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HIGH SEAS MPAs

Regional Approaches and Experiences

SIDE EVENT

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Background document for the

HIGH SEAS MPAS

regional approaches and experiences

side event at the 12th UNEP Global Meeting of the Regional Seas Conventions and Action Plans, 20th of September 2010

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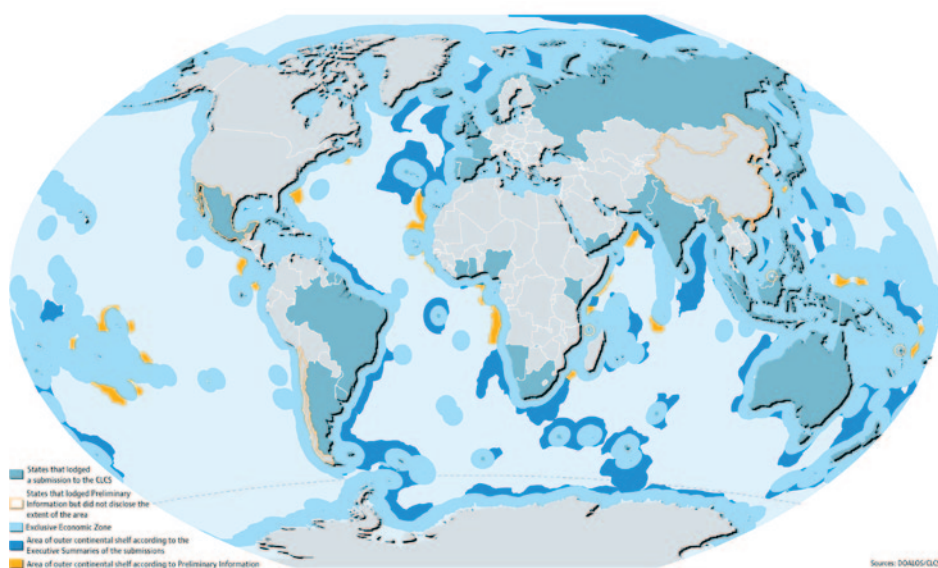
From meter long tubeworms dwelling near black smokers to turtle hatchlings clinging to Sargassum weed, from millions of tons of tuna in open waters to billions of tons of manganese nodules on the deep sea floor: the high seas still host to mankind every surprise and every treasure conceivable – and beyond.

Preface

But with shipping and fishing leaving ever-growing footprints beyond the limits of national jurisdiction over many decades and deep-sea mining re-appearing on the horizon, high seas biodiversity and ecosystems are under serious threat. In addition, with rising atmospheric carbon dioxide levels, the impacts from ocean acidification and ocean warming are set to further aggravate these footprints, reducing the resilience of vulnerable ecosystems and species. Recognition of the need for protection of ocean biodiversity and processes is growing, and networks of marine protected areas are considered a central tool to aid in providing this protection.

While the protection targets set by the international community have been moderate, progress towards achieving them has been painfully slow. Today, less than one percent of the oceans has been designated as protected, while science is considering up to 40 % necessary to ensure long-time conservation and recovery. Ecologically representative networks of marine protected areas, well managed and coherent, are slowly emerging and regional bodies are playing a pivotal role in their creation.

WWF is dedicated to supporting those active for the conservation of marine ecosystems and works towards achieving global networks of marine protected areas which help protect ocean ecosystems. With this background document we wish to highlight progress in regional high seas marine protected area establishment and make experiences available to, and encourage, those committed to the conservation of marine biodiversity within and beyond countries' waters.



Global distribution of high seas and outer continental shelf

Fig. 1: Summary chart of all areas included in submissions (dark blue) and preliminary information (yellow) to the UN Commission on the Limits of the Continental Shelf as of 31 May 2009, and the remaining areas of the High Seas and the Area (light blue). source: UNEP/GRID-Arendal

I. **A brief overview of the global ocean governance framework**

The overarching framework for ocean governance is set by the United Nations Convention on the Law of the Sea (UNCLOS, in force since 1994), which provides rights and duties to coastal states in a set of differentiated legal zones. The sovereign rights afforded include the exploration and exploitation of living and non-living resources in waters and seafloor under national jurisdiction. On the contrary, the general duty established by UNCLOS for all states to “pre-

serve and protect the environment” (Art. 192), in particular those which are “rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other form of marine life” (Art. 194 (5)) is not limited to any legal zone and includes waters and seafloor in areas beyond national jurisdiction.

