



Area-Based Management
Tools in Marine Areas Beyond
National Jurisdiction:

Building ambition, broadening participation and planning ahead

A Report of the IUCN Workshop
entitled "Area-Based Management
Tools in Marine Areas Beyond
National Jurisdiction" (ABMTs in
ABNJ) from 8-10 October, 2019 in
Gland, Switzerland

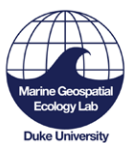


Government Offices of Sweden
Ministry of the Environment and Energy

Area-Based Management Tools in Marine Areas Beyond National Jurisdiction:

Building ambition, broadening participation and planning ahead

A REPORT OF THE IUCN WORKSHOP
8-10 OCTOBER 2019, GLAND, SWITZERLAND



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The experts attending the workshop (see Annex A) provided a considerable breadth of expertise and a wide range of perspectives and views on all aspects of area-based management tools, including marine protected areas, in areas beyond national jurisdiction. All experts spoke in their personal capacities and under the Chatham House rule. Therefore, the key reflections from the workshop contained in this report, which represent the overall reflections of the workshop, should not be taken to represent the views of any individual expert listed in Annex A. The Agenda of the workshop is at Annex B for further information.

INTRODUCTION

This report highlights the results of the workshop entitled “Area-Based Management Tools in Marine Areas Beyond National Jurisdiction” (ABMTs in ABNJ) that took place from 8-10 October 2019 at IUCN headquarters in Gland, Switzerland. This was the third of a series of capacity building workshops to inform the on-going UN BBNJ negotiations with the support of the Government of France.

Building ambition, broadening participation and planning ahead were the three framing concepts introduced at the outset by the workshop participants as essential elements for the future of our common ocean. The purpose of the workshop was to build a shared understanding of ABMTs, and to “stress-test” the draft provisions for ABMTs including Marine Protected Areas (MPAs) in the May 2019 [President’s draft text](#)¹ of an international legally binding instrument for conservation and sustainable use of marine biodiversity in ABNJ (“BBNJ agreement” or “agreement for marine biodiversity in ABNJ”).

The President’s draft text for the BBNJ agreement was released in May 2019 to guide negotiations at the third Intergovernmental Conference (IGC) convened in August 2019 pursuant to General Assembly resolution [72/249](#). According to this resolution, the IGC is to elaborate the text of an agreement under the United Nations Convention on the Law of the Sea (UNCLOS) in a way that enhances the coherence of the current regime while not undermining relevant bodies and agreements. The negotiations are to address four elements in particular, together and as a whole: 1, marine ge-

netic resources, including sharing of benefits; 2, ABMTs including MPAs; 3, environmental impact assessments; and 4, capacity building and the transfer of marine technology. Other issues have also been discussed including general principles and approaches, institutional arrangements and dispute resolution mechanisms. This workshop focused on ABMTs (recognizing that these are not limited to MPAs) and related crosscutting issues, while recognizing the importance of addressing the other elements.

The workshop used a case study exercise based on the Sargasso Sea in the Central North Atlantic and the Costa Rica Dome in the Eastern Central Pacific to assess how the current draft text might work to secure protection for two internationally recognized significant areas. Expert presentations put the known ecological values of both places, increasing levels of human activities and accelerating impacts of ocean warming, deoxygenation and ocean acidification in the forefront of the participants’ minds as they worked their way through a hypothetical MPA proposal based on the President’s draft text. To further ground the discussion, other experts reviewed the challenges within existing institutions of advancing towards ecosystem-based management, opportunities presented by new tools and technologies that could enable managers to better respond to changes in near-real time, and experiences in promoting cross-sectoral area-based planning.

The workshop presentations, discussions and breakout group exercise revealed three core priorities regarding the draft ABMT provisions:

¹ A/CONF.232/2019/6 Draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction – Note by the President (advance, unedited version in English only) June 2019. Available at <https://undocs.org/en/a/conf.232/2019/6>; An updated version of the draft text was released on 18 November 2019 as A/CONF.232/2020/3. Available at: <https://undocs.org/en/a/conf.232/2020/3>

1. the need to clarify a number of central provisions, including: definitions, objectives, consultation on and assessment of proposals, management plans, decision-making, implementation, monitoring and review, as well as cross-cutting institutional arrangements;
2. the value of strengthening the central powers of the Conference of Parties to adopt MPAs and other ABMTs and implement protection measures; and
3. the need to strengthen the scientific competence, resources and political will of sectoral organizations and other bodies to advance conservation and sustainable use of BBNJ.

At the same time, participants recognized the need to attract broad support from the States most active in the high seas while also future-proofing the agreement to confront the increasingly complex challenges of sustaining marine biodiversity in a changing ocean. Participants identified ten enabling conditions and eight specific considerations for the next round of negotiations of the draft BBNJ agreement. The observations below represent the general conclusions of the workshop but may not reflect the full agreement of all participants.

TEN ENABLING CONDITIONS TO FUTURE-PROOF THE BBNJ AGREEMENT

1. Recognize that the Global Ocean is a “commons” whose health is a common interest of all humanity. Given the double crisis of climate change and biodiversity loss, the BBNJ agreement should require and enable all States to act individually and collectively to safeguard marine biodiversity and enhance ocean resilience on behalf of present and future generations. Such provisions are essential to build resilience and strengthen our ability to cope with cumulative impacts despite a lack of information. The BBNJ agreement should also require the application of principles of precaution, stewardship, transparency and accountability in all aspects of management and decision-making, especially in the face of changing climatic conditions.

2. Accelerate progress in the BBNJ negotiations through greater engagement of politicians from capitals empowered to negotiate an ambitious and pragmatic agenda. It may help to focus on the many ways the BBNJ agreement could benefit the global community. For example, the BBNJ agreement could improve capacity for ecosystem-based conservation and sustainable use of BBNJ by facilitating access to science, resources and technologies, as well as providing a platform to collaborate to achieve common goals and address shared concerns.

3. Enable nimble measures to respond to a changing ocean. We will need dynamic, adaptive and creative thinking to be able to respond to

threats, activities and technologies we are not yet aware of and to maintain the ability to adopt and apply measures in a timely and effective manner. Future proofing the agreement means establishing sound principles and objectives; not foreclosing future evolution of the agreement; and avoiding inflexible processes that may inhibit innovative and precautionary responses to these threats or shifts in the composition and distribution of marine biodiversity.

4. Ensure access to data, monitoring and information, and other products of enhanced ocean sciences. The ocean is a dynamic system that is undergoing many changes due to increasing atmospheric CO₂ levels/concentrations. These changes and their implications are difficult to predict but are likely to intensify. Hence, continuous monitoring, data sharing, and assessment are essential to enable managers to incorporate and adapt to evolving human use patterns, biodiversity impacts, rates of change, and other emerging issues. Access to information about human activities at sea also needs to be facilitated to allow managers and scientists to factor in past, current and future patterns and pressures.

5. Provide necessary institutional elements that include a conference of the parties (COP), an independent scientific and technical advisory committee (STAC), and an implementation committee. A COP should be able to take decisions on the establishment and management of ABMTs

and “consider and undertake any other actions that may be required to achieve the purposes of this Convention”. A STAC comprising scientific, technical, and policy expert representatives from all States Parties and observers could build a shared knowledge base across all States Parties. This advisory body could be supplemented by expert working groups to focus on more specific issues as needed. STAC functions could include reviewing proposals for possible ABMTs, responding to requests for information, as well as developing a proactive program of work. An implementation committee could be empowered to regularly review progress and challenges of implementation, compliance and effectiveness and to recommend improvements.

6. Include dedicated measures to conserve marine biodiversity.

The BBNJ agreement should include specific obligations for States Parties to: 1) establish a well-connected network of ecologically representative MPAs dedicated to conservation of marine biodiversity; and 2) conserve ecosystem structure, function and processes and protect species and habitats across space and time using MPAs and other ABMTs. These should be accompanied by the general objective of taking measures necessary to promote a healthy, productive and resilient ocean and marine ecosystems based on an ecosystem-based approach, precautionary decision-making and adaptive management.

7. Recognize interconnectivities through ecosystem-based management.

These include vertical and horizontal connectivity in the water column, seafloor as well as air space above. Air space provides an important habitat for many marine species, from seabirds to microbes, as well as a locus for potentially harmful activities such as geoengineering and long-range air pollution. There is a need to ensure that ABMTs and

other measures under the BBNJ instrument include air space as part of the marine ecosystem, as well as to account for the transboundary connectivity of species and anthropogenic impacts when managing human activities within and beyond the national jurisdiction of States.

