

2014 Potsdam Ocean Governance Workshop - Background Document 2

Julien Rochette (IDDRI), Sebastian Unger (IASS), Glen Wright (IDDRI)

Governing the “High Seas” - Linking global governance and regional implementation

Abstract

Marine areas beyond national jurisdiction (ABNJ), often referred to as the “High Seas”¹, represent around half of the Planet’s surface and host a significant portion of its biodiversity. Despite their global importance, there are significant governance gaps that impede effective conservation and sustainable use. Since the beginning of the 21st century, States have started to discuss, in various arenas, integrated approaches to the conservation and sustainable use of marine biodiversity in ABNJ. This debate was prompted by increased evidence of threats to these areas (e.g. through over-exploitation of living marine resources, climate change, ocean acidification or pollution). At the same time, new scientific discoveries demonstrated the importance of marine genetic resources in ABNJ. Following a commitment from the Rio +20 UN Conference on Sustainable Development, current global discussions focus on the opportunity to elaborate a new international agreement under the United Nations Convention on the Law of the Sea (UNCLOS) (an “Implementing Agreement”). In parallel, some Regional Seas Conventions have progressively extended their activities into ABNJ. In this regard, the most advanced efforts take place in the Mediterranean Sea, the North-East Atlantic and the Southern Ocean, where MPAs have already been designated in ABNJ.

This workshop will explore the relationship between global (i.e. international conventions and organisations) and regional level governance in ABNJ (i.e. Regional Seas programmes, Regional Fisheries Management Organisations and other regional mechanisms such as Large Marine Ecosystems) and consider options for filling governance gaps. The aims are:

- to analyse and highlight the role of regional organisations within the framework of a possible new international instrument under UNCLOS;
- to identify options for regional organisations to engage in the conservation and sustainable use of marine biodiversity in ABNJ, including their interaction with other competent management authorities at the global level;

An underlying assumption is that legal instruments and governance approaches at the global and regional levels would complement each other: while a global agreement would strengthen the legal mandate for regional activities, regional organisations would facilitate implementation of the overarching global legal framework.

¹ According to UNCLOS, ABNJ encompass the high seas and the Area, i.e. “the seabed and ocean floor and sub-soil thereof, beyond the limits of national jurisdiction”.

Results from this workshop will feed into the international discussions that are currently taking place within the United Nations framework and at the regional level, e.g. within the UNEP Regional Seas Programme and Regional Seas Conventions, supporting the effective design of a new global agreement as well as building momentum and partnership for regional action.

1. Background

Prior to the adoption of UNCLOS, the United Nations General Assembly created the UNEP Regional Seas Programme, celebrating “40 years of action” this year. The regional approach to marine environmental protection provides an appropriate scale for the implementation of an ecosystem approach to conservation, and often allows for political consensus among limited numbers of parties that share similar history, culture and interests in the region. It is therefore appropriate that UNCLOS has emphasised regional cooperation with regard to the marine environment, stipulating that States “shall cooperate on a global basis and, as appropriate, on a regional basis” for the protection of the marine environment, “taking into account regional features”.² On the other hand, the role of third parties is not reflected adequately in the legal instruments operating at a regional level, and global activities such as shipping could come into conflict with regional protection interests. Based on the assumption that contracting parties to a regional agreement have similar interests in the specific region, as compared to more distant and less affected States, these general observations also apply to regional level measures in ABNJ.

Over the past decades, the international community has become increasingly aware of the growing threats to biodiversity in ABNJ. As a result, discussions have commenced on the conservation and sustainable use of marine biodiversity in ABNJ, both under the auspices of the United Nations General Assembly (UNGA) and within different regional organisations. In 2004, the UNGA created an 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 (the so called “BBNJ Working Group” which has subsequently met eight times. In 2012, the United Nations Conference on Sustainable Development (“Rio +20 Conference”) committed “to address, on an urgent basis, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction including by taking a decision on the development of an international instrument under UNCLOS” (The Future We Want § 162; see also Wright et al. 2014 and Ardron et al. 2013). This decision will have to be made by the end of the 69th session of the UNGA (September 2015).

