing on FADs and a region-wide FAD management plan. As of 2019, contracting Parties have to follow specific principles for the design and deployment of FADs to reduce the entanglement of sharks, sea turtles or any other species. Furthermore, flag vessels of IATTC contracting Parties are also prohibited to set a purse-seine net on a school of tuna associated with a live whale shark. IATTC has also established an ad hoc Permanent Working Group on FADs.[137]

Although CPPS' jurisdictional scope mainly focuses on the EEZ of its member States and extends to adjacent high seas areas in cases when these could be affected by marine and coastal pollution or for the promotion of the conservation of marine living resources,[138] it has legal provisions on the establishment of conservation measures for fragile, vulnerable, and unique ecosystems, focusing particularly on those comprising endangered marine species.[139] CPPS member States who ratified this protocol must adopt, individually or through cooperation, protected areas and buffer zones within which human activities must be regulated or prohibited.[140] CPPS member States reiterated in the 2012 Galapagos Commitment their commitment to advance the identification of EBSAs in the Southeast Pacific and contribute to the establishment of coastal and marine protected areas, including a network of MPAs in the Southeast Pacific, in order to achieve the Aichi Biodiversity Target 11 (and thereby also SDG 14.5).[141]

Despite the establishment of fisheries closure areas and adoption of yearly TACs, there has not been any cooperation, coordination or exchange between IATTC and SPRFMO when considering the establishment of ABMTs in the Southeast Pacific. It is relevant to highlight that experts have identified a total of 21 EBSAs within the Eastern Tropical and Temperate Pacific region, an area that includes the Southeast Pacific region, during a regional workshop organised by the CBD in 2012.[142] Some of these EBSAs span over large areas that include ABNJ but, given CBD's jurisdictional mandate,[143] they have not been considered further for ABNJ.[144]

[137] IATTC, 'Amendment of Resolution C-16-01 on the Collection and Analyses of Data on Fish-aggregating Devices' (C-18–05, 2018).

[138] *CPPS Estatuto* art 4 gives CPPS the competency to promote the conservation of marine living resources beyond the national jurisdiction of its member States without mentioning to which extent this competency applies. Article 1 of the *Lima Convention* applies to areas within national jurisdiction and adjacent high seas areas that are impacted by marine pollution.

[139] Protocolo para la Conservacion y Administracion de las Areas Marinas Y Costeras Protegidas del Pacifico Sudeste [Protocol for the Conservation and Management of Marine and Coastal Protected Areas of the Southeast Pacific] (Paipa, 21 September 1989, in force 24 January 1995), art. II.

[140] Protocolo para la Conservacion y Administracion de las Areas Marinas Y Costeras Protegidas del Pacifico Sudeste [Protocol for the Conservation and Management of Marine and Coastal Protected Areas of the Southeast Pacific] (Paipa, 21 September 1989, in force 24 January 1995), arts. II, V, and VI.

[141] *CPPS Compromiso de Galápagos*, arts. I.2, IX.22, IX.29, and IX.30.

[142] See: https://www.cbd.int/doc/meetings/mar/ebsa-ettp-01/official/ebsa-ettp-01-04-en.pdf (accessed: September 2012).

[143] The CBD has no jurisdictional mandate for ABNJ, only in the case of processes and activities under the jurisdiction of its contracting Parties. See: CBD, arts. 4 and 5.

[144] The Colombian National Section to the CPPS notes here that Colombia has identified EBSAs within its jurisdictional water. On this point also, the Peruvian National Section to the CPPS would like to note that it would be recommendable to hold dissemination workshops in the CPPS member States to expose and discuss the scientific criteria and/or considerations that were used in the identification of these EBSAs at the CBD regional workshop and that this exercise be contrasted, for example, with the scientific evidence available in the four CPPS member States for some or all of these EBSAs.

4.2 BBNJ Element: Environmental Impact Assessments (EIAs)

Key Messages:

- Undertaking EIAs for activities that can potentially have a significant impact on the marine environment is part of customary international law. There is however no existing detailed legal framework in place for undertaking EIAs in ABNJ;
- SPRFMO, IATTC, SEAFO and ICCAT have legal provisions on the use of the precautionary approach;
- SEAFO requires an environmental impact assessment in the case of proposed exploratory bottom fishing activities but not in existing identified bottom fishing areas; whereas SPRFMO's Convention area is closed to bottom fishing unless member States can prove through assessments that their activities will not have a significant adverse impact on marine ecosystems;
- CCSBT Extended Commission and/or its subsidiary bodies has to undertake a risk assessment of marine species associated with southern bluefin tuna to assess the impact of fishing and adopt appropriate measures;
- The regional seas programme hosted by the CPPS has a legal provision on the application of EIAs for activities that may have an adverse impact on designated marine and coastal protected areas as well as a legal provision on assessing the impacts of human activities on the coastal and marine environments and main pollutants.

The requirement to assess potential impacts of human activities on the environment was first adopted in the 1969 United States National Environmental Policy Act and was further mentioned in the 1982 World Charter for Nature.[145] EIAs can be used to fulfil States' obligations in the application of the precautionary approach, which requires States to take action to protect the marine environment from the specific harm caused by certain human activities despite scientific uncertainty, as outlined by in Principle 15 of the 1992 Rio Declaration.[146]

[145] See: US National Environmental Policy Act of 1969, Pub L No 91-190 § 102 C (1969) and United Nations General Assembly, World Charter for Nature, GA Res 37/7, 48th sess, A/RES/37/7 (28 October 1982).

[146] United Nations General Assembly, Report of the United Nations Conference on Environment and Development, A/CONF.151/26 (Vol. I) (12 August 1992) annex I ('Rio Declaration on Environment and Development').

There is a general obligation provided in UNCLOS for States to assess the potential effects of planned activities taking place under their control in marine areas within and beyond national jurisdiction.[147] This is further specified in other biodiversity-specific agreements, such as:

- Several RFMOs for deep sea bottom fisheries;
- The ISA for the exploration of seabed mining in the Area;
- The London Convention and its Protocol for the dumping of wastes and ocean fertilisation;[148]
- The CBD with regard to activities or processes under national jurisdiction or control that may affect the conservation and sustainable use of biodiversity (regardless of whether the effects occur within or beyond national jurisdiction);[149]
- The Agreement on the Conservation of Albatrosses and Petrels (ACAP); and
- The Convention on the Conservation of Migratory Species of Wild Animals (CMS).[150]

While under UNCLOS an assessment is required when activities are expected to trigger 'substantial pollution of or significant and harmful changes to the marine environment',[151] recent court cases have led to the obligation to undertake EIAs for activities that can potentially have a significant impact on the marine environment being part of customary international law.[152]

There is however no existing detailed legal framework for undertaking EIAs in ABNJ, as provided, for example, by the 1991 Espoo Convention and its 2003 Kiev Protocol for transboundary assessments. In the development of such a framework in a future BBNJ agreement, the 2012 CBD voluntary guidelines on biodiversity-inclusive EIA for marine and coastal areas, which include ABNJ, as well as guidelines for EBFM in the fisheries context can provide important information. Furthermore, the precautionary and ecosystem approaches to management have also been identified as important for the conservation of high seas biodiversity.[153]

[147] UNCLOs, art. 206.

[148] *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, opened for signature 13 November 1972, ATS 16 (entered into force 30 August 1975); *Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972*, opened for signature 7 November 1996, 36 ILM 1 (entered into force 24 March 2006) amended in 2006.

[149] CBD, arts. 4.2, 7 and 14.

[150] For example: CBD, Art. 14a; Convention on the Conservation of Migratory Species of Wild Animals, *Resolution 7.2: Impact Assessment and Migratory Species, Proceedings of the Seventh Meeting of the Conference of the Parties, Conference of the Parties to the Convention on the Conservation of Migratory Species* of Wild Animals, 7th meeting (18 to 24 September 2002); Agreement on the Conservation of Albatrosses and Petrels (Canberra, 19 June 2001, in force 1 February 2004) ATS 5, annex 3.

[151] UNCLOs, art. 206.

[152] See, e.g. *Request for an Examination of the Situation in Accordance with Paragraph 63of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v France) Case* [1995] ICJ Rep 288; *Gabčíkovo-Nagymaros Dam Case (Hungary v Slovakia)* [1997]ICJ Rep 7; *MOX Plant Case (Ireland v United Kingdom) (Provisional Measures) [2001] ITLOS No. 10; Case concerning Land Reclamation by Singapore* in and around the Straits of Johor (Malaysia v Singapore) (Provisional Measures) [2003] ITLOS No. 12; *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Provisional Measures) [2006] ICJ Rep 135; *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Request for Advisory Opinion submitted to the Seabed Disputes Chamber) [2011] ITLOS No. 17.

[153] See: http://undocs.org/en/a/conf.232/2018/1 at p. 9.

4.2.1 EIAs in the Southeast Atlantic

Both SEAFO and ICCAT have a legal provision on the use of the precautionary approach.[154] SEAFO initially adopted a measure in 2008 requiring that Contracting Parties proposing to participate in bottom fishing must submit information and an initial assessment, where possible, of the known and anticipated impacts. In 2011, SEAFO adopted a fishing footprint of 'existing bottom fishing areas', where bottom fisheries were permitted without requiring an impact assessment.[155] The regulation further stipulates that bottom fishing in areas outside the footprint should be subject to an Interim Exploratory Bottom Fishing Protocol that required an initial, though undefined, assessment of the known and anticipated impacts of its bottom fishing activities on VMEs. In 2014, SEAFO adopted measure 29–14 that required that impact assessments for exploratory fisheries be conducted in a manner consistent with the criteria set out in the FAO International Guidelines with respect to potential impacts on VMEs.[156] This measure was updated by measure 30/15, which has been in force since 2016.[157] In this document, SEAFO member States have to submit a preliminary assessment of the known and anticipated impacts for each of their proposed exploratory bottom fishing activities, which then has to be reviewed by SEAFO's Scientific Committee.[158]

ICCAT has passed resolutions on reducing discards of tropical tunas and swordfish caught in its Convention area.[159] It furthermore conducts fisheries impact assessments and ecological risk assessments for certain by-catch species in the Convention area.[160] ICCAT has also been advancing it's work on ecosystem-based management.

The CCSBT Extended Commission has the task to undertake a risk assessment for all marine species associated with southern bluefin tuna that are or can be impacted by fishing activities for southern bluefin tuna. This Commission considers how identified risks can be mitigated, including through the adoption of additional measures.[161] The CCSBT Commission also has to have monitoring systems for all fishing activities in place to not only enhance scientific knowledge but also to ensure the effective implementation of the measures adopted under its convention.[162]

[154] Convention on the Conservation and Management of Fishery Resources in the Southeast Atlantic Ocean, art. 7; ICCAT 'Resolution by ICCAT Concerning the Use of a Precautionary Approach in Implementing ICCAT Conservation and Management Measures' (Resolution 15–12).

[155] The footprint was based on any area fished during a reference period between 1987 and 2011 (extended from the original end date of 2007) and delineated in 1 degree longitude by 1 degree latitude blocks. Depending on the latitude, blocks of 1 degree longitude by 1 degree latitude in the SEAFO area would be approximately 8,000 to 12,000 square kilometres in size and would likely result in the inclusion of areas or features (e.g. seamounts) that had not been previously fished in the footprint, although much of the footprint would also encompass areas too deep for bottom fishing to occur (e.g. deep abyssal plain).

[156] Though the criteria incorporated into Annex 3 of CM 29-14 left out the reference to assessing the impacts on 'low-productivity fishery resources' contained in the FAO Guidelines.

[157] SEAFO 'Conservation Measure 30/15 on Bottom Fishing Activities and Vulnerable Marine Ecosystems in the SEAFO Convention Area' (adopted in December 2015, in force in February 2016).

[158] SEAFO 'Conservation Measure 30/15 on Bottom Fishing Activities and Vulnerable Marine Ecosystems in the SEAFO Convention Area' (adopted in December 2015, in force in February 2016), art. 7.

[159] See for instance: ICCAT, 'Recommendation by ICCAT on Prohibition on Discards of Tropical Tunas Caught by Purse Seiners' (Resolution 17-01, 2018) and ICCAT, 'Resolution by ICCAT for Evaluating Alternatives to Reduce Catches of Juveniles or Dead Discards of Swordfish' (Resolution 01-04, 2002).

[160] See for instance: ICCAT, 'Recommendation by ICCAT on the Conservation of Oceanic Whitetip Shark Caught in Association with Fisheries in the ICCAT Convention Area' (Resolution 10-07, 2011); ICCAT, 'Recommendation by ICCAT on Shortfin Mako Caught in Association with ICCAT Fisheries' (Resolution 10-06, 2011); ICCAT, 'Recommendation by ICCAT on the Conservation of Silky Sharks Caught in Association with ICCAT Fisheries' (Resolution 11-08, 2012); ICCAT, 'Recommendation by ICCAT on Porbeagle Caught in Association with ICCAT Fisheries' (Resolution 15-06, 2016); ICCAT, 'Recommendation by ICCAT on Shortfin Mako Caught in Association with ICCAT Fisheries' (Resolution 14-06, 2015); ICCAT, 'Supplemental Recommendation by ICCAT on Reducing Incidental By-Catch of Seabirds in ICCAT Longline Fisheries' (Resolution 11-09, 2012).

[161] See: CCSBT, 'Recommendation to Mitigate the Impact on Ecologically Related Species of Fishing for Southern Bluefin Tuna' (2011).

[162] CCSBT, *Text of the Convention for the Conservation of Southern Bluefin Tuna* (entered into force on 20 May 1994), art. 8.9.

4.2.2 EIAs in the Southeast Pacific[163]

Although both the IATTC and SPRFMO Conventions provide for the use of the precautionary approach,[164] there is no existing regional framework in place for the application, implementation, and enforcement of EIAs for fishing activities carried out in ABNJ of the Southeast Pacific. SPRFMO has legal provisions on avoiding and limiting the impacts of fishing activities on VMEs and can take special conservation and management measures, in cases of emergency where fishing is deemed to threaten the sustainability of fishery resources or marine ecosystems or can be exacerbated by natural phenomena or human-caused disasters and as recommended by its Scientific Committee, to prevent significant adverse impacts on VMEs.[165] Identified VMEs within the SPRFMO Convention area are closed to bottom fishing, unless the Commission determines through member States' assessments of their vessels' bottom fishing activities that they will not have a significant adverse impact on these ecosystems.[166] In line with the precautionary approach, SPRFMO has also adopted conservation and management measures for the management of new and exploratory fisheries, including for the exploratory fishing for toothfish in its Convention area.[167] As outlined in Section 4.1.2, IATTC has adopted a resolution on FADs, which allows the Commission to make recommendations, based on collected data, on the adoption of management measures for affected fish stocks.[168] The regional seas programme hosted by the CPPS has also a legal provision on the application of EIAs for activities that may have an adverse impact on designated marine and coastal protected areas as well as a legal provision on assessing the impacts of human activities on the coastal and marine environments and main pollutants.[169]

[163] This section draws and builds on previous analyses by Durussel et al. 2017; see: Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635-671.DOI: http://doi.org/10.1163/15718085-12324051.

[164] *IATTC Antigua Convention, Art. IV; SPRFMO Convention, Arts. 3.1b and 3.2.*

[165] SPRFMO Convention, arts. 10.2c and 20.5.

[166] SPRFMO 'Conservation and Management Measure for the Management of Bottom Fishing in the SPRFMO Convention Area' (CMM 03–2018, 2018), art. 22.

[167] SPRFMO, 'Conservation and Management Measure for the Management of New and Exploratory Fisheries in the SPRFMO Convention Area' (CMM 13–2016, 2016); SPRFMO, 'Conservation and Management Measure for Exploratory Fishing for Toothfish in the SPRFMO Convention Area' (CMM 14–2016, 2016).

[168] SIATTC, 'Amendment of Resolution C-16-01 on the Collection and Analyses of Data on Fish-aggregating Devices' (C-18–05, 2018).

[169] CPPS MPA Protocol, Art. 8 and Plan de Accion para la Proteccion del Medio Marino y Areas Costeras del Pacifico Sudeste [Plan of Action for the Protection of the Marine Environment and Coastal Areas of the Southeast Pacific] (Guayaquil, 1981, updated 12 April 2013), Arts. 6.1 and 12; http://cpps.dyndns.info/cpps-docs-web/planaccion/docs2013/mar/xix_ag/011.%20CPPS(1981)Plan_de_Accion_PSE.pdf (accessed: September 2018).

4.3 BBNJ Element: Marine Genetic Resources (MGRs)

Key Messages:

- ↗ MGRs and bioprospecting in ABNJ are not covered by the current legal framework. They will need to be addressed in a new BBNJ agreement;
- ↗ There is a strong interest in MGRs from stakeholders in both the Southeast Atlantic and Southeast Pacific regions;
- ↗ In the 2012 Commitment of Galapagos, CPPS member States highlighted their interest in MGRs and committed to promote coordinated action on this issue;
- ↗ An expert meeting was organised in 2008 by the CPPS to discuss the legal and scientific status of MGRs in the Southeast Pacific region.

MGRs and bioprospecting are not explicitly covered by UNCLOS as they were relatively new concepts at the time when the Convention was negotiated. The 2010 CBD Nagoya Protocol and the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture are the only existing instruments tackling the use of genetic resources from biological resources.[170] They are however only applicable to areas within national jurisdiction and thus do not apply to ABNJ. There are neither global or regional frameworks nor precedents in place to regulate the access to and distribution of the benefits of the use of MGRs. This topic is specific to the BBNJ process under the United Nations and has been specifically identified as one of the gaps to be tackled in the development of a future implementing agreement on BBNJ under UNCLOS. There is however strong interest from stakeholders in both the Southeast Atlantic and Southeast Pacific regions in this topic, as highlighted during both STRONG High Seas Dialogue Workshops in Cali and Abidjan in June 2018.[171] Both of these regions have a high level of biodiversity and have geomorphological structures including seamounts, hydrothermal vents, ridges and trenches that could potentially host a relatively high abundance of marine species endemism.[172]

[170] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (Nagoya, 29 October 2010, in force 12 October 2014) 3 ATNIF; International Treaty on Plant Genetic Resources for Food and Agriculture (Rome, 3 November 2001, in force 29 June 2004) 2400 UNTS.

[171] Personal communication. STRONG High Seas Workshop in Cali, Colombia: https://www.prog-ocean.org/opportunities-for-strengthening-ocean-governance-in-the-southeast-atlantic-strong-high-seas-dialogue-workshop-1-2/ (accessed: September 2018); STRONG High Seas Workshop in Abidjan, Côte d'Ivoire: https://www.prog-ocean.org/opportunities-for-strengthening-ocean-governance-in-the-southeast-pacific-strong-high-seas-dialogue-workshop-1/ (accessed: September 2018).