Areas beyond national jurisdiction (ABNJ) are the open ocean waters beyond the coastal states’ Exclusive Economic zones (200 nm), and the seafloor seawards of the (extended) continental shelf boundaries (“the Area”), as of the decisions taken by the UN Commission on the Limits of the Continental Shelf. Currently, a large number of states have filed submissions to the Commission¹ which have not yet been finally decided upon (see figure 1). Therefore, some uncertainty exists as to whether and to what extent national sovereignty exists with respect to the seafloor included in the submissions, and how potential marine protected areas with dual legislation, the seafloor under national, the water column under international legislation could operate (see chapter V). First experiences have been made already in the North East Atlantic and Mediterranean (chapter II and IV).

While the “solid, liquid or gaseous mineral resources in or beneath the seabed” are “the common heritage of mankind”, and therefore have to be administered to the benefit of all nations (Art. 136, 140), the living resources do not have such an ownership; their exploitation is one of the high seas freedoms (Art. 87). The freedom of fishing in the high seas has only been limited by multilateral agreements, such as the 1995 UN Fish Stocks Agreement², and regional fisheries conventions, to cooperate on taking the necessary measures for the conservation of the resource. The FAO Compliance Agreement³ (1993) sets out responsibilities for flag states to ensure that any fishing vessel flying its flag and operating in the high seas complies with international conservation and management measures. To further urge contracting parties to exercise fishing in a more responsible and sustainable way, the voluntary FAO Code of Conduct for Responsible Fisheries was agreed in 1991, and supplemented in 2001 by the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing (IUU) which urges contracting parties to cooperate through regional fisheries management organisations. The FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (2009⁴) particularly address the vulnerability of open ocean and deep sea ecosystems to fishing activities and provide a set of rules, including the closure of areas to fishing, for minimising environmental damage.

¹ http://www.un.org/Depts/los/clcs_new/commission_submissions.htm

² 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

³ 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

⁴ FAO, 2009. International guidelines for the management of deep-sea fisheries in the high seas Food and Agriculture Organization of the United Nations Rome, pp. 1-73.

The Convention on Biological Diversity (CBD 1992) provides the global framework for biodiversity conservation, sustainability of natural resource use and benefit sharing from genetic resources. Among other measures, CBD contracting parties commit to implement the World Summit of Sustainable Development's 2012 target for the completion of an effectively managed, ecologically representative network of marine and coastal protected areas⁵. Although CBD provisions do not apply directly to areas beyond national jurisdiction, the Conference of Parties in 2008 has adopted a set of criteria designed to apply to open ocean and deep seabed areas, including marine areas beyond national jurisdiction⁶, which will allow for the identification of "ecologically and biologically significant areas (EBSAs)". In order to help meet the network criteria of representativity, connectivity, replication and size of the network, the EBSA criteria have been complemented by further guidance as well as a global bioregionalisation scheme⁷. There is currently no agreed mechanism to decide upon the establishment of protected areas in areas beyond national jurisdiction, however the UN BBNJ working group⁸ has the mandate to explore options for cooperation for the establishment of marine protected areas beyond the limits of national jurisdiction.

Several international conventions are applicable to the conservation of marine wildlife. The International Convention for the Regulation of Whaling (1946) applied to all waters where whaling is carried out and has to ensure the effective conservation of whale stocks by various instruments. Endangered species can receive additional protection by global trade restrictions according to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, in force since 1987). The Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention, in force since 1983) particularly seeks to encourage contracting parties to cooperate on protection measures for wide ranging species, including the establishment of protected areas in critical habitats.

The International Seabed Authority (ISA) has been established in 1994, under the UNCLOS and the 1994 Implementing Agreement on the Area⁹. Through the authority, contracting parties to UNCLOS organize and control the exploration and exploitation of "solid, liquid or gaseous mineral resources in or beneath the seabed" in ABNJ. Among specific regulations for the exploration and exploitation of resources, the ISA can designate areas no mining is allowed.

The International Maritime Organization (IMO) is responsible for developing rules and regulations concerning maritime safety, the efficiency of navigation and the prevention and control of marine pollution from ships (International Convention for the Prevention of Pollution from Ships, MARPOL 1978) and all other sources (London Convention, 1972, Protocol 1996). The IMO provides the mechanisms enabling the cooperation among governments which adopt these minimum standards for their fleets in all waters. In addition to the globally applicable fleet regulations, IMO contracting parties can designate areas where particular regulations apply to protect the marine environment from impacts arising from navigation and marine pollution, Particular Sensitive Sea Areas (PSSAs), such as the Western Europe Seas, and MARPOL (1978) "Special Areas", such as the Mediterranean.

