

MARINE PROTECTED AREAS AND FREEDOM OF THE HIGH SEAS

Centre for International Law
National University Singapore

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Penelope Nevill

Barrister

20 Essex Street Chambers
London • Singapore

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STRUCTURE OF THIS TALK

1. The state of the world's oceans and seas
2. MPAS and ABNJ: History and development
3. Will the proposed new treaty interfere with freedom of the high seas?
4. Contemporary treaty negotiations and the proposed treaty: the role of civil society and the private sector

I. THE STATE OF THE WORLD'S OCEANS AND SEAS: THE TRAGEDY OF THE COMMONS

“Humans... have put the oceans under risk of irreversible damage by over-fishing, climate change and ocean acidification (from absorbed carbon emissions), increasing pollution, unsustainable coastal area development, and unwanted impacts from resource extraction, resulting in loss of biodiversity, decreased abundance of species, damage to habitats and loss of ecological functions.”

UN Secretary-General Ban Ki-Moon, August 2012

Some statistics:

- “state of the world’s fisheries is worsening” - FAO, 2012
- 90.1% fish stocks either overexploited (28.8%; cf 10% in 1974) or very close to maximum sustainable production (61.3%)
- 13% global fisheries have collapsed
- 60% world’s major marine systems have been degraded or are used unsustainably
- approx 20% world’s coral reefs lost

If coral reefs are gone...

“What we will be left with is an algal-dominated hard ocean bottom... with lots of microbial life soaking up the sun’s energy by photosynthesis, few fish but lots of jellyfish grazing on the microbes. It will be slimy and look a lot like the ecosystems of the Precambrian era, which ended more than 500 million years ago.”

Dr Roger Bradbury, ‘A World Without Coral Reefs’, *The New York Times*, 13 July 2012







90% Indian Ocean's shark population has gone

MPAs part of the solution

Targets of 10% MPA coverage by 2020
(CBD, WSSD) - just over 1% in 2010

...Targets for coverage may not be met
(recent IUCN predictions are more encouraging)

II. MPAs: HISTORY, DEFINITIONS AND LEGAL FRAMEWORK

- No one scientific or legal definition
- IUCN 2008:
 - “A protected area is a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values”*
- No one treaty or legal framework

- Instead an incremental, iterative development since late 1940s through
 - patchwork of treaties
 - programmes of UN organs and agencies ECOSOC, UNGA, UNESCO, FAO, IMO, UNEP (after 1972)
 - Stockholm Conference on Sustainable Development 1972
 - treaty bodies (e.g. CBD), and
 - work of the IUCN and World Parks Congress
- Mixture of “hard” and “soft law” (guidelines, recommended practices, etc.)

- Treaties containing provisions for protected areas:
 - 1946 Convention on the Regulation of Whaling
 - 1971 Convention on Wetlands of International Importance (Ramsar)
 - 1972 World Heritage Convention
 - MARPOL 73/78 - “special areas” and “particularly sensitive sea areas”
 - UNEP’s regional seas programme: Barcelona Convention, OSPAR, CCAMLR

- World Park Congress and IUCN resolutions to promote MPAs in the 1980s
- 1990s - Rio World Summit on Sustainable Development 1992 adopts Agenda 21, chapter 17, and Convention on Biological Diversity, Art 8(a) (nb. CBD key in this area)
- 2000s
 - WSSD 2002 - Johannesburg Plan of Action -calls on states to promote conservation and management of world's oceans through MPAs
 - FAO 2005 supports MPA networks

Law of the Sea proper?

- UNEP, IMO attended LOS negotiations 1973-1982
- Only one provision in UNCLOS for MPAs
 - Article 211(6)(a) for IMO areas
- Articles 64-65 on straddling stocks (1995 Straddling Stocks Agreement)
- Obligations under Articles 117-119 to control nationals and cooperate to conserve fisheries on the high seas (UNEP RSAs)
- Article 194(5) - only reference to “ecosystems” - emphasis on pollution and marine environment not holistic approach

Law of the Sea proper?

- 1999 UN Open-ended Informal Consultative Process on Oceans and Law of the Sea
- 1998 “Troubled Waters: A Call for Action” - 1605 marine scientists and conservation biologists
- UNGA resolutions endorse WSSD 2002 Johannesburg Plan of Action, incl MPAs
- 2004 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*

Law of the Sea proper?