[172] The Southeast Pacific region has been identified as having a high percentage of marine species endemism by Miloslavich *et al.*, namely 71.2 % for the Tropical East Pacific region and 43.4 % for the Humboldt Current region.

4.3.1 MGRs in the Southeast Atlantic

To date, no specific discussion on MGRs has taken place in the Southeast Atlantic region.

4.3.2 MGRs in the Southeast Pacific[173]

The CPPS member States have highlighted the issue of MGRs as being of particular interest for their region and have committed to promote coordinated action on this issue.[174] In 2008, CPPS member States met at an expert meeting to discuss the legal and scientific status of MGRs in the Southeast Pacific region.[175] The recommendations from this meeting are as follows:

a) Strengthening cooperation between CPPS member States to reinforce their capacities in MGR research and technology transfer;

b) Organising training and workshops in the region to improve scientific and legal knowledge on the topic;

c) Establishing an internal legal regime for the region on MGR data gathering and exchange, the development of scientific projects, or the sharing of their benefits;

d) Creating scientific networks to study the scientific, economic, environmental, and legal aspects of MGRs and to develop and share MGR information;

e) Coordinating a regional position to recognise MGRs found within the national jurisdiction of CPPS member States as common heritage of mankind; and

f) Promoting a global legal regime for the exploration and exploitation of MGRs in ABNJ under the LOSC and thereby promoting the establishment of regulatory norms for their ABC.[176]

Since this 2008 meeting, no other meeting regarding MGRs has been organised by the CPPS.

Under the 1969 Cartagena Agreement, member States have adopted in 1996 a Common Regime on Access to Genetic Resources, which applies to member States' genetic resources, their derived products, their products, their intangible components and to the genetic resources of migratory species which, are found on the territory of the member States. The purpose of this regime is to regulate access to genetic resources to ensure amongst other: the fair and equitable sharing of benefits derived from their access; to promote the conservation of biodiversity and the sustainable development of biological resources containing these genetic resources; to promote the development of scientific, technological and technical capacities; and to strengthen the negotiating capacity of member States. While this regime is only applicable within national jurisdiction, it is another example of regional genetic resources framework in place that can provide a basis for discussion during the BBNJ negotiations.

[173] This section draws and builds on previous analyses by Durussel et al. 2017; see: Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635-671.DOI: http://doi.org/10.1163/15718085-12324051.

[174] CPPS Compromiso de Galápagos, arts. III.7 and VIII.20.

[175] CPPS, 'Seminario-Taller sobre Aspectos Juridicos y Cientificos de los Recursos Geneticos Marinos en la Region del Pacifico Sudeste' (2009), 5–6 Noviembre de 2008, Lima, Peru, available at http://cpps-int.org/cpps-docs/rec-no-vivos/genetica/taller-rec-mar-genetic-2008.pdf (accessed: September 2018).

[176] CPPS, 'Seminario-Taller sobre Aspectos Juridicos y Cientificos de los Recursos Geneticos Marinos en la Region del Pacifico Sudeste' (2009), 5–6 Noviembre de 2008, Lima, Peru, available at http://cpps-int.org/cpps-docs/rec-no-vivos/genetica/taller-rec-mar-genetic-2008.pdf (accessed: September 2018), pp. 14–15.

4.4 BBNJ Element: Capacity Building and Transfer of Marine Technology

Key Messages:

- There are several references to capacity building and the transfer of marine technology in UNCLOS, UNFSA, CBD, as well as in soft law provisions. IOC oversees a wide-ranging Capacity Development Programme and has developed criteria and guidelines on the transfer of marine technology;
- One of the key challenges for a future BBNJ agreement will be to ensure the active participation of developing and geographically disadvantaged States in scientific research and the management and commercial use of resources and sharing of their benefits in ABNJ;
- SPRFMO, IATTC, SEAFO, and ICCAT have legal obligations requiring States Parties and Secretariats to assist developing States in the fulfilment of their legal obligations and to ensure their participation in the fisheries, including in ABNJ;
- CPPS organises and hosts many workshops, expert meetings and trainings specifically aimed at informing its member States on specific issues of interest and enhancing their capacities;
- IOCAFRICA and the IOC Regional Committee for the Central Eastern Atlantic also play a role in capacity building in the Southeast Atlantic region.

While the transfer of marine technology is explicitly outlined in the stand-alone Part XIV of UNCLOS, capacity building is referenced in some of the sections of the Agreement, especially under Part XII on the protection of the marine environment and part XIII on marine scientific research. Specifically, under UNCLOS, States have the obligation to:

- assist in technical and scientific personnel training;[177]
- facilitate the participation of developing countries in international programmes;[178]
- promote programmes of scientific, educational, technical, and other assistance;[179]
- assist in preparing environmental assessments;[180]
- supply necessary equipment and facilities;[181]

[177] UNCLOS, arts. 143.3b, 144.2, 202, 244, 268, and 274.
[178] UNCLOS, arts. 202 and 272.
[179] UNCLOS, arts. Arts. 143.3b, 144.2, 202, 244, 268 and 274.
[180] UNCLOS, art. 202.
[181] UNCLOS, arts. 202, 268, 274, 275 and 276.

- cooperate internationally and provide international funding for ocean research and development;[182]
- provide advice on and develop facilities for research, monitoring, educational and other programmes;[183]
- enhance equipment manufacturing capacity;[184] and
- assist in minimising effects of major pollution incidents.[185]

These UNCLOS provisions are also underscored by several soft law provisions as well as specific technical and scientific cooperation obligations under the UNFSA and the CBD.[186]

The IOC has a strong Capacity Development Programme aiming at assisting its member States in areas such as the development of human resources, the access to physical infrastructure, the strengthening of global, regional and sub-regional mechanisms, the development of ocean research policies, the reinforcement of sustained long-term resource mobilisation and public awareness (e.g. the promotion of public information on ocean research and the Ocean Literacy programme).[187] IOC has also established an IOC Group of Experts on Capacity Development, which first met in March 2018.[188] IOC adopted in 2003 the 'IOC Criteria and Guidelines on Transfer of Marine Technology', which is a tool aimed at facilitating the transfer of marine technology to developing countries.[189]

One of the key challenges is for a future BBNJ agreement to address capacity building and technology transfer in a way that it ensures the active participation of developing and geographically disadvantaged States in scientific research and the management and commercial use of resources in ABNJ. The regional workshops organised by IOC to prepare the design of the UN Decade of Ocean Science for Sustainable Development (2021–2030) will also be important to identify the gaps and challenges in capacity building and technology transfer in the different marine regions.[190]

4.4.1 Capacity Building and Transfer of Marine Technology in the Southeast Atlantic

SEAFO member States have to cooperate through the Commission and other regional organisations 'to enhance the ability of developing States in the region to conserve and manage fishery resources and to develop their own fisheries' and 'to assist [them], [and] enable them to participate in fisheries', specifically with regard to financial and technical assistance, the

[182] UNCLOS, arts. 270 and 273.

[183] UNCLOS, art. 202.

[184] UNCLOS, art. 202.

[185] UNCLOS, art. 202.

[186] UNFSA, art. 25; CBD, arts. 18, 19, and 20. See also: International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (1999; http://www.fao.org/docrep/006/X3170E/x3170e02.htm), International Plan of Action for the Conservation and Management of Sharks (1999; http://www.fao.org/docrep/006/X3170E/x3170e03.htm), International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (2001; http://www.fao.org/docrep/003/y1224e/y1224e00.htm), and International Plan of Action for the Management of Fishing Capacity (1999; http://www.fao.org/fishery/ipoa-capacity/legal-text/en); Code of Conduct for Responsible Fisheries (1995; http://www.fao.org/docrep/005/v9878e/v9878e00.htm); Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Rome, 29 November 1993, in force 24 April 2003) 2221 *UNTS*.

[187] See: http://www.ioc-cd.org/images/3897_15_IOC_E_F_2_langues_WEB.pdf (accessed: December 2018).

[188] See: http://ioc-cd.org/index.php?option=com_oe&task=viewEventRecord&eventID=2166 (accessed: December 2018).

[189] See: http://unesdoc.unesco.org/images/0013/001391/139193m.pdf (accessed: December 2018).

[190] See for instance: http://www.fao.org/3/CA0463EN/ca0463en.pdf (accessed: September 2018).

development of human resources, and the transfer of technology.[191] ICCAT has some provisions on assisting developing coastal States within its Convention area, notably with regard to a port inspection scheme, by providing technical assistance, establishing a funding mechanism, and facilitating their participation in relevant meetings and training programmes.[192]ICCAT also established a Scientific Capacity Building Fund to support scientists from developing countries to acquire knowledge and develop skills on ICCAT-related issues.[193] One of CECAF's tasks is also 'to encourage, recommend and coordinate training' for its member States.[194]

The Intergovernmental Oceanographic Sub-Commission for Africa and Adjacent Island States (IOCAFRICA) and the IOC Regional Committee for the Central Eastern Atlantic also play a role in capacity building in the region. Recent actions taken by IOCAFRICA relevant to the region include: capacity development in marine science and technology, offering training courses on a wide range of topics; review of the statues of the African Sea Level Observation network; preparation of a proposal for an ocean observing systems for the Eastern Atlantic; and setting up an African Ocean Data portal.[195]

IOCAFRICA also developed a range of partnerships, including through a project on 'Strengthening Global Governance of Large Marine Ecosystems and Their Coasts through Enhanced Sharing and Application of LME/ICM/MPA Knowledge and Information Tools', which provides an opportunity for strengthening collaboration between African LME projects and other organisations in the region. Activities are also ongoing under the framework of the project 'Enhancing oceanography capacities on the CCLME Western Africa countries' and a concept note for a third phase of the project has been developed.[196] The IOCAFRICA Strategic Plan for 2014–2021 notes that the regional capacity development programme should include: strengthening marine science laboratories and university programmes; strengthening UNESCO Chairs as a tool for capacity development and establishing centres of excellence; organisation of focused training addressing specific needs identified by member States; ensuring equitable participation of African marine scientists in IOC programmes and other global ocean research and observation programmes; and collaboration with other IOC Sub Commissions (IOC-WESTPAC and IOCARIBE) in capacity development.[197]

The Global Environment Facility (GEF) is also funding several projects under its focal area 'International Waters' with a focus on national waters in Africa or involving African partners in the case of global projects.[198]

[191] Convention on the Conservation and Management of Fishery Resources in the Southeast Atlantic Ocean, arts. 21.3 and 21.4.

[192] ICCAT, 'Recommendation by ICCAT for an ICCAT Scheme for Minimum Standards for Inspection in Port' (Resolution 12-07, 2013), para. 26.

[193] ICCAT, 'Recommendation by ICCAT on the Establishment of a Scientific Capacity Building Fund for Developing States which are ICCAT Contracting Parties' (Resolution 13–19, 2014).

[194] CECAF, 'Appendix E: Revised Terms of Reference of the Fishery Committee for the Eastern Central Atlantic (CECAF)' in 'Amendments of the Statutes of the Fishery Committee for the Eastern Central Atlantic' (CL 124/REF), available at: http://www.fao.org/fishery/docs/DOCUMENT/cecaf/CECAFstatutes_amend_CL124.pdf (accessed: September 2018).

[195] See: http://www.unesco.org/new/en/iocafrica (accessed: September 2018).

[196] See: https://www.thegef.org/project/strengthening-global-governance-large-marine-ecosystems-and-their-coasts-through-enhanced and http://www.unesco.org/new/en/media-services/single-view/news/enhancing_oceanography_capacities_in_western_african_countri/ (accessed: September 2018).

[197] http://www.ioc-cd.org/index.php?option=com_content&view=article&id=11&Itemid=134 (accessed: September 2018).

[198] See: https://www.thegef.org/projects-faceted?search_api_views_fulltext=ocean (accessed: September 2018).

4.4.2 Capacity Building and Transfer of Marine Technology in the Southeast Pacific[199]

Capacity building is a prominent part of the legal frameworks of the regional organisations in the Southeast Pacific. CPPS organises and hosts many workshops, expert meetings and trainings specifically aimed at informing its member States on specific issues of interest and enhancing their capacities. It further promotes the development of programmes on scientific, technical, legal and educational issues, the formation of scientific and technical staff, the appointment of experts or information sharing with respect to marine environmental protection.[200] The CPPS Statute furthermore highlights the need to promote knowledge on marine issues for the general public, ensure the sharing of information develop its member States' capacity to undertake scientific research and to obtain technical and financial assistance from relevant organisations.[201] CPPS has also signed several MoUs with global, sectoral, and other regional organisations, as well as universities and research institutes, mainly on research collaboration and data exchange. SPRFMO and IATTC have legal obligations to assist developing States in the fulfilment of their legal obligations under the conventions and to ensure their participation in the fisheries, including in ABNJ. Such measures to be considered include notably technical assistance, the transfer of technology, and the organisation of trainings.[202] Furthermore, IATTC set up and administers a 'Special fund for strengthening the institutional capacity of developing countries and territories for the sustainable development of fisheries for highly migratory species'.[203] This fund aims among others to develop technical and scientific capacities of these countries and territories, especially in the creation of a standardised system for data collection, processing and analysis; for education and training; for representatives' participation at IATTC meetings; and to support IATTC scientific staff in support of developing countries and territories.

The Global Environment Facility (GEF) is also funding several projects under its focal area 'International Waters' with a focus on national waters in South America or involving South American partners in the case of global projects.[204]

[199] This section draws and builds on previous analyses by Durussel et al. 2017; see: Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635-671.DOI: http://doi.org/10.1163/15718085-12324051.

[200] 1981 Lima Convention, Art. 10; 1989 MPA Protocol, Arts. IX and X.

[201] CPPS Estatuto, Arts. 4g, 4k, 4l, 4m.

[202] IATTC Antigua Convention, Art. XXIII.1 and SPRFMO Convention, arts. 19.3 and 19.4.

[203] IATTC, 'Amendment of Resolution C-11-11 on the Creation of the Special Sustainable Development Fund for Fisheries for Highly Migratory Species to Strengthen the Institutional Capacity of Developing Countries and Territories' (C-14–03, 2014).

[204] See: https://www.thegef.org/projects-faceted?search_api_views_fulltext=ocean (accessed: September 2018).

4.5 SDG 14.1: Marine Pollution

Key Messages:

- ↗ The IMO is the responsible UN specialised agency and has developed several conventions and protocols on the prevention of marine pollution from shipping and the regulation of dumping. At the regional level, regional seas programmes have played a leading role in facilitating the implementation of various provisions regarding marine pollution;
- ↗ Regional seas programmes play an important role in facilitating the regional implementation of conventions, protocols and strategies to prevent marine pollution;
- ↗ CPPS has adopted specific protocols on land-based pollution, radioactive pollution, and pollution from hydrocarbons or other harmful substances;
- ↗ In contrast to many RFMOs, SPRFMO has a legal provision on the prevention of marine pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystem;
- ↗ All coastal States of the Southeast Pacific and all but one in the Southeast Atlantic have ratified MARPOL Annexes I-V. However, only few coastal States in both regions have ratified the London Convention and Protocol, the MARPOL Annex VI or the BWM Convention.

The international legal framework relating to the protection of the marine environment has historically been focussed on the prevention of marine pollution.[205] UNCLOS encourages States to cooperate and coordinate to fight marine pollution, stipulating that States 'shall take, individually or jointly as appropriate, all measures [...] that are necessary to prevent, reduce and control pollution of the marine environment [...] and they shall endeavour to harmonise their policies in this connection'.[206] According to UNCLOS, marine pollution refers to:[207]

'the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities'.

This includes pollution from land-based sources (e.g. chemicals, particles, industrial, agriculture and residential waste); vessels; exploration and exploitation of natural resources; atmospheric pollution; and dumping. In recent years, particular types of pollution have been the subject of particular concern as scientific knowledge has developed, e.g. plastics and noise pollution.[208]

[205] Alan E. Boyle, 'Marine Pollution under the Law of the Sea Convention', The American Journal of International Law 79, no. 2 (1985): 347–72.

[206] UNCLOS, Article 194.

[207] UNCLOS, Article 1.1(4).

[208] R. Williams et al., 'Impacts of Anthropogenic Noise on Marine Life: Publication Patterns, New Discoveries, and Future Directions in Research and Management', Ocean and Coastal Management 115 (2015): 17–24, https://doi.org/10.1016/j.ocecoaman.2015.05.021; Andrés Cózar et al., 'Plastic Debris in the Open Ocean', Proceedings of the National Academy of Sciences of the United States of America 111, no. 28 (July 15, 2014): 10239–44, https://doi.org/10.1073/pnas.1314705111.

The IMO is the UN specialised agency with responsibility for the prevention of marine pollution from ships. The IMO is responsible for the administration of a number of conventions and protocols, including:

- The International Convention for the Prevention of Pollution from Ships (1973, modified by the Protocol of 1978 – MARPOL 73/78'), which regulates pollutions from ships;
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (1972 'London Convention') and the 1996 London Protocol, which regulates all dumping of waste at sea; and
- The International Convention for the Control and Management of Ships' Ballast Water and Sediments (2004 'Ballast Water Management Convention' or 'BWM Convention', which regulates ships' ballast water and sediments discharge to prevent the spread of harmful aquatic organisms across regions.

At the regional level, RSPs have played a leading role in facilitating the implementation of various provisions regarding marine pollution, adopting a range of conventions, protocols, strategies and projects to prevent and reduce the different sources of marine pollution.[209]

States have also made a range of commitments relating to marine pollution in international policy fora. For example, in the context of the UN Ocean Conference in 2017, 540 voluntary commitments were made relating to the reduction of marine pollution, in particular aiming to reduce marine pollution from plastics, improve nutrient management, and control other sources of pollution. Marine pollution is the subject of one of the nine 'Communities of Ocean Action' established following the conference, which aims to support its members in implementing their marine pollution-related voluntary commitments by exchanging progress reports, experiences, lessons learned and good practices.[210] Similarly, the UN Environment Clean Seas Campaign has generated thousands of pledges from 43 countries, as well as individuals and civil society.[211]

4.5.1 Marine Pollution in the Southeast Atlantic

All but one coastal State of the Southeast Atlantic have ratified MARPOL Annexes I–V but very few have ratified the London Convention, London Protocol, MARPOL Annex VI or the BWM Convention.[212] While States in the region have cooperated through regional organisations, such as the Abidjan Convention and the Benguela Current Commission (BCC), to conduct activities regarding marine pollution, these efforts have not yet extended to ABNJ.

4.5.2 Marine Pollution in the Southeast Pacific

CPPS hosts the Secretariat of the Southeast Pacific Regional Seas Programme, to which Panama is also a party. It has several legal agreements on the protection of the marine environment, particularly with regard to marine pollution and the protection of vulnerable ecosystems and habitats. The 1981 Lima Convention, its Protocol and its Plan of Action form the basis for the

[209] Julien Rochette et al., 'Regional Oceans Governance Mechanisms : A Review' 60 (2015): 9–19, https://doi.org/10.1016/j.marpol.2015.05.012.

