

Marine spatial planning in areas beyond national jurisdiction

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Pressure on marine areas beyond national jurisdiction (ABNJ) has increased significantly in recent decades, yet the current international legal framework does not provide for holistic and cross-sectoral area-based management. Negotiations for a new international legally binding instrument will consider how to fill this gap. Marine spatial planning (MSP) is one tool that could contribute to conservation and sustainable use. Provisions for MSP, including obligations, support for coordination and cooperation, and a strong legal basis, should therefore be part of a new agreement. This brief proposes some avenues for the inclusion of MSP in a new agreement, including general provisions, institutional implications, and possible models for an international MSP process.

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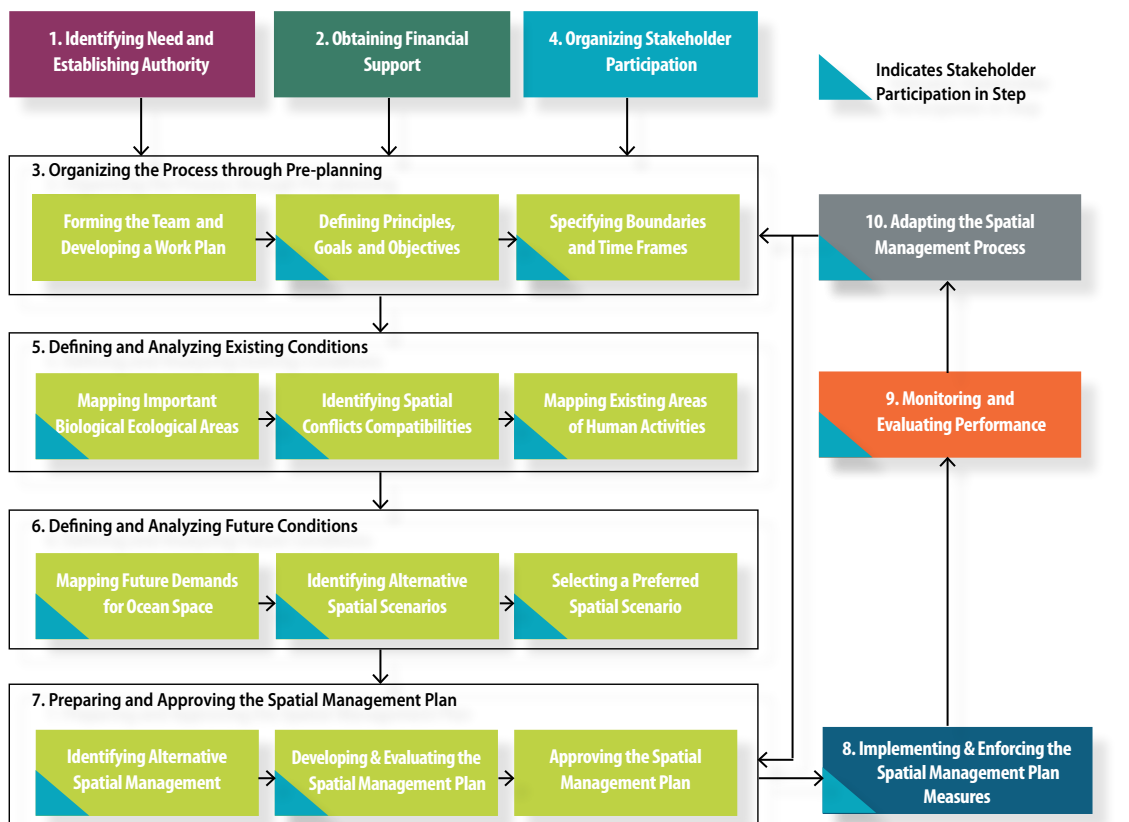
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KEY MESSAGES

- Negotiations for an international legally binding instrument (ILBI) regarding marine biodiversity in areas beyond national jurisdiction (ABNJ) provide an opportunity to facilitate the development of marine spatial planning (MSP) in these areas.
- MSP can be a key tool for implementing ecosystem-based management but it requires a framework for collecting, sharing, and updating scientific research.
- A new ILBI could provide a foundation for MSP by refining existing obligations and provisions on cooperation and the integration of biodiversity into marine management.
- The ILBI could set out a tailored process for MSP in ABNJ, including by defining the triggers for initiating MSP, establishing a mandate for cooperation and coordination, and providing oversight and review.

