

# Conservation and Management of Marine Living Resources beyond National Jurisdiction. Filling the Gaps

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# Presentation Outline

- Marine living resources and biodiversity beyond national jurisdiction
- Governance gaps in conservation and sustainable use of marine living resources beyond national jurisdiction
- Potential role of a new implementing agreement in remediating these governance gaps



# Marine Living Resources and BBNJ

- Conservation and sustainable use of marine living resources beyond national jurisdiction has been a central focus of the BBNJ discussions in both the Working Group and Preparatory Committee meetings
- Discussion of marine living resources has encompassed both pelagic and benthic resources including fish stocks, marine mammals and sedentary species as well as their habitats and the ecosystems of which they form part



# Marine Living Resources and BBNJ

Fishing is one of the key drivers of biodiversity loss and ecological change in the open-ocean beyond national boundaries for number of reasons

- There are much higher levels of overfishing and overfished stocks for straddling and migratory species in the open-ocean in ABNJ than in national waters, with twice the rate of overfished stocks or those experiencing overfishing than stocks within national jurisdictions;
- Bycatch in open-ocean fisheries and the indirect impacts of abandoned, lost or discarded fishing gear have been implicated in the severe decline of fish, sea turtle, shark, seabird and marine mammal populations;
- Open-ocean fisheries have been shown to reduce pelagic biodiversity and ecosystem resilience;
- Fisheries have altered trophic relationships in open-ocean communities, generating trophic cascades that can lead to ecosystem-level impacts and regime shifts; and
- The ecological impacts of open-ocean fisheries and climate change can act synergistically to induce profound transformations of ecosystem dynamics. (Crespo and Dunn 2016)



# Governance Gaps

- The BBNJ process has brought into sharp relief a range of governance gaps in conservation and sustainable use of marine living resources beyond national jurisdiction
- These gaps take different forms and have been variously categorised as governance, regulatory and implementation gaps



# Governance Gaps

- To address the significant stresses on the ocean, the current legal and institutional regime for the high seas based primarily on flag State jurisdiction is inadequate
- A more integrated and cross sectoral governance structure is needed which adequately protects not only the interests of individual users but also of the international community.



# Governance Gaps

- There is no international rule making structure for the high seas which can hold individual states accountable for their failure to act in the face of actions by their fisheries vessels which have adverse impacts on the marine environment beyond national jurisdiction.
- The deficiencies in flag State control over fishing vessels have been remedied to a certain extent by port state control (2009 FAO Port State Measures Agreement) and trade based measures but these measures are not comprehensive