[210] See: https://oceanconference.un.org/commitments/?community=6 (accessed: December 2018).

[211] See: http://www.cleanseas.org/ (accessed: September 2018).

[212] Only the Democratic Republic of Congo has not ratified the MARPOL Convention (Annexes I-V). See Annex III on the memberships and treaty ratification of Abidjan Convention Member States.

regional seas programme work in the region.[213] Through the Lima Convention, CPPS' jurisdictional competence can be extended beyond national jurisdiction in cases when adjacent high seas areas could be affected by marine and coastal pollution.[214] CPPS member States have the obligation to cooperate bilaterally or multilaterally to adopt measures for the prevention, reduction and control of marine pollution in marine and coastal areas of the Southeast Pacific;[215] this applies to both activities within their national jurisdiction as well as activities under their control to prevent damage to adjacent high seas areas.[216] Discharges contributing to coastal and marine pollution include those from land, the atmosphere or dumping, for which the CPPS has adopted other specific protocols on land-based pollution, radioactive pollution, and pollution from hydrocarbons or other harmful substances.[217] CPPS also implements the Project GloBallast since 2006, with the financial and technical support of IMO, which aims at helping developing countries to reduce the transfer of invasive species through ballast waters.[218] CPPS also has a programme to coordinate the studies, monitoring and control of marine pollution in the Southeast Pacific (CONPACSE III) since 2001 and a regional programme for the integral management of marine waste in the Southeast Pacific since 2007.[219]

The SPRFMO Convention also has a legal provision, based on Article 5 of the UNFSA, on the prevention of marine pollution from fishing vessels, whereby its member States and cooperating non-members have to minimise 'pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems'.[220]

All coastal States of the Southeast Pacific have ratified MARPOL Annexes I–V. However, only Chile and Peru have ratified the MARPOL Protocol (Annex VI) and the London Convention. Peru is also the only Southeast Pacific State to have ratified the BWM Convention and Chile the only Southeast Pacific State to have ratified the London Protocol.[221]

[213] *Convenio para la Protección del Medio Marino y la Zona Costera del Pacífico Sudeste* [Convention for the Protection of the Marine Environment and Coastal Area of the Southeast Pacific], opened for signature 12 November 1981 (entered into force 19 May 1986) ('Lima Convention'); *Protocolo para la Conservación y Administracion de las Áreas Marinas y Costeras Protegidas del Pacífico Sudeste* [Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the Southeast Pacific], opened for signature 21 September 1989 (entered into force 24 January 1995); Plan de Acción para la Protección del Medio Marino y Áreas Costeras del Pacífico Sudeste [Plan of Action for the Protection of the Marine Environment and Coastal Areas of the Southeast Pacific] (2013).

[214] *CPPS 1981 Lima Convention* Art. 1; see: http://cpps.dyndns.info/consulta/documentos/legal/convenios/CONVENIO%20PARA%20LA%20PROTECCION%20DEL%20MEDIO%20AMBIENTE%20Y%20ZONA%20COSTERA%20DEL%20PS/TEXTO%20DEL%20CONVENIO.pdf (accessed: September 2018).

[215] *CPPS 1981 Lima Convention Art.* 3.1.

[216] *CPPS 1981 Lima Convention* Art. 3.5.

[217] *CPPS 1981 Lima Convention* Art. 5; Protocolo para la Protección del Pacífico Sudeste contra la Contaminación Proveniente de Fuentes Terrestres [Protocol for the Protection of Southeast Pacific against Pollution from Land- Based Sources], opened for signature 22 July 1983 (entered into force 23 September 1986); Protocolo para la Protección del Pacífico Sudeste contra la Contaminación Radiactiva [Protocol for the Protection of the Southeast Pacific against Radioactive Pollution], opened for signature 21 September 1989 (entered into force 24 January 1995); Acuerdo sobre la Cooperación Regional para el Combate contra la Contaminación del Pacífico Sudeste por Hidrocarburos y otras Sustancias Nocivas en Casos de Emergencia [Agreement on Regional Cooperation in Combating Pollution of the Southeast Pacific by Hydrocarbons or other Harmful Substances in Cases of Emergency], opened for signature 12 November 1981 (entered into force 7 February 1988); Protocolo Complementario del Acuerdo sobre Cooperación Regional para el Combate contra la Contaminación del Pacífico Sudeste por Hidrocarburos y otras Sustancias Nocivas [Supplementary Protocol to the Agreement on Regional Cooperation in Combating Pollution of the Southeast Pacific by Hydrocarbons or other Harmful Substances], opened for signature 22 July 1983 (entered into force 20 May 1987).

[218] See: http://cpps-int.org/index.php/2014-09-05-20-06-33/globallast (accessed: September 2018).

[219] See: http://cpps-int.org/index.php/2014-09-05-20-06-33/contaminacion-marina and http://cpps-int.org/cpps-docs/pda/biblioteca/programas/conpacse2000.pdf (accessed: September 2018).

[230] *SPRFMO Convention* art 3.1a.x.

[221] See Annex V on the membership and treaty ratification of CPPS Member States.

4.6 SDGs 14.2 and 14.5: Management and Protection of Marine Ecosystems in ABNJ

Key Messages:

- There is a general obligation under UNCLOS to protect and preserve the marine environment but there is no comprehensive legal framework for its application, including with respect to the conservation and sustainable use of BBNJ in ABNJ;
- SEAFO closed some VMEs to bottom fishing. In contrast, bottom fishing activities are prohibited throughout the SPRFMO Convention area;
- IATTC has adopted several measures to conserve bycatch species such as silky sharks, oceanic whitetip sharks, mobulid rays, seabirds, and sea turtles;
- CCSBT member States have to comply with other RFMOs' measures regarding marine species associated with southern bluefin tuna, regardless of their membership to these organisations, and report their implementation annually to the Compliance Committee;
- ICCAT has adopted a number of relevant management measures and is strengthening efforts to move towards ecosystem-based management.
- All coastal States of the Southeast Atlantic and Southeast Pacific are Parties to the CBD and CITES; in contrast, the CMS and especially ACAP do not have full coverage in the regions, particularly in the case of the Southeast Atlantic.

UNCLOS imposes a general obligation on all States to protect and preserve the marine environment[222] It specifically requires States to:

- Protect rare and fragile ecosystems as well as the habitat of depleted, threatened and endangered species and other forms of marine life; and
- Cooperate in developing international rules, standards and recommended practices and procedures for environmental protection, taking into account characteristic regional features.[223]

This is complemented by the CBD, which requires Parties as far as possible and as appropriate to cooperate for the conservation and sustainable use of biological diversity, to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in their natural surroundings, and to integrate consideration of the conservation and sustainable use of biological resources into national decision-making.[224] Although the CBD has no jurisdictional mandate for ABNJ – only, as outlined in CBD art. 4, in the case of processes and activities under the jurisdiction of its contracting Parties, it provides a broad cooperation

[222] UNCLOS Art. 192.

[223] UNCLOS, arts. 194.5 and 197.

[224] CBD, arts. 3, 4, 5, 7, 8, 10 and 14. The cooperation obligation under CBD equally to ABNJ, as States must ensure that activities under their jurisdiction or control do not cause damage to ABNJ and must monitor and control any activities likely to cause significant harm.

obligation with regard to the conservation and sustainable use of marine biodiversity in ABNJ (art. 5). Additionally, the CMS requires the establishment of habitat conservation and restoration measures, the prevention and minimisation of adverse impacts on species' migration, the eradication and control of alien invasive species, and the prohibition of killing or hunting migratory species listed in its Appendix I.[225] The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) requires the adoption and implementation of measures prohibiting or limiting the import and export of listed species, with Appendices I and II also applying to marine species taken from ABNJ.[226] Other species-specific hard and soft law agreements further contribute to this legal framework on the protection of threatened and endangered marine species.[227]

SDG 14.2 on the sustainable management and protection of marine and coastal ecosystems has especially an emphasis on avoiding significant adverse impacts by strengthening ecosystems' resilience and taking action for their restoration. Achieving this target will therefore require an ecosystem approach to management and the application of broad and effective management measures.

SDG 14.5, just as CBD Aichi Target 11, requires States to conserve at least 10 % of coastal and marine areas by 2020.[228] Since the UN Ocean Conference in 2017, over 735 voluntary commitments have been pledged for the achievement of SDG target 14.2 and 397 for the achievement of SDG target 14.5.[229] At the regional level, the management and protection of marine ecosystems is implemented through coastal States and competent organisations, including Regional Seas programmes.

4.6.1 Management and Protection of Marine Ecosystems in ABNJ of the Southeast Atlantic

As noted above in Section 4.2.1 of this report, SEAFO manages bottom fisheries for impacts on VMEs through a combination of mechanisms, including a footprint approach to fishing permits, a move-on rule, area closures and the requirement that any bottom fishing in the remaining areas can only take place after a prior impact assessment.[230] The move-on rule stipulates that all encounters above the threshold levels are required to be reported to the SEAFO Executive Secretary. While there is data available for the reported bycatch of benthic organ-

[225] *Convention on the Conservation of Migratory Species of Wild Animals*, opened for signature on 23 June 1979, ATS 32 (entered into force 11 January 1983), arts. 2, 3.4a, 3.4b, 3.4c, and 5.

[226] *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, ATS 29 (entered into force 1 July 1975). At its COP16 in 2013, CITES State Parties agreed that the term 'introduction from the sea' under CITES Article 1, which is defined as 'transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State', can be understood as being the transportation of any species taken from ABNJ, as reflected in UNCLOS. This applies however only to Appendices I and II, not to Appendix III (see: https://cites.org/eng/res/14/14-06R16.php, accessed: September 2018). The Peruvian National Section to the CPPS would like to note that, according to Peruvian legislation, catches made by national fishing vessels in ABNJ are considered as national catch. In this sense, it would be advisable that, through regional organisations, research be carried out in order to estimate the state of the population of the fishery resources included in CITES, based on the premise that their geographical distribution ranges include both jurisdictional waters and ABNJ. On this basis, fishing seasons and catch quotas could be established, among other management measures.

[227] *Agreement on the Conservation of Albatrosses and Petrels*, opened for signature 19 June 2001, ATS 5 (entered into force 1 February 2004), arts. 3.1b and 3.1c; *International Convention for the Regulation of Whaling*, opened for signature 2 December 1946, ATS 18 (entered into force 10 November 1948) amended in 1956; United Nations Food and Agriculture Organization, 'International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries' (1999); United Nations Food and Agriculture Organization, 'International Plan of Action for the Conservation and Management of Sharks' (1999); Inter-American Convention for the Protection and Conservation of Sea Turtles, opened for signature 1 December 1996, UNTS I-37791 (entered into force 2 May 2001); *Agreement on the Conservation of African-Eurasian Migratory Waterbirds*, opened for signature 15 August 1996 (entered into force 1 November 1999).

[228] See: https://www.cbd.int/sp/targets/rationale/target-11/ (accessed: September 2018).

[229] See: https://oceanconference.un.org/commitments/ (accessed: September 2018).

[230] See http://www.seafo.org/Management (accessed: September 2018) and maps of existing fishing areas in SEAFO 'Conservation Measure 30/15 on Bottom Fishing Activities and Vulnerable Marine Ecosystems in the SEAFO Convention Area' (adopted in December 2015, in force in February 2016).

isms such as corals, sponges, etc., the threshold levels have never been reported as having been exceeded, thus the move-on rule has never been applied.[231] To date, SEAFO has closed twelve known or representative areas of VMEs to fishing.[232] A research survey is planned for early 2019 to explore unmapped seamounts with emphasis on VMEs.[233] However, not all areas that are known to contain VMEs are protected, and the Commission does not always follow the advice of its Scientific Committee.[234] SEAFO member States have also to periodically report catches of fishery resources and bycatch species to the SEAFO Secretariat.[235] Furthermore, SEAFO requires all member States' vessels fishing in the Convention area to mark their gears and to make every reasonable attempt to retrieve lost or abandoned gear.[236] The deliberate abandoning of fishing gear is not allowed, except in extreme cases where vessels are in distress or life is in danger.[237]

The ICCAT Convention is in the process of being amended to include specific reference to the ecosystem approach to fisheries management.[238] In 2016, ICCAT adopted a resolution, which requests its Standing Committee on Research and Statistics to 'examine the available information on the trophic ecology of pelagic ecosystems that are important and unique for ICCAT species in the Convention area' and to report back to the Commission in 2019.[239] In ICCAT, all items related to ecosystems are addressed by the Sub-Committee on Ecosystems, which develops its own short and long-term ecosystem-based fisheries management (EBFM)-related objectives based on the 2015–2020 Science Strategy Plan.[240] This Committee meets annually and has extensively studied EBFM, including by: a) reviewing cases where EBFM is being implemented; b) discussing the obstacles to implementing EBFM in ICCAT; c) reviewing how to operationalise conceptual management objectives within an EBFM; d) defining the components for an EBFM framework based on the Sargasso Sea; e) developing conceptual objectives for four ecological elements of a reporting framework that would align with ICCAT's organisational structure; e) evaluating the progress of applying the EBFM approach in ICCAT; and f) providing a draft EBFM framework for ICCAT species.[241] Plans for further EBFM development

[231] Gianni, M., Fuller, S.D., Currie, D.E.J., K., Goldsworthy, L., Pike, B., Weeber, and Owen, S., Friedman.

[232] Only the Valdivia Bank South Area is closed to all fishing gears except for pots and longlines. See: SEAFO 'Conservation Measure 30/15 on Bottom Fishing Activities and Vulnerable Marine Ecosystems in the SEAFO Convention Area' (adopted in December 2015, in force in February 2016).

[233] http://statements.unmeetings.org/media2/19408356/npfc-statement-for-abmt.pdf.

[234] Schleit Gianni, M., Fuller, S.D., Currie, D.E.J., B. K., Goldsworthy, L., Pike, B., Weeber, and A Owen, S., Friedman, 'How Much Longer Will It Take? A Ten-Year Review of the Implementation of United Nations General Assembly Resolutions 61/105, 64/72 and 66/68 on the Management of Bottom Fisheries in Areas beyond National Jurisdiction' (Deep Sea Conservation Coalition, 2016).

[235] Fishery resources include: Alfonsino, Horse Mackerel, Mackerel, Orange Roughy, Skates, Sharks, Armourhead, Cardinal Fish, Deep-sea Red Crab, Octopus, Squid Family, Patagonian Toothfish, Hake Merluccius, Wreckfish, and Orea dories. See: SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), art. 12 and Annex I.

[236] SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), arts. 7 and 8.

[237] SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), art. 8

[238] See also: ICCAT, 'Resolution by ICCAT Concerning the Application of an Ecosystem Approach to Fisheries Management' (Resolution 15–11, 2015).

[239] ICCAT, 'Resolution by ICCAT on Ecosystems that are Important and Unique for ICCAT Species' (16–23, 2016).

[240] The 2015–2020 Science Strategic Plan includes objectives related to ecosystems associated with data collection, research opportunities, stock assessments as well advice and communication. See: https://www.iccat.int/en/StrategicPlan.html (accessed: September 2017).

[241] Report of the 2016 Joint Meeting of t-RFMOs on Implementation of Ecosystem Approach to Fisheries Management. See: http://www.fao.org/fileadmin/user_upload/common_oceans/docs/JointTunaRFMO_EBFM_Meeting.pdf (accessed: September 2018).

include to develop an Ecosystem Report Card and to conduct of a quantitative Ecosystem Risk Assessment (ERA) of the important ecological, human and institutional interactions occurring within the ICCAT ecosystem that could have implications for fisheries management.[242]

In order to mitigate the impacts of fishing on other marine species, including albatrosses and petrels, CCSBT requires its member States and cooperating non-member States to implement the FAO International Plans of Action (IPOA)s on sharks and seabirds, as well as the FAO guidelines to reduce sea turtle mortality in fishing operations. It also requires them to comply with all current measures adopted under the Indian Ocean Tuna Commission (IOTC), the Western and Central Pacific Fisheries Commission (WCPFC) and ICCAT – irrespective of their States' membership to these organisations – with regard to the protection of marine species associated with southern bluefin tuna, such as seabirds, sea turtles and sharks. Measures taken by States have to be reported annually to the CCSBT Compliance Committee.[243] Furthermore, the CCSBT Extended Commission has the task to undertake a risk assessment for all marine species associated with southern bluefin tuna that are or can be impacted by fishing activities for southern bluefin tuna. See more information on this issue under Section 4.2.1.

All coastal States of the Southeast Atlantic are Parties to the CBD and CITES, and all but two are Parties to the CMS. In contrast, only one State is party to the ACAP.[244]

4.6.2 Management and Protection of Marine Ecosystems in ABNJ of the Southeast Pacific

When fishing in the SPRFMO Convention area, member States and cooperating non-members are obliged to follow the general obligation to protect and preserve the marine environment, particularly marine ecosystems with a long recovery time following disturbance from fishing activities.[245] SPRFMO requires measures to be adopted to prevent significant adverse impacts on VMEs, particularly the adoption of precautionary measures for VMEs or when the extent of fisheries impacts on VMEs cannot be adequately determined and in the case of new or exploratory fisheries.[246] According to SPRFMO's 2018 measure on bottom fishing, such activities are prohibited within the Convention area, unless member States and cooperative non-members have undertaken an impact assessment of their vessels' bottom fishing activities.[247] Identified VMEs are closed to bottom fishing, unless the Commission determines, through these assessments, that it will not have a significant adverse impact on these ecosystems.[248] This

[242] Report of the 2016 Joint Meeting of t-RFMOs on Implementation of Ecosystem Approach to Fisheries Management. See: http://www.fao.org/fileadmin/user_upload/common_oceans/docs/JointTunaRFMO_EBFM_Meeting.pdf (accessed: September 2018).

[243] See: CCSBT, 'Recommendation to Mitigate the Impact on Ecologically Related Species of Fishing for Southern Bluefin Tuna'

[244] See Annex III on the memberships and treaty ratification of Abidjan Convention Member States.

[245] *SPRFMO* Convention arts. 3.1a.ii and 3.1a.vii.

[246] *SPRFMO* Convention arts. 20.1d and 22.

[247] SPRFMO 'Conservation and Management Measure for the Management of Bottom Fishing in the SPRFMO Convention Area' (CMM 03–2018, 2018), arts. 8d and 10.