8. Establish clear requirements for implementing the precautionary principle.

As provided in the UN Fish Stocks Agreement (UNFSA) Article 6 (but not yet uniformly implemented or enforced), requirements for what to do when information is uncertain, unreliable or inadequate could include, for example: 1) being more cautious; 2) not using absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; 3) requiring the development of data collection and research programmes to narrow information gaps and assess impacts; 4) reviewing the ongoing efficacy of conservation and management measures; and 5) acknowledging that significant knowledge gaps exist regarding the distribution and composition of biodiversity in ABNJ.

9. Incorporate existing definitions, standards and criteria to ensure their consistent application across jurisdictions and institutions.

Key examples include: 1) use of internationally agreed definitions for MPAs and “other effective conservation measures” (OECMs) that are used to track global and national progress on MPAs (and soon also OECMs) in the World Database on Protected Areas, and 2) inclusion of the criteria to describe ecologically or biologically significant areas (EBSAs), as these criteria have already been widely applied to identify areas in need of protection, and many of these areas overlap waters under national jurisdiction and ABNJ. These definitions, standards and criteria have been developed to ensure that MPAs and OECMs actually fulfill their stated objectives, and do not become another ex-

ercise in “paper parks” that are designated but not effectively managed.

10. Strengthen existing bodies using the BBNJ agreement. Limited mandates, expertise and resources make it challenging for existing relevant bodies to adopt precautionary measures to conserve biodiversity or address cumulative stressors within or across sectors and regions. Hence,

the COP needs a strong role both in promoting implementation through other bodies and instruments and in exercising its own powers to act directly. As with the UNFSA, the BBNJ agreement could further oblige States Parties to strengthen existing institutions, including through responsive decision-making processes (UNFSA Articles 13, 14 and 28).

EIGHT CONSIDERATIONS FOR THE NEXT ROUND OF NEGOTIATIONS

Participants also crafted some recommendations on the draft text for consideration during the next round of negotiation. These considerations are based on review of the draft President's text (May 2019 version) as applied to the two case studies for the Sargasso Sea and Costa Rica Dome. To enable the BBNJ agreement to produce enhanced conservation benefits, it should:

- 1. Establish a process that delivers effectively protected MPAs in ABNJ;** provides for consistency with conservation measures within national jurisdiction; and adopts a flexible approach for the development and adoption of other ABMTs at the global, regional and sectoral levels. Examples include dynamic ABMTs including mobile MPAs that can follow species and features across temporal and spatial scales and adapt to changing conditions.
- 2. Recognize that States Parties possess inherent powers** to regulate their own nationals and vessels as well as their own ports and access to markets. The Conference of the Parties should be specifically empowered to require States Parties to apply these inherent powers as necessary.
- 3. Enable the Conference of Parties to adopt a management plan and specific conservation measures for MPAs,** provided that such measures take into account existing frameworks and bodies and do not undermine their effectiveness.
- 4. Specifically spell out how States can implement their duty to cooperate.** Under the UN Fish Stocks Agreement this includes obligations to agree and comply with measures to ensure conservation, to agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner, to adopt precautionary measures when information is uncertain, inadequate or unreliable, to strengthen existing organizations, to share processed data collected by national scientists or national research programs in an effective way e.g. through storing in international databases., to ensure the full cooperation of relevant national agencies and industries, and to ensure compliance by vessels flying its flag.
- 5. Replace the term “relevant instruments and bodies” with “competent international organizations” in most places** (other than consultation requirements) as only these bodies are capable of adopting relevant management measures.

- 6. Invite competent international organizations to adopt measures within a time-bound period** to achieve the specific objectives of the MPA's management plan. In this context, the BBNJ agreement should specifically empower the COP to e.g. adopt interim measures or provisional measures that would apply until the competent organization adopts the necessary measures. An emergency power vested in the COP might also be appropriate for adopting ABMTs in cases where BBNJ is under urgent threat.

- 7. Create a separate provision for the COP to establish other types of ABMTs in addition to MPAs**, and to provide for global recognition of other global, sectoral, or regional ABMTs where requested.

- 8. Encourage existing organizations to define explicitly their mandates, including their taxonomic mandates** with the objective of more clearly defining the specific species and activities over which existing organizations have legal competence and responsibility. Such clarity would thus allow for the new implementing agreement to advance research and monitoring efforts for unmonitored or unmanaged BBNJ.



ISSUES EXPLORED

Overview

The workshop was organized into two sessions: the first session of introductions, expert presentations and general discussions to help set the scene for the second session's case study exercise. During the first session challenges related to the impacts of climate change and the accelerating loss of marine biodiversity and reviewed the state-of-play of the negotiations were explored. The Sargasso Sea and Costa Rica Dome were introduced as examples of internationally significant ecosystems in need of enhanced protection. The presentations illuminated obstacles experienced in advancing ecosystem-based management in these two regions based on the readiness and capacity of existing competent bodies to conserve marine biodiversity and address ecosystem-level impacts. The scene-setting session was rounded out with three presentations on challenges, opportunities, tools and technologies for managing at ecosystem-scale in a changing ocean and the output of a UNEP-WCMC project studying conditions for enabling cross-sectoral ecosystem-based management. The outcomes of the case study exercise are presented in the section [STRESS-TESTING THE DRAFT TEXT BASED ON THE SARGASSO SEA/COSTA RICA DOME](#).

Challenge of a changing ocean

The workshop commenced with a reminder from Minna Epps, Director of the IUCN Global Marine and Polar Programme, of the current worrisome

news about the state of the ocean and the patterns of ocean use and ocean change. Current research shows that the ocean is growing warmer, more acidic, and less oxygenated. The BBNJ treaty is one of the key actions States can take to provide the necessary international legal framework to mitigate and adapt to the effects of climate change on our ocean. To do this, the text needs to clearly make the link between climate and ocean and the ocean and coasts.

As further highlighted by Minna Epps and Dr. Grethel Aguilar, Acting Director General of IUCN, the recent IPCC [Special Report on Ocean and Cryosphere](#)² and IPBES [Global Assessment Report on Biodiversity and Ecosystem Services](#)³ together raise tremendous concern about the increasing vulnerability of the ocean. Climate change and unsustainable exploitation of marine natural resources have already caused long-term and negative impacts on people and biodiversity.

In a special video message, Haydee Rodriguez Romero, Vice-Minister of Water and Sea, Costa Rica, stressed that the international community needs a strong treaty to secure a healthy, resilient and productive ocean for present and future generations, and that a strong treaty must allow for MPA networks that are well designed and well managed.

The need for a strong treaty is further supported by the IPCC Special Report, which stressed the imperative of strengthening response options that include protection, restoration, precautionary

2 Special Report on the Ocean and Cryosphere in a Changing Climate (SROCC) <https://www.ipcc.ch/srocc/download-report/>

3 Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services <https://www.ipbes.net/global-assessment-report-biodiversity-ecosystem-services>

ecosystem-based management and the reduction of pollution and other stressor.⁴ The current fragmented governance arrangements hamper the ability to provide these integrated holistic and collective responses.⁵

With respect to ABMTs, the IPCC Special Report reiterated the important role that networks of protected areas can play in maintaining ecosystem services, including carbon uptake and storage, and enabling future ecosystem-based adaptation options by facilitating the poleward movements of species, populations, and ecosystems that occur in response to warming and sea level rise. Identified challenges that could be addressed by the new BBNJ agreement include geographic barriers, ecosystem degradation, habitat fragmentation and barriers to regional cooperation.⁶

Thus, we know what we need to do. The challenge is to raise political will and create the enabling conditions to make these changes happen, now and into the future.

State of play of treaty negotiations

Discussions at the third IGC made good progress towards clarifying a general process for adopting and implementing ABMTs including MPAs, though more efforts will be required to develop the ABMT monitoring, control and surveillance portions of the instrument. The key provisions would cover objectives, criteria for identification, proposal standards, consultation requirements, decision-making, implementation, monitoring and review. Applicable principles would include the best available science, traditional knowledge of indigenous people and local communities,

the application of the precautionary approach or principle and an ecosystem approach. States were also willing to recognize the need for explicit assurance that the BBNJ agreement would not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, nor prejudice the rights of coastal States over areas under national jurisdiction and/or the effectiveness of any measures adopted by coastal States therein.

