

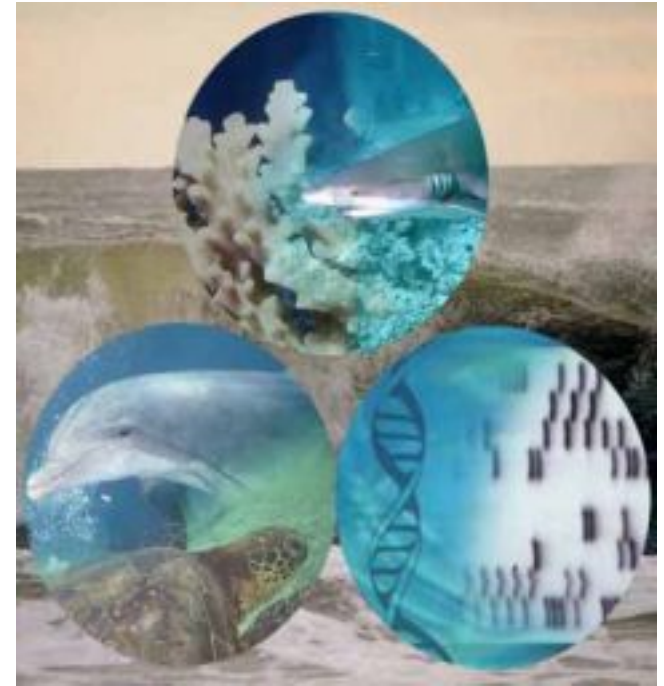
# UNCLOS 'Implementation Agreement' and Fisheries Law

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# Overview

1. Introduction
2. Background and Context to ABNJ IA
3. BBNJ/PrepCom 1 and Fisheries
4. Scope and Content of Prospective ABNJ Agreement
5. Impact on ABNJ Agreement on Fisheries Law



## 2. Background and Context to ABNJ IA

- United Nations Convention on the Law of the Sea 1982 UNCLOS
- The conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction
- UN process:
  - BBNJ & PrepCom



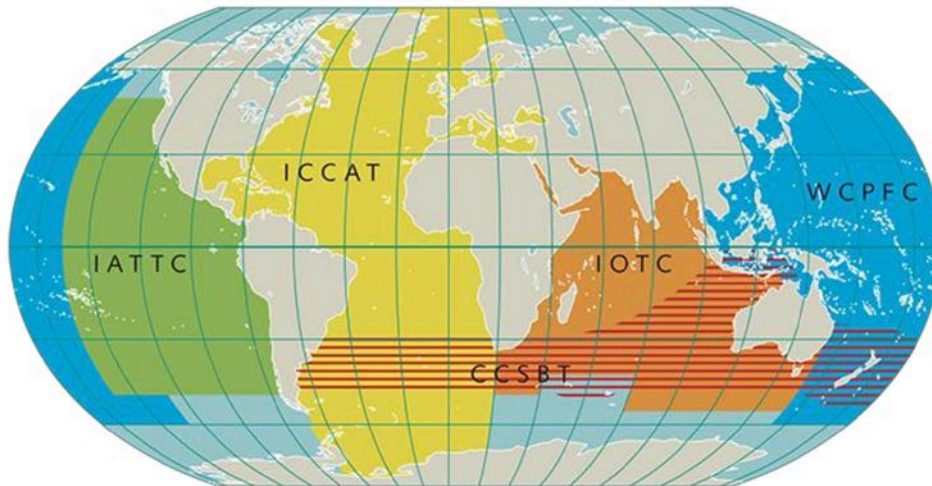
## 3. BBNJ and Fisheries Issues

- Key Points:
    - Fisheries as a threat to marine biodiversity in ABNJ
    - Implementation and governance gaps
    - Fisheries and integrated approaches to conservation and sustainable use of ABNJ
    - Fisheries and Area–Based Management
    - Fisheries and Environmental Impact Assessment
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# RFMO Gaps



Source: Future Ocean, International Ocean Institute and Mare (2013), *World Ocean Review 2 – The Future of Fish – The Fisheries of the Future*, Maribus gGmbH, Hambourg.