Given this global context, State delegations and observers (including international and regional organisations, NGOs, research centres, etc.) are increasingly discussing the possible role of regional organisations within the framework of any future international instrument under UNCLOS. Although crucial, this issue has not yet been elaborated in detail. Further research is therefore needed to feed the international deliberations and inspire the content of a potential future international instrument.

At the same time, it is likely to take many years before any agreement generates concrete results. Even if negotiations for an international instrument under UNCLOS are opened in 2015, it will likely take several years for such an agreement to be negotiated and to enter into force. It is therefore

² UNCLOS Art. 197

necessary to develop complementary processes that make best use of the existing regional instruments³ in order to ensure that action is being taken in the shorter-term⁴.

2. The role of regional organisations within the framework of a possible international instrument under UNCLOS

Regional oceans governance mechanisms are a cornerstone of international environmental law and policy, with a range of instruments governing ocean use at the regional level (Billé et al., 2014). UNCLOS provides the basis for regional approaches to oceans governance, making particular mention of regional approaches in its provisions on enclosed and semi-enclosed seas,⁵ environmental protection,⁶ high seas living resources,⁷ and regional marine scientific and technological centres.⁸ The 1995 Fish Stocks Agreement⁹ strengthened the call for regional arrangements, urging States to create regional fisheries management organisations (RFMOs).¹⁰ Regional oceans governance currently takes place through three main mechanisms: (i) Regional Seas programmes, most of which are supported or coordinated by the United Nations Environment Programme (UNEP); (ii) regional fisheries bodies (RFBs), some of which have been established under the framework of the Food and Agriculture Organization of the United Nations (FAO); and (iii) Large Marine Ecosystem (LME) mechanisms, including projects supported by the Global Environment Facility (GEF). Other regional arrangements whose mandate is not specifically focused on environment, sometimes also conduct initiatives on marine and coastal issues¹¹.

Regional governance mechanisms allow initiatives to be conducted at an appropriate scale, taking the uniqueness of a marine ecosystem into account and applying the most appropriate legal and management tools for that context. The approach moves beyond merely general principles to target specific threats to regional marine areas. Regional arrangements sometimes deliver stricter environmental protection standards than those mandated at the global level. More generally, cooperative action is often easier at the regional level than at the global level, where diverse stakeholders with conflicting interests make negotiations thornier (Rochette and Chabason, 2011).

A multitude of conventions, protocols, action plans and decisions have already been concluded within this framework. Replicating these efforts through a new legal instrument at the global level would likely duplicate existing work, stretch already limited funding, and further fragment the oceans governance landscape. It is therefore very likely that regional organisations will have a role to play in any new UNCLOS IA on the conservation and sustainable use of marine biodiversity in ABNJ.

³ A case study for the Mid-Atlantic Ridge for example is given by Dotinga and Molenaar (2008) that reviews the scope and functioning of applicable regional regimes.

⁴ An argumentation for such a pragmatic approach is provided by Töpfer et al. 2014.

⁵ Article 123.

⁶ Part XII.

⁷ Articles 117-119.

⁸ Article 276.

⁹ The 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 (A/CONF.164/37. 8 September 1995).

¹⁰ Article 8.

¹¹ e.g. Secretariat of the Pacific Community (SPC), Caribbean Community Secretariat (CARICOM), Association of Southeast Asian Nations (ASEAN), Indian Ocean Commission (COI).

States have already been discussing this aspect within the BBNJ WG. As illustrated by the discussions during the last meeting, held in June 2014 (Wright et al., 2014), many delegations recognised the need to leverage existing regional mechanisms. However, this is hindered by a number of issues. Independent from the fact that currently most Regional Seas programmes do not extend into ABNJ (the picture is somewhat different for RFMOs). Particular challenges that remain are the non-universal participation in regional agreements and the capacity of regional organisations to tackle ABNJ challenges.