Nevertheless, as highlighted in the [Statement by the President](#)⁷ at the closing of the third IGC, many differences remain. These differences regarding ABMTs relate in particular to the potential roles of bodies established under the agreement, such as the COP, and other relevant global, regional and sectoral bodies, for developing, agreeing and implementing associated conservation and management measures. This was a focus for much of the IUCN ABMT Workshop's discussions.

While noting that the negotiations had come a long way, at the IUCN ABMT Workshop some participants expressed frustration that States at the third IGC had not started “negotiating” text but were more focused on replaying known positions. There was also concern that too much attention was being given to fears that the agreement might “undermine” existing bodies and agreements, rather than more proactively focusing on how the agreement might strengthen the capacity of global, regional and sectoral bodies to address the challenges of sustaining marine biodiversity in a changing ocean.

Coming soon after the release of the President's Statement, the IUCN ABMT Workshop was well

4 SROCC Paragraph C2

5 SROCC paragraph C1.2

6 SROCC paragraph C2.1

7 A/CONF.232/2019/10 Statement by the President of the conference at the closing of the third session with the oral reports of the facilitators of the informal working groups to the plenary on 30 August 2019 https://www.un.org/bbnj/sites/www.un.org/bbnj/files/bbnj_presidents_closing_statement_-_advance_unedited.pdf

timed to consider further the processes for ABMTs including MPAs. To do so, workshop exercises were designed to enable participants to delve into the process envisaged in the draft text, as it would relate to the two case study areas: the Sargasso Sea and the Costa Rica Dome.

Setting the Scene:

Case Study: The Sargasso Sea Experience

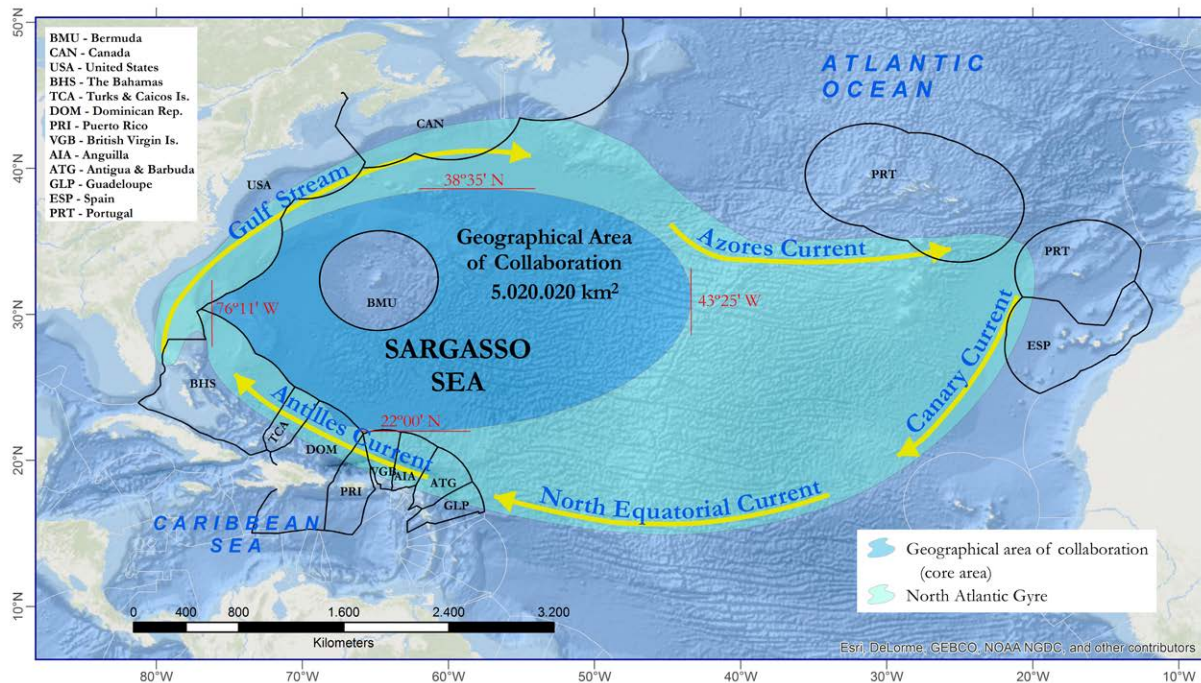
Presentation by David Freestone, Executive Secretary Sargasso Sea Commission

The Sargasso Sea spans around 5 million square kilometres or 2 million square miles, in the North Atlantic Subtropical Gyre, surrounding the islands of Bermuda, a UK overseas dependent territory.

The *Sargassum* weed—a pelagic macroalgae—that characterizes the Sargasso Sea provides habitat for 145 endemic species and serves as a

vital nursery and feeding area for a wide variety of resident and migratory species of conservation, commercial and recreational value. The Sargasso Sea provides ecosystem services of global importance in terms of ecological functions: carbon sequestration, oxygen generation and biodiversity protection as well as protecting passive values relating to wildlife and iconic and charismatic organisms.⁸ The Sargasso Sea is the only known spawning grounds for two species of eels, a catadromous species that grows up in freshwaters of Europe and Northern Africa (Anguilla Anguilla) and the United States, Canada, Gulf of Mexico and the Caribbean (A. Rostrata). Even though the European eels are listed under CITES Appendix II, there is a huge market for glass eels, as in 2019 they have been fetching more than \$4,000 lb., stimulating increasing fishing pressure and illegal trade.

The Sargasso Sea Project was established in 2010 by the Government of Bermuda together with a network of international partners to seek



Map showing the interaction of oceanographic features, legal boundaries and geographic areas of collaboration for the Sargasso Sea.

⁸ L. Pendleton, et al., (2014), "Assessing the Economic Contribution of Marine and Coastal Ecosystem Services in the Sargasso Sea. NI R 14-05. Durham, NC

international recognition and protection for this unique open ocean ecosystem. The Sargasso Sea Project has worked directly and through supportive States within the relevant competent organizations including the International Seabed Authority (ISA), the International Maritime Organization (IMO), the International Commission for the Conservation of Atlantic Tuna (ICCAT) and the Northwest Atlantic Fisheries Organizations (which only addresses non-tuna fisheries in the very northern tip of the Sargasso Sea). There is however neither a regional seas body nor an RFMO for non-tuna species for the vast majority of the Sargasso Sea.

Lessons learned from the Sargasso Sea's experience with the ICCAT process are directly applicable to the proposed process for ABMTs including MPAs. Despite the Sargasso Sea Commission's efforts to compile and present the best science available, the region still remains data poor as vessel reporting is uneven and fine-scale data are difficult to access. Some ICCAT state members remain reluctant to agree to precautionary measures or even to advance ecosystem-based fisheries management. As a result, it may now be possible to say that an important opportunity to limit the expansion of fishing activities into the Sargasso Sea, which existed in 2010, may have been lost.⁹

For the proponents of an ecosystem approach to conservation of the Sargasso Sea, a strong BBNJ agreement is needed; one where the COP has decision-making powers to designate an MPA, and to adopt its own protective measures should the sectoral organizations fail to respond in a timely way, or to add to these protective measures. Much can be learned from the UN Fish Stocks Agreement, which has many progressive features in its text but has not lived up

to its potential due to uneven implementation, lack of compliance and weak enforcement as well as the absence of an overarching global institutional mechanism capable of galvanizing progress. The 2019 IPCC Ocean and Cryosphere report stresses the importance of marine reserves in limiting adverse impacts of climate change.