[248] SPRFMO 'Conservation and Management Measure for the Management of Bottom Fishing in the SPRFMO Convention Area' (CMM 03–2018, 2018), art. 22.

contrasts with the approach taken by SEAFO in the Southeast Atlantic, which closes specific areas to bottom fishing rather than the whole Convention area. It is the role of the IATTC Commission to adopt conservation and management measures for species that are associated, dependent, or belong to the same ecosystem as the fish stocks managed by IATTC and to apply the precautionary principle.[249] IATTC has also adopted several measures to conserve bycatch species such as silky sharks, oceanic whitetip sharks, mobulid rays, seabirds, and sea turtles.[250]

CPPS hosts the Secretariat of the Southeast Pacific Regional Seas programme, to which Panama is also a party. Aside from marine pollution prevention, the 1989 Protocol on MPAs and 2013 Plan of Action include further provisions on the protection of the marine environment, particularly with regard to the protection of vulnerable ecosystems and habitats.[251] CPPS member States who have ratified the protocol are obligated to appropriate measures for the conservation and protection of fragile, vulnerable, and unique ecosystems, particularly when these host endangered marine species.[252] They further have to adopt, individually or collectively, protected areas, within which all human activities that may have a negative impact on the marine environment should be regulated and/or prohibited, as well as to establish buffer zones around them.[253] Furthermore, under this RSP, CPPS has a working group on sharks and has elaborated a regional action plan for the conservation and management of sharks, rays, and chimaeras *(CTC PAR Tiburón)*.[254] CPPS also has a regional action plan on mangroves and marine mammals, and a regional programme for the conservation of marine turtles in the Southeast Pacific.[255]

All coastal States of the Southeast Pacific are Parties to the CBD and CITES, and all but Colombia are Parties to the CMS and ACAP.[256]

[249] IATTC Antigua Convention, arts. IV & VII.f.

[250] IATTC, 'Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark *(Carcharhinus falciformis)*, for the years 2017, 2018, and 2019' (C-16–06, 2016); IATTC, 'Resolution on the Management of Shark Species' (C-16–05, 2016); IATTC, 'Resolution on the Conservation of Mobulid Rays Caught in Association with Fisheries in the IATTC Convention Area' (C-15–04, 2015); IATTC, 'Resolution to Mitigate the Impact on Seabirds of Fishing for Species Covered by the IATTC' (C-11–02, 2011); IATTC, 'Resolution to Mitigate the Impact of Tuna Fishing Vessels on Sea Turtles' (C-07–03, 2007); IATTC, 'Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area' (C-11–10, 2011).

[251] *Protocolo para la Conservación y Administracion de las Áreas Marinas y Costeras Protegidas del Pacífico Sudeste* [Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the Southeast Pacific], opened for signature 21 September 1989 (entered into force 24 January 1995); Plan de Acción para la Protección del Medio Marino y Áreas Costeras del Pacífico Sudeste [Plan of Action for the Protection of the Marine Environment and Coastal Areas of the Southeast Pacific] (2013). See: http://cpps-int.org/index.php/principal (accessed: September 2018).

[252] Protocolo para la Conservacion y Administracion de las Areas Marinas Y Costeras Protegidas del Pacifico Sudeste [Protocol for the Conservation and Management of Marine and Coastal Protected Areas of the Southeast Pacific] (Paipa, 21 September 1989, in force 24 January 1995), Art. II. See: http://cpps.dyndns.info/consulta/documentos/legal/convenios/PROTOCOLO%20PARA%20LA%20CONSERV.%20Y%20ADM.%20DE%20AREAS%20MARINAS%20Y%20COSTERAS%20PROTEGIDAS%20DEL%20PS/TEXTO%20DEL%20PROTOCOLO.pdf (accessed: September 2018).

[253] Protocol for the Conservation and Management of Marine and Coastal Protected Areas of the Southeast Pacific, Arts. II, V, and VI.

[254] See: http://cpps-int.org/index.php/grupos-de-trabajo/ctcpar-tiburon (accessed: December 2018). This working group works together with the IATTC through a MoU on scientific cooperation for Chondrichthyans. The CPPS Secretariat notes here that Chile uses a user-government-private integration model of governance for artisanal fisheries, particularly in the case of its benthic resource management areas (AMERBs), that could be further looked into in the context ABNJ (see: http://www.subpesca.cl/portal/615/w3-article-11086.html, accessed: December 2018).

[255] See: http://par-manglares.net/; http://www.cpps-int.org/cpps-docs/pda/mamiferos/docs/Plan.de.accion.mamiferos.marinos.PSE.pdf; http://www.cpps-int.org/cpps-docs/pda/tortugas/docs/plan-conservacion-tortugas-2000.pdf (accessed: December 2018).

[256] See Annex V on the memberships and treaty ratification of CPPS Member States.

4.7 SDG 14.4: IUU Fishing

Key Messages:

- RFMOs have a central role to play in preventing and deterring IUU fishing. All coastal States of the Southeast Pacific are members or cooperating non-members of the relevant RFMOs while the majority of coastal States of the Southeast Atlantic region are members of a RFMO with an ABNJ mandate in the region;
- Both the FAO Port State Measures and Compliance Agreements provide an important legal basis for combatting IUU fishing. However, only few coastal States have ratified the FAO Port States and Compliance Agreements as well as UNFSA in both regions;
- Apart from CECAF, all RFMOs of the two regions have an IUU vessel list and IUU fishing measures in place;
- CPPS member States signed a Declaration on IUU fishing activities in October 2017.

IUU fishing is defined as:

- **Illegal Fishing:** includes vessels operating in waters under the jurisdiction of a State without its permission or in contravention of its laws; vessels operating in contravention of the conservation and management measures adopted by a RFMO, whether the State flying the flag is a member of the RFMO or a cooperating non-member; and vessels violating national laws or international obligations.[257]
- **Unreported Fishing:** unreported or misreported to the relevant national authority or RFMO, in contravention of applicable fisheries regulations.[258]
- **Unregulated Fishing:** fishing conducted by vessels without nationality, flying the flag of a country not party to the relevant RFMO, or fishing in unregulated areas or inconsistent with State responsibilities under international law.[259]

[257] United Nations Food and Agriculture Organization, 'International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing' (2001), art. 3.1.

[258] United Nations Food and Agriculture Organization, 'International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing' (2001), art. 3.2.

[259] United Nations Food and Agriculture Organization, 'International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing' (2001), art. 3.2.

Under UNCLOS, States bear the responsibility for the vessels, including fishing vessels, which fly their flag.[260] The UNFSA sets out principles for the conservation and management of highly migratory and straddling fish stocks and establishes that such management must be based on the precautionary approach and the best available scientific information.[261] The FAO Compliance Agreement explicitly outlines the responsibilities of flag States with regard to fishing vessels flying their flag, including the obligation to ensure that such vessels do not undertake activities that may undermine the effectiveness of international measures and to obtain all necessary information regarding their fishing operations, catches, and landings.[262] They furthermore have to take appropriate enforcement measures and sanctions to 'deprive offenders of the benefits accruing from their illegal activities', including, in serious cases, the 'refusal, suspension or withdrawal of the authorization to fish on the high seas'.[263] This agreement also promotes international cooperation in exchanging information on fishing vessels' activities on the high seas to detect those that are undertaking IUU fishing.[264] Furthermore, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ('Port State Measures Agreement', 'PSMA') gives port States the legal right to close ports to vessels suspected of illegal fishing and to refuse to grant permission to dock if unregulated fishing has occurred.[265]

RFMOs have a central role to play in preventing and deterring IUU fishing, given their geographical scope and management mandate.[266] RFMOs can identify vessels engaging in IUU fishing and adopt measures against them, adopt port inspection schemes and restrictions on transhipment at sea, adopt catch certification and trade documentation schemes as well as adopt other market-related measures.[267] Under the PSMA, port States have the obligation to deny access to a vessel if it flies the flag of a State not party to a RFMO, is known to be engaging or have engaged in IUU fishing activities in the area of a RFMO or in ABNJ, or has been previously identified by a RFMO as engaging or supporting IUU fishing activities.[268]

[260] Tamo Zwinge, 'Duties of Flag States to Implement and Enforce International Standards and Regulations – And Measures to Counter Their Failure to Do So', *Journal of International Business and Law*, vol. 10, 2010, https://doi.org/10.2139/ssrn.1682193.

[261] *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, opened for signature 8 September 1995, ATS 8 (entered into force 11 December 2001) , arts. 5b, 5c and 6.

[262] *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, opened for signature 29 November 1993, ATS 26 (entered into force 24 April 2003), arts. III.1.a and III.7. The responsibility of flag States is further underscored by the ITLOS Advisory Opinion of 2 April 2015, which promotes the 'due diligence' approach. However, ITLOS found that, in coastal waters, the coastal State, rather than the flag State, bears primary responsibility for preventing IUU fishing. See:

[263] *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, opened for signature 29 November 1993, ATS 26 (entered into force 24 April 2003), art. III.8.

[264] *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing* Vessels on the High Seas, opened for signature 29 November 1993, ATS 26 (entered into force 24 April 2003), art. V.1.

[265] *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, opened for signature 22 November 2009 (entered into force 5 June 2016), art. 9. See: http://www.fao.org/3/a-i5469t.pdf.

[266] See, for instance: *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, opened for signature 29 November 1993, ATS 26 (entered into force 24 April 2003), art. V.3.

[267] United Nations Food and Agriculture Organization, 'International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing' (2001). See: http://www.fao.org/3/y3536e0b.htm (accessed: September 2018).

[268] *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, opened for signature 22 November 2009 (entered into force 5 June 2016), arts. 2.5, 2.6 and 2.7.

4.7.1 Combatting IUU Fishing in the Southeast Atlantic

SEAFO adopted in 2015 a system of observation, inspection, compliance and enforcement to combat IUU fishing. This agreement, which came into force in 2016, applies to all fishing vessels fishing in SEAFO's Convention area. SEAFO member States have to ensure that only fishing vessels able to fulfil and comply with SEAFO's Convention and measures, be authorised to fish, have no previous record of IUU fishing, have an independent scientific observer on board, comply with port States measures and inspections procedures, and be equipped with a permanently operational Vessel Monitoring System (VMS).[269] It is the competency of SEAFO member States to ensure that their vessels do not engage in IUU fishing, for instance through carrying out at sea inspections, the monitoring of transhipments in ports or the development of port State control measures, and to take appropriate punitive measures in the reverse case.[270] Member States also have to report any fishing activities by non-member States in the Convention area.[271] SEAFO has established an IUU vessel list, which also includes all vessels that are on the NAFO, NEAFC or CCAMLR IUU vessel list.[272] Transhipments within the SEAFO Convention area are strictly prohibited.[273]

ICCAT requires VMS reporting on a 4-hour interval for vessels over 24 m in length and implements a port inspection scheme that requires that, if the information collected during the inspection evidences infringement of ICCAT conservation and management measures, the competent authority has to forward the information to the ICCAT Secretariat as well as to the flag State and, as appropriate, the relevant coastal State.[274] ICCAT has also established an IUU vessel list.[275] Efforts by individual countries and regional cooperation to strengthen national fisheries management systems have resulted in improved monitoring, control and surveillance (MCS) of some fisheries. However, many of the commercial fish species in the region are migratory and the national and foreign fishing operators that target them follow these stocks, so effectively tackling illegal fishing requires regional cooperation. In 2016, 54 % of ICCAT member States had some degree of non-compliance, with 7 % having serious issues of non-compliance.[276] Observers have suggested that ICCAT could strengthen efforts to combat IUU fishing by: a) requiring functioning VMS on all authorised fishing vessels; b) banning transhipment at sea until the Commission can verify that it is not facilitating IUU fishing; and c) allowing vessels to be added to the IUU list intersessionally.[277]

[269] SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), arts. 4.1, 4.4, 13, 18, and 25.

[270] SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), arts. 4.4, 14, 17, 24.

[271] SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), art. 27.

[272] SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), art. 28. See: http://www.seafo.org/Management/IUU (accessed: September 2018).

[273] SEAFO 'System of Observation, Inspection, Compliance and Enforcement' (2016), art. 5.

[274] See https://www.iccat.int/Documents/Recs/compendiopdf-e/2014-09-e.pdf and https://www.iccat.int/en/portinspection.html (accessed: September 2018).

[275] ICCAT, 'Recommendation by ICCAT Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried out Illegal, Unreported, and Unregulated Fishing Activities in the ICCAT Convention Area' (Resolution 11-18, 2012) and ICCAT, 'Resolution Establishing Guidelines for the Cross-Listing of Vessels Contained on IUU Vessel Lists of Other Tuna RFMOs on the ICCAT IUU Vessel List in Accordance with Recommendation 11-18' (Resolution 14-11, 2004).

[276] ICCAT, 'Report of the Fourth Project Steering Committee: Sustainable Management of Tuna Fisheries and Biodiversity Conservation in the ABNJ' (Rome, 16-18 July 2018), available at: http://www.fao.org/fileadmin/user_upload/common_oceans/docs/ABNJ-Tuna-2018-PSC_FINAL.pdf (accessed: September 2018).

[277] See: https://www.iccat.int/Documents/BienRep/REP_EN_16-17_II-1.pdf (accessed: September 2018).

Similarly to ICCAT and SEAFO, CCSBT has adopted several measures to combat IUU fishing. These include: the establishment of a Compliance Plan and a three-year Action Plan,[278] minimum standards for port inspections, including reporting IUU fishing cases to the CCSBT Secretariat in cases of infringement,[279] a transhipment programme,[280] a scientific observer programme,[281] and the implementation of a catch documentation scheme.[282] CCSBT also requires its member States to use VMS as well as to take action at the national level to deter IUU fishing and to ensure that their vessels are not conducting IUU fishing.[283] It also has a list of vessels authorised to fish within its Convention area as well as a list of IUU fishing vessels.[284]

One of CECAF's tasks includes 'provid[ing] advice on monitoring, control and surveillance' to its member States.[285]

The issue of IUU fishing is highlighted in both the 2050 Africa's Integrated Maritime Strategy and the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter).[286] Furthermore, the network 'Stop Illegal Fishing' has been operating effectively since 2007 and works towards raising awareness and addressing the issue of IUU fishing in Africa. This network established the Task Force FISH-I Africa in 2012 and the West Africa Task Force in 2015 to combat IUU fishing in East Africa and West Africa, respectively.[287] Though operating in areas within national jurisdiction, these initiatives show that cooperation to work towards addressing IUU fishing is possible.

Within the Southeast Atlantic region, only few coastal States have ratified the FAO Port State Measures and Compliance Agreements.[288] As both these agreements provide an important legal basis for combatting IUU fishing, the ratification and implementation of these agreements is important, especially for the numerous coastal countries that are not Parties to any RFMO with a mandate to work in ABNJ in the Southeast Atlantic region. Furthermore, most countries have also not ratified the UNFSA, which is the key treaty in relation to the management and conservation of highly migratory and straddling fish stocks, including in ABNJ.[289]

[278] CCSBT, 'CCSBT Compliance Plan' (2017) and CCSBT, 'Action Plan' (2000).

[279] CCSBT, 'Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port' (2015).

[280] CCSBT, 'Resolution on Establishing a Program for Transhipment by Large-Scale Fishing Vessels' (2017).

[281] CCSBT, 'CCSBT Scientific Observer Program Standards' (2015).

[282] CCSBT, 'Resolution on the Implementation of a CCSBT Catch Documentation Scheme' (2014).

[283] CCSBT, 'Resolution on the CCSBT Vessel Monitoring System (VMS)' (2017); CCSBT, *Text of the Convention for the Conservation of Southern Bluefin Tuna* (entered into force on 20 May 1994), art. 15.

[284] CCSBT, 'Resolution on a CCSBT Record of Vessels Authorised to Fish for Southern Bluefin Tuna' (2015) and 'Resolution on Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing Activities For Southern Bluefin Tuna (SBT)' (2017).

[285] CECAF, 'Appendix E: Revised Terms of Reference of the Fishery Committee for the Eastern Central Atlantic (CECAF)' in 'Amendments of the Statutes of the Fishery Committee for the Eastern Central Atlantic' (CL 124/REF), available at: http://www.fao.org/fishery/docs/DOCUMENT/cecaf/CECAFstatutes_amend_CL124.pdf (accessed: September 2018).

[286] See: https://cggrps.com/wp-content/uploads/2050-AIM-Strategy_EN.pdf and https://au.int/sites/default/files/treaties/33128-treaty-0060_-_lome_charter_e.pdf (accessed: December 2018).

[287] See: https://stopillegalfishing.com/initiatives/fish-i-africa/ and https://stopillegalfishing.com/initiatives/watf/ (accessed: December 2018).

[288] 9 countries have ratified the Port States Agreement and 5 have ratified the FAO Compliance Agreement. See Annex III on the memberships and treaty ratification of Abidjan Convention Member States.

[289] Only 8 coastal States of the Southeast Atlantic have ratified UNFSA. See Annex III on the memberships and treaty ratification of Abidjan Convention Member States.

4.7.2 Combatting IUU Fishing in the Southeast Pacific

Both IATTC and SPRFMO have adopted legally binding provisions with regard to the conduct of IUU fishing. SPRFMO has been updating its IUU List of Vessels since 2015 and it is available, together with the links to other IUU vessel lists held by other RFMOs, on its website.[290] Together with the obligation to maintain a register of fishing vessels entitled to fly member States' flag within the SPRFMO Convention area,[291] all fishing vessels on this register also have to operate 'on a permanent basis' a VMS within the SPRFMO Convention area as well as within a buffer zone of 100 nautical miles outside the Convention area.[292] This buffer zone however does not apply to vessels flagged to coastal States fishing within their national jurisdiction. SPRFMO also adopted in 2017 a resolution on minimum standards of inspection in ports, whereby its member States and cooperating non-member States are required to create a list of designated ports where foreign fishing vessels can land their catches and notify the SPRFMO Secretariat of their listing,[293] request prior notification on landing and/or transhipment,[294] carry out inspections on at least 5% of landing and transhipment operations made by foreign fishing vessels in their ports,[295] and follow the Port State Inspection Standards established by SPRFMO.[296] Any infringements by foreign vessels need to be immediately notified to SPRFMO so that these can be published on its website.[297] SPRFMO member States and cooperating non-member States are furthermore required to submit an annual implementation report, which serves as a basis for the evaluation through the Compliance and Technical Committee of States' compliance with the SPRFMO Convention.[298] Finally, SPRFMO also adopted procedures for at sea inspection as well as for regulations of transhipment activities in its Convention area, which are only allowed for vessels listed on SPRFMO's Record of Vessels.[299] IATTC also established an IUU fishing vessel list as well as a list of vessels allowed to fish in its convention area.[300] Vessels of 24 m or more in length of IATTC member and cooperating non-member States operating in the IATTC Convention area and harvesting tuna

[290] https://www.sprfmo.int/measures/iuu-lists/#SPRFMO (accessed: September 2018). See also: SPRFMO 'Conservation and Managaement Measure Establishing a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing Activities in the SPRFMO Convention Area' (CMM 04–2017,2017).

[291] SPRFMO 'Conservation and Management Measure for the Establishment of the Commission Record of Vessels authorised to fish in the Convention Area' (CMM 05–2016, 2016), art. 4.