The specific role of existing regional mechanisms within any future UNCLOS IA is therefore yet to be determined.

Case study – Marine Protected Areas (MPAs)

Considering the role of regional organisations within an international instrument under UNCLOS requires an analysis and assessment of the possible options for institutional arrangements in relation to all elements of the 2011 “Package Deal”¹². As a starting point for this discussion, this paper specifically focuses on MPAs as a case study (which is only one element of the package deal), with the different scenarios explored in the table below. The table outlines the establishment of MPAs sequentially, beginning with an initial proposal for the establishment of an MPA and their scientific basis, through to implementation, management, and oversight. In this regard, the table sets out potential options for specific questions:

- What is the scientific basis for designating MPAs in ABNJ?
- Which institution(s) can propose the establishment of a MPA in ABNJ?
- Which institution(s) can formally designate a MPA in ABNJ?
- Which institution(s) are in charge of developing & implementing management plans?
- Which institution(s) can review implementation?

The options suggested are not necessarily mutually exclusive; for example, multiple parties may have a responsibility for proposing MPAs or multiple scientific justifications may be used as a basis. The table provides a range of possibilities for each stage, but there is a need to discuss their feasibility and desirability, and to further develop the ideas into a coherent framework.

¹² As agreed at the 2011 session of the BBNJ Working Group, the process should address, together and as a whole, “marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology” – often referred to as the “package deal (Ardrón et al. 2013).

Scientific basis	Proposal	Designation	Adoption of management measures	Implementation	Review/oversight
One or multiple bases? EBSAs VMEs Criteria from regional organisations¹³ New set of criteria Amalgamation of existing sectoral criteria	UNCLOS IA Scientific Committee Dedicated MPA body Regional Organisations Group of States where no competent organisations/ group of States in any case International organisations (e.g. UNESCO, CBD, IOC, IMO, FAO, UNEP, etc.) Continuation/ evolution of the BBNJ WG Stakeholder/civil society body INGOs/Groups of NGOs	UNCLOS COP UNCLOS COP after Scientific Committee approval UNGA – annual oceans resolution CBD Other international organisation(s) nominated by IA.	Cooperation and coordination between competent organisations in drafting management plan Either through agreed mechanism, or ‘informally’, as at present Elaboration by Scientific Committee/ regional sub-committees	States Regional organisations Relevant international sectoral organisations	Compliance Committee (potential division between enforcement and facilitation)¹⁴ COP Stakeholder Forum¹⁵ Secretariat Civil society

¹³ There are already a number of MPAs and environmental designations (such as Particularly Sensitive Sea Areas, designated by the International Maritime Organisation) in ABNJ. A key question will be how to integrate or ‘upgrade’ these in the context of a new agreement under UNCLOS.

¹⁴ The UNFCCC Compliance Committee, for example, has two branches. The facilitative branch provides advice and assistance in order to promote compliance, while the enforcement branch determines the consequences of non-compliance. See <https://unfccc.int/bodies/body/6432.php>.

¹⁵ The Committee on Food Security (CFS) could provide a model. The CFS is an “inclusive international and intergovernmental platform for all stakeholders to work together in a coordinated way to ensure food security” (<http://www.fao.org/cfs/cfs-home/en/>). See Eklin et al. 2014.