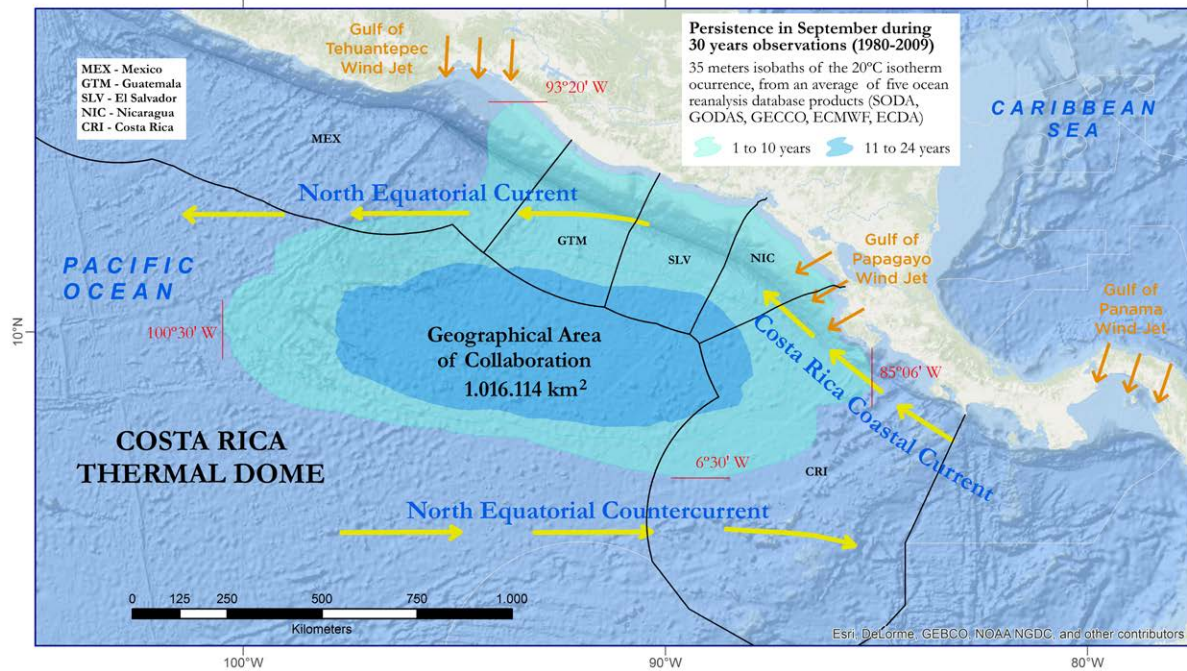
Case Study: The Costa Rica Dome Experience

Presentation by Dr. Jorge Jimenez, Director General, MarViva

The Costa Rica Dome is a unique upwelling system where deep nutrient-rich water is brought to the surface, creating an ecosystem that is five to six times more productive than adjacent waters. The feature varies in size and location over the year: it starts out close to the coast, expands into the high seas to the widest extent of 1000 km, and then fades away in December, only to begin again. Though its persistence and width may vary, the center is always in the high seas.

The productivity of the Costa Rica Dome attracts 10 species of cetaceans with a special concentration of Blue Whales. It also attracts many tuna and tuna-fishing vessels, with the highest intensity of fishing during the time the Dome is most extensive. The Dome is also an important maritime traffic route as five percent of global maritime traffic passes through *en route* to or from the Panama Canal. These increases in fishing and shipping traffic are creating calls for a more integrated management approach to safeguarding marine biodiversity.

⁹ Contrast the fishing activity identified in 2013 by Sumaila, U. R., Vats, V., and W. Swartz. 2013. *Values from the Resources of the Sargasso Sea*. Sargasso Sea Alliance Science Report Series, No. 12, 24 pp. with 2019 Global Fishing Watch http://www.sargassoseacommission.org/storage/GFW_-_Sargasso_Sea_Commission_March_2019_2_1.pdf



Map showing the interaction of oceanographic features, legal boundaries and geographic areas of collaboration for the Costa Rica Thermal Dome.

The challenges of establishing protective measures for the Costa Rica Dome are many. Though the States in the region recognize the importance of the Dome and its related ecosystem services, they lack human and financial capacity to attend the international and regional meetings that regulate activities in order to promote conservation measures. At the same time, there is a lack of data at the scale needed to develop safe routes for maritime traffic or to address bycatch-related issues. Identified priorities for action include fostering discussions that are more intersectoral and enabling the participation of regional States in international fora to make sure regional interests are represented.

The BBNJ agreement should be a mechanism to ensure that regional conservation interests are recognized by sectoral bodies. The Costa Rica Dome case study illustrates the need: for the BBNJ agreement to apply a precautionary approach to approving activities in biodiversity-rich areas until sufficient data are available; to promote actions to highlight and understand the linkages between the high seas and coastal econ-

omies; and to establish a strong mandate for the conservation of ecosystem goods and services benefiting neighboring Coastal States. The agreement should take into account regional interests and offset the weaknesses of existing regional institutions.

Challenges and opportunities for managing highly migratory species at ecosystem scale

Presentation by Maria-Jose Juan Jordá, PhD

Based on research by Dr. Maria José Juan Jordá on progress by tuna RFMOs towards ecosystem-based fisheries management, it is possible to identify good progress on managing target tuna and billfish species, but less improvement with respect to developing and applying indicators to measure the sustainability of current initiatives to address bycatch species of tuna fisheries, indicators to assess impacts of fisheries on trophic relationships and on habitats of ecological concern. With respect to bycatch species, some tuna

RFMOs have adopted target or limit reference points for some billfishes and sharks, but not for marine mammals (with the exception of IATTC), seabirds or sea turtles. Where mitigation measures have been established to address the ecosystem impacts of fishing, monitoring programs to determine their effectiveness are not sufficient or are not yet in place. Similarly, there are few measures to address the mounting impacts of fishing on food webs and trophic relationships and habitats of ecological concern. Still needed are objectives, indicators, thresholds and measures to address food web impacts of the tuna industry and to identify and protect habitats of ecological concern.

Some tuna RFMOs are starting to use ABMTs to address overfishing of target species of tunas, and in some cases to reduce bycatch, but primarily to reduce bycatch of juvenile tunas by purse seiners using Fish Aggregating Devices (FADs). The Scientific Committees of tuna RFMOs are increasingly being requested to identify areas of high fishing intensity and high occurrence of bycatch species, but most often the lack of high quality fisheries data - due to lack of reporting or low spatial resolution - does not allow for identification of these areas. For example, it does not allow for identification of these areas where there are high interactions between tunas and vulnerable shark species such as shortfin mako.

The BBNJ agreement could enhance ecosystem-based fisheries management in several ways: by encouraging the collection and sharing of fisheries-dependent data; supporting fisheries-independent science relevant to ecosystem-scale management; increasing exchange with independent scientific bodies; creating a stronger conservation mandate within the RFMO scientific committees and the Commissions themselves; and raising awareness - and with it accountability - within the global community.

Tools and technologies for managing at ecosystem-scale in a changing ocean

Presentation by Guillermo Ortuño Crespo, PhD Candidate, Duke Nicholas School of Environment

New tools and technologies can help account for temporal scales in the management of fisheries and other activities in ABNJ. The incorporation of temporal and spatial dynamics into ecosystem-based management is crucial for taking into account changes in the vertical and horizontal distribution of biodiversity on a seasonal basis, and increasingly, due to climate change.

An ecosystem can be defined as a biological community of interacting organisms and their physical environment. By nature, most ocean ecosystems are dynamic at various scales and interconnected vertically and horizontally, across jurisdictional boundaries. Humans impact ecosystems both directly and indirectly: directly via targeted catch, bycatch, physical habitat, loss of biodiversity, or behavioral change; indirectly via transboundary/long range impacts, trophic cascades and regime shifts.

Dynamic ocean management, which responds to changes in ecosystems in near real-time, is a relatively new approach that has been applied to date solely on a single sector basis and primarily with a focus on avoiding bycatch. It may be possible to explore and implement this approach across sectors to provide a more comprehensive and nimble management of the various components of biodiversity and ecosystems as their distribution changes over time. For this to happen, however, will require the collection of and ability to assimilate large amounts of geospatial and environmental data to create heat maps that can predict the probability of encountering migratory species such as tunas, sea turtles, sharks and marine mammals, and to create tailored management

scenarios across ocean sectors and jurisdictions (i.e., EEZs and high seas). In the context of fisheries, dynamic closures could then be designed to protect non-target biodiversity identifying areas where the probability of bycatch is high and the probability of catching the target species is low.

However, data coverage remains poor, spatially, temporally and taxonomically. The best data source is OBIS, which contains point data on +23,000 species in ABNJ. But the high seas coverage is based in many areas on only 10 observations; with poor taxonomy coverage, significant sampling gaps and low contributions. Only 4,018 species of fish have been recorded in high seas. Of these 4,018 recorded fish species in the OBIS database, a recent paper shows that only 193 of these (or 4.8%) have been assessed, the first prerequisite to effective management. This leads to the observation that RFMOs in practice manage or monitor the abundance of only a few species; this suggests that the current taxonomic mandates of RFMOs do not include the comprehensive monitoring of fisheries impacts on high seas biodiversity.