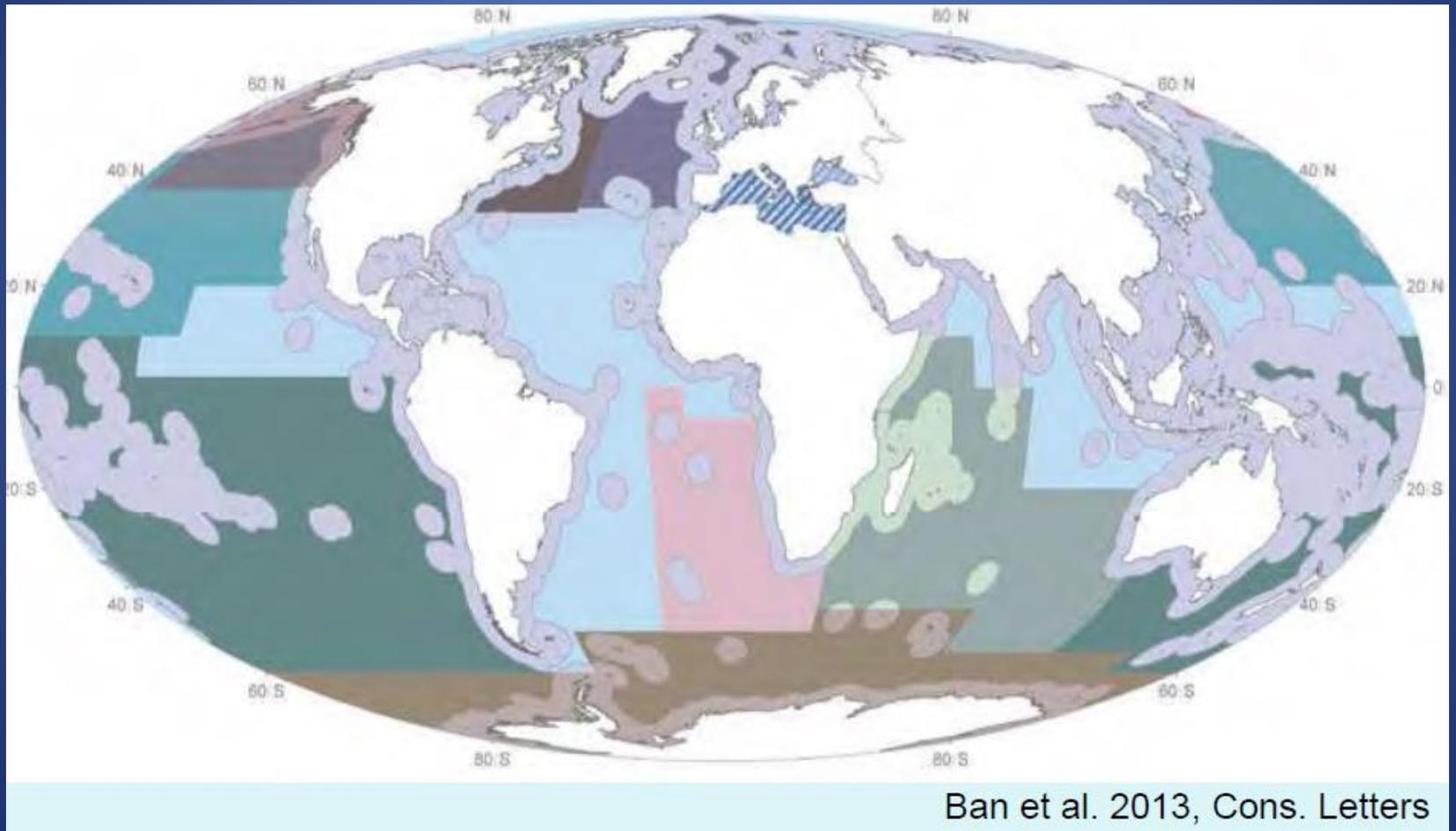


# Regulatory Gaps

- Poor regulation of high seas fishing acknowledged throughout BBNJ process as the principal threat to marine biodiversity beyond national jurisdiction
- Gaps in high seas geographic coverage of RFMOs
- These include the Arctic, Central and Southwest Atlantic



# Non Tuna RFMO Gaps



# Regulatory Gaps

- UNFSA only covers straddling and highly migratory stocks not discrete high seas fish stocks such as orange roughy
- RFMOS cover many but not all species
- UNFSA provides a framework for highly migratory and straddling stocks which incorporates modern conservation principles but parties are not obliged to comply with its provisions



# Regulatory Gaps

- No global institution responsible for reviewing the performance of RFMOs, flag or port states
- No organization coordinating the activities of RFMOs
- Review, coordination, cooperation and communication has tended to be ad hoc eg Kobe Process for Tuna RFMOs, review conferences for UNFSA



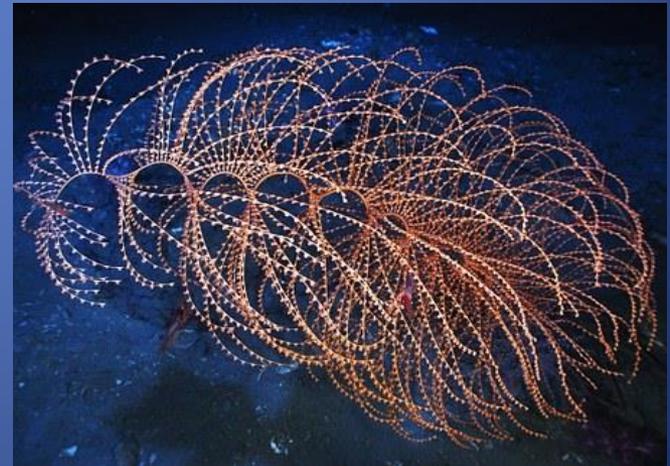
# Regulatory Gaps

- UNFSA and some RFMO agreements address environmental impact assessments in general terms but specific terms for EIAs are only spelled out for deep sea bottom fisheries
- RFMOs are limited in their ability to deliver strategic or integrated EIAs of fishing and other activities in ABNJ