[292] SPRFMO 'Conservation and Management Measure for the Establishment of the Vessel Monitoring System in the SPRFMO Convention Area' (CMM 06–2018, 2018), arts. 2 and 5.

[293] SPRFMO 'Conservation and Management Measure on Minimum Standards of Inspection in Port' (CMM 07–2017, 2017), arts. 7 and 9.

[294] SPRFMO 'Conservation and Management Measure on Minimum Standards of Inspection in Port' (CMM 07–2017, 2017), art. 11.

[295] SPRFMO 'Conservation and Management Measure on Minimum Standards of Inspection in Port' (CMM 07–2017, 2017), art. 14

[296] SPRFMO 'Conservation and Management Measure on Minimum Standards of Inspection in Port' (CMM 07–2017, 2017), art. 18 and Annex II.

[297] SPRFMO 'Conservation and Management Measure on Minimum Standards of Inspection in Port' (CMM 07–2017, 2017), arts. 25 and 26.

[298] SPRFMO 'Conservation and Management Measure for the Establishment of a Compliance and Monitoring Scheme in the SPRFMO Convention Area' (CMM 10–2018, 2018), arts. 2 and 5.

[299] SPRFMO 'Conservation and Management Measure Relating to Boarding and Inspection Procedures in the SPRFMO Convention Area' (CMM 11–2015, 2015) and SPRFMO 'Conservation and Management Measure for the Regulation of Transhipment and Other Transfer Activities' (CMM 12–2018, 2018), art. 2.

[300] See: https://www.iattc.org/VesselRegister/IUU.aspx?Lang=en and https://www.iattc.org/VesselRegister/VesselList.aspx?List=RegVessels&Lang=ENG (accessed: September 2018). See also: IATTC, 'Resolution (Amended) on a Regional Vessel List' (C-18-06, 2018) and IATTC, 'Amendment to Resolution C-05-07 on Establishing a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing Activities in the Eastern Pacific Ocean' (C-15-01, 2015).

or tuna-like species have to be equipped with a VMS.[301] As for SPRFMO, IATTC has a list of vessels authorised to undertake transhipment at sea, although most of the transhipment is encouraged to take place in ports.[302] Observers on vessels have to report relevant data to the IATTC Commission.[303]

Within the Southeast Pacific region, only Chile and Peru have ratified the FAO Port State Measures and Compliance Agreements as well as the UNFSA.[304] All four coastal States of the Southeast Pacific are members or cooperating non-members of the relevant RFMOs with an ABNJ mandate in the region.[305] Despite not having full ratification of these legal agreements in the Southeast Pacific region, CPPS member States signed a declaration on IUU fishing activities in the region in October 2017.[306] In this declaration, CPPS member States reiterate the position of the CPPS as a regional institutional coordination mechanism, including in the coordination and consolidation of its member States' interest in the conservation and sustainable use of transboundary fish populations within national jurisdiction.[307] CPPS member States have been informed of an increased number of fishing vessels of foreign flag States undertaking fishing activities close to the EEZs of Ecuador and Peru, including possible IUU fishing activities, and request through this declaration that IATTC and SPRFMO investigate this issue within their respective Convention areas and apply relevant sanctions, where necessary.[308] In this regard, CPPS reiterates its determination to coordinate actions between its member States to face IUU fishing regionally and unilaterally, for both vessels fishing with their EEZs and in adjacent ABNJ.[309] CPPS member States furthermore reiterate the need to further cooperation with States fishing in ABNJ adjacent to their EEZs, particularly through RFMOs, in order to avoid the exploitation of ABNJ fish resources having a negative impact on the conservation and sustainable use of fishery resources within their EEZs.[310] Following this declaration, FAO and CPPS co-organised an expert workshop on IUU fishing in Chile in November 2017 to discuss this issue further.

[301] IATTC, 'Resolution (Amended) on a the Establishment of a Vessel Monitoring System (VMS)' (C-14-02, 2014), art. 1.

[302] IATTC, 'Amendment to Resolution C-11-09 on Establishing a Program for Transshipments by Large-Scale Fishing Vessels' (C-12-07, 2012), arts. 1 and 4.

[303] IATTC, 'Resolution on Scientific Observers for Longline Vessels' (C-11-08, 2011) and IATTC, 'Resolution on At-Sea Reporting' (C-03-04, 2003).

[304] See Annex V on the memberships and treaty ratification of CPPS Member States.

[305] Updated from analyses done by Durussel (2015): Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415.

[306] 2017 Declaración de la Comisión Permanente del Pacífico Sur sobre posibles actividades de pesca ilegal, no declarada y no reglamentada, http://cpps.dyndns.info/cpps-docs-web/publicaciones/declaraciones-cpps/Declaraci%C3%B3n%20de%20la%20CPPS%20sobre%20posibles%20actividades%20de%20pesca%20INDNR.pdf (accessed: September 2018).

[307] 2017 Declaración de la Comisión Permanente del Pacífico Sur sobre posibles actividades de pesca ilegal, no declarada y no reglamentada, para. 1.

[308] 2017 Declaración de la Comisión Permanente del Pacífico Sur sobre posibles actividades de pesca ilegal, no declarada y no reglamentada, paras. 4–6.

[309] 2017 Declaración de la Comisión Permanente del Pacífico Sur sobre posibles actividades de pesca ilegal, no declarada y no reglamentada, para. 7.

[310] 2017 Declaración de la Comisión Permanente del Pacífico Sur sobre posibles actividades de pesca ilegal, no declarada y no reglamentada, para. 2.

5. Regional Organisations in the Southeast Atlantic without a Specific Mandate for ABNJ

Key Messages:

- The Abidjan Convention covers the EEZs of the Southeast Atlantic region and, except for three States, all coastal States are member States of the organisation;
- The Abidjan Convention is a regional seas programme with a focus on the prevention, reduction and combatting of marine pollution in marine and coastal areas of its member States as well as establishing protected areas for fragile ecosystems and endangered species;
- ATLAFCO covers the whole of the Southeast Atlantic region with the objective to promote and strengthen regional cooperation on fisheries development and the coordination and harmonisation of efforts and capacities of stakeholders for the conservation and exploitation of fisheries resources;
- SRFC, FCWC and COREP have limited coastal State membership in the Southeast Atlantic. Most of them have an advisory role in promoting State coordination and cooperation in the management of fisheries, particularly to combat IUU fishing;
- The Benguela Current Commission has the objective of restoring and protecting the biological integrity of the Benguela Current Large Marine Ecosystem.

The geographical scope of several other regional organisations extends across parts of the Southeast Atlantic. Although they do not have a mandate to cover ABNJ, they could play a role in this region toward strengthening the conservation and sustainable use of BBNJ. This section looks at several regional organisations of the Southeast Atlantic that may be of relevance to the region for the conservation and sustainable use of BBNJ. At the Dialogue Workshop organised by the STRONG High Seas project in Abidjan, Côte d'Ivoire, in June 2018, participants identified several organisations of relevance to BBNJ, including several organisations covering the EEZs of their member States such as the Abidjan Convention, the Sub-Regional Fisheries Commission (SRFC), the Fishery Committee for the West Central Gulf of Guinea (FCWC), the Regional Fisheries Committee for the Gulf of Guinea (COREP), and the Ministerial Conference on Fisheries Cooperation Among African States Bordering the Atlantic (ATLAFCO).[311]

[311] The STRONG High Seas Project organises yearly Dialogue Workshops in the Southeast Atlantic and Southeast Pacific regions to to discuss the current status, interests and challenges for global and regional ocean governance, foster exchange and build new networks. The first Dialogue Workshop in the Southeast Atlantic region, entitled 'Opportunities for Strengthening Ocean Governance in the Southeast Atlantic', took place in Abidjan, Côte d'Ivoire, in June 2018 and brought together about 40 stakeholders from the ministries of the member States of the Abidjan Convention, global and research organisations, research institutes and NGOs. More information can be found here: https://www.prog-ocean.org/opportunities-for-strengthening-ocean-governance-in-the-southeast-atlantic-strong-high-seas-dialogue-workshop-1-2/ (accessed: September 2018).

5.1 Abidjan Convention

The Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region – known as the Abidjan Convention – was adopted in 1981 and is one of the regional seas programmes with its Secretariat hosted by UN Environment. To date, the Abidjan Convention counts a total of 19 member States, with only three countries of the Southeast Atlantic region not members of the Convention.[312] The Convention primarily focuses on the prevention, reduction and combatting of the various forms of marine pollution in marine and coastal areas of its member States.[313] In 2012, a protocol on land-based sources of pollution was adopted under the Abidjan Convention, which placed a general obligation on member States to take appropriate measures to 'prevent, reduce, mitigate and control pollution and degradation of the Protocol area from land-based sources and activities and to ensure environmentally sound management of natural resources', as well as specific obligations requiring Parties to regulate point and diffuse sources of pollution in conformity with international law and best practices.[314] At the 12th Conference of the Parties (COP) in March 2017, member States to the Abidjan Convention also adopted a decision on marine waste, requesting these States to collect reliable data and information on marine waste to enable 'the secretariat and its relevant partners to create a database on marine waste which would be used as a basis for the strategies developed in the region on marine waste'.[315] Member States to the Abidjan Convention must further conduct an assessment of the potential environmental effects for any activity that may cause substantial pollution or significant and harmful changes to the Convention area.[316] With the assistance of relevant international and regional organisations, they are required to cooperate with each other in the fields of scientific research, monitoring, and the assessment of pollution in the Convention area.[317] Abidjan Convention member States are called upon to work towards establishing protected areas for fragile ecosystems and endangered species and controlling activities likely to have adverse effects on endangered species, ecosystems, or biological processes.[318] The Action Plan for the Protection and Development of the Marine Environment and Coastal Areas adopted under the Abidjan Convention further aims to provide a framework for comprehensive, environmentally-sound coastal area

[312] These are Cape Verde, Equatorial Guinea, and Sao Tome e Principe. See: https://abidjanconvention.org/index.php?option=com_content&view=article&id=92&Itemid=192&lang=en (accessed: September 2018).

[313] Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Entry into force: 5 August 1984), arts. 5, 6, 7, 8, 9, 10 and 11; see: https://abidjanconvention.org/index.php?option=com_content&view=article&id=100&Itemid=200&lang=en (accessed: September 2018).

[314] Additional Protocol to the Abidjan Convention Concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-Based Sources and Activities in the Western, Central, and Southern African Region (Cote d'Ivoire, 22 June 2012), art. 5. See: http://abidjanconvention.org/media/documents/protocols/LBSA%20Protocol-Adopted.pdf (accessed: September 2018).

[315] Twelfth Conference of the Contracting Parties to the Convention on Cooperation for the Protection, Management and Development of the Marine Environment and Coastal Areas of the Atlantic Coast of the West, Central and Southern African Region (Abidjan, Côte d'Ivoire, 27 to 31 March 2017), Decision CP12/16, available at: http://cop12.abidjanconvention.org/images/Fichiers/Working%20Documents/ABC%20-%20WACAF%20-%20COP12%20-%206%20Eng%2025%20March.pdf.

[316] Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Entry into force: 5 August 1984), art. 13; see: https://abidjanconvention.org/index.php?option=com_content&view=article&id=100&Itemid=200&lang=en (accessed: September 2018).

[317] Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Entry into force: 5 August 1984), art. 14; see: https://abidjanconvention.org/index.php?option=com_content&view=article&id=100&Itemid=200&lang=en (accessed: September 2018) and Action Plan for the Protection and Development of the Marine Environment and Coastal Areas, arts. 12 and 13.

[318] Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Entry into force: 5 August 1984), art. 11; see: https://abidjanconvention.org/index.php?option=com_content&view=article&id=100&Itemid=200&lang=en (accessed: September 2018).

development and to protect the marine environment and coastal areas.[319] It is designed to assess the state of the environment, including the impact of development activities on environmental quality, in order to assist member States to deal with environmental problems.[320]

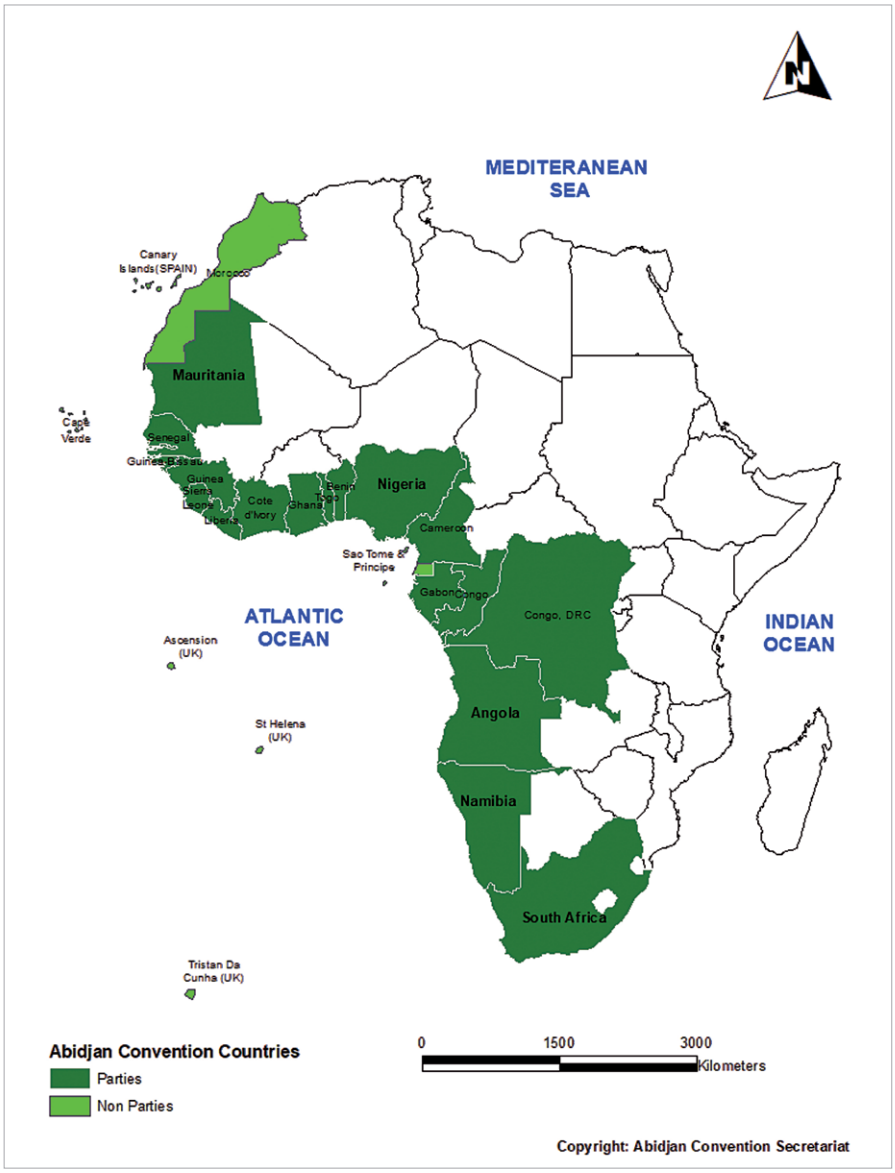


Figure 9: Geographical Scope of the Abidjan Convention[321] (Source: Abidjan Convention Secretariat [2018])

[319] Protocol of the Abidjan Convention concerning Cooperation in Combating Pollution in Cases of Emergency and the associated Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the West and Central African Region (Abidjan, 1981; entered into force 5 August 1984), art. 2.

[320] Protocol of the Abidjan Convention concerning Cooperation in Combating Pollution in Cases of Emergency and the associated Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the West and Central African Region (Abidjan, 1981; entered into force 5 August 1984), art. 4.1.

[321] Source: Abidjan Convention Secretariat (2018), available at: http://abidjanconvention.org/index.php?option=com_content&view=article&id=226&Itemid=277&lang=en.

5.2 Regional Fisheries Bodies

The two regional fisheries bodies to which nearly all coastal States of the Southeast Atlantic are members are CECAF and ATLAFCO.[322] The latter was established in July 1991 to promote and strengthen the regional cooperation on fisheries development and the coordination and harmonisation of efforts and capacities of stakeholders for the conservation and exploitation of fisheries resources. ATLAFCO has an advisory role for its member States to promote their cooperation in assessing transboundary fish stocks and highly migratory marine species, gathering and sharing scientific and catch data, and harmonising their policies for their conservation and management.[323] It furthermore encourages its member States to monitor and control fishing operations, to harmonise fisheries policies, to undertake coordinated marine scientific research, to cooperate at the regional level for the protection of the marine environment, and to promote capacity building in the form of technical training for fishermen.[324]

The other regional fisheries bodies, namely SRFC, FCWC, and COREP, have only limited coastal State membership within the Southeast Atlantic region. SRFC has the objective to harmonise the long-term policies of its member States in the preservation, conservation and exploitation of the fisheries resources within the national jurisdiction of its member States and to strengthen cooperation among them.[325] In 1993, SRFC member States adopted a Convention on conditions of access and exploitation of marine resources in their waters in which they committed to a number of measures against IUU fishing.[326] The 2001 Nouakchott Declaration on Illegal, Unreported and Unregulated Fishing called for the use of all means at its disposal to fight against IUU fishing activities in the EEZs of its member States, better cooperation, stricter control, the implementation of the FAO International Plan of Action.[327] In 2012, SRFC member States adopted a revised Convention on conditions of access, which provides for the establishment of a database on fishing activities in its Convention area and requires that repeat offenders in one of the member States be prohibited from fishing in all waters under the jurisdiction of member States for a period of one year.[328]

FCWC is a sub-regional committee of fisheries established by ATLAFCO in the western central part of the Gulf of Guinea with the aim to promote cooperation amongst its member States to ensure the sustainable development of the fisheries resources in its Convention Area.[329] Similar to ATLAFCO, the FCWC promotes regional coordination in fisheries management, including the development of common policies and strategies, the development of research capabilities and data collection, and the monitoring, control, surveillance and enforcement of fishing activities in its Convention area, including cooperation with regard to distant water fishing nations.[330] In 2009, FCWC member States adopted the Ministerial Declaration of Accra to combat IUU fishing as well as the regional action plan against IUU fishing.[331]

[322] Known in French as COMHAFAT (Conférence ministérielle sur la coopération halieutique des États Africains riverains de l'Océan Atlantique).

[323] Regional Convention on Fisheries Cooperation among African States bordering the Atlantic Ocean (adopted on 5 July 1991, entered into force in July 1995), arts. 3 and 4.

[324] Regional Convention on Fisheries Cooperation among African States bordering the Atlantic Ocean (adopted on 5 July 1991, entered into force in July 1995), arts. 5, 10, 11, 12 and 13.