To enable more precise management responses in near real time will require a meaningful expansion of fisheries-dependent and independent sources of high seas biodiversity information. Electronic monitoring is emerging as a much more valuable tool as vessels can be fitted with cameras that use image recognition to report near real time biodiversity data. Fisheries independent data is also essential, which can come from research cruises, robotics, electronic tags, autonomous vehicles, and genetic tools such as DNA barcoding, metabarcoding and environmental DNA (i.e., DNA samples from the water column can help to identify species, communities and potentially abundance). All of these sources of information could also be used to fit distributional models.

To address these data gaps, we will need enhanced access to data from all nations that fish in different parts of the ocean. Complete electronic monitoring coverage of high seas activities will be fundamental to ensure the sustainability of human activities in the high seas.

Conditions for enabling cross-sectoral ecosystem-based management

Presentation by Nina Bhola, UNEP-WCMC

UNEP-WCMC has been spearheading a project on “Cross-sectoral area-based planning in ABMJ as part of a larger Common Oceans/GEF funded project on “Sustainable fisheries management and biodiversity conservation of deep-sea living marine resources and ecosystems in the Areas Beyond National Jurisdiction.” The objective of this project was the development and testing of a methodology for area-based planning.

Given the uncertainty as to how sectoral approaches will interact in the future, this project sought to explore how cross-sectoral area-based planning could help to promote balanced and considerate use. It first reviewed the applicability of area-based planning tools to ABNJ; gathered experiences and good practices from other regions, and sought to understand the relevant governance frameworks.

Marine spatial planning centered around an ecosystem-based management approach, as currently applied largely within national waters, was found to provide a helpful framework that could underpin efforts to enhance cooperation, coordination and conservation in ABNJ. For this to be successful, efforts need to be guided by principles such as best available science, the precautionary principle and the ecosystem approach, and based on inclusive and participatory processes.

Important first steps include to define and agree the objectives based on the guiding principles, and then to identify ecosystem ecological conditions, prioritize issues and definition of specific areas, and to engage and consider wider stakeholder input based on the objectives and priorities. Marine spatial planning can thus provide a possible governance framework to bring together knowledge sharing and capacity, governance, data and tools.

Governance and institutional arrangements do however need to be worked out ahead of time, including identification of who guides and leads

the process as well as the financial and capacity aspects.

Lack of a cross-sectoral governance framework for ABNJ is a potential barrier to the implementation of marine spatial planning. For ABNJ, there would need specific guidance for each element. Potentially, the next phase of the GEF ABNJ Common t project could aim to build on the current phase by catalyzing cross-sectoral integration as a basis for strategic and ecosystem-based management of ocean space in ABNJ, with a focus on 1- 2 pilot regions.

STRESS-TESTING THE DRAFT TEXT BASED ON THE SARGASSO SEA/COSTA RICA DOME

The exercise sought to explore the implications of the draft elements for advancing protection and ecosystem-based management measures for the Sargasso Sea and Costa Rica Dome. The challenge was to identify strengths, weaknesses / challenges, and opportunities for each case study area with respect to the following sections of the June President's draft text following the IGC3 and examples of commentary from other States and IUCN:

1. Definitions, objectives and criteria
2. Proposal process (including consultation and assessment)
3. Decision-making process, including international cooperation and coordination
4. Implementation, monitoring and review,

The discussions started with a reminder that there were currently several options for making rules for MPAs and other ABMTs: 1) The COP can directly establish and adopt conservation measures for MPAs and other ABMTs; 2) The COP can designate or recognize MPAs and require or request States Parties to work through regional or sectoral bodies to adopt conservation measures; or 3) The COP can establish principles or criteria for adoption of MPAs and other ABMTs, and regional/sectoral bodies have sole authority to establish/adopt.

Below are specific recommendations gleaned from the discussions. Again, these may not reflect the views of all the workshop participants.

The numbering used in the President's May draft text is referenced here.

1. Definitions: ABMT & MPA (Articles 1.3 and 1.10)

1.3. The term "ABMT" could reflect a more forward-looking and dynamic approach by referring to the fact that such tools can be applied "across temporal and spatial scales." As elaborated further herein, to future-proof the BBNJ agreement, the BBNJ agreement should encourage relevant competent international organizations (and oblige States Parties) to adopt ABMTs to promote the *in situ* conservation of biodiversity and provide a process to establish various ABMTs in addition to MPAs.

1.10. The term "MPA" should be defined consistent with the IUCN definition to ensure comparable reporting in the World Database on Protected Areas (WDPA) and compatible protection standards within and beyond national jurisdictions.

- As defined by IUCN and applied by the WDPA, an MPA is: "A clearly defined geographical space, recognized, dedicated and managed... to achieve the *long-term conservation of nature*

with associated ecosystem services and cultural values” (emphasis added).¹⁰

- To qualify as an MPA in the WDPA, MPA management measures must be sufficient to meet the primary objective of “long-term conservation” of biodiversity in the targeted area. It needs to have defined goals and objectives and a management plan or equivalent that addresses the needs for conservation of the site’s major values. The qualities of good governance, sound planning and design, effective management and conservation outcomes are also essential standards for an MPA.¹¹
- “Other effective [area-based] conservation measures” (OECMs): Canada has proposed the BBNJ agreement recognize “OECMs”, a concept developed under the Convention on Biological Diversity (CBD) to enable Parties to report progress towards Aichi Target 11’s goal.¹² If OECMs are to be included in the BBNJ agreement, the term should be defined in a way that is consistent with the CBD’s Aichi Target 11 and recently elaborated definition in Decision 14/8: “A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio–economic, and other locally relevant values. (CBD 2018).¹³ Like MPAs,

OECMs are defined as long-term; therefore, not all ABMTs can be considered OECMs.

Specific reflections from the case studies:

- Other types of ABMTs (sectoral, regional or global) can also play an important part in reducing the impact of activities outside an MPA for example, to protect the habitat of migratory species and/or separate conflicting uses. ABMTs adopted pursuant to a specific process in the BBNJ agreement could address threats, activities or uses not yet identified or regulated, or be in advance of or in addition to measures adopted by competent international organizations (recognizing that these should be compatible with and no less effective than such measures).

14. Objectives

14. The primary objective: The primary objective of this Part should be clearly stated as “Establish a system of ecologically representative MPAs that are connected and effectively and equitably managed” (currently 14.(d)). MPA networks are crucial for maintaining the full range of biodiversity; safeguarding key habitats for migratory species; linking sources and sinks of food supply and larval flow; and encompassing other ecological, oceanographic and genetic connectivities. At the same time, the treaty should require, enable and encourage a broad range of ABMTs to promote

10 Applying IUCN’s Global Conservation Standards to Marine Protected Areas (MPA), https://www.iucn.org/sites/dev/files/content/documents/applying_mpa_global_standards_v120218_nk_v2.pdf; See also Day, J., Dudley, N., Hockings, M., Holmes, G., Laffoley, D., Stolton, S., Wells, S. and Wenzel, L. (eds.) (2019). *Guidelines for applying the IUCN protected area management categories to marine protected areas. Second edition.* Gland, Switzerland: IUCN. <https://portals.iucn.org/library/node/48887>

11 Applying IUCN’s Global Conservation Standards to Marine Protected Areas (MPA), https://www.iucn.org/sites/dev/files/content/documents/applying_mpa_global_standards_v120218_nk_v2.pdf

12 “By 2020, at least ...10 percent of coastal and marine areas ...are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and **other effective area-based conservation measures**, and integrated into wider landscapes and seascapes” (emphasis added)

13 IUCN-WCPA, 2019. *Recognising and Reporting Other Effective Area-based Conservation Measures*. Technical Report. IUCN, Switzerland. The main difference between MPAs and OECMs is that OECMs may or may not have nature conservation as a primary objective, thus providing some flexibility on who manages them; however both are supposed to have the same holistic conservation benefits. https://www.iucn.org/sites/dev/files/content/documents/recognising_and_reporting_oecms_-_iucn_technical_report_-_august_2019.pdf

the in situ conservation of nature, while also recognize that individual sites of ecological, biological, scientific or cultural significance will also need protection.¹⁴

- 14.(b). Although the key environmental obligations of UNCLOS (articles 192, 194 and 197) are widely considered to reflect customary international law, these should be repeated here (or in Article 2) to clarify that they apply to Parties and non-Parties to UNCLOS.
- 14.(e). The “Rehabilitate/restore” objective here should be broadened to prioritize protection, as this would be more consistent with the precautionary approach and with commitments at Rio+20.¹⁵ Precautionary and measures to protect and maintain biodiversity are far more important and likely to succeed than measures to “rehabilitate or restore” particularly for deep-sea ecosystems and long-lived species. Thus, this objective could be amended to read: “Protect, maintain, and restore where necessary...”

