Conservation and Sustainable Use of Biodiversity Beyond National Jurisdiction Tackling A Global Challenge

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# The ocean is our planetary lifesupport system



Provides 50% of oxygen Regulates climate, weather & water Absorbs CO<sub>2</sub> **Regenerates and** supplies nutrients to the sunlit zone **Provides almost** 20% of the world's total animal protein

# Marine Areas Beyond National Jurisdiction (ABNJ)

Nearly 50% of Earth's surface
 Increasing Human Impacts on ABNJ

 Increased intensity of existing activities
 New activities

 BUT no comprehensive governance framework for ABNJ

### Human impacts are increasing



Halpern et al., 2008

#### **Resources are exhausted**

Stock Exploitation

Stock = (Family, Genus, Species) by FAO areas, max annual catch >= 1000t and year count >= 5 100 crashed 80 over exploited 60 Stock (%) fully exploited 40 developing 20 underdeveloped 0 1960 1970 1990 2000 1950 1980 Year

Figure 1. Global trend in the status of marine fisheries resources. Based on FAO statistics to 2003 and the methods and definitions in Froese and Pauly (2003).

# Ocean transport spreading



# Ocean garbage patches growing

#### Out of sight, out of mind

The continent-sized vortex of plastic waste blighting the Pacific



# Growing threats from climate change....



UNEP, In Dead Water, 2008

# And new uses are emerging



Jack Cook, WHOI Graphics

"Synergistic effects of these stressors risks an unprecedented, dramatic and wide-spread collapse of marine ecosystems and fisheries within the next decades"



#### IN DEAD WATER

MERGING OF CLIMATE CHANGE WITH POLLUTION, OVER-HARVEST, AND INFESTATIONS IN THE WORLD'S FISHING GROUNDS

Nelleman, C., Hain, S., and Alder, J. (eds.) February 2008

# Gaps in the High Seas Legal and Institutional Framework

- The legal and institutional regime for the high seas is fragmented and incomplete.
- Governance, regulatory, substantive and implementation gaps limit the effectiveness of the high seas regime in securing sustainable conservation and use of the marine environment beyond national jurisdiction, its resources and biodiversity.

The effective protection of the high seas marine environment requires a more integrated and cross sectoral governance structure which adequately protects not only the interests of individual users but also of the international community.

#### **Governance Gaps**

 Governance gaps include those resulting from the predominance of flag State jurisdiction on the high seas.

There is no international rule making structure for the high seas which can hold individual states accountable for their failure to act in the face of State actions which have adverse impacts on the high seas marine environment.

# **Regulatory Gaps**

 Regulatory gaps include gaps in high seas coverage by RFMOs and arrangements which may not apply to all fisheries within a geographic region

Lack of regional conservation regimes in most but not all regions

 Lack of coordination and cooperation between the fisheries regimes and between the fisheries and environmental sectors.

# **Substantive Gaps**

- No regulatory regime for existing and emerging high seas activities including marine scientific research, bioprospecting, the laying of cables and pipelines, military activities, climate change mitigation schemes floating installations and deep sea tourism.
- Lack of clarity on the interaction of the legal regimes of the high seas and the extended continental shelf.
- No global rules which elaborate on the basic requirements in the LOSC for environmental impact assessment for existing and emerging high seas activities.

#### **Implementation Gaps**

 High seas management is fragmented among a variety of sectoral and geographically based bodies including the treaty regimes established under the IMO and RFMOs.

 Implementation of these regimes is largely dependent on compliance by flag States many of whom are unable or unwilling to fulfil their obligations to protect the high seas marine environment.

#### Central Challenge of High Seas Governance

 The central challenge for high seas governance stems from the nature of the high seas as a common property open access regime with equal rights of user and exclusive flag state jurisdiction.

- The freedom of open access leads inexorably to the tragedy of the commons.
- Flag state jurisdiction is ineffective in halting this tragedy.

# The Legal Basis for a New Approach to High Seas Governance

 In view of the flaws in the current high seas regime, the international community is in the process of exploring the "scope parameters and feasibility" of negotiating a new instrument under the LOSC to conserve and sustainably use marine biodiversity beyond national jurisdiction

Do any principles exist on which to base an international regime consistent with the LOSC?

# Improving Global Coordination and Cooperation

A new regime for conservation and sustainable use could take a number of forms including an implementing agreement to the LOSC or a stand alone agreement.

# Potential Elements in New Agreement

Principles of Oceans Governance Area Based Management Tools – marine protected areas, marine spatial planning Environmental Impact Assessment process Access to and Distribution of benefits from Marine Genetic Resources in ABNJ Transfer of Technology, Capacity Building and Information Exchange

# Modern Principles of Ocean Governance

- Freedom of the High Seas with some conditions
- Protection and Preservation of the Marine Environment
- International Cooperation
- Science Based Approach to Management
- The Precautionary Approach
- The Ecosystem Approach
- Sustainable and Equitable Use
- Public Availability of Information
- Transparent and Open Decision making Processes
- Responsibility of States as Stewards of the Global Marine Environment

# Area Based Management Tools

Global vs. regional
Decision making process for MPAs in ABNJ
Designation process for MPAs in ABNJ
Regulatory mandate
Protective measures

#### **Environmental Impact Assessment**

- Screening process
- Scoping Process
- Reporting
- Public notification and consultation
- Post EIS decision making
- Monitoring
- Cumulative impact assessment
- Best practice standards and default EIA process for unregulated activities

# **Marine Genetic Resources**

- A network of different common pools for sharing nonmonetary benefits of MGRs derived from ABNJ – biorepositories and data banks for samples knowledge and technology related to MGRs
- Multilateral standards for R & D into MGRs
- A regime for monetary benefit sharing from development of MGRs derived from ABNJ locations
- ABNJ Trust Fund for benefits from MGRs derived from ABNJ
- Patent pools
- Framework for increased international collaboration and cooperation on R & D related to MGRs derived from ABNJ

### **Technology Transfer**

Methods and scope for sharing technology and data – MGRs or broader Voluntary or compulsory Central data repository or regional data nodes Clearing house for the sharing of and access to information and data

# **Capacity Building**

- Combined regional training programmes between RFMOs and RSOs on ABNJ conservation
- Global fund for capacity building projects in ABNJ
- Global scholarships for ABNJ research
- Strengthening of UN oceans to become a global coordination body for ABNJ capacity building

# **BBNJ Working Group**

- Seven meetings so far
- Three meetings mandated by UNGA 67 in April 2014, June 2014 and January 2015
- Decision to be made on whether to negotiate an instrument under the LOSC for the conservation and sustainable use of marine biodiversity in ABNJ before end of UNGA 69 in September 2015

#### Conclusions

- The international law regime for conservation and sustainable use of marine biodiversity in ABNJ is fragmented, incomplete and poorly implemented.
- A more integrated regime working through a closely linked network of sectoral and regional organizations would enhance the application of modern conservation principles and management tools to existing and new activities in ABNJ.

 Prognosis for the development of such a regime is uncertain at this stage and requires more consensus on key objectives