3. Building momentum - regional approaches to the conservation and sustainable use of marine biodiversity in ABNJ

In parallel with the global discussions regarding a new instrument under UNCLOS, regional initiatives and organisations with the appropriate mandate have progressively extended their activities into ABNJ, including in the Mediterranean Sea, the North-East Atlantic and the Southern Ocean where MPAs have been created. Steps are also being taken for the conservation of marine biodiversity in ABNJ in the Sargasso Sea, an area without a regional seas agreement, through the cooperation of neighbouring States and stakeholders (Rochette et al., 2014). Other regions, e.g. in Western Africa or the South East Pacific, have made political commitments and are currently considering options to address the conservation of ABNJ. With regard to high seas fisheries, complementary measures have been taken in some regions through Regional Fisheries Management Organisations (RFMOs) under the “UN Fish Stocks Agreement”. In addition, the Convention on Biological Diversity (CBD) is undertaking a scientific and technical process through regional workshops and initiatives to describe areas meeting the scientific criteria for “Ecologically or Biologically Significant Areas (EBSAs)”. Though strictly a scientific exercise, the EBSA process provides valuable information for States and relevant competent international organisations developing regional measures and action in ABNJ, and has helped establish regional connections and built a shared sense of purpose (Dunn et al. 2014).

A common feature of regional approaches is that they are tailor-made to regional characteristics varying with regard to their legal, political and institutional arrangements. Although even the most advanced examples are still to be considered work in progress, conclusions drawn from them could inform the discussion of a global instrument (see § 2) and the development of regional initiatives in other parts of the world. Whilst a case-by-case approach on the regional level may not lead to a global representative network of MPAs but rather to a variety of regional processes, regional cooperation has the advantage of meeting the needs of a region and often leads to more effective implementation.¹⁶

An overview of the current initiatives of regional bodies is given in Table 1¹⁷ (for a detailed assessment of regional approaches to ABNJ refer to Rochette et al. 2014; Freestone et al. 2014 provides experiences from two ongoing processes, including an overview of “ingredients for success”).

¹⁶ For a debate on differences in approaching MPAs in ABNJ either through universalism or regionalism see Matz-Lück & Fuchs 2014.

¹⁷ A detailed description is provided in Rochette et al. 2014

Area	Organisations/Conventions	MPA-related actions/measures	Advantages/Disadvantages
The North-East Atlantic	- OSPAR - NEAFC	- First network of MPAs in ABNJ (OSPAR) - NEAFC fisheries closures - Collective Arrangement between competent organisations on cooperation	- Established through legally binding decisions; management of the two main pressures (fisheries and shipping outside the remit of OSPAR); - Existence of two regional bodies for environmental protection (OSPAR) and fisheries (NEAFC) that collaborate through MoUs and other arrangements.
Mediterranean	- Mediterranean Action Plan (MAP), Barcelona Convention - General Fisheries Commission for the Mediterranean and Black Sea (GCFM)	- First MPA partly covering High Seas (Pelagos Sanctuary) - MoU between MAP and GCFM - Project on developing a network of SPAMIs in the open seas, including the deep seas - Proposal to designate parts of the Sanctuary as a Particularly Sensitive Sea Areas (PSSA).	- Particular context of the Mediterranean Sea where there is no point located at a distance of more than 200 nautical miles from the closest land or island. - Management Plan of the Pelagos Sanctuary to be strengthened
The Southern Ocean	- CCAMLR	- South Orkney Islands MPA - Process to establish a circumpolar network of MPAs is ongoing	- Regional body that combines both elements of a Regional Seas Convention and an RFMO - Very special legal situation (ATS); approach might not be replicated elsewhere.
South Pacific	- SPREP	- SPREP Convention applies to four "high seas pockets" (no measure through SPREP taken so far)	- Convention area includes ABNJ - So far no MPA-related initiatives
South East Pacific	- CPPS	- Member States of CPPS committed themselves in 2012 "Galapagos Declaration" to promote action to protect living resources in ABNJ	- Strong political leadership through Galapagos declaration