Specific reflections from the case studies:

- To make a difference on the water, MPAs should be managed to meet biodiversity conservation objectives in the short term and over the long term. Although there are different categories of MPAs that allow for a variety of purposes and management objectives across a seascape, under the IUCN MPA standards, effectively managed MPAs are free of environmentally damaging activities such as industrial-scale fishing, dumping or infrastructure developments.¹⁶

15. International cooperation and coordination [N.B. this section has been updated to reflect the November version of the draft text]

Article 15.1. Obligation to cooperate: This paragraph should more clearly state that the obligation is to “promote the establishment of ABMTs including MPAs through...” The current emphasis on “coherence and complementarity” is vague and more akin to an objective than an elaboration of the duty to cooperate.

- 15.1(a) “Relevant legal instruments” and “bodies”: This provision should be clarified to refer more specifically to “competent international organizations” as this is the phrase used in UNCLOS and these are the bodies more likely to have competence to adopt MPAs or other ABMTs.
- 15.1b(i). Adopting conservation and ~~[management]~~ ~~[sustainable use]~~ measures to “complement” measures designated under relevant instruments or bodies: This approach could be problematic if “to complement measures” is read to imply that other measures must already be in place, which may not always be the case. Clarifying the role of the new agreement to focus on conservation measures could help to clarify the various roles.
- 15.1b(ii). Establishing ABMTs, including MPAs, and adopting conservation and management measures where there is no relevant legal instrument or body: This provision loses sight of the objective of enhancing coherence and complementarity, as action may still be needed to coordinate protective measures despite the existence of other relevant bodies.

¹⁴ See eg, General framework for the establishment of CCAMLR Marine Protected Areas <https://www.ccamlr.org/en/measure-91-04-2011>

¹⁵ See para 158 of the Outcome Document “The Future We Want”: [A/RES/66/288 - The Future We Want](https://www.un.org/en/development/desa/policy/2012/04/RES/66/288-The-Future-We-Want.html)

¹⁶ Applying IUCN’s Global Conservation Standards to Marine Protected Areas (MPA) https://www.iucn.org/sites/dev/files/content/documents/applying_mpa_global_standards_v120218_nk_v2.pdf

- [15.2 At11 to para 1(b)(ii)]: Obligation to cooperate to establish a new body where there is no relevant instrument or body: The establishment of a new body should not be required, as it may not be a cost-effective or time-efficient use of resources: new organizations may be slow to develop and may be more complex than is necessary to achieve the purposes of the proposed ABMT or MPAs. However, the evolution of such bodies, based on the devolved authority of the COP, could be a useful way to support wider scale regional planning and implementation of ABMTs.
- 15.3. Arrangements for consultation and coordination: The Conference of Parties is the best place to charge with establishing an arrangement or arrangements for consultation and coordination. States Parties may not have equal capacities to establish their own coordination and collaboration mechanisms resulting in unequal progress across regions.
- 15.4 “Not undermine the effectiveness of measures adopted by coastal States in adjacent areas”: A more proactive way to express this could be “measures adopted in accordance with this Part shall be compatible and complementary to the ABMTs adopted by coastal States in adjacent areas within national jurisdiction.”

Specific reflections from the case studies:

Article 15 would be enhanced by including an obligation for States Parties to cooperate to promote a more biodiversity- inclusive, integrated and ecosystem-based approach to management both directly through the BBNJ Agreement and as members of global, regional and sector-based

organizations. Such an explicit obligation could help to strengthen priorities to include biodiversity conservation and sustainable use; and create the necessary impetus to ensure that States Parties in RFMOs, the IMO, the ISA or regional seas organizations adopt measures to protect ecosystems, habitats and species and require that ongoing or any future activities do not cause significant adverse effects.

16. Identification of areas [requiring protection]

16.2 Criteria: The list of indicative criteria in Annex I should include at minimum the criteria used in CBD COP Decision IX/20¹⁷ to describe ecologically or biologically significant areas (EBSAs), including “uniqueness or rarity”, “productivity” and “naturalness” as these criteria have been widely applied to describe areas in need of protection both within and beyond national jurisdiction. Their application in ABNJ would enable more consistent description and protection of ecosystems and habitats within and beyond national jurisdiction.

16.4. The text now in brackets regarding application of such criteria by States Parties should be accepted and broadened to encourage States Parties and other competent bodies to also apply the criteria contained in the BBNJ agreement as this could encourage greater cooperation, consistency and coherence between existing bodies and the BBNJ agreement.

Specific reflections from the case studies:

- Both the Sargasso Sea and the Costa Rica Dome would clearly benefit from being designated as an MPA. However, the large size and dynamic nature of the ecosystems, highlight

17 CBD scientific criteria for ecologically or biologically significant areas (EBSAs) (annex I, decision IX/20) <https://www.cbd.int/ebsa/resources> Further details on the EBSA criteria are available at: <https://www.cbd.int/doc/meetings/mar/ebsaws-2014-01/other/ebsaws-2014-01-azores-brochure-en.pdf>

why it is important to also consider a range of other ABMTs outside the MPA. Such measures might include protections for species such as sea turtles and cetaceans to reduce the risk of bycatch or ship collisions when the species are nearby.

- Additional examples of global ABMTs could include:
 - Data and information reporting and sharing on activities in or adjacent to an area
 - Reporting requirements for approaching an area
 - Requirements to receive and respond to reports e.g., on the presence of a migratory species
 - Request to go slow or stow gear when approaching/passing through an area (could be triggered by presence of species/habitat)
 - Cetacean mitigation measures
 - Requests to identify and protect vulnerable marine ecosystems (VME) or species through a process of prior assessment and adoption of management measures to avoid significant adverse impacts
 - Provisional application of a new agreement, e.g., ballast water exchange prohibition
 - Request to help monitor an area with passive scientific equipment

The criteria should clearly reflect the need to protect migratory marine species and their connectivity corridors across their range while in ABNJ. An additional criterion should also include areas important for their “ecosystem services”.

Ecosystem services may produce benefits locally, regionally and globally.¹⁸

- Climate change-related criteria should address more than just vulnerability; some areas may be important for e.g., carbon storage. Other MPA benefits acknowledged to be relevant to climate resilience include buffering acidification, preventing the release of carbon stored in seafloor sediments, protecting apex predators that confer ecosystem stability, increasing population sizes and consequently resiliency, providing stepping stones for climate migrants, and promoting genetic diversity that supports adaptation.¹⁹

17. Proposals

17.4 Proposal elements:

- 17.4(e) Description of the conservation and sustainable use objectives: As is reflected in the IUCN MPA Standards, the primary focus of MPAs should be conservation, while ABMTs could be established for both objectives. According to the IUCN MPA Standards, there is a need for clarity of conservation-focused objectives for MPAs from the outset to determine the types of management measures needed.
- 17.4(f). There may need to be different requirements for MPA proposals versus other ABMTs as other types of ABMTs may not require a management plan, simply a monitoring and review plan. An MPA proposal should contain proposed conservation and management measures as well as “priority elements” for a management plan. The priority

18 Ross Salazar, E., Jiménez Ramón, J.A., Castro Campos, M., Blanco Bolaños, M. 2019. The Thermal Dome of Costa Rica / Atlas. MarViva Foundation, San José. 108 pp. See e.g., Concept Note on the importance of Sargassum and the Sargasso Sea for Atlantic Sea Turtles available at: http://www.sargassoseacommission.org/storage/CIT-CCE-2014-Doc.3_Concept_Note_Sargassum_Sea_Turtles_29_May_2014.pdf; Pendleton, L., F. Krowicki., P. Strosser, and J. Hallett-Murdoch. Assessing the Economic Contribution of Marine and Coastal Ecosystem Services in the Sargasso Sea. NI R 14-05. Durham, NC: Duke University http://www.sargassoseacommission.org/storage/ni_r_14-05_full_pdf.pdf

19 Roberts, et al, 2017, Marine reserves can mitigate and promote adaptation to climate change PNAS, 114, no. 24, 6167–6175

elements should be the categories of actions considered necessary to achieve the specific conservation objectives of a proposed MPA given the available knowledge at the time.

Specific reflections from the case studies:

- Both the Sargasso Sea and the Costa Rica Dome have enough information to identify that the area is important and general objectives for conservation but are in need of more detailed information on specific uses to feed into a management plan. Thus, a general obligation for States and others to facilitate access to data and information would be important at this stage.