[325] See: http://www.fao.org/fishery/rfb/srfc/en (accessed: September 2018). Its member States are: Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal, and Sierra Leone.

[326] See: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/Technical_Note_eng.pdf (accessed: September 2018).

[327] Ndiaye T.M., 'Illegal, Unreported and Unregulated Fishing: Responses in General and in West Africa', 10 Chinese Journal of International Law (2011), 373–405, at p. 377.

[328] See: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/Technical_Note_eng.pdf (accessed: September 2018).

[329] Its member States are: Benin, Côte d'Ivoire, Ghana, Liberia, Nigeria and Togo. See: https://www.fcwc-fish.org/about-us/member-countries.html (accessed: September 2018).

[330] See: https://www.fcwc-fish.org/about-us/about-fcwc.html (accessed: September 2018).

[331] FCWC, 'Regional Plan of Action aimed at Preventing, Deterring and Eliminating Illegal, Unreported and Unregulated Fishing in the Maritime Zone of FCWC Member Countries', available at: https://www.fcwc-fish.org/publications/documents/administrative-docs/send/3-administrative-documents/107-regional-plan-of-action-aimed-at-preventing-deterring-and-eliminating-iuu.html (accessed: September 2018).

Established by the Convention concerning the regional development of fisheries in the Gulf of Guinea adopted in June 1984, COREP is a specialised agency of the Economic Community of Central African States (ECCAS) that aims at promoting active cooperation in the development and management of fisheries, collecting scientific data, and harmonising fisheries policy and legal frameworks of its member States.[332]

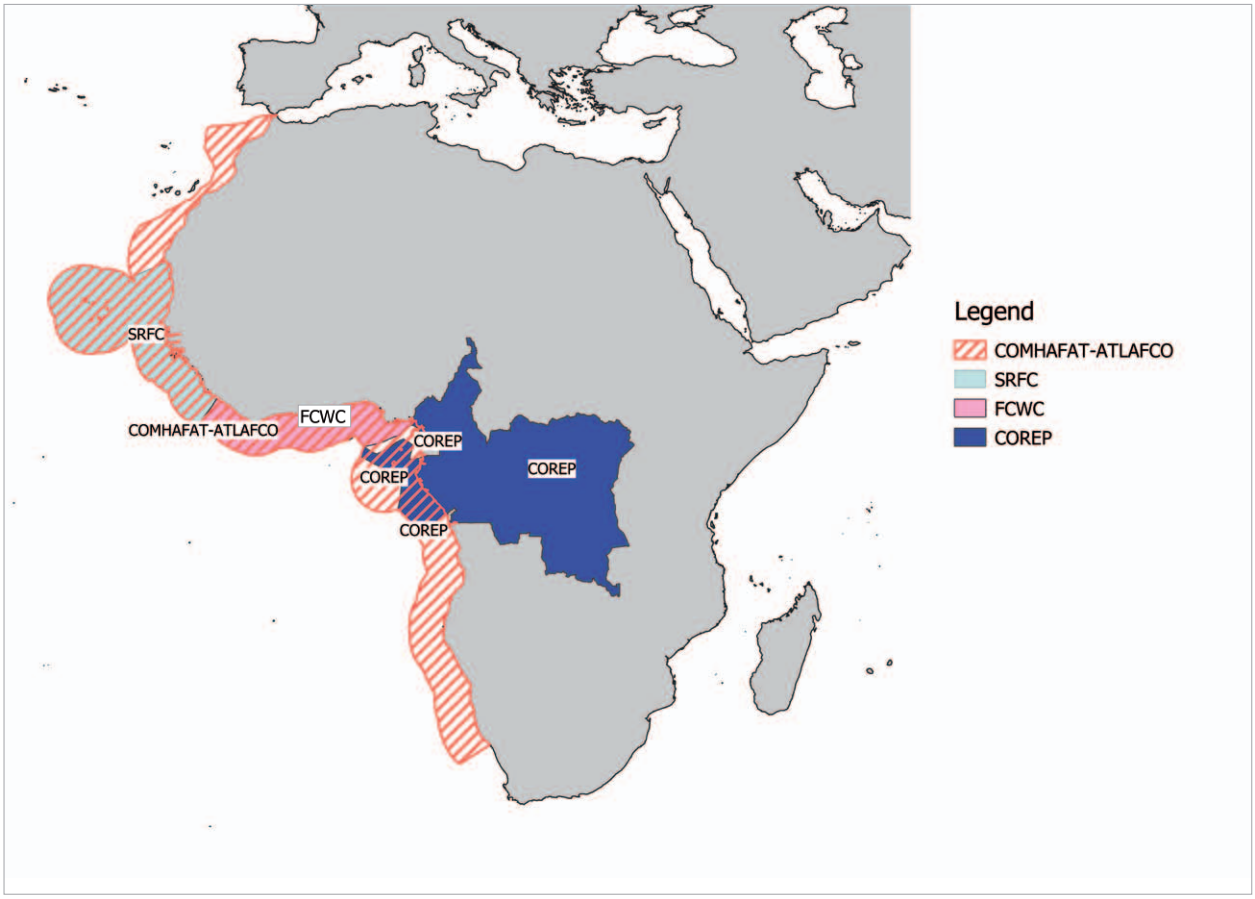


Figure 10: Geographical Scope of Regional Fisheries Organisations in the Southeast Atlantic Without a Specific Mandate for ABNJ[333] (Source: IASS based on FAO data [2018])

[332] Its member States are: Angola, Cameroon, Congo, Democratic Republic of Congo, Gabon, Sao Tome e Principe. Equatorial Guinea is an observer. See: http://www.corep-se.org/mot-du-president-en-exercice/ and http://www.corep-se.org/missions-et-objectifs/ (accessed: September 2018).

[333] Map Source: IASS based on FAO data. See: http://www.fao.org/figis/geoserver/factsheets/rfbs.html (accessed: December 2018).

5.3 Benguela Current Commission

The Benguela Current Commission (BCC) was established in 2007 with the aim of restoring and protecting the biological integrity of the Benguela Current Large Marine Ecosystem (BCLME). In 2013, the Benguela Current Convention was signed by Angola, Namibia and South Africa, determining a focus on topics such as the fish stocks management, ecosystem health, pollution, marine diamond mining and oil and gas production.[334] The BCC is involved in the development and implementation of a range of research projects that aim to improve knowledge and understanding of the LME, including projects to develop the capacity to describe the region's EBSAs and implement management measures to ensure their conservation and sustainable use, as well as to build the resilience of marine fisheries by encouraging the implementation of adaptive strategies.[335]

[334] See: http://www.benguelacc.org/index.php/en/about/what-is-the-bcc (accessed: September 2018).
[335] See: http://www.benguelacc.org/index.php/en/activities/the-science-programme (accessed: September 2018).

6. Strengthening Regional Ocean Governance for the High Seas in the Southeast Atlantic and the Southeast Pacific

This chapter aims to summarise the key findings from the previous chapters identified in this report. It first aims to compare and highlight key findings and differences between the two focus regions, and then seeks to provide a number of options about how governance for the high seas in the Southeast Atlantic and Southeast Pacific could be strengthened.

6.1 Key Features of Regional Ocean Governance Frameworks for the High Seas in the Southeast Atlantic and the Southeast Pacific

Diversity of member States

The Southeast Atlantic region spans a large number of countries, with a similarly diverse range of cultures, languages and capacities.[336] Overall, available resources for engagement with BBNJ issues are limited. By contrast, the Southeast Pacific spans just four countries with greater similarity in culture and capacities, and which have demonstrated the availability of resources and the political will to engage with BBNJ issues. Coastal States in both regions are not always member States of the same regional organisations and have not necessarily ratified all relevant international and regional agreements.

Varying participation in international agreements

While all coastal States in the Southeast Atlantic region have ratified UNCLOS, in the Southeast Pacific region, Chile and Ecuador have ratified UNCLOS while Colombia and Peru have not.[337] Furthermore, most coastal States of the Southeast Atlantic and Southeast Pacific have not ratified the UNFSA, the FAO Compliance Agreement or the PSMA and, apart from MARPOL Annexes I–V, there is also a lack of ratification of other relevant IMO agreements, such as the London Convention and its Protocol, the Ballast Water Management Convention, and MARPOL Annex VI. The limited membership of coastal States in SEAFO and the lack of broad participation in key legal agreements within the two regions, makes it difficult to address BBNJ-related issues due to a lack of a full and coherent legal basis and, in the case of the Southeast Atlantic, an institutional basis as well.[338]

Varied mandates

The mandates of regional organisations in the Southeast Pacific cover nearly the full geographical range of the region and have largely complementary mandates.[339] However, the extent to which CPPS' mandate extends to the ABNJ adjacent to the national waters of its member States has not been clearly defined. By contrast, there are several regional organisations in the Southeast Atlantic with a mandate including ABNJ, but they do not provide comprehensive geographical coverage of the region and their mandates are limited, generally focussing on fisheries management with only limited consideration of conservation and sustainable use of biodiversity.[340] In the Southeast Atlantic, there are a range of organisations that aim to facilitate cooperation between member States, but

[336] Though not discussed in detail in this report, it may also be that States will have differing interests and needs in relation to the conservation and sustainable use of BBNJ.

[337] See Annex III on the memberships and treaty ratification of Abidjan Convention Member States and Annex V on the memberships and treaty ratification of CPPS Member States.

[338] This is without prejudice to the sovereign decision of each State to become party to the agreements that they consider from their national standpoint relevant for ocean governance.

[339] A small area in the northern part of the region is only covered by CPPS and IATTC, while a small area in the southern part of the region is only covered by CPPS and SPRFMO (see Figure 7).

[340] E.g. CECAF only has an advisory mandate so that there is a lack of coverage of a non-tuna RFMO with a management mandate in the northern part of the Southeast Atlantic that can complement the work undertaken by SEAFO in the southern part of the region.

they do not have an explicit mandate to address issues relating to ABNJ.

Limited cross-sectoral cooperation

In both regions, the extent to which governance efforts are integrated and coordinated across sectors is limited. In general, each organisation adopts its own principles, resolutions and recommendations on an ad-hoc basis with limited consideration of complementarity of management measures or coordination with other organisations. Indeed, this reflects shortcomings found in the global ocean governance framework, where it is widely acknowledged that a fragmented patchwork of sectoral, regional and global organisations makes coordinated management incredibly challenging.

6.2 Options for Strengthening Regional Ocean Governance for the High Seas in the Southeast Atlantic and Southeast Pacific

While there are many organisations in these regions that are well placed to address issues relating to the conservation and sustainable use of BBNJ, such issues have been given only limited consideration to date. Based on the foregoing analysis, this section provides some possible options for strengthening regional governance in the Southeast Atlantic and Southeast Pacific.

Advancing cross-sectoral cooperation

Without effective cooperation and coordination between different organisations, it is not possible to develop an ecosystem-based approach to manage of marine resources and ensure conservation and sustainable use of BBNJ. This is especially important for straddling species or transboundary ecosystems.

States could establish mechanisms for cross-sectoral cooperation, including through:

- Further exchange and coordination between tuna and non-tuna RFMOs, as well as between RFMOs and regional seas programmes;
- Joint programmes to build capacity and strengthen the common scientific basis for action (further described below);
- Development of a regional biodiversity strategy and action plan that could result in recommendations for conservation and management measures;
- Establishment of an institutional cooperative mechanism between organisations;
- Memoranda of Understanding or memoranda of cooperation;
- Participation at each other's meetings; and
- Establishment of common working groups, task forces or platforms for exchange to tackle specific BBNJ-related issues of common interest.[341]

States could also leverage established fora as an opportunity to enhance exchange and cooperation on issues concerning BBNJ, including in fora that do not have a specific mandate for ABNJ.[342] For example, there are several RFBs with an advisory mandate covering national waters in the Southeast Atlantic that pursue similar objectives of a coordinated approach to fisheries manage-

[341] See: Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415; Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635-671.DOI: http://doi.org/10.1163/15718085-12324051.

[342] The Abidjan Convention Secretariat notes that, for the Southeast Atlantic, States could also do so in regional integration organisations that are in charge of promoting cooperation and economic integration in West Africa, such as the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU). The environmental objectives of these organisations are to harmonise and coordinate national policies, to promote programmes, projects and activities in the fields of agriculture and natural resources, and to develop environmental protection policies. Other relevant regional organisations include, amongst other: the Regional Maritime Safety Centre for West Africa (CRESMAO), the Regional Maritime Safety Centre for Central Africa (CRESMAC), and the Interregional Coordination Centre (CIC) for the Implementation of Regional Strategy for Maritime Safety and Security in Central and West Africa. In this context, the African Union (AU) Agenda 2063 ('The Africa We Want') and the AU Strategy 2050 are important policy documents to be taken into account.

ment. These bodies could nonetheless provide an important institutional basis for cooperation on the management of fishery resources in the region. As most of the coastal States in the Southeast Atlantic region have not ratified the FAO Compliance Agreement, PSMA or UNFSA, these organisations could provide an important avenue for promoting ecosystem-based approaches to management and combatting IUU fishing, e.g. through recommendations on the coordination of policies across the region.

Promoting conservation and sustainable use of BBNJ through international fora

States could promote conservation and sustainable of BBNJ by voicing their views and proposing management actions at relevant global and regional fora. States could, for example, make efforts to advance ecosystem-based management within RFMOs by advocating that they put a greater emphasis on assessment of non-target species and management of bycatch. States could also propose specific spatial measures at meetings of relevant competent organisations. For example, States could:

- In the Southeast Atlantic, raise the possibility of developing spawning area closures through ICCAT to restore bluefin tuna populations and request SEAFO to adopt provisions to prohibit bottom trawling throughout the Convention area until strict EIAs are conducted (as is the case under SPRFMO in the South Pacific);[343]
- Develop proposals for the establishment of PSSAs in high seas areas that are sensitive to impacts from shipping and work towards building a consensus that would allow the measures to be agreed within the IMO;[344]
- Promote implementation and further strengthening of relevant provisions of the CBD for the conservation and sustainable use of marine biodiversity in ABNJ, for example by developing a coordinated regional approach and promoting also the use of EBSAs as a scientific basis to develop ABMTs;[345] and
- Play an active role in the discussions taking place at the ISA, e.g. by advocating for strong provisions in regulations related to the potential exploitation of marine mineral resources and contributing to the development of Regional Environmental Management Plans (REMPs) to be adopted by the ISA.

Participating in relevant treaties and regional organisations

Challenges to cross-sectoral cooperation can be eased if more States in the regions become Parties to the key international and regional agreements, including a future BBNJ agreement. Indeed, such participation may be seen as a priority, as this would provide a shared and coherent basis for common action. Coastal States of the Southeast Atlantic and Southeast Pacific regions could therefore consider the possibility of becoming Parties to all relevant international treaties, such as UNCLOS, the UNFSA, and the Port State Measures Agreement, as well as relevant regional organisations.[346] They could also request that third Parties with an interest or activity in the region to participate in relevant regional and global fora.

[343] The Pew Environment Group, 'Conserving Atlantic Bluefin Tuna with Spawning Sanctuaries', *Science Brief*, 2010.

[344] Julian Roberts, Allan Chircop, and Sian Prior, 'Area-Based Management on the High Seas: Possible Application of the IMO's Particularly Sensitive Sea Area Concept', *The International Journal of Marine and Coastal Law* 25 (2010): 483 522.

[345] Although the CBD has no jurisdictional mandate for ABNJ – only, as outlined in CBD art. 4, in the case of processes and activities under the jurisdiction of its contracting Parties, it provides a broad cooperation obligation with regard to the conservation and sustainable use of marine biodiversity in ABNJ (art. 5). This cooperation could for instance include the development of a coordinated regional approach on the use of EBSAs as a scientific basis to develop ABMTs.

[346] As outlined above, this is without prejudice to the sovereign decision of each State to become party to the agreements that they consider from their national standpoint relevant for ocean governance.

Promoting flag State responsibility

Flag States have the ultimate regulatory authority over their vessels. Nothing prevents one or several States from unilaterally declaring that they prohibit or restrict activities by vessels flying their flag. Indeed, there is some precedent for a unilateral national initiative to prohibit or restrict fishing in ABNJ.[347] Flag States could consider taking action to:

- Impose regulations regarding areas or activities that are not currently covered by a competent management authority;
- Impose stricter standards than required by a competent management authority; and
- Provide regulations where the relevant RFMO or sectoral management body has not adopted measures.

Both with regard to flag State jurisdiction and the application of port State measures, coastal States in the Southeast Atlantic and Southeast Pacific could choose to implement a common approach or policy for the region on conservation priorities. For example, in October 2017, States in the Southeast Pacific agreed to a high-level political declaration against IUU fishing within CPPS. Such a declaration could be replicated in the Southeast Atlantic, e.g. through ATLAFCO. Such high-level commitments could send a strong signal that these regions intend to cooperate on key issues and act as champions for effective flag State responsibility.

Empowering regional seas programmes

The expansion of efforts to coordinate BBNJ issues through regional seas programmes could allow for a more coordinated approach to conservation and sustainable use. States could use RSPs as a forum for discussing possible management actions, developing proposals for ABMTs and considering environmental assessments. Some States have already agreed to declare regional MPAs in ABNJ, though cross-sectoral cooperation and coordination between relevant competent organisations remains necessary to ensure that the full range of management measures may be developed (e.g. within RFMOs for fisheries, the ISA for deep seabed mining, and the IMO for shipping).

Developing a robust scientific basis and capacity for action

The importance of establishing a robust scientific knowledge base within regions cannot be underestimated.[348] It is important to ensure that relevant scientific information and data for the regions are available to e.g. support the establishment of conservation and management measures and ensure the consistency and complementarity of sectoral measures. Furthermore, the discovery of and access to MGRs depends on scientific research and shared technologies, and therefore requires coordination and collaboration between scientific institutions, both at the national and regional level. The establishment of a scientific knowledge base will also be important to build capacity and provide the necessary impetus for transfer of marine technology in the regions.

[347] In the Southwest Atlantic, Spain, the only State known to conduct significant bottom fishing activities, published a list of authorised vessels and, in the absence of a RFMO for the region, unilaterally declared nine areas closed to bottom fishing by its vessels in July 2011 and restricted its bottom fishing footprint to two areas already fished for 25 years (see European Union, 'EU Report on the Implementation of Measures Pertaining to the Protection of Vulnerable Marine Ecosystems from the Impact of Bottom Fishing on the High Seas in UNGA Resolution 61/105 of 2006 and UNGA Resolution 64/72of 2010' (2010) at p. 6, available at https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/20110520_report_en.pdf). In New Zealand, the Government worked in consultation with industry, environmental NGOs and government departments to implement closures in its footprint area in advance of measures being formally taken by the competent RFMO for the region (See New Zealand Government, 'Report on New Zealand's Implementation of Operative Paragraphs 80 and 83–90 of Resolution 61/105' at pp. 7–12, available at http://www.un.org/depts/los/general_assembly/contributions_fisheries/new_zealand.pdf).