- 2008 meeting of Working Group considered area based management tools on the high seas/areas beyond national jurisdiction (ABNJ)
- WSSD 2012 - “Rio+20” - commitment to create a treaty under UNCLOS
- UNGA asked Working Group to consider treaty proposal
- 3 sets of meetings between 1 April 2014 and 23 January 2015 result in WG recommendation to UNGA to negotiate a treaty under UNCLOS

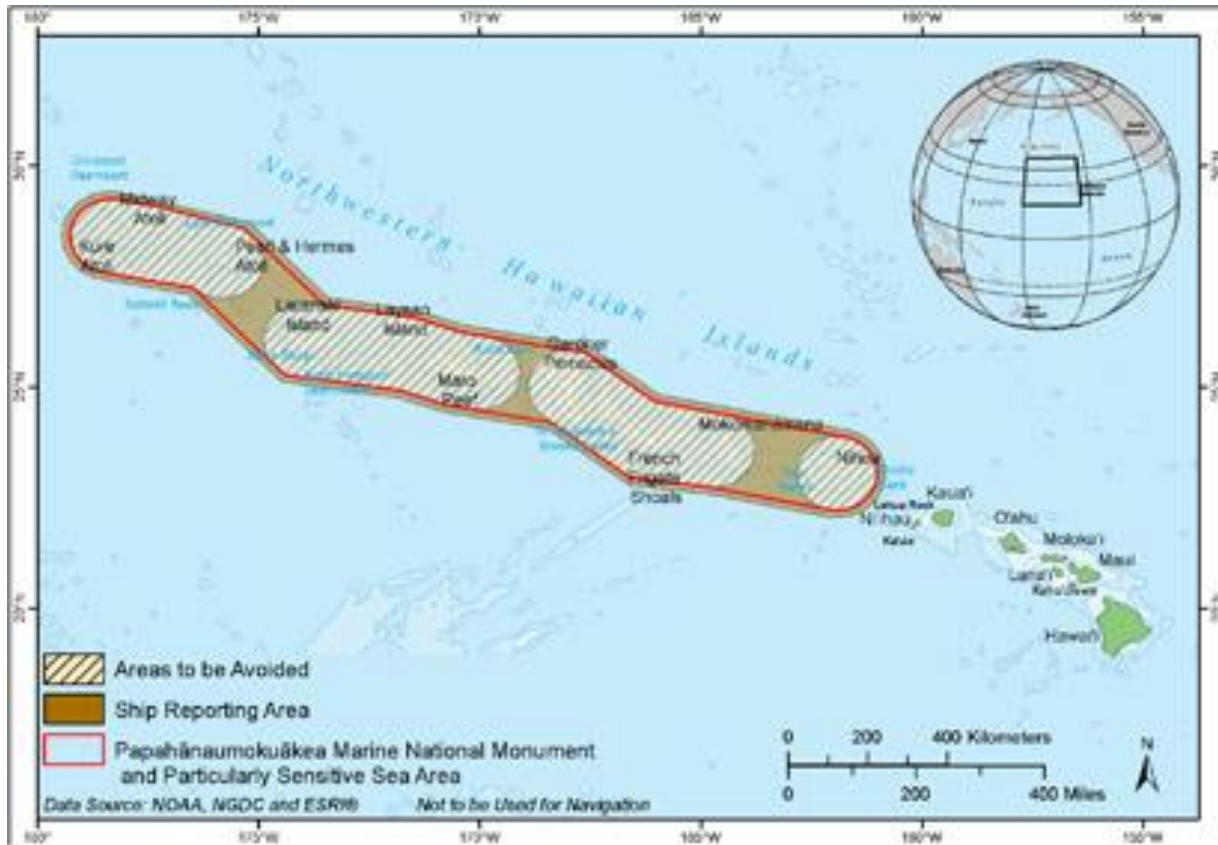
III. WILL MPAs IN ABNJ RESTRICT FREEDOMS OF THE HIGH SEAS?

- Open list in UNCLOS Article 87: navigation, overflight, laying cables and pipelines, fishing, construction of artificial installations, marine scientific research
- “Rights” qualified by other provisions, e.g. Articles 117-119 and must be exercised with due regard to rights of other states

...shipping?