18. Consultation and assessment

Specific reflections from the case studies:

18.1 Consultations on proposals: It would be helpful to explicitly include civil society, including IGOs, environmental NGOs and industry as well as scientific and technical experts.

18.2b (vi). Relevant legal instruments and bodies: In addition to being invited to submit views, 18.2b (vi) could be amended to explicitly request such instruments and bodies to share and facilitate access to data and information relevant to activities and potential conservation and management measures.

18.4 Consideration of contributions: This provision is ambiguous as it could be interpreted to require the proponent to continue the consultation process *ad infinitum* until it has revised the proposal to embrace all comments from those consulted. It may be clearer if it said: the pro-

ponent “may” revise the proposal to “take into account” the contributions received. There should be no obligation to continue the consultation until consensus is achieved on its contents.²⁰

18.5 Time-bound consultations: To prevent delays, relevant bodies and instruments should be requested to establish an expedited procedure for the consideration of MPA and other ABMT proposals.

19. Decision making

- Alt.1 19.1(b)(i) The identification of areas requiring protection: If this step is intended as a separate step, one consequence of identification could be a legal obligation on States Parties to share information and to actively promote the adoption of measures to protect the area. Provisional measures might also be needed to freeze the expansion of existing activities and new activities by States Parties while the management plan is under development.
- 19.1(c) Where there are relevant instruments or bodies: Here the term should be narrowed to “competent international organizations.” Neither instruments nor advisory bodies have the ability to adopt measures. Hence, such instruments and bodies would not be “relevant” to the adoption of conservation or management measures. “Competent international organization” is the term used in UNCLOS, which provides greater clarity over whether an organization has competence over any functions relevant to BBNJ, and what those functions are.

19.1(c)(i). Whether to recommend that States Parties promote the adoption of relevant measures: need to clarify what “relevant measures”

²⁰ 4. The proponent shall consider take into account the contributions received during the consultation period and may shall either submit a revised proposal, accordingly, or continue the consultation process.

means. At minimum, such measures should be sufficient to achieve the objectives of the MPA, in accordance with the respective mandates of the competent organizations.

- 19.1(d). Where there are no relevant legal instruments or bodies: again, this provision should be clarified to only refer to “competent international organizations”.

Specific reflections from the case studies:

- The BBNJ process was born from the need to effectively protect marine biodiversity in the high seas and the deep ocean. Article 19 as drafted presents two big issues” 1) who is the relevant body? In the Costa Rica Dome, there is no legal entity with capacity to undertake this process; and sectoral organizations are those at the root of the problem. What to do if such other organizations/State members fail to take actions or take contrary actions that could undermine the objectives of the BBNJ agreement?
- With respect to the Sargasso Sea, the Sargasso Sea Commission’s Hamilton Declaration would not qualify as a relevant framework but would still be an important sub-regional cooperation mechanism that should be consulted.
- Discussions on the origin of the “not undermine” text revealed that it arose in part from concern that the BBNJ agreement might override or amend the UN Fish Stocks Agreement. (UNFSA). Some participants observed that the UNFSA already contains a general principle to “protect biodiversity in the marine environment” (Article 5(g)) and an obligation to apply the precautionary approach widely apply to “protect the living marine resources” and “preserve the marine environment” (Article 6.1). It was further observed that RFMOs have experienced challenges in implementing this requirement as well as the wider aspects of ecosystem-based management in the case study areas, though there had been some recent improvements. It was suggested that the BBNJ agreement provisions for shared science together with ABMTs including MPAs provide one way to further detail and elaborate the general principles and obligations of UNFSA. It was further observed that RFMOs manage less than 5% of fish species, and hence, there are many fish species that may be impacted by fishing even if not directly targeted.



SUGGESTED REVISIONS TO ARTICLE 15 and 19 (adapted from EU proposal)

After the workshop, several participants brainstormed on how Article 15 and Article 19 could be adapted to reflect key points from the workshop discussions. Below is a suggested revision:

Article 15

International cooperation and coordination [applies to MPAs only at this point]

1. **States Parties shall promote the objectives of this part, by:**

(a) designating marine protected areas in accordance with this article;

(b) acting through relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, without prejudice to their respective mandates, to adopt conservation and management measures for the implementation of the management plan for each marine protected area designated in accordance with this article;

;

(c) adopting conservation and management measures sufficient to implement the management plans of designated marine protected areas, ensuring that such measures are not inconsistent with measures, if any, adopted under relevant legal instruments or frameworks or relevant global, regional or sectoral bodies;

(d) undertaking and communicating specific conservation and management measures

stricter than those required by other relevant instruments or bodies, where necessary to ensure implementation of the management plan for each designated marine protected area.

2. Where there is no legal instrument or framework or relevant global, regional or sectoral body with appropriate and adequate mandate and capacity to implement the management plan, States Parties may shall cooperate to establish such an instrument, framework or body and shall participate in its work to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

3. **Under this agreement, the Conference of Parties** shall **also** establish **a** coordination and collaboration mechanism to enhance cooperation and coordination among relevant legal instruments and frameworks and relevant global, regional and sectoral bodies with regard to area-based management tools, including marine protected areas, as well as coordination among associated conservation and management measures adopted under such instruments and frameworks and by such bodies.

4. In promoting cooperation and coordination under this article, States Parties shall not undermine relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

Article 19 Decision-making:

1. On the basis of the draft management plan, taking into account scientific advice or recommendations and the contributions received during the consultation process established under this part, while respecting relevant legal instruments and frameworks and relevant global, regional and sectoral bodies in the designation of marine protected areas, the Conference of the Parties shall take decisions with respect to:

(a) Proposals submitted under this Part, on a case-by-case basis, including in relation to:

- (i) The identification of areas requiring protection;
- (ii) The designation of marine protected areas; and
- (iii) The adoption of a management plan and a research and monitoring plan to achieve specific conservation objectives, taking into account existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;

(b) Where there are global, regional or sectoral bodies with appropriate and adequate mandate and capacity to implement the management plan:

- (i) Whether to recommend that States Parties to this Agreement promote the adoption of relevant measures

through such instruments, frameworks and bodies without prejudice to their respective mandates;

(ii) Whether to adopt conservation and management measures that are not inconsistent with those measures, if any, adopted under such instruments, frameworks and bodies; without prejudice to their respective mandates;

(iii) Whether to recommend that States Parties to this Agreement undertake and communicate specific conservation and management measures stricter than those provided for by other relevant instruments or bodies, to support implementation of the management plan.

(c) Where there are no global, regional or sectoral bodies with appropriate and adequate mandate and capacity to implement the management plan:

(i) The adoption of conservation and management measures in accordance with the management plan;

(ii) Whether to recommend that States Parties cooperate to establish a relevant legal instrument or framework or relevant global, regional or sectoral body to adopt and implement conservation and management measures.

[...]

CONCLUSION

Building ambition, broadening participation and planning ahead were the three framing concepts introduced at the outset by the workshop participants as essential elements for the future of our common ocean. The recent IPCC [Special Report on Ocean and Cryosphere](#)²¹ and IPBES [Global Assessment Report on Biodiversity and Ecosystem Services](#)²² together raise tremendous concern about the increasing vulnerability of the ocean. Climate change and unsustainable exploitation of marine natural resources have already caused long-term and negative impacts on people and biodiversity. The international community needs a strong treaty to secure a healthy, resilient and productive ocean for present and future generations. A strong treaty must allow for MPA networks that are well designed and well managed.

To deepen understanding of how the draft text of the agreement would operate to enhance protection of significant areas, the workshop used a case study exercise based on two internationally recognized areas: the Sargasso Sea in the North Central Atlantic and the Costa Rica Dome in the Eastern Central Pacific.

The workshop presentations, discussions and breakout group exercise revealed three core priorities regarding the draft ABMT provisions:

1. the need to clarify a number of central provisions, including: definitions, objectives, consultation on and assessment of proposals, management plans, decision-making, imple-

mentation, monitoring and review, as well as cross-cutting institutional arrangements

2. the value of strengthening the central powers of the Conference of Parties to adopt MPAs and other ABMTs and implement protection measures; and
3. the need to strengthen the scientific competence, resources and political will of sectoral organizations and other bodies to advance conservation and sustainable use of BBNJ.

Suggestions to address these concerns are provided in the body of this report. At the same time, participants recognized the need to attract broad support from the States most active in the high seas while also future-proofing the agreement to confront the increasingly complex challenges of sustaining marine biodiversity in a changing ocean.