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Figure 1. Indicative MSP process (Ehler and Douvere, 2009)



TOWARDS MARINE PLANNING IN AREAS BEYOND NATIONAL JURISDICTION

The first United Nations (UN) World Ocean Assessment highlighted how growing use of ocean space has “the potential for conflicting and cumulative pressures” and that “in most cases, those various activities are increasing without any clear overarching management system or a thorough evaluation of their cumulative impacts on the ocean environment”.¹

Marine spatial planning (MSP), a “public process of analysing and allocating the spatial and temporal distribution of human activities in marine areas” (Ehler and Douvere, 2009), is becoming increasingly common within national jurisdictions as a tool for balancing demands for development with the need to protect the marine environment.

States recently agreed to negotiate a new international legally binding instrument regarding marine biodiversity in areas beyond national jurisdiction (ABNJ), presenting the international community with an opportunity to facilitate the development of MSP.

1. The First Global Integrated Marine Assessment (2016). Available at http://www.un.org/depts/los/global_reporting/WOA_RPROC/WOACompilation.pdf.

As noted in a non-paper by the Chair of the Preparatory Committee (PrepCom):²

- MSP provides a “framework for the orderly and sustainable use of the oceans envisaged by UNCLOS”;
- MSP approaches should be “ecosystem-based, adaptive and include all relevant stakeholders”; and
- Sectoral area-based management tools (ABMTs) (e.g. fisheries closures), cross-sectoral ABMTs (e.g. marine protected areas), environmental impact assessments and strategic environmental assessments are an integral part of this overarching planning approach.

It is recognised that there are several challenges to implementing MSP in ABNJ. Organising an effective and equitable MSP process in ABNJ may be logistically and political challenging, especially where there are overlaps, conflicts, or gaps

2. Chair of the Preparatory Committee established by resolution 69/292, 2017. Chair’s non-paper on elements of a draft text of an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Available at http://www.un.org/depts/los/biodiversity/prepcom_files/Chair_non_paper.pdf.

between existing sectors and plans. Furthermore, there is a lack of comprehensive data, a diverse and diffuse group of stakeholders, and no legal framework or body with the authority to coordinate the development and implementation of plans and activities.

A new agreement could provide a solid foundation by: clarifying the legal basis; establishing a process for designating MPAs; elaborating roles and responsibilities for other ABMTs; setting out an organisational framework; and reaffirming underlying principles. A new agreement could include the following elements:

- A framework for research and the collection and sharing of data;
- Legal obligations to cooperate to support MSP processes and implement relevant measures;
- Triggers for an MSP process;
- The establishment or designation of a body with a mandate to coordinate MSP; and
- Processes and mechanisms for developing, supporting, and implementing MSP in ABNJ.

BUILDING ON EXISTING AREA-BASED MANAGEMENT TOOLS

While there is no overarching framework for the implementation of MSP in ABNJ, there are nonetheless existing sectoral ABMTs that can provide a foundation for its development, including:

- Closure of **Vulnerable Marine Ecosystems** (VMEs) to bottom fishing. Regional Fisheries Management Organisations (RFMOs) are obliged to implement such closures pursuant to UN General Assembly resolutions aiming to protect deep sea biodiversity.³ Approximately 30 such areas have been closed (Gianni *et al.*, 2016).
- **Areas of Particular Environmental Interest** (APEI) where no seabed mining is permitted. The International Seabed Authority (ISA) has designated 9 APEIs in the Clarion-Clipperton Zone (North Central Pacific).
- **Particularly Sensitive Sea Areas** (PSSAs) to protect areas that are deemed vulnerable to damage by international maritime activities. International Maritime Organization (IMO) Member States have not yet designated any PSSAs in ABNJ.

In addition to these sectoral ABMTs, some regional organisations have sought to adopt measures for conservation and sustainable use. For example, the OSPAR Commission⁴ has declared a

network of MPAs in ABNJ, and the North East Atlantic Fisheries Commission (NEAFC) has declared VME closures that largely overlap with these areas (Ardron *et al.*, 2014). The two organisations have also developed a non-binding “Collective Arrangement” that aims to facilitate coordination between organisations with mandates covering the region.⁵

A number of recent developments may provide further support and momentum for MSP in ABNJ:

- UNESCO has published a report considering how the World Heritage Convention could be applied to ABNJ.⁶
- The United Nations Environment Assembly (UNEA) adopted a resolution that encouraged the Parties to Regional Seas conventions to consider the possibility of extending their geographical coverage;⁷
- The Scientific and Technical Advisory Panel of the Global Environment Facility has made a recommendation to support development of ABMTs in ABNJ and to enhance the capacity of relevant bodies to “act as platforms for integrated conservation and management of ABNJ that are adjacent to their existing regional mandates”;⁸
- The International Oceanographic Commission of UNESCO and the European Commission have adopted a joint roadmap to accelerate MSP, highlighting the role of MSP for implementation of the UN Agenda 2030 for Sustainable Development.⁹

ONGOING INITIATIVES

A range of ongoing initiatives are potentially relevant for the development of MSP in ABNJ, for example:

- The Convention on Biological Diversity (CBD) process to describe Ecologically or Biologically Significant Marine Areas (EBSAs) has identified

5. See *On the process of Forming a Cooperative Mechanism Between NEAFC and OSPAR: From the First Contact to a Formal Collective Arrangement* (2015). Available at <https://www.ospar.org/documents?v=35111>.