[348] See: Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415; Durussel, C., Soto Oyarzún, E., Urrutia S., O. (2017): Strengthening the legal and institutional framework of the Southeast pacific: Focus on the BBNJ package elements. – International journal of marine and coastal law, 32, 4, p. 635-671.DOI: http://doi.org/10.1163/15718085-12324051.

For instance, in the Southeast Pacific, several national scientific institutions and programmes undertake marine scientific research on marine resources related to seamounts, hydrothermal vents, trenches and ridges in areas within national jurisdiction. Ensuring the collaboration and exchange between these national institutions and programmes and establishing linkages across the region, will be beneficial to share important information regarding these resources, both for their sustainable and equitable use and also for their conservation.

Building coalitions

Coastal States could form coalitions to promote mutual interest in specific BBNJ-related issues within existing processes and in the negotiations for a new global BBNJ agreement. Such a coalition-based approach has been taken, for example, for the Sargasso Sea, where a coalition of States, international organisations and NGOs, is working towards protecting this ecologically sensitive ecosystem.

In the Southeast Atlantic, for example, States could build a coalition towards a high-level political declaration on IUU fishing and request that the competent RFMOs with a mandate to work in ABNJ of the Southeast Atlantic takes further actions towards tackling this issue. Angola, Namibia and South Africa, as Parties to SEAFO, could seek to improve the efficacy of fishery closures and other rules in the Convention area, as not all areas that are known to contain VMEs have been protected and the SEAFO Commission does not always follow the advice of its Scientific Committee.[349]

Championing a strong new international agreement

The negotiation of a new international legally binding agreement for BBNJ is an important opportunity to build on the provisions of UNCLOS and other global and regional instruments to promote an integrated, coherent and consistent approach to governance of ABNJ and support improved cross-sectoral cooperation also at the regional level. States could therefore seek to champion the adoption of a strong agreement that can enhance regional efforts by providing:[350]

- Overarching governance and environmental principles to guide decision-making;
- Global biodiversity conservation objectives, targets and obligations;[351]
- Rules and standards for practices and procedures to ensure that the impacts of human activities are assessed effectively and transparently;
- Rigorous requirements for ecosystem-based management, protection of marine biodiversity, and transparency; and
- For the establishment or strengthening of regional integration mechanisms.

In order to help inform and coordinate States positions for the negotiations of a future BBNJ agreement, States in the two regions could establish a platform or mechanism for regular exchange and discussion on e.g. biodiversity and climate-induced changes or on MGR issues within the two regions. States could further use the UN negotiations as an opportunity to encourage all States to take part in relevant global and regional agreements and to recognise and respect regional policies and management measures adopted in the two regions.

[349] Gianni, M., Fuller, S.D., Currie, D.E.J., K., Goldsworthy, L., Pike, B., Weeber, and Owen, S., Friedman, 'How Much Longer Will It Take? A Ten-Year Review of the Implementation of United Nations General Assembly Resolutions 61/105, 64/72 and 66/68 on the Management of Bottom Fisheries in Areas beyond National Jurisdiction'. In particular, they could contribute to strengthen the application of EIAs and ensure that all seamount areas and other identified VME areas are closed to bottom fishing by all gear types.

[350] Gjerde, K., Boteler, B., Durussel, C., Rochette, J., Unger, S., Wright, G., 'Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction: Options for Underpinning a Strong Global BBNJ Agreement through Regional and Sectoral Governance', STRONG High Seas Project, 2018.

[351] E.g. Building on relevant provisions found in UNFSA and CBD, such obligations might include minimising impacts, developing biodiversity strategies and actions plans and adopting proactive and precautionary protective measures through ABMTs including protected areas, EIAs and other measures.

Annex I – VI

Annex I: Selected Agreements Relevant to the Conservation and Sustainable Use of BBNJ

Short name	Name	Year of Adoption	Entry into Force
UNCLOS	United Nations Convention on the Law of the Sea	1982	1994
Part XI Agreement	Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982	1994	1996
UNFSA	United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	1995	2001
FAO Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas	1993	2003
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing	2009	2016
MARPOL (Annexes I–V)	International Convention for the Prevention of Pollution from Ships	1973	1983
MARPOL Protocol (Annex VI)	Protocol to the International Convention for the Prevention of Pollution from Ships	1997, amended 2008	2005 & 2010 (amendment)
London Convention	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter	1972, amended 1993	1975
London Protocol	Protocol on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter	1996, amended 2006	2006
BWM Convention	International Convention for the Control and Management of Ships' Ballast Water and Sediments	2004	2017
ICRW	International Convention for the Regulation of Whaling	1946	1948
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora	1973	1975
CMS	Convention on the Conservation of Migratory Species of Wild Animals	1979	1983
CBD	Convention on Biological Diversity	1992	1993
ACAP	Agreement on the Conservation of Albatrosses and Petrels	2001	2004

Annex II: Key Regional Organisations of the Southeast Atlantic with an ABNJ Mandate

International Commission for the Conservation of Atlantic Tunas (ICCAT)

ICCAT is an inter-governmental organisation responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas, covering approximately 30 species. Currently, there are 52 Contracting Parties participating in ICCAT, which can be joined by any government that is a member of the United Nations (UN), any specialized UN agency, or any inter-governmental economic integration organisation constituted by States that have transferred to it competence over the matters governed by the ICCAT Convention. One of its key functions is to compile fishery statistics from its members and from all entities fishing for the species it covers in the Atlantic Ocean. Further, ICCAT coordinates research on behalf of its members, including stock assessments, develops scientific-based management advice, provides a mechanism for Contracting Parties to agree on management measures, and produces relevant publications. Based on these assessments each year, the Commission proposes conservation and management measures aimed at maintaining target stocks at levels that permit the maximum sustainable catch for food and other purposes.[352]

South East Atlantic Fisheries Organisation (SEAFO)

SEAFO aims to ensure the long-term conservation and sustainable use of all living marine resources in the South East Atlantic Ocean, and to safeguard the environment and marine ecosystems in which the resources occur. Fish species of economic importance in the Convention Area include sedentary or discrete as well as straddling species such as alfonsino, orange roughy, oreo dories, armourhead, sharks, Patagonian toothfish and red crab. The inclusion of discrete high seas stocks takes the SEAFO Convention beyond the scope of the UNFSA. The Convention Area covers a sizeable part of the high seas of the South East Atlantic Ocean. The Convention was signed in April 2001 in Windhoek by Angola, the European Community, Iceland, Namibia, Norway, Republic of Korea, South Africa, United Kingdom (on behalf of St. Helena and its dependencies of Tristan da Cunha and Ascension Islands) and the United States of America. It entered into force on April 2003. SEAFO adheres to an ecosystem and precautionary approach to fisheries management when deciding on management and conservation measures. The Commission adopts resolutions and recommendations based on scientific advice from the Scientific Committee and MCS advice from the Compliance Committee. The Commission meets annually to agree on new management and conservation measures, and to set a total allowable catch (TACs) for each commercially viable species for the subsequent year. It is the responsibility of each SEAFO Contracting Party to ensure that regulations are adhered to by vessels of their flag State Contracting Party. Contracting Parties are obligated to ensure that legal proceedings are taken to mitigate infringements of SEAFOs conservation and enforcement regulations.[353]

Fishery Committee for the Eastern Central Atlantic (CECAF)

CECAF was established in 1967, by Resolution 1/48 adopted by the FAO Council. As a body created under Article VI (2), of the FAO constitution, CECAF has only an advisory mandate. In spite of this, CECAF has, throughout its history, not only studied the fisheries and the fished stocks in its area of competence but has also formu-

[152] Source: https://www.iccat.int/en/contracting.html (accessed: September 2018).
[153] Source: http://www.seafo.org/About (accessed: September 2018).

lated and recommended specific management measures to be implemented by its members. The Secretariat is provided by the FAO Regional Office for Africa, based in Accra, Ghana. The Convention applies to the Eastern Central Atlantic between Cape Spartel and the Congo River, covering both waters under national jurisdiction and high seas. CECAF is composed of a Committee and a scientific sub-committee (SSC) that should meet alternately every two years. The SSC is supported by several ad-hoc working groups, supported through extra-budgetary funding. Although technical working groups have continued to meet in recent years, the Committee and SSC have not met since 2011 due to budgetary and institutional constraints. Despite its current institutional problems, throughout history CECAF has played an important role in regional cooperation and capacity development for fisheries management in the West African region, providing notably catch statistics though FAO, advice on the state of stocks and fisheries and harmonised management measures.

Annex III: Membership and Treaty Ratification of Southeast Atlantic Coastal States[354]

	Angola	Benin	Cape Verde	Cameroon	Dem. Rep. Congo	Republic of Congo	Côte d'Ivoire	Equatorial Guinea	Gabon	Gambia	Ghana
International Organisations[351]											
FAO	1977	1961	1975	1960	1961	1961	1961	1981	1961	1965	1957
IOC	1982	1986	1984	1973	2010	1962	1961		1977	1985	
IMO	1977	1980	1976	1961	1973	1975	1960	1972	1976	1979	1959
ISA											
IWC		2002		2005		2008	2004		2002	2005	
UN Environment	2005										
International Agreements[356]											
ACAP											
BWM						2007					2017
CBD	1998	1994	1995	1994	1994	1996	1994	1994	1997	1994	1994
CITES	2013	1984	2005	1981	1976	1983	1994	1992	1989	1977	1975
CMS	2006	1986	2006	1983	1990	2000	2003	2010	2008	2001	1988
CMS Sharks MoU	Range State	2017	Range State	Range State	Range State	2010	2017	Range State	Range State	Range State	2010
FAO Compliance Agreement	2006	1999	2006								2003
ICRW		2002		2005		2008	2004		2002	2005	
London Convention		2011	1977				1987	2004	1982		
London Protocol	2006					2014					2010
MARPOL Ann. I–V	2002	2000	2003	2009		2014	1988	1996	1983	1992	1991
MARPOL Protocol Ann. VI		2007				2015					2011
Part XI	2010	1997	2008	2002		2008	1994	1997	1998		2016
PSMA	2009	2010	2016						2010	2016	2016
UNCLOS	1990	1997	1987	1985	1989	2008	1984	1997	1998	1984	1983
UNFSA		2017					1996		1996		2017
Regional Organisations[357]											
Abidjan Convention											
ATLAFCO											
CCSBT											
CECAF											
COREP	Obs.										
FCWC											
ICCAT	1976		1979				1972	1987	1977		1968
SEAFO	2006										
SRFC											
Benguela Current Commission											

[354] Legend: green dot: ratification or member State; yellow dot: signed but not ratified; red dot: not signed/ratified or not member State; blank: no data available.

[355] Sources: http://www.ioc-unesco.org/index.php?option=com_oe&task=viewDocumentRecord&docID=4017 (IOC); http://www.fao.org/legal/home/membership-of-fao/en/ (FAO); http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/IMO%20MEMBERSHIP.pdf (IMO); https://www.isa.org.jm/member-states (ISA); https://iwc.int/members (IWC); https://wedocs.unep.org/bitstream/handle/20.500.11822/26598/CPR%20directorynew.pdf?sequence=1&isAllowed=y (UN Environment). All accessed: September 2018.

	Guinea	Guinea-Bissau	Liberia	Mauritania	Namibia	Nigeria	Senegal	Sao Tome e Principe	Sierra Leone	South Africa	Togo
International Organisations[351]											
FAO	1959	1973	1945	1961	1977	1960	1961	1977	1961	1993	1960
IOC	1982	1984			2001	1973	1969		1974	1969	1975
IMO	1975	1977	1959	1961	1994	1962	1960	1990	1973	1995	1983
ISA											
IWC	2000	2007		2003			1982	2018		1948	2005
UN Environment											
International Agreements[356]											
ACAP										2003	
BWM			2017			2017				2017	2018
CBD	1993	1995	2000	1996	1997	1994	1994	1999	2017	1995	1995
CITES	1981	1990	1981	1998	1990	1974	1977	2001	1994	1975	1978
CMS	1993	1995	2004	1998		1987	1988	2001	1994	1991	1996
CMS Sharks MoU	2010	Range State	2010	2014	Range State	Range State	2010	Range State	Range State	2011	2010
FAO Compliance Agreement					1998		2009				
ICRW	2000	2007		2003			1982	2018		1948	2005
London Convention						1996			2008	1978	
London Protocol						2010			2008	2006	
MARPOL Ann. I–V	2003	2017	1983	1998	2003	2002	1997	1998	2001	1985	
MARPOL Protocol Ann. VI			2005			2015			2008	2015	
Part XI	1995		2008	1996	1995	1995	1995	1987	1994	1997	1995
PSMA	2016			2017	2017		2017	2016	2018	2016	2016
UNCLOS	1985	1986	2008	1996	1983	1986	1984	1987	1994	1997	1985
UNFSA	2005	1995	2005	1995	1998	2009	1997			2003	
Regional Organisations[357]											
Abidjan Convention											
ATLAFCO											
CCSBT										2016	
CECAF											
COREP											
FCWC											
ICCAT	1991	2016	2014	2008	1999	2007	2004	1983		1997	
SEAFO					2002					2008	
SRFC											
Benguela Current Commission											

[356] Sources: http://www.acap.aq/en/resources/parties-to-acap (ACAP); http://www.cbd.int/information/parties.shtml (CBD); http://www.cites.org/eng/disc/parties/chronolo.php (CITES); http://www.cms.int/en/parties-range-states (CMS); http://www.cms.int/en/legalinstrument/sharks (CMS MoU Sharkes); http://www.fao.org/fileadmin/user_upload/legal/docs/012s-e.pdf (FAO Compliance Agreement); http://www.fao.org/port-state-measures/background/parties-psma/en/ (PSMA); https://iwc.int/members (ICRW); http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202018.pdf#%5B%7B%22num%22%3A522%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C69%2C778%2C0%5D and www.imo.org/en/About/Conventions/StatusOfConventions/Documents/status-x.xlsx (IMO treaties); http://www.un.org/Depts/los/reference_files/status2018.pdf (UNCLOS, UNFSA & Part XI). All accessed: September 2018.

[357] Sources: https://abidjanconvention.org/index.php?option=com_content&view=article&id=91&Itemid=191&lang=en (Abidjan Convention); http://www.comhafat.org/en/etats-membres.php (ATLAFCO); http://www.benguelacc.org/index.php/en/about/the-countries-of-the-bclme (Benguela Current Commission); https://www.ccsbt.org/en/content/origins-convention (CCSBT); http://www.fao.org/fishery/rfb/cecaf/en (CECAF); http://www.corep-se.org/pays-membres/ (COREP); https://www.fcwc-fish.org/about-us/member-countries.html (FCWC); https://www.iccat.int/en/contracting.html (ICCAT); http://www.seafo.org/About/Contracting-Parties (SEAFO); http://www.fao.org/fishery/rfb/srfc/en (SRFC). All accessed: September 2018. Note: Namibia has not ratified MARPOL Annex IV..

Annex IV: Key Regional Organisations of the Southeast Pacific with an ABNJ Mandate

Inter-American Tropical Tuna Commission (IATTC)

The IATTC has the mandate to 'ensure the long-term conservation and sustainable use of fish stocks covered by [the 2003 Antigua Convention]',[358] namely tuna and tuna-like species as well as other fish species caught by fishing vessels in the Eastern Pacific.[359] Its main focus are on tropical tuna species (yellowfin, bigeye, skipjack) as well as Pacific bluefin tuna and North Pacific albacore, and it has adopted resolutions on bycatch species such as sharks, mobulid rays and sea turtles. IATTC also serves as the Secretariat for the Agreement on the International Dolphin Conservation Program (AIDCP), which was established by the 1999 *Agreement for the Conservation of Dolphins* and aims to reduce and eliminate incidental dolphin mortalities in its tuna purse-seine fishery through the establishment of annual limits and by developing dolphin-safe ways of capturing yellowfin tunas.[360] IATTC was first established in 1949 by the *Convention for the Establishment of an Inter-American Tropical Tuna Commission*, which makes it the first established RFMO.[361] The IATTC 1949 Convention was updated in 2003 by the Antigua Convention, which now incorporates more modern conservation principles and provisions adopted during the 1990s and early 2000s in declarations and agreements.[362] The geographical scope of the IATTC covers the whole of the Eastern Pacific Ocean, which includes both the high seas and the national jurisdiction of its member States. Although the Antigua Convention cannot undermine the sovereignty and sovereign rights of its member States under UNCLOS, these States have the duty to ensure that the conservation and management measures established on the high seas and the measures established in areas within national jurisdiction be compatible, as underscored by article 64 of UNCLOS and article 7 of UNFSA.[363] The IATTC has 21 member States and five cooperating non-member States.[364] Its Commission is responsible for coordinating scientific research on fish stocks in the Convention Area, adopting data standards, and adopting consensus-based management, compliance, and enforcement measures that are legally binding on its mem-

[358] Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Washington, DC, 27 June 2003, in force 27 August 2010) ('IATTC Antigua Convention'), Arts. II. Available at https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/Antigua_Convention_Jun_2003.pdf (accessed: 21.05.2018).

[359] Antigua Convention, Art. I.

[360] The 1999 Agreement for the Conservation of Dolphins replaces the La Jolla Agreement for the Reduction of Dolphin Mortality in the Eastern Pacific Ocean, opened for signature 21 April 1992 (entered into force 21 April 1992). The 1999 Agreement is legally binding on the 14 States that have ratified it: Belize, Colombia, Costa Rica, Ecuador, El Salvador, European Union, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, USA and Venezuela. Bolivia and Vanuatu have agreed to provisionally apply its provisions.

[361] Convention for the Establishment of an Interamerican Tropical Tuna Commission, opened for signature 31 May 1949 (entered into force 3 March 1950) ('IATTC 1949 Convention').

[362] This includes provisions from the 1992 Agenda 21 and Rio Declaration, the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), the 1995 Code of Conduct and UNFSA as well as the 2002 Johannesburg Plan of Implementation (JPOI) agreed at the World Summit on Sustainable Development (WSSD).

[363] Antigua Convention, Art. V.