Western Africa	- Abidjan Convention	- Establishment of 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 (COP 11 in 2014: Decision - CP. 11/10).	- Political decision to consider ABNJ through a working group (process established) - Links and raised awareness through Maritime Policy Process for Africa (AU)
Western Indian Ocean	- Nairobi Convention	- Feasibility of the extension of the geographical coverage of the Nairobi Convention to ABNJ in progress, in the context of a project funded by the French GEF	- Interest of conducting a feasibility study before engaging the process towards the extension of the Convention's geographical coverage - Process that might take time
Sargasso Sea	- Sargasso Sea Alliance and Commission - 2014 Hamilton Declaration (signed by Azores, Bermuda, Monaco, UK and US).	Encourages and facilitates voluntary collaboration toward the conservation of the Sargasso Sea (measures through competent management authorities)	- Flexible process that allows coordination and collaboration in the absence of a competent regional body - Political ("Hamilton") Declaration provides leadership from "champions" - Management measures through SSA not possible

Current approaches

The "OSPAR approach"

In 2010 the OSPAR Commission took a historic decision to establish the world's first network of MPAs in ABNJ, consisting of 6 sites covering about 286 200km² (O'Leary et al. 2012, Rochette et al. 2014, Freestone et al. 2014). Subsequently an area was added in 2012 expanding the areas protected to 465 165 km². As a general rule High Seas MPAs in OSPAR are established under a common procedure (Recommendation 2003/3 on a Network of Marine Protected Areas, as amended by Recommendation 2010/2) that reflects the overall political commitment in the region to establish an ecological coherent network of well-managed MPAs, including in ABNJ. Whereas MPAs in territorial waters and in EEZs can be established through a national nomination procedure, High Seas MPAs need to be designated through consensus decisions by all Contracting Parties of the OSPAR Commission.

The OSPAR High Seas MPAs offer interesting case studies, reflecting the complex legal and political characteristics of the chosen sites¹⁸. This might inform initiatives in other marine regions or at the global level. The management of these MPAs is set out by non-binding OSPAR Recommendations reflecting the limited competence of the OSPAR Commission in managing human activities in ABNJ. Fisheries, one of the most damaging human activities in the marine environment, are regulated separately by the North-East Atlantic Fisheries Commission (NEAFC). In 2009 NEAFC closed some of these areas (corresponding to a large degree to OSPAR MPAs) to bottom trawling in a parallel process. Both institutions, OSPAR and NEAFC, took their scientific advice from the International Council for the Exploration of the Sea (ICES).

The situation in the North-East Atlantic is mutually beneficial for both regional bodies, given the large degree of overlap between OSPAR and NEAFC in their convention areas. To coordinate their management efforts for selected areas in ABNJ both organisation also now have agreed a related “Collective Arrangement”¹⁹. Through this arrangement competent international organisations should cooperate and seek coordination to ensure that suitable measures for the conservation and management of these areas are implemented, informed, where appropriate, by conservation objectives established for these areas. Other competent organisations (such as the International Seabed Authority) are encouraged to participate so that it could potentially function as an umbrella for bringing together all the relevant management organisations in this area.

The “OSPAR approach” offers interesting lessons learned with regard to the cooperation between RFMOs and regional seas conventions. Although still under development, the “Collective Arrangement” provides an example of how cooperation between different competent authorities could be coordinated. The complex legal situations that have been dealt with in the designation procedures for some of the OSPAR High Seas MPAs²⁰ might also inform similar processes in other areas.

The “Pelagos approach”

The “Pelagos Sanctuary for Mediterranean Marine Mammals” was established by France, Monaco and Italy in 1999. It comprises 84 000km² that are located partly in the high seas. The agreement on the creation of the sanctuary establishes an MPA, but leaves it to the parties to take the necessary protective measures through their national legislation. Subsequently in 2001 the Pelagos Sanctuary was recognised by the Contracting Parties of the Barcelona Convention as Specially Protected Area of