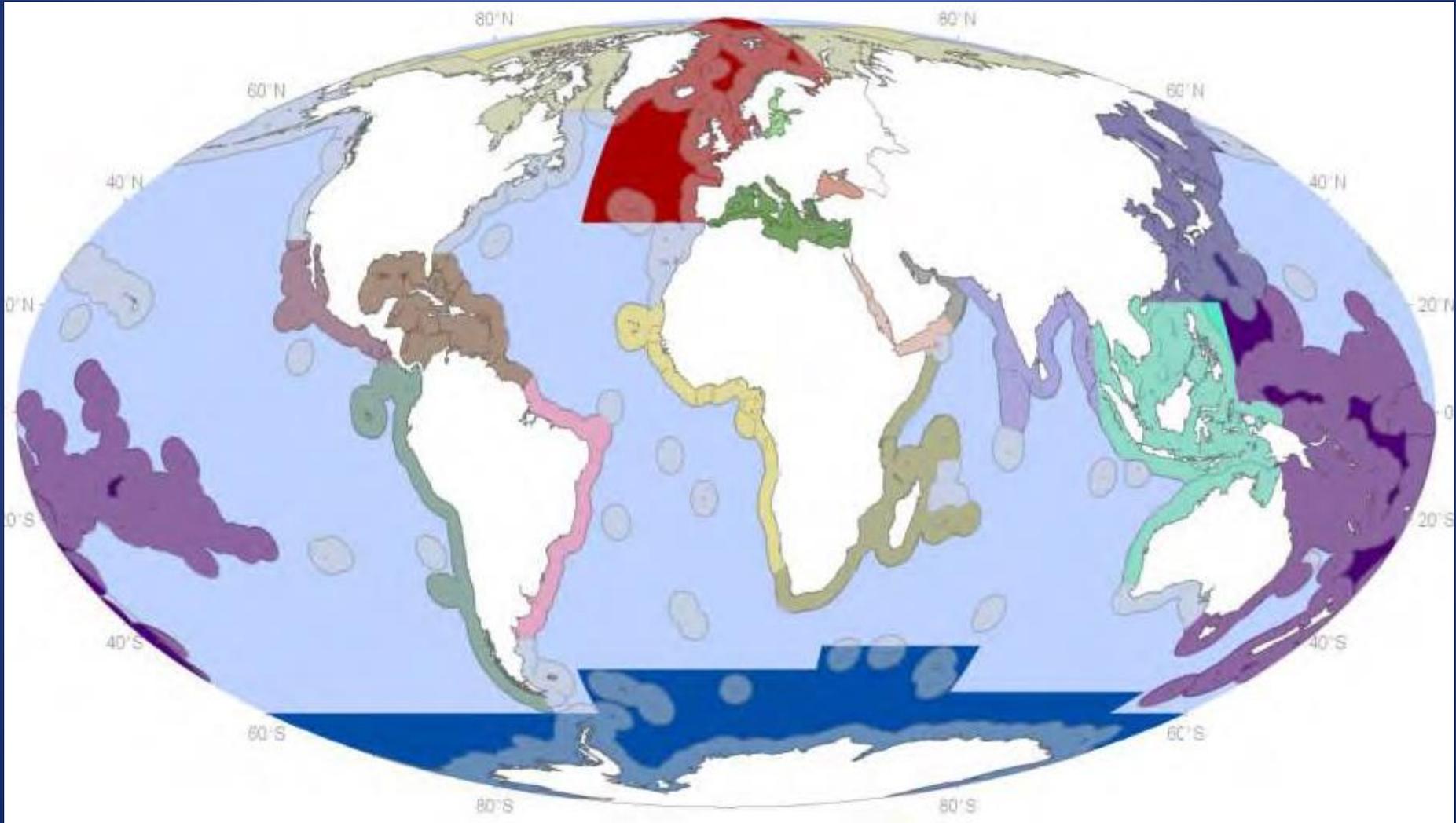


# Regulatory Gaps

- Lack of regional oceanic conservation regimes in most of ABNJ
- Lack of communication, cooperation and coordination between regional seas organizations and RFMOs