[364] Member States of IATTC are: Belize, Canada, China, Colombia, Costa Rica, Ecuador, El Salvador, European Union, France, Guatemala, Japan, Kiribati, Korea, Mexico, Nicaragua, Panama, Peru, Chinese Taipei, USA, Vanuatu and Venezuela. The cooperating non-member States are: Bolivia, Chile, Honduras, Indonesia and Liberia.

ber States.[365] The IATTC is further composed of a Committee for the Review of Implementation of Measures Adopted by the Commission as well as a Scientific Advisory Committee, who both have an advisory mandate towards the Commission.[366]

South Pacific Regional Fisheries Management Organisation (SPRFMO)

SPRFMO was established by the 2009 Convention on the *Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* with the objective 'to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur' through the application of the precautionary and ecosystem approaches.[367] Fishery resources included under the SPRFMO Convention are all marine living resources, including molluscs and crustaceans, but excluding sedentary, anadromous, catadromous, and highly migratory species as well as marine mammals, marine reptiles and seabirds.[368] To date, SPRFMO has mainly focused on the overexploited Chilean jack mackerel. SPRFMO's jurisdictional mandate is limited to the high seas of the South Pacific Ocean and its member States have the duty to ensure, through cooperation, that conservation and management measures adopted for the high seas and established within national jurisdiction be compatible to ensure the long-term conservation of straddling fish stocks, consistently with UNCLOS and UNFSA.[369] SPRFMO has 15 member States and four cooperating non-member States.[370] Its Commission adopts legally binding conservation, management, monitoring and compliance measures that need to be taken by consensus or, in cases when all efforts have been exhausted, by a majority for questions of procedure and by a three-fourths majority for questions of substance.[371] SPRFMO is furthermore composed of a Scientific Committee in charge of undertaking the stock assessment and providing scientific advice; a Compliance and Technical Committee, which monitors States' implementation of and compliance with SPRFMO's adopted measures; an Eastern and a Western Sub-regional Management Committee, with an advisory role to recommend appropriate conservation and management measures and recommendations for the determination of States' participation in the fisheries of the Convention Area; and a Finance and an Administration Committee.[372] It can establish further subsidiary bodies as necessary to undertake its work.[373]

Comisión Permanente del Pacífico Sur (CPPS)

Known in English as the Permanent Commission for the South Pacific, this intergovernmental organisation is a strategic regional alliance between the countries of Colombia, Ecuador, Peru, and Chile that was established in 1952 by the *Convention on the Organisation of the Permanent Commission of the Conference on the*

[365] Antigua Convention, Art. VII and IX.

[366] Antigua Convention, Art. X and XI.

[367] *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean*, opened for signature 14 November 2009, ATS 28 (entered into force 24 August 2012) corrected in 2010 ('SPRFMO Convention'), Art. 2.

[368] SPRFMO Convention, Art. 1.

[369] SPRFMO Convention, Art. 4 and 5.

[370] Member States of SPRFMO are: Australia, China, Cuba, European Union, Republic of Korea, Peru, Chinese Taipei, Vanuatu, Chile, Cook Islands, Ecuador, Denmark for the Faroe Islands, New Zealand, Russia, and USA. The cooperating non-member States are: Colombia, Curaçao, Liberia, Panama.

[371] SPRFMO Convention, Art. 16.

[372] SPRFMO Convention, Art. 6, 10, 11, 12, and 13.

[373] A SPRFMO Convention, Art. 9.

Use and Conservation of the Marine Resources of the South Pacific,[374] signed by Chile, Ecuador and Peru at the First Conference on the Use and Conservation of the Marine Resources of the South Pacific, and later joined by Colombia in 1979. CPPS's mission is to coordinate and promote the marine policies of its member States for the conservation and sustainable use of marine resources and the marine environment to ensure the benefit for its people of integrated and sustainable development.[375] Particularly, its strategic objectives are to: a) coordinate the marine policies of its member States with a view to promote the adoption of regional marine policies for the conservation and sustainable use of marine living and non-living resources; b) promote and support scientific research on the marine environment, its biological resources, the climate and on socio-economic issues; c) foster activities and policy coordination mechanisms to prevent, reduce and control marine pollution, thereby ensuring the adequate management of marine resources; d) establish the necessary mechanisms to allow and guarantee access to the knowledge generated by CPPS to society as a whole.[376] CPPS is also the Executive Secretariat of the Southeast Pacific regional seas programme established through the 1981 *Convention for the Protection of the Marine Environment and Coastal Area of the Southeast Pacific*, which promotes policy coordination mechanisms between its member States to prevent, reduce, and control marine pollution and to develop and manage marine and coastal protected areas.[377] Panama is also a member of this regional seas programme. CPPS' jurisdictional mandate includes both the national waters of its member States as well as in some cases the adjacent high seas areas of the Southeast Pacific, although the extent and scope of this competence is not clearly legally defined or outlined. Article 4 of the 2013 CPPS Statute states that CPPS has the competence to promote the conservation of marine living resources within the national jurisdiction of its member States and beyond, focusing especially on straddling and highly migratory fish stocks;[378] to foster active participation of its member States in

[374] *Convenio sobre Organización de la Comisión Permanente de la Conferencia sobre Explotación y Conservación de las Riquezas Marítimas del Pacífico Sur* [Convention on the Organisation of the Permanent Commission of the Conference on Exploitation and Conservation of Marine Resources of the South Pacific], opened for signature 18 August 1952 (entered into force 6 May 1955) ('CPPS Organisation Convention'). Available at http://cpps.dyndns.info/consulta/documentos/legal/convenios/conf_explot_riquezas_pacif_sur_1952.pdf (accessed: 21.05.2018).

[375] CPPS mission: http://www.cpps-int.org/index.php/home/mision-vision-y-objetivos (accessed: 21.05.2018).

[376] *Reglamento de la Comisión Permanente del Pacífico Sur Personal Internacional de la CPPS* [Rules of the Permanent Commission for the South Pacific CPPS] (2013) ('CPPS Reglamento'), Art 3. See also *Estatuto sobre Competencias y Estructura de la Comisión Permanente del Pacífico Sur* [Statute on Competency and Structure of the Permanent Commission for the South Pacific] (2013) ('CPPS Estatuto'), Art. 4b, 4j, 4k, 4l.

[377] *Convenio para la Protección del Medio Marino y la Zona Costera del Pacífico Sudeste* [Convention for the Protection of the Marine Environment and Coastal Area of the Southeast Pacific], opened for signature 12 November 1981 (entered into force 19 May 1986) ('CPPS Marine Environmental Protection Convention'), Art. 13. Available at http://cpps.dyndns.info/consulta/documentos/legal/convenios/CONVENIO%20PARA%20LA%20PROTECCION%20DEL%20MEDIO%20AMBIENTE%20Y%20ZONA%20COSTERA%20DEL%20PS/TEXTO%20DEL%20CONVENIO.pdf.
Project GloBallast, with the financial and technical support of IMO, aims at helping developing countries to reduce the transfer of invasive species through ballast waters. CPPS also has a programme to coordinate the studies, monitoring and control of marine pollution in the Southeast Pacific (CONPACSE III) and a regional programme for the integral management of marine waste in the Southeast Pacific. See also: *Plan de Acción para la Protección del Medio Marino y Áreas Costeras del Pacífico Sudeste* [Plan of Action for the Protection of the Marine Environment and Coastal Areas of the Southeast Pacific] (2013); *CPPS Marine Environmental Protection Convention; Acuerdo sobre la Cooperación Regional para el Combate contra la Contaminación del Pacífico Sudeste por Hidrocarburos y otras Sustancias Nocivas en Casos de Emergencia* [Agreement on Regional Cooperation in Combating Pollution of the Southeast Pacific by Hydrocarbons or other Harmful Substances in Cases of Emergency], opened for signature 12 November 1981 (entered into force 7 February 1988); Protocolo para la Protección del Pacífico Sudeste contra la Contaminación Proveniente de Fuentes Terrestres [Protocol for the Protection of Southeast Pacific against Pollution from Land-Based Sources], opened for signature 22 July 1983 (entered into force 23 September 1986); *Protocolo para la Conservación y Administracion de las Áreas Marinas y Costeras Protegidas del Pacífico Sudeste* [Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the Southeast Pacific], opened for signature 21 September 1989 (entered into force 24 January 1995); *Protocolo para la Protección del Pacífico Sudeste contra la Contaminación Radiactiva* [Protocol for the Protection of the Southeast Pacific against Radioactive Pollution], opened for signature 21 September 1989 (entered into force 24 January 1995); *Plan de Acción para la Conservación de los Mamíferos Marinos del Pacífico Sudeste* [Plan of Action for the Conservation of Marine Mammals in the Southeast Pacific] (1991).

[378] CPPS Estatuto, Art 4a.

the exploration and exploitation of non-living resources in ABNJ;[379] and to promote a holistic assessment of the natural resources and fisheries of the Southeast Pacific with a view to its economic development and sustainable use.[380] Under the 1981 Lima Convention, its jurisdiction extends to adjacent high seas areas affected by marine and coastal pollution.[381] The 2012 Galapagos Commitment emphasises CPPS' member States' interest in ABNJ. In this Commitment, States committed to promote coordinated action in the Southeast Pacific 'regarding their interests in living and non-living resources in ABNJ'.[382] The CPPS Assembly is responsible for the development of policies, plans and programmes and the management of the other organs while the Executive Committee ensures the fulfilment of decisions taken by the Assembly and is responsible for managing the work of the Working Groups.[383] Decisions taken by the CPPS Assembly or the Executive Committee are by consensus and all non-disputed adopted resolutions are legally binding on its member States.[384] Furthermore, the CPPS National Sections serve as coordination bodies between the national institutions the CPPS member States and the CPPS Secretariat to ensure the fulfilment of its work at the national level.[385] Work under the CPPS is carried out by the Working Groups as well as the General Secretary, composed of the department for international marine policy and legal affairs, the department of scientific affairs and fishery resources, and the department for the plan of action for the protection of the marine and coastal environments of the Southeast Pacific.[386]

[379] CPPS Estatuto, Art 4d.

[380] CPPS Estatuto, Art 4i.

[381] *CPPS Estatuto, Art 4i.*

[382] CPPS, Compromiso de Galápagos para el Siglo XXI, VII Reunión de Ministros de Relaciones Exteriores de la Comisión Permanente del Pacifico Sur (Galápagos, 17 de agosto de 2012) *('CPPS Compromiso de Galápagos')*, Art. VIII.20; http://cpps.dyndns.info/cpps-docs-web/planaccion/docs2016/Mayo/compromiso-galapagos-siglo21.pdf (accessed: 21.05.2018).

[383] CPPS Estatuto, Art 8, 10, 15, and 19.

[384] CPPS Estatuto, Art 9 and 18. CPPS Organisation Convention art 4.

[385] CPPS Estatuto, Art 20 and 23.

[386] CPPS Estatuto, Art. 25, 26 and 27.

Annex V: Membership and Treaty Ratification of Southeast Pacific Coastal States[387]

	Chile	Colombia	Ecuador	Peru
International Organisations[388]				
FAO	1946	1945	1945	1952
IOC		1969		1967
IMO	1972	1974	1956	1968
ISA				1979
IWC	1979	2011	2007	2007
UN Environment				
International Agreements[389]				
ACAP	2005		2003	2005
BWM				2017
CBD	1994	1995*	1993**	1993**
CITES	1975	1981	1975	1975
CMS	1983		2004	1997
CMS Sharks MoU	2011	2013	2017	range state

*also Cartagena Protocol **also Cartagena & Nagoya Protocols

[387] Table updated from Durussel (2015): Durussel, Carole Claire, Challenges in the conservation of high seas biodiversity in the Southeast Pacific, Doctor of Philosophy thesis, Australian National Centre for Ocean Resources and Security (ANCORS) – Faculty of Law, Humanities and the Arts, University of Wollongong, 2015. http://ro.uow.edu.au/theses/4415. Legend: green dot: ratification or member State; yellow dot: signed but not ratified; red dot: not signed/ratified or not member State; blank: no data available.

[388] Sources: http://www.ioc-unesco.org/index.php?option=com_oe&task=viewDocumentRecord&docID=4017 (IOC); http://www.fao.org/legal/home/membership-of-fao/en/ (FAO); http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/IMO%20MEMBERSHIP.pdf (IMO); https://www.isa.org.jm/member-states (ISA); https://iwc.int/members (IWC); https://wedocs.unep.org/bitstream/handle/20.500.11822/26598/CPR%20directorynew.pdf?sequence=1&isAllowed=y (UN Environment). All accessed: September 2018.

[389] *Sources: http://www.acap.aq/en/resources/parties-to-acap (ACAP); http://www.cbd.int/information/parties.shtml (CBD); http://www.cites.org/eng/disc/parties/chronolo.php (CITES); http://www.cms.int/en/parties-range-states (CMS); http://www.cms.int/en/legalinstrument/sharks (CMS MoU Sharkes); http://www.fao.org/fileadmin/user_upload/legal/docs/012s-e.pdf (FAO Compliance Agreement); http://www.fao.org/port-state-measures/background/parties-psma/en/ (PSMA); https://iwc.int/members (ICRW); http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202018.pdf#%5B%7B%22num%22%3A522%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C69%2C778%2C0%5D and www.imo.org/en/About/Conventions/StatusOfConventions/Documents/status-x.xlsx (IMO treaties); http://www.un.org/Depts/los/reference_files/status2018.pdf (UNCLOS, UNFSA & Part XI). All accessed: September 2018.*

	Chile	Colombia	Ecuador	Peru
FAO Compliance Agreement	2004			2001
ICRW	1979	2011	2007	1979
London Convention	1977			2003
London Protocol	2011			
MARPOL Ann. I–V	1995	1983	1990	1983
MARPOL Protocol Ann. VI	2007			2014
Part XI	1997		2012	
PSMA	2012			2017
UNCLOS	1997	1982	2012	
UNFSA	2016		2016	
Regional Organisations[390]				
CPPS	1952	1979	1952	1952
IATTC	***			
SPRFMO		***		

***cooperating non-member

[390] Sources: http://www.cpps-int.org/index.php/home/estados-miembros (CPPS); https://www.iattc.org/HomeENG.htm (IATTC); https://www.sprfmo.int/ (SPRFMO). All accessed: September 2018.

Annex VI: Membership of RFMOs Covering the Southeast Atlantic and Southeast Pacific Regions[391]

	CCSBT	IATTC	ICCAT	SEAFO	SPRFMO
Albania	●	●	●	●	●
Algeria	●	●	●	●	●
Angola	●	●	●	●	●
Australia	●	●	●	●	●
Barbados	●	●	●	●	●
Belize	●	●	●	●	●
Brazil	●	●	●	●	●
Canada	●	●	●	●	●
Cabo Verde	●	●	●	●	●
Chile	●	●	●	●	●
China	●	●	●	●	●
Colombia	●	●	●	●	●
Cook Islands	●	●	●	●	●
Costa Rica	●	●	●	●	●
Croatia	●	●	●	●	●
Cuba	●	●	●	●	●
Denmark	●	●	●	●	●
Ecuador	●	●	●	●	●
Egypt	●	●	●	●	●
El Salvador	●	●	●	●	●
Equatorial Guinea	●	●	●	●	●
EU	●	●	●	●	●
France	●	●	●	●	●
Gabon	●	●	●	●	●

[391] Sources: https://www.ccsbt.org/; https://www.iattc.org/HomeENG.htm; https://www.iccat.int/en/contracting.html; http://www.seafo.org/About/Contracting-Parties; https://www.sprfmo.int/ (accessed: December 2018).

	CCSBT	IATTC	ICCAT	SEAFO	SPRFMO
Ghana	●	●	●	●	●
Grenada	●	●	●	●	●
Guatemala	●	●	●	●	●
Guinea	●	●	●	●	●
Guinea Bissau	●	●	●	●	●
Honduras	●	●	●	●	●
Iceland	●	●	●	●	●
Indonesia	●	●	●	●	●
Japan	●	●	●	●	●
Jordan	●	●	●	●	●
Kazakhstan	●	●	●	●	●
Kenya	●	●	●	●	●
Kiribati	●	●	●	●	●
Liberia	●	●	●	●	●
Libya	●	●	●	●	●
Mauritania	●	●	●	●	●
Mexico	●	●	●	●	●
Morocco	●	●	●	●	●
Namibia	●	●	●	●	●
New Zealand	●	●	●	●	●
Nicaragua	●	●	●	●	●
Niger	●	●	●	●	●
Nigeria	●	●	●	●	●
Norway	●	●	●	●	●
Panama	●	●	●	●	●
Peru	●	●	●	●	●

	CCSBT	IATTC	ICCAT	SEAFO	SPRFMO
Philippines	🔴	🔴	🟢	🔴	🔴
Russian Federation	🔴	🔴	🟢	🔴	🟢
St Vincent & the Grenadines	🔴	🔴	🟢	🔴	🔴
Sao Tome & Principe	🔴	🔴	🟢	🔴	🔴
Senegal	🔴	🔴	🟢	🔴	🔴
Sierra Leone	🔴	🔴	🟢	🔴	🔴
South Africa	🟢	🔴	🟢	🔴	🔴
[South] Korea (Republic of)	🟢	🟢	🟢	🟢	🟢
Syrian Arab Republic	🔴	🔴	🟢	🔴	🔴
Taiwan (Chinese Taipei)	🟢	🟢		🔴	🔴
Trinidad and Tobago	🔴	🔴	🟢	🔴	🔴
Tunisia	🔴	🔴	🟢	🔴	🔴
Turkey	🔴	🔴	🟢	🔴	🔴
United Kingdom of Great Britain & Northern Ireland	🔴	🔴	🟢	🔴	🔴
United States of America	🔴	🟢	🟢	🔴	🟢
Uruguay	🔴	🔴	🟢	🔴	🔴
Vanuatu	🔴	🟢	🟢	🔴	🟢
Venezuela (Bolivarian Republic of)	🔴	🟢	🟢	🔴	🔴

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ViSdP

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About the STRONG High Seas project

The STRONG High Seas project is a five-year project that aims to strengthen regional ocean governance for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. Working with the Secretariat of the Comisión Permanente del Pacífico Sur (CPPS; Permanent Commission for the South Pacific) and the Secretariat of the West and Central Africa Regional Seas Programme (Abidjan Convention), the project will develop and propose targeted measures to support the coordinated development of integrated and ecosystem-based management approaches for ocean governance in areas beyond national jurisdiction. In this project, we carry out transdisciplinary scientific assessments to provide decision-makers, both in the target regions and globally, with improved knowledge and understanding on high seas biodiversity. We engage with stakeholders from governments, private sector, scientists and civil society to support the design of integrated, cross-sectoral approaches for the conservation and sustainable use of biodiversity in the Southeast Atlantic and Southeast Pacific. We then facilitate the timely delivery of these proposed approaches for potential adoption into the relevant regional policy processes. To enable an interregional exchange, we further ensure dialogue with relevant stakeholders in other marine regions. To this end, we set up a regional stakeholder platform to facilitate joint learning and develop a community of practice. Finally, we explore links and opportunities for regional governance in a new international and legally-binding instrument on marine biodiversity in the high seas.

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Implementing partners: BirdLife International, Institute for Sustainable Development and International Relations (IDDRI), International Ocean Institute (IOI), Universidad Católica del Norte, WWF Colombia, WWF Germany
Regional partners: Secretariat of the Comisión Permanente del Pacífico Sur (CPPS), Secretariat of the Abidjan Convention
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