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## 4. Scope and Content of ABNJ IA

- *Conservation and Sustainable Use of Marine Biological Diversity in ABNJ*
    - Governance Principles:
      1. Duty to cooperate
      2. Integrated – Cross sectoral Approach
      3. Protection and Preservation of Marine Environment
      4. Science-based approach to management
      5. Precautionary approach
      6. Ecosystem-based approach
      7. Sustainable and equitable use
      8. Public availability of information
      9. Transparent and open decision-making
      10. Protection of Biodiversity
      11. Impact Assessment
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Impact Assessment	*		*					*		*		*	*	*	*	*		
Protection of biodiversity	*									*		*	*	*	*	*		
Transparent and open decision-making	*											*	*	*	*	*	*	
Public availability of information	*	*	*		8	*	*	*	*	*	*	*	*	*	*	*	*	
Sustainable and/or equitable use	*	*	*	*		*	*	*	*		*		*	*	*	*	*	
Ecosystem-based approach	*		*			*	*			*	*		*	*	*	*	*	
Precautionary approach	*		*			*	*			*		*	*	*	*	*	*	
Science-based management	*		*	*		*	*	*	*	*	*	*	*	*	*	*	*	
Protection of the marine environment	*	*	*			*	*			*		*	*	*	*	*		
Integrated Approach – cross sectoral cooperation	*		*				*					*		*	*	*	*	
Cooperation	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	FSA 1995	APFIC	CCAMLR	CCSBT	CECAF	GFCM	IATTC	ICCAT	IOTC	NAFO	NEAFC	NPAFC	NPFC	SEAFO	SIOFA	SPRFMO	WCPFC	WECAFC

# Focus on 'GLoTT' FRMBs

<b>Impact Assessment</b>	Art. 5(d)				Art. XII(4) (b)	Art. 5(d)	
<b>Protection of biodiversity</b>	Art. 5(g)					Art. 5(f)	
<b>Transparent and open decision-making</b>	Art. 12		Art. XVI			Art. 21	?
<b>Public availability of information</b>	Art. 14(3)	Art. 12(4)(f)	Arts XII (2)(j), XVI(1) (a)	Art. IV(2) (d)	Art. V(2)(a)	Arts. 10(1), 13(3)	Art 6(f)
<b>Sustainable and/or equitable use</b>	Arts. 5(a), 24	Art. 3	Art. II	Art. IV(2)(b)	Art. V(1)	Art. 5(a)	
<b>Ecosystem-based approach</b>	Art. 5(e)		Art. VII (1)(f)?				Art. 2(a)
<b>Precautionary approach</b>	Art. 6		Art. IV			Art. 6	Art. 2(a)
<b>Science-based management</b>	Art 5(b)	Art. 11	Art. VII (1)(c)	Art. IV	Art. V(2)	Art. 5(b)	Art. 6(g)
<b>Protection and Preservation of the</b>	Art. 6		Art s. VII(1)(k), XV(3)				
<b>Integrated Approach – cross sectoral cooperation</b>	? Art 24.		Art. XVI(2)?			Art. 22	Arts 2(c), 11
<b>Cooperation</b>	Art. 5	Preamble	Preamble	Pre-amble	Art. IV(3)	Art. 5	
	<b>FSA 1995</b>	<b>BOBP- IGO</b>	<b>IATTC</b>	<b>ICCAT</b>	<b>IOTC</b>	<b>WCPFC</b>	<b>WECAFC</b>



## 4. Scope and Content of ABNJ IA

- **Area-based management tools**
  - *Existing Options*

1. UNCLOS - Article 194(5)
  2. FSA 1995 - Article 5
  3. CBD 1992 - Article 8.
  4. MARPOL - PSSA/APM and SECA
  5. OSPAR – MPA Network – e.g. Charlie Gibbs Fracture Zone+ others
  6. Barcelona Convention and SPAMIS in ABNJ
  7. FAO – Deep-Sea Guidelines? Developing tools on MPA?
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# Area-based Management - Fisheries

- Some examples of ABM in RFMOs
  - GFCM adopted Fisheries Restricted Areas (SPAMIs)
  - NEAFC closed areas of 2009 .
  - NAFO closed shrimp fisheries on the Flemish Cap, Fogo Seamounts, Corner Seamounts, New England Seamounts and Orphan Knoll
  - SEAFO has closed 11 vulnerable marine areas since 2006
  - SIOFPA - 13 Benthic Protected Areas
  - FAO Guidelines on Management of Deep-Sea Fisheries on the High Seas
- Key Issues
  1. Coordination?
  2. Bindingness ?
  3. Compliance?
  4. FAO Guidelines as a Model?
  5. Costs of ABM?