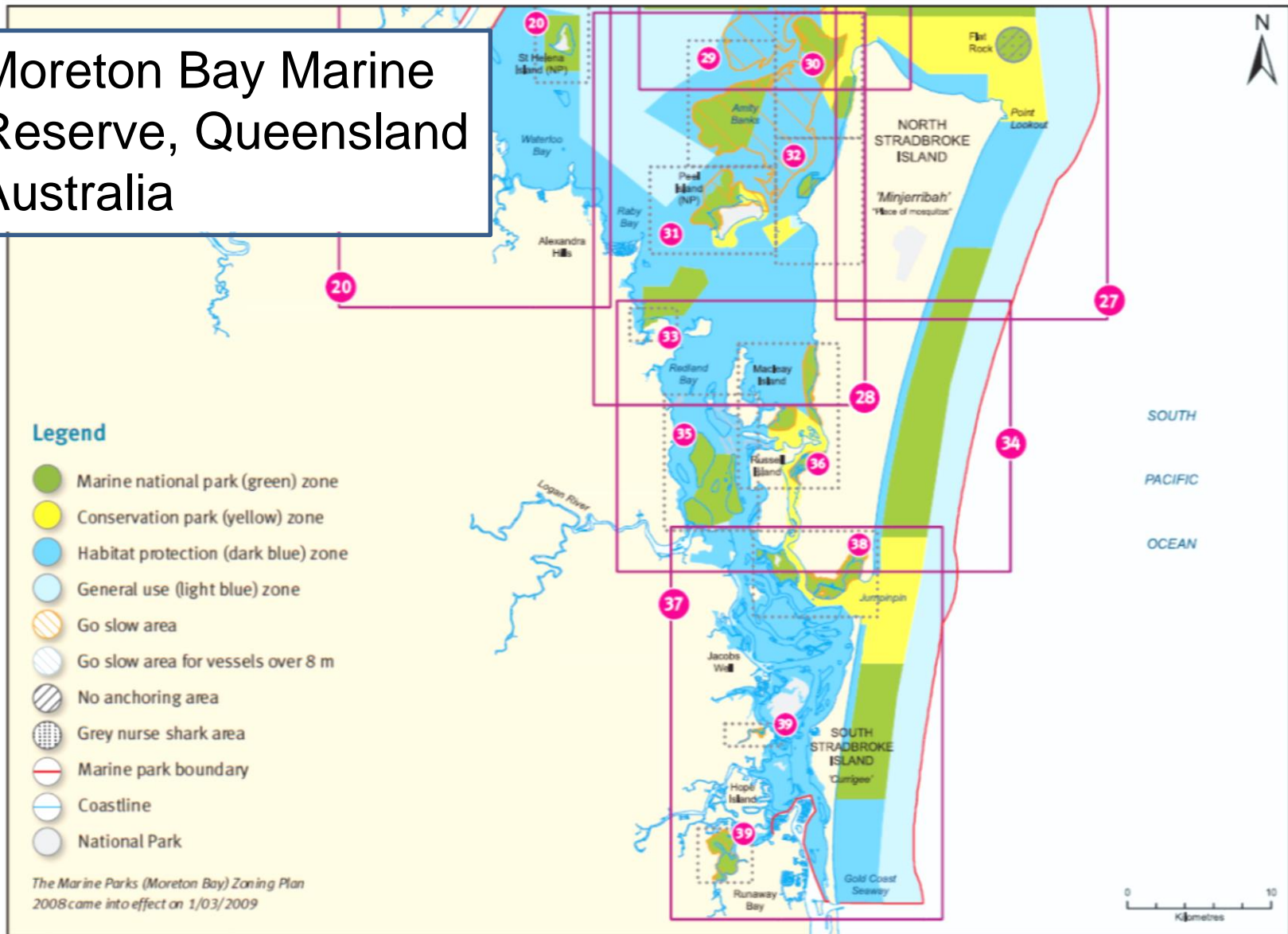
“Not really”

- Already have (expensive) obligations under IMO rules and framework, e.g. 2004 Ballast Water Convention and special areas and PSSAs
- Push for MPAs already underway under existing law
- States will take shipping (and other business) interests into account because of (i) economic interests and (ii) guidelines on creation of MPAs require stakeholders' interests to be taken into account