⁵ WSSD, 2002. Report of the World Summit on Sustainable Development. A/CONF.199/20.

⁶ Convention on Biological Diversity, 2008. Marine and coastal biodiversity. COP 9 Decision IX/20, Bonn, 19 - 30 May 2008.

⁷ UNESCO, 2009. Global Open Oceans and Deep Seabed (GOODS)- Biogeographic Classification. UNESCO-IOC (IOC Technical Series, 84).

⁸ 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

⁹ Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

II. The North-East Atlantic

II.1 The Regional Governance Framework

Several regional conventions and management mechanisms are operational in the North-East Atlantic. The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention, since 1992), superseding the prior Oslo and Paris Conventions for the prevention of environmental pollution by dumping and land-based sources, respectively (1972 and 1974, resp.), aims at regional action to prevent and eliminate pollution, and to

take the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected¹. The Convention has 16 Contracting Parties, including all coastal states of the North-East Atlantic, the European Community and three land-locked states connected via the river catchments. The Convention is implemented through a hierarchy of decisions (legally binding for Contracting Parties), recommendations and other agreements. Overall, the work of the OSPAR Commission is guided² by the ecosystem approach to an integrated management of human activities in the marine environment. This is supported by a general obligation of Contracting Parties to apply the precautionary principle, the polluter pays principle and the best available techniques (BAT) and best environmental practice (BEP), including clean technology. The Convention's five current annexes are made operational by means of a thematic strategy each, addressing the main threats from eutrophication, hazardous substances, offshore industry, radioactive substances and to biodiversity and ecosystems³. The impacts of climate change are addressed as a cross-cutting issue.

Annex V to the Convention (1998) on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area, supplemented by Criteria for Identifying Human Activities for the Purpose of Annex V are the basis for extending the cooperation of the Contracting Parties to cover all human activities that might adversely affect the marine environment of the North-East Atlantic. However, where the Commission considers **action desirable in relation to fisheries management and shipping**, the Commission shall draw that question to the attention of the relevant competent authorities and international bodies and endeavour to cooperate with them (Annex V, Art. 4). In the case of maritime transport, OSPAR Contracting Parties shall endeavour to cooperate within the International Maritime Organisation to achieve an appropriate response (Annex V, Art. 4.2).

The OSPAR Convention area covers all waters of the Atlantic and Arctic Ocean north of 36° N latitude and 42° W longitude (north of 59° N, 44° W) and 51° E longitude, except the Mediterranean Sea and the Baltic Sea. This **includes waters beyond national jurisdiction**, currently assessed to amount to approximately 40 % of the Convention area⁴. However, several Contracting Parties have filed submissions to the UN Commission on the Limits of the Continental Shelf, UNCLCS with respect to the outer limits of their continental shelf, which will lead to a significant reduction of the seafloor beyond national jurisdiction ("the Area", UNCLOS Part XII) in the Convention area. The current status as in the submissions of coastal states is reflected in figure 2.

¹ OSPAR Convention, Art. 2.1 (a)

² see http://www.ospar.org/content/content.asp?menu=00320109000066_000000_000000

³ http://www.ospar.org/html_documents/ospar/html/Revised_OSPAR_Strategies_2003.pdf#nameddest=biodiversity

⁴ BDC 10/2/1 Add.5-E(L) Draft 2010 Status Report on the OSPAR Network of Marine Protected Areas



Fig. 2: Limits of the extended continental shelves of coastal states in the North-East Atlantic as applied for in submissions made by May 2009 to the UN Commission for the Limits of the Continental Shelves (EEZs and equivalent in light blue)⁵. The Norwegian boundary has been adopted in 2009. The OSPAR and NEAFC Convention areas are indicated within the hatched line.

OSPAR's measures taken involve a comprehensive system of periodic assessment and monitoring, culminating in Quality Status Reports. Since the adoption of Annex V, and in particular since the Ministerial Meeting in 2003, OSPAR is committed to a holistic ecosystem approach to the management of human activities, including a set of Ecological Quality Objectives, and the establishment of an ecologically coherent network of well-managed MPAs by 2010⁶. Based on a set of identification criteria⁷, a priority list of species and habitats under threat and/or decline in the OSPAR area⁸ has been adopted and adapted since 2003, with a view to seeking to reduce threats and improve the conservation status by either national measures of Contracting Parties or regional measures by e.g. regional fisheries bodies. This also holds for the habitats listed, including deep sea habitats, which have been

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