## 4. Scope and Content of ABNJ IA

- **Environmental Impact Assessment**
  - *Existing Options...*

1. UNCLOS – Article 206
  2. FAS Article 5
  3. 1994 Implementation Agreement – Annex. S 1.7
  4. ISA Regulations on Nodules and Sulphides
  5. CBD Article 14
  6. Espoo and Kiev Protocol
  7. Non-binding instruments: GA Res 61/105, FAO Guidelines
  8. EIA under customary law – *Pulp Mills case*, *Area Advisory Opinion*
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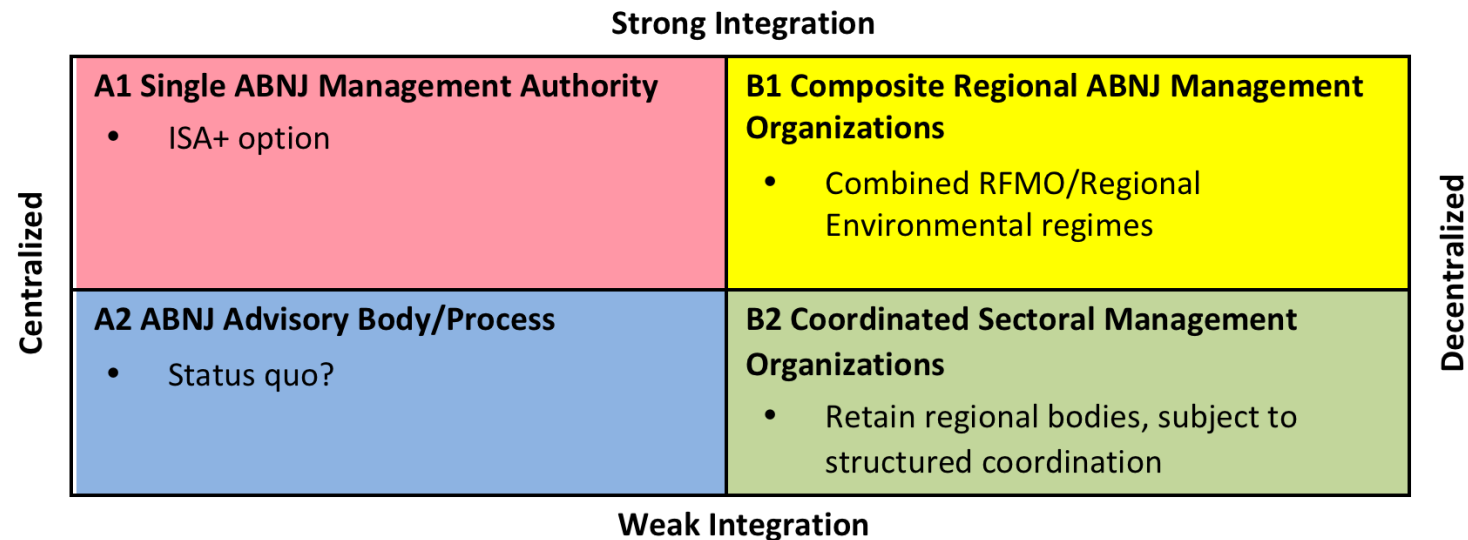
# EIA and Fisheries

- ***Key Issues:***

1. Fisheries are often apart from EIAs
  2. FAO Guidelines –general regime of assessment – not comparable to domestic EIA
  3. UNGA Res which calls for impact assessments – e.g. 61/105 para 83(a) and 64/72
  4. Questions re use of SEA and coordinated fisheries assessments
  5. Use of EIA as a precondition for any new fishery/all fisheries in ABNJ?
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## 4. Scope and Content of ABNJ IA

### *Implementation Agreement Scenarios*



## 4. Scope and Content of ABNJ IA

### ***Principles of Good Regulation***

1. **Effectiveness** – does the regulatory approach secure the desired policy outcome
  2. **Mixed Regulation.** Most forms of regulation require a range of tools and options for their use – Flexibility
  3. **Compatibility** – any regulatory options must be compatible with each other, and with existing regulatory regimes
  4. **Less intervention** – regulation should be facilitative rather than coercive
  5. **Scaled/Sequenced Regulation** – In a system which uses a range of techniques
  6. **Efficiency** – is the intervention or regulatory approach cost effective (or indeed feasible). This reinforces less interventionist approaches
  7. **Transparency** – legitimacy and knowing ‘terms of the deal’
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## 6. Impact on ABNJ IA on Fisheries Law

- **Tentative Conclusions**

1. Decentralised system favours retention of State control over activities
2. Discussions indicate retention of RFMO in some capacity
3. Governance Principles support RFMO/As in some form:
  - a. Compatibility, instrument mix, effectiveness, scaled approaches (regionalism), efficiency...

- **Main issues going forward**

1. Closing gaps in species/geographic coverage
2. Inclusion of fisheries issues within other forums?
3. Inclusion of other concerns in RFMO/As?
4. Strengthening use of ABM and EIA in RFMO/As
5. Oversight of regional approaches
6. Learning from regional approaches – OSPAR/EU