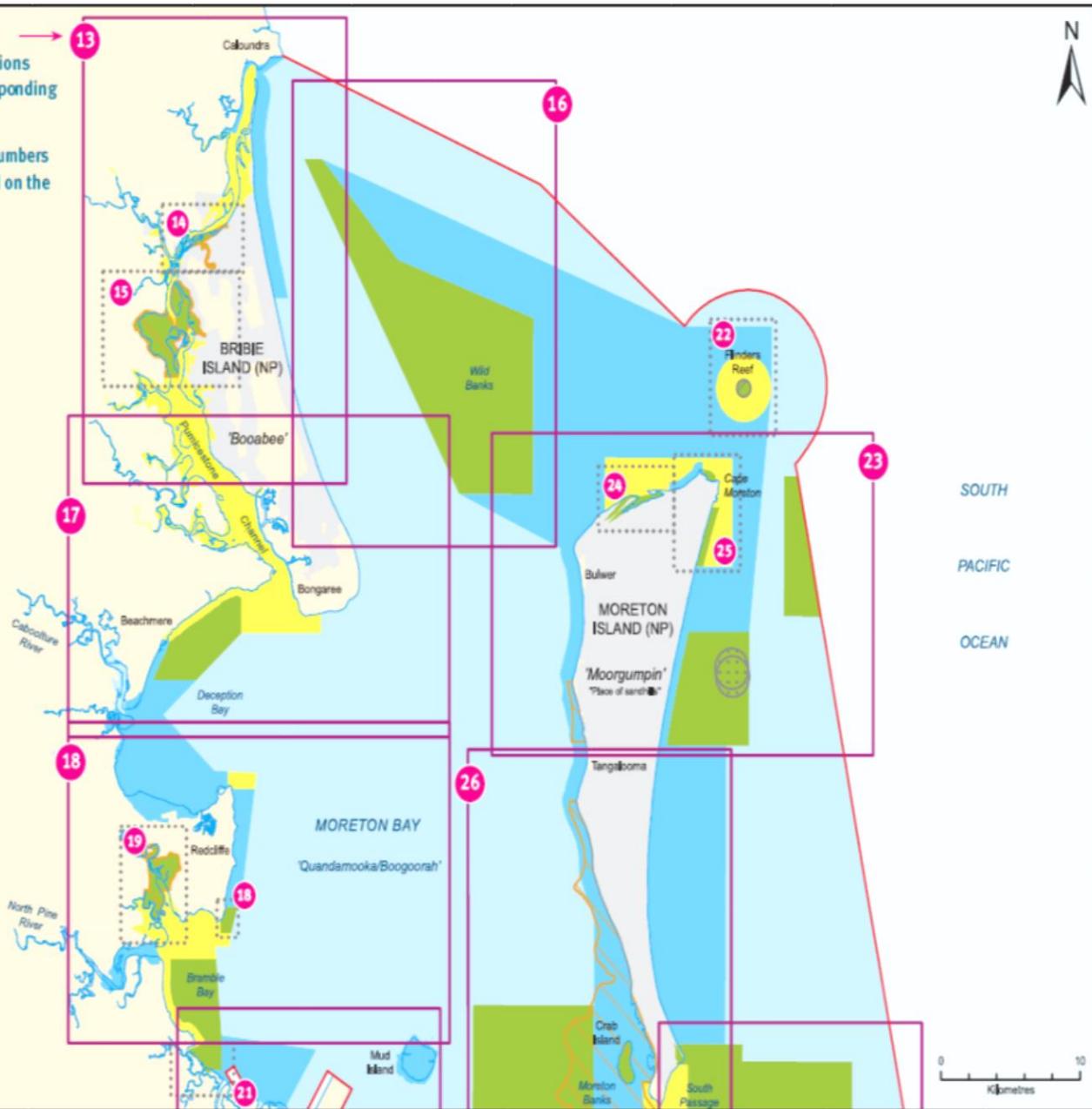
Papahānaumokuākea Marine National Monument
 (originally named the Northwestern Hawaiian Islands Marine National Monument)

Moreton Bay Marine Reserve, Queensland Australia



For a closer look
at boundary locations
turn to the corresponding
page number.

Adjoining page numbers
are also indicated on the
detailed maps.



- Role in enforcement?
- Working Group recommendations clear that new treaty “should not undermine existing legal instruments and frameworks and relevant regional and sectoral bodies”

IV. CONTEMPORARY TREATY NEGOTIATION: THE ROLE OF CIVIL SOCIETY & THE PRIVATE SECTOR

- The Arms Trade Treaty model
- WG emphasised need to take all stakeholders view into account and invite engagement, views and expertise
- WG included Greenpeace, International Chamber of Commerce and others

- Then and now: comparison with UNCLOS negotiations in the 1970s:

“They [NGOs] brought independent experts to meet the delegations, thus enabling delegates to have an independent source of information on technical issues. They assisted representatives from developing countries in narrowing the technical gap between them and their counterparts from the developed countries.”

Chairman Tommy Koh, speech on the conclusion of UNCLOS in 1982



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