¹⁸ Three different types of High Seas MPAs with a decreasing degree of comprehensiveness from an ecological and management perspective can be distinguished in the OSPAR Maritime Area as follows: (1) MPAs comprising both the seabed and superjacent water column in an area that is situated entirely in ABNJ, e.g. the Milne Seamount Complex Marine Protected Area; (2) MPAs comprising the water column superjacent to the seabed of a site (i.e. “the high seas component”) in an area that is subject to a submission to the Commission on the Limits of the Continental Shelf, designated in coordination with, and complementary to, protective measures for the seabed taken by the submitting coastal State, e.g. the Mid-Atlantic Ridge North of the Azores High Seas Marine Protected Area; (3) MPA comprising the water column superjacent to the seabed of the site (i.e. “the High Seas component”) in an area that is subject to a submission by a Coastal State to the Commission on the Limits of the Continental Shelf (without additional protective measures by the coastal State for the seabed), e.g. the Charlie-Gibbs North Marine Protected Area (for a detailed discussion see Rochette et al. 2014).

¹⁹ “Collective Arrangement between competent international organisations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic” (OSPAR Agreement 2014-09)

²⁰ For example “hybrid MPAs” consisting of MPAs comprising the water column superjacent to the seabed of site in an area that is subject to a submission to the Commission on the Limits of the Continental Shelf, designated in coordination with, and complementary to, protective measures taken by the submitting coastal state.

Mediterranean Importance (SPAMI) under the 1995 Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD).

It is important to note that the situation in the Mediterranean is somewhat unique. The SPA/BD Protocol includes ABNJ; however any waters in ABNJ would disappear if all coastal States decided to establish their Exclusive Economic Zones. Nevertheless the Pelagos Sanctuary might serve as an example for a step-by-step approach in which first a limited number of States establish a spatial protective measure through a multilateral agreement outside a competent organisation (i.e. with an agreement only binding upon themselves) and then seeking endorsement in a second step, for example through a regional seas convention.

The “CCAMLR approach”

In 2009 the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) decided to establish the South Orkney Islands Southern Shelf MPA as the world’s first MPA in ABNJ. It prohibits fishing and associated activities, including the discharge of waste by fishing vessels and any transshipment. Negotiations to establish additional MPAs are ongoing²¹. The CCAMLR approach is special as the Southern Ocean is regulated under the 1959 Antarctic Treaty and related Treaties,²² forming together the Antarctic Treaty System (ATS). It encompasses not only the ecosystem and precautionary approach but also provided the institutional platform to support a balance between the long-term conservation of marine living resources and their rational use. Due to the special legal nature of the ATS, this approach could not be directly replicated elsewhere at this time. However, it could inform the discussion about broadening the mandate of Regional Fisheries Bodies to address explicitly conservation of marine biodiversity. This might be particular relevant in areas that are currently only covered by an RFMO and not by a Regional Seas body, e.g. in the area of the North Atlantic Fisheries Organisation (NAFO).

The “Sargasso Sea approach”

The Sargasso Sea Commission was established pursuant to the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, signed on 11 March 2014, by the governments of the Azores, Bermuda, Monaco, UK and US. The Commission will encourage and facilitate voluntary collaboration between stakeholders. While the Commission has no management authority, it will “exercise a stewardship role for the Sargasso Sea and keep its health, productivity and resilience under continual review.” It intends to promote actions and measures to be taken by other management bodies, such as RFMOs. The Sargasso Sea approach could serve as an example for the type and level of regional cooperation for the conservation of marine biodiversity is possible in the absence of a competent regional authority.

Advancing regional governance in ABNJ

The discussion of the expansion of the activities of Regional Seas programmes into ABNJ will be based on three general assumptions that have been underpinned by the current examples:

1. The conservation and sustainable use of marine biodiversity in ABNJ is possible at a regional scale.

²¹ For a detailed description of the process and a discussion of lessons learned from the MPA related process refer to Brooks (2013).

²² Notably the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR).

2. The legal, political and institutional arrangements differ from region to region, but they share similar aims and objectives.
3. There is benefit in advancing regional initiatives in ABNJ, e.g. through specific measures such as the designation of MPAs, taking into account the specific ecological, societal and economic conditions.