6. *World Heritage in the High Seas: An Idea Whose Time Has Come* (2016). Available at <http://whc.unesco.org/document/143493>.

7. United Nations Environment Assembly resolution 2/10 (2015). Available at <http://wedocs.unep.org/handle/20.500.11822/11199?show=full>.

8. *Governance Challenges, Gaps and Management Opportunities in Areas Beyond National Jurisdiction* (2016). Available at https://www.thegef.org/sites/default/files/council-meeting-documents/EN_GEF.STAP_.C.51.Inf_o2_Governance_Report.pdf.

9. *Joint Roadmap to accelerate Maritime/Marine Spatial Planning processes worldwide* (2017). Available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/Joint_Roadmap_MSP_v5.pdf.

3. UNGA Resolutions 61/105 (2006) and 64/72 (2009).

4. OSPAR is the mechanism by which 15 Governments & the EU cooperate to protect the marine environment of the North-East Atlantic.

more than 300 such areas.¹⁰ EBSAs that have been reviewed by the CBD Conference of Parties are added to an EBSA repository, and States and competent international organisations are requested to consider mechanisms to enhance protection and management.

- The Migratory Connectivity in the Ocean (MiCO) project¹¹ is seeking to fill a major knowledge gap by providing information regarding global migratory routes and ecosystem connectivity.
- The Horizon 2020 ATLAS Project¹² in the North Atlantic is strengthening the evidence base to support implementation of ecosystem-based management in the deep-sea. ATLAS will apply a generic MSP framework and methodology to develop ‘blue growth’ scenarios for a representative range of regional case studies.
- The ‘SEMPIA process’ (Strategic Environmental Management Planning in the Atlantic)¹³ aims to support the ISA’s development of a Regional Environmental Management Plan for deep-sea mining on the Mid Atlantic Ridge and has produced a scientific rationale to justify spacing and location APEI.

POTENTIAL CONTRIBUTION OF A NEW AGREEMENT

The PrepCom Chair’s non-paper outlines several potential provisions, including principles for MSP in ABNJ, obligations for coordination and cooperation, and a legal basis for ABMTs from UNCLOS and the UN Fish Stocks Agreement. To contribute to the development of effective MSP in ABNJ, a new could include concrete provisions for institutional mechanisms and requirements, such as:

- An authority with the mandate to oversee planning and implementation of MSP;
- A scientific or technical body or mechanism;
- Mechanisms for funding to support collaboration between countries of different capacities;
- A framework for collecting, sharing, and updating scientific research and data, including principles for acknowledging and dealing with scientific uncertainty;
- Other provisions, such as: a Secretariat to provide administrative and logistical support; reporting process; a clearinghouse mechanism; financial resources; provisions for the settlement

of disputes; and provisions for issues of liability, monitoring, review and compliance.

POSSIBLE MODELS FOR AN MSP PROCESS IN ABNJ

There are several possible models for addressing MSP in a new agreement, ranging from ‘do nothing’ to the creation of a centralised MSP process. While the former would be a missed opportunity, leaving MSP to be developed on an *ad hoc* basis, the latter may be challenging to implement.

A “hybrid” or “regionalized” approach could potentially be a pragmatic and effective model. Under such a model, the MSP process could be conducted at the regional level, with international oversight, guidance and support. An inclusive global process could allow for the setting of objectives and facilitate regional coordination and management. Responsibility for taking specific management actions could remain with existing competent bodies, where they exist, thereby encouraging the integration of biodiversity into sectoral processes. The agreement would need to provide for resources to support competent organisations to build or maintain capacity to oversee planning and coordination.

CONCLUSION

The opening of negotiations for an international legally binding instrument on the conservation and sustainable use of marine biodiversity in ABNJ provide the international community with an historic opportunity to improve the governance framework for the global ocean. Development of appropriate provisions for MSP, including obligations, support for coordination and cooperation, and a strong legal basis, should be a key part of an ambitious new agreement.

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10. See <https://www.cbd.int/ebsa/>.

11. See www.mgel.env.duke.edu/mico/.

12. See www.eu-atlas.org.

13. See *Workshop: Towards the development of a strategic Environmental Management Plan for deep seabed mineral exploration and exploitation in the Atlantic basin*. Available at <https://webgate.ec.europa.eu/maritimeforum/en/node/3718>.