Participants identified ten enabling conditions and eight specific considerations to inform the next round of negotiations of the draft BBNJ agreement. The observations below represent the general conclusions of the workshop but may not reflect the full agreement of all participants.

1. Recognize that the Global Ocean is a “commons” whose health is a common interest of all humanity.
2. Accelerate progress in the BBNJ negotiations including through greater engagement of politicians from capitals empowered to negotiate an ambitious and pragmatic agenda.

21 Special Report on the Ocean and Cryosphere in a Changing Climate (SROCC) <https://www.ipcc.ch/srocc/download-report/>.

22 Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services <https://www.ipbes.net/global-assessment-report-biodiversity-ecosystem-services>.

3. Enable nimble measures to respond to a changing ocean.
4. Ensure access to data, monitoring and information, and other products of enhanced ocean science.
5. Provide necessary institutional elements that include a conference of the parties (COP), an independent scientific and technical advisory committee (STAC), and an implementation committee.
6. Include dedicated measures to conserve marine biodiversity.
7. Recognize interconnectivities through ecosystem-based management.
8. Establish clear requirements for implementing the precautionary principle.
9. Incorporate existing definitions, standards and criteria to ensure their consistent application across jurisdictions and institutions.
10. Strengthen existing bodies using the BBNJ agreement.

Eight considerations based on review of the draft President's text as applied to the two case studies for the Sargasso Sea and Costa Rica Dome, highlighted that the BBNJ agreement should:

1. Establish a process that delivers effectively protected MPAs in ABNJ;
2. Recognize that States Parties possess inherent powers to regulate their own nationals and vessels as well as their own ports and access to markets.
3. Enable the Conference of Parties to adopt a management plan and specific conservation measures for an MPA.
4. Spell out more specifically how States can implement their duty to cooperate.
5. Replace the term "relevant instruments" and "bodies" with "competent international organizations" in most places (other than consultation requirements)
6. Invite competent international organizations to adopt measures within a time-bound period
7. Create a separate provision for the COP to establish other types of ABMTs in addition to MPAs, and to provide for global recognition of other global, sectoral, or regional ABMTs where requested.
8. Encourage existing organizations to define explicitly their mandates, including their taxonomic mandates to advance research and monitoring efforts for unmonitored or unmanaged marine biodiversity.

The BBNJ process was born from the need to more effectively protect marine biodiversity in areas beyond national jurisdiction. It is the hope of IUCN that this report can serve to further inform and advance progress towards this common goal and globally shared concern.

ANNEX A: List of Participants

LAST NAME	FIRST NAME	ROLE AND AFFILIATION
Workshop coordination and IUCN – GMPP:		
Epps	Minna	IUCN GMPP, Director
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Battle	Jessica	WWF
Clorley	John	UK Marine and Fisheries Directorate
Egge	Kjell Kristian	Norway
Freestone	David	Executive Secretary, IUCN Sargasso Sea Commission
Garcia	Serge	IUCN CEM-FEG
Jimenez	Jorge	MARVIVA (Costa Rica Thermal Dome)
Juan-Jorda	Maria Jose	FAO consultant (Ecosystem approach to fisheries)
Kenfack	Jean	Cameroon
Marras	Phénia	Agence Française pour la Biodiversité (AFB)
Mossop	Joanna	IUCN WCEL
Nilsson	Pernilla	Sweden Ministry of Foreign Affairs
Ortuno Crespo	Guillermo	Duke University (Dynamic ABMTs)
Payne	Cymie	Chair, IUCN WCEL Ocean, Coasts and Coral Reefs Specialist Group
Richard	Joelle	Université de Brest - Campus mondial de la mer
Segura	Serge	French Ambassador of the Oceans, Ministry of Foreign Affairs and International Development (MAEDI)
Slobodian	Lydia	IUCN ELC, Bonn

Steitz	Matthias	German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU)
van Barneveld	Ramon	DG-MARE (ABMTs)
Vermont	Sibylle	Switzerland Federal Office for the Environment (FOEN), International Affairs Division
Warner	Robin	IUCN WCEL
Wyssbrod	Valérie	Environmental Law, Neuchatel University
<i>Remote attendance:</i>		
Bhola	Nina	UNEP-WCMC
Halpin	Patrick	Duke University - WCPA High seas MPA specialist group, Dynamic planning and management

ANNEX B: Agenda

AGENDA

Workshop on Area-based Management Tools in Areas Beyond National Jurisdiction

IUCN Headquarters, Gland, Switzerland

8 - 10 October 2019

Room: Holcim Think Tank A

Tuesday 8 October 2019

(afternoon)

13:00: Coffee / tea in meeting room

13:30 **Opening by Minna Epps,**
Director IUCN Global Marine and Polar Programme

SESSION 1

State of negotiations

Facilitator : Carl Gustaf Lundin

- Housekeeping info and quick run through workshop programme and setting (Chatham House rule)
- Presentation round of participants

14:00 – 15:00 *Presentations followed by discussion*

1. Kristina Gjerde – Where are we post IGC3
2. Serge Segura – Observations of political challenges and opportunities ahead
3. Jessica Battle - Perspectives from WWF

15:00 – 15:30 : Coffee / tea in meeting room

- 15:30 – 17:30 4. Short perspectives and updates from others, including definitions
5. Group discussion

17:30: End Day 1

Wednesday 9 October 2019
(morning)

8:30: *Coffee / tea in meeting room*

9:00 – 9:15 Opening by Grethel Aguilar, IUCN Acting DG

SESSION 2

Building a common understanding of ABMTs in Areas Beyond National Jurisdiction

Facilitator: David Freestone

9:15 – 10:15 *Presentations (15 minutes each) with discussion time*

Part 1: Setting the scene:

1. Case study - Sargasso Sea experience, David Freestone
 2. Case study - Costa Rica Dome, Jorge Jimenez
-

10:15 – 10:30 : *Coffee / tea in meeting room*

10:30 – 12:00

Part 2: Opportunities and challenges of advancing ecosystem-based management and protection

3. *Challenges and opportunities for managing highly migratory species at ecosystem scale* - Maria Jose Juan Jorda
4. *Tools and technologies for managing at ecosystem-scale in a changing ocean* - Patrick Halpin & Guillermo Ortuño Crespo

Summary identification of key opportunities and challenges:

D Freestone and D Laffoley

12:00 – 13:00 : *Lunch*

Wednesday 9 October 2019
(afternoon)

13:00 Coffee / tea in meeting room

SESSION 3

"Stress-testing" ABMTS

Facilitator : Kristina Gjerde

- 13:15 – 14:45 5. *Nina Bhola, UNEP WCMC, Conditions for Enabling Ecosystem-based Management*
- K. Gjerde, Introduction to break-out group discussions to stress test current ABMT scenarios when applied to Sargasso Sea and Costa Rica Dome case studies.*
- What are the implications of the draft elements for advancing protection and ecosystem-based management measures for the Sargasso Sea and Costa Rica Dome?*
- 1. Definitions, objectives and criteria**
- Identify strengths, weaknesses / challenges, and opportunities as applied to case study area
- 2. Proposal process (including consultation and assessment)**
- Identify strengths, weaknesses / challenges, and opportunities as applied to case study area

14:45 – 15:15: Coffee / tea in meeting room

- 15:15 – 17:00 *Break-out sessions continued*
- 3. Decision-making process, including international cooperation and coordination**
- Identify strengths, weaknesses / challenges, and opportunities for the case study area
- 4. Implementation, monitoring and review,**
- Identify strengths, weaknesses / challenges, and opportunities for the case study area
- Preliminary observations: Breakout group rapporteurs
- Preliminary summary: D Laffoley

17:30 : Departure for evening event

Thursday 10 October 2019
(morning)

9:00 Coffee / tea in meeting room

SESSION 4

Conclusions and take-home messages

9:30 – 10:45 *Summarise take-home messages and identify priorities for intersessional period to IGC4;*

Facilitator – part 1: François Simard

1. Rapporteurs from Session 3 break-out groups to report back on outcomes

10:45 – 11:00: Coffee / tea in room

11:00 – 12:15 Facilitator part 2: Dan Laffoley

2. Workshop summary points
3. Identify next steps and priorities (incl. upcoming calendar events)
4. Thank you and official farewell - Minna Epps

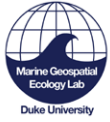
12:15 – End of workshop



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