From the present experiences outlined above and described in detail in the literature, several factors can be described that have helped to establish successful processes. The expansion of regional initiatives in ABNJ should be informed by these “ingredients for success” (Freestone et al. 2014). These include e.g. agreed criteria and selection processes for the establishment of MPAs, “champions” such as organisations, States or stakeholders to raise the issue and take forward processes, related policy goals and targets or long-term institutional commitment. Gjerde et al. (2008) point out that cooperation between competent bodies may be most successful if it occurs early in the process of establishing conservation and management measures, and if developed into an ongoing process.

For the discussion of possible expansions of regional programmes into ABNJ, the following issues would merit further in-depth discussion:

1. What are the regions in which the development of regional approaches in ABNJ, e.g. through the establishment of MPAs in ABNJ, is currently most feasible?
2. What are the lessons-learned from current experiences that should inform processes in these regions? Likewise, how could they be used to further strengthen current initiatives?
3. What should be the scope and parameters for the expansion of regional seas programmes in ABNJ?
4. What are the main opportunities and challenges that would need to be addressed?

One of the general issues will be the strengthening of cooperation and coordination between competent management organisations (challenges related to cooperation among existing international agreements is summarized in Ardron et al. 2014). Each case would have to identify the right type and level of cooperation. For regions with well-established management bodies and ongoing initiatives in ABNJ, cooperation at a broader institutional and scientific level, such as an agreement to collaborate or seeking joint scientific advice from scientific advisory bodies (such as ICES in the North-East Atlantic), may be appropriate. For regions that are still at the stage of considering possible measures in ABNJ or embarking on this process, exchanges between Secretariats based on Memorandums of Understanding between organisations could be an adequate starting point.

A common issue with regard to regional initiatives in ABNJ is the lack of capacities in many regional bodies. For regions that are beginning to engage in ABNJ, it will therefore be important to find the right level of engagement. In many cases a step-by-step approaches could be suitable, starting for example with the establishment of scientific evidence. In a second step, different levels of protection could be explored by a smaller number of “champion” States or stakeholders and focused on a main pressure and type of species or habitat. If regions do not cover ABNJ, such activities could possibly establish the case for an expansion of the convention area. In some areas, EEZs may not yet be competently managed; in such cases, both the EEZ and adjacent ABNJ might be considered at the same time.

An additional lever to advance regional governance in ABNJ could be through cooperation between the different regions. Cooperation between regional seas programmes is mainly taking place at the

Secretariat level under the umbrella of the UNEP Regional Seas Programme. Likewise RFMOs collaborate through the FAO. However, there are a few examples for interregional cooperation, e.g. twinning arrangements between regions, such as between the OSPAR Commission (North-East Atlantic) and the Abidjan Convention (West Africa) or the Helsinki Commission (Baltic) and the Nairobi Convention (East Africa). Such examples, if supported adequately with capacities and expert advice, could be starting points to build further partnership between “first mover” regions in order to share scientific evidence and expertise on regional management in ABNJ.

4. Discussion of possible next steps

Current initiatives in ABNJ have largely been developed on a case-by-case basis within the regions themselves. So far there has been only limited exchange between the regions or between regional initiatives and the global debate on a new legal instrument under UNCLOS. Whereas the UNEP Regional Seas Programme provides an appropriate forum for the discussion and exchange of experience between regions represented by their Secretariats, there is currently no process that brings together regional activities and expertise from science and stakeholders to consider the development of new approaches in ocean governance, provide related policy advice, and encourage progress. Also there is no systematic reflection of regional instruments within the BBNJ Working Group or related exchanges with regional bodies that could inform the debate about the possible role of regional bodies under a new legal instrument under UNCLOS. To build further momentum for the development of regional approaches in ABNJ the working group will be invited to consider options for better articulating the role of regional bodies in ABNJ in the context of the global debate on a potential international agreement under UNCLOS and the feasibility and possible scope of an international process in support of regional initiatives in ABNJ.

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