# Gaps in Regional Seas Organizations Coverage



# Regulatory Gaps for Sedentary Species in ABNJ

- No global or regional organizations with comprehensive responsibility for conservation of sedentary species in ABNJ
- Some non-tuna RFMOs have competence over the conservation and management of sedentary species within their areas of responsibility but fish stocks would tend to have priority
- Other RFMOs specifically exclude sedentary species eg SEAFO and NAFO



# Regulatory Gaps for Sedentary Species in ABNJ

- ISA has responsibility to take necessary measures with respect to activities in the Area to ensure effective protection for the marine environment from **harmful effects which may arise from such activities** (Art 145 LOSC)
- This must be balanced with the Authority's responsibility to develop the mineral resources of the Area so the Authority's responsibility to protect the marine environment of the Area is circumscribed



# Regulatory Gaps for Marine Genetic Resources in ABNJ

- There is no specific international law framework regulating access to and distribution of the benefits of marine genetic resources in ABNJ
- Developing such a framework is a key element of the IA package and one of the original reasons for the BBNJ process



# Regulatory Gaps for Marine Genetic Resources in ABNJ

- Key questions in the BBNJ debate have centred on whether marine genetic resources are marine living resources and subject to the high seas regime or whether they form part of the common heritage of mankind
- In meetings of the BBNJ working group and the Prep Com discussion has included the questions of whether MGRs are a common concern of humankind, whether conditions should be placed on access to MGRs in ABNJ and how monetary and non-monetary benefits of MGRs derived from ABNJ should be distributed



# Implementation Gaps

- Variable progress among RFMOs in incorporating modern conservation principles into their agreements and practice
- Limited application of conservation and management measures such as fisheries closures and bycatch mitigation measures by RFMOs
- These measures are limited to members
- Difficult to reach decisions on conservation and management measures in RFMOs where consensus is required
- Lack of effective compliance and enforcement mechanisms:
  - No cooperative surveillance, inspection, monitoring and control procedures for high seas fishing in some regions



# Potential Role of IA in Remediating Gaps

- IA could complement and supplement capacities, functions and knowledge base of RFMOs particularly in relation to biodiversity impacts, climate change and ecosystem based management
- Area based management measures introduced under an IA may enhance the recovery of fish stocks, ecosystem resilience and improve monitoring of changes.
- Current fisheries monitoring practices could be supplemented with broader ecosystem monitoring to comprehend the many population, community and ecosystem-level impacts from fisheries or other activities that account for cumulative effects including from climate change



# Potential Role of IA in Remediating Gaps

- IA could provide support for data gathering, monitoring and assessment from a broader group of organizations that can feed into larger processes to understand the cumulative impacts of fisheries and other activities on BBNJ
- A globally and regionally coordinated approach to SEAs in a new IA could provide a broader context for fisheries assessments



# Potential Role of IA in Remediating Gaps

- New IA could contain principles and standards generally applicable to all States Parties
- Establish regular as opposed to ad-hoc cooperation mechanisms between RFMOs and other global and regional organisations
- Could provide cohesiveness and financial support for RFMOs and other organisations to work together



# Potential Role of IA in Remediating Gaps

- Enable complementary protection measures in other sectors for spawning grounds and other important habitats for commercial fish species
- Require EIAs for activities that may impact adversely fish stocks and their environment
- Provide a means to develop no-take reference zones to enhance ecosystem stability



# Potential Role of IA in Remediating Gaps

- Involving RFMOs and other stakeholders in establishment of MPAs and other area-based management tools
- Establish environmental baselines which can contribute to long term fisheries conservation
- Facilitate sectoral biodiversity strategies and action plans which will assist in reducing adverse impacts of fisheries on biodiversity



# Potential Role of IA in Remediating Gaps

- Enhancing cooperation and collaboration to make fisheries data and other relevant information available, including through EIAs and SEAs
- Improving information on ways to decrease the likelihood of bycatch through improved information on species habitat preferences in space and over time
- Enhancing conservation and management of sedentary species including through cooperation with RFMOs and ISA
- Providing a regulatory regime for access to and distribution of the benefits of marine genetic resources derived from ABNJ

