

UNCLOS as the Cornerstone in the Implementation of SDG 14: A Central Integrative and Framing Role



SDG 14 and Ocean Issues for the Pacific Islands and the East Asia

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Conserve and sustainably use the oceans, seas and marine resources

Seven Targets

14.1 - Marine pollution (incl. land based) [2025]

14.2 - Manage and protect marine and coastal ecosystems [2020]

14.3 - Address ocean acidification

14.4 - Restore fish stocks to produce maximum sustainable yield [2020]

14.5 - Conserve at least 10% of coastal and marine areas [2020]

14.6 - Eliminate fisheries subsidies that contribute to overcapacity and overfishing [2020]

14.7 - Increase economic benefits of SIDS [2030]

UNCLOS is ...

- **Comprehensive: it seeks to regulate all the uses of the sea**
- **Near universal: 168 parties and many of its provisions are commonly referred to as customary international law (whether they were before or have become since)**
- **Uses intertemporal language and mechanisms**
- **UNCLOS Article 193 is about sustainable development**

Intertemporal language and specific mechanisms

- Seeks to encompass prior treaties that relate to the oceans, its uses and the protection of the marine environment (e.g. MARPOL, London Convention on Dumping)
- Art 237 and 311(2) establish the pre-eminence of the general principles of UNCLOS
- Subsequent treaties contain provisions to clarify that they should be implemented consistently with UNCLOS / are without prejudice to UNCLOS
- Several provisions in Part XII incorporate by reference global rules, standards and procedures developed by the competent international organization (that often did not exist at the time of the negotiations)

Consistency of the existing ocean governance framework

- **UNCLOS is not a separate self-contained regime**
- **UNCLOS includes in-built mechanisms that allow sub-regimes to be developed and integrated into UNCLOS for different activities: IMO, FAO, RFMO, ISA, and other competent international organisations**
- **UNCLOS Part XII is implemented in parts by other treaties – E.g. IMO Conventions, 1972 London Dumping Convention and its Protocol as well as Article 194(5) which calls on other instruments for the protection and preservation of rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species or other forms of marine life (CBD, CITES, CMS, Ramsar, etc.)**

Part 2 - Unifying, Structuring and Integrative Function

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Consistency of the existing ocean governance framework

- **The obligation to act with due diligence to protect and preserve the marine environment read in UNCLOS Article 192 (and Part XII in general) by several international decisions provide another push for integration of instruments relating to the protection and preservation of the marine environment (as appropriate)**
- **Recent international case law (SCS Arbitration case) held that**
 - **the general obligation to protect and preserve the marine environment under Article 192 of UNCLOS is broad enough to include the protection of biodiversity; and,**
 - **Article 194 also includes the protection and preservation of the biological diversity in the form of endangered species listed in CITES' Appendices**

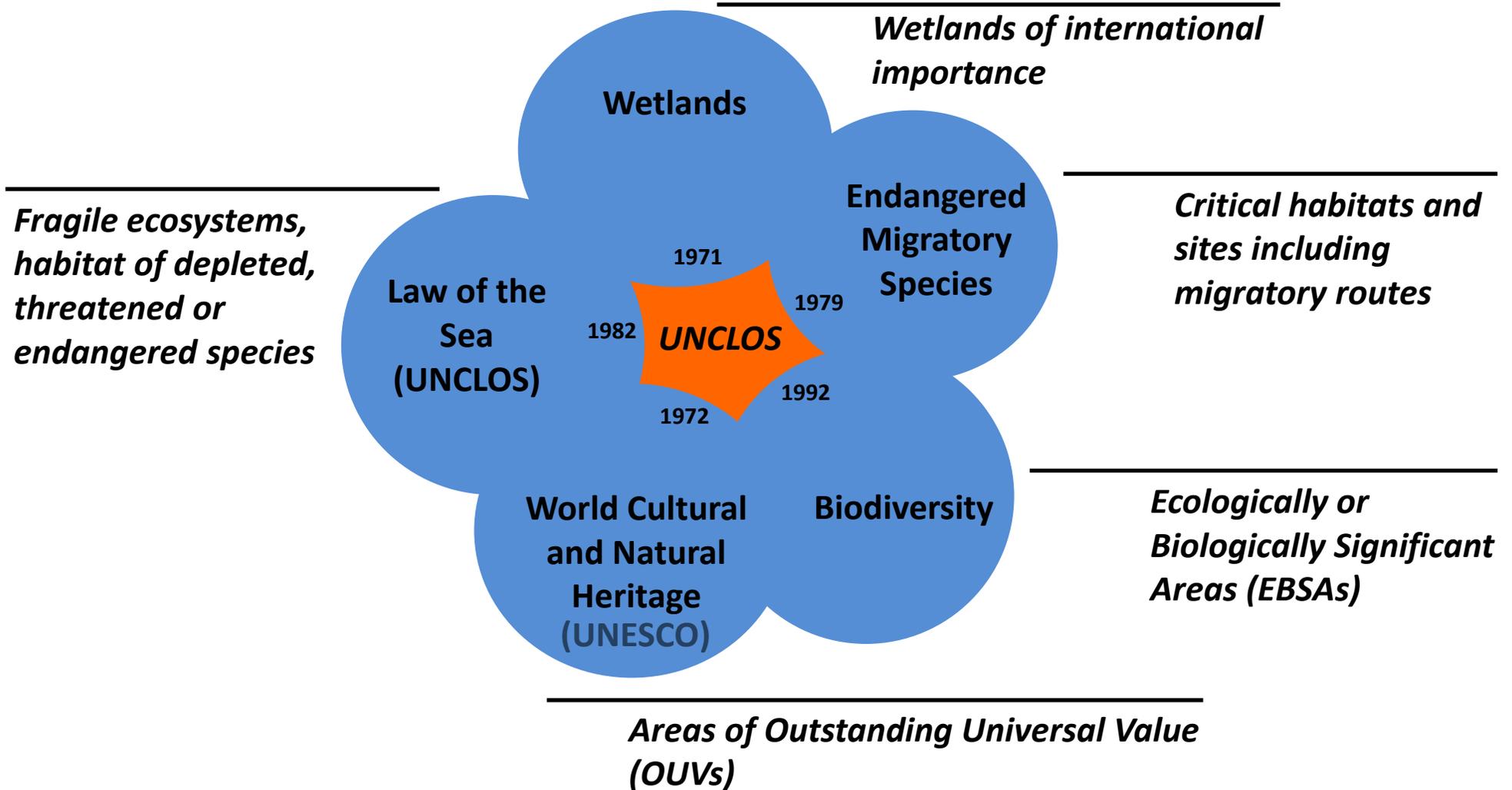
Part 2 - Unifying, Structuring and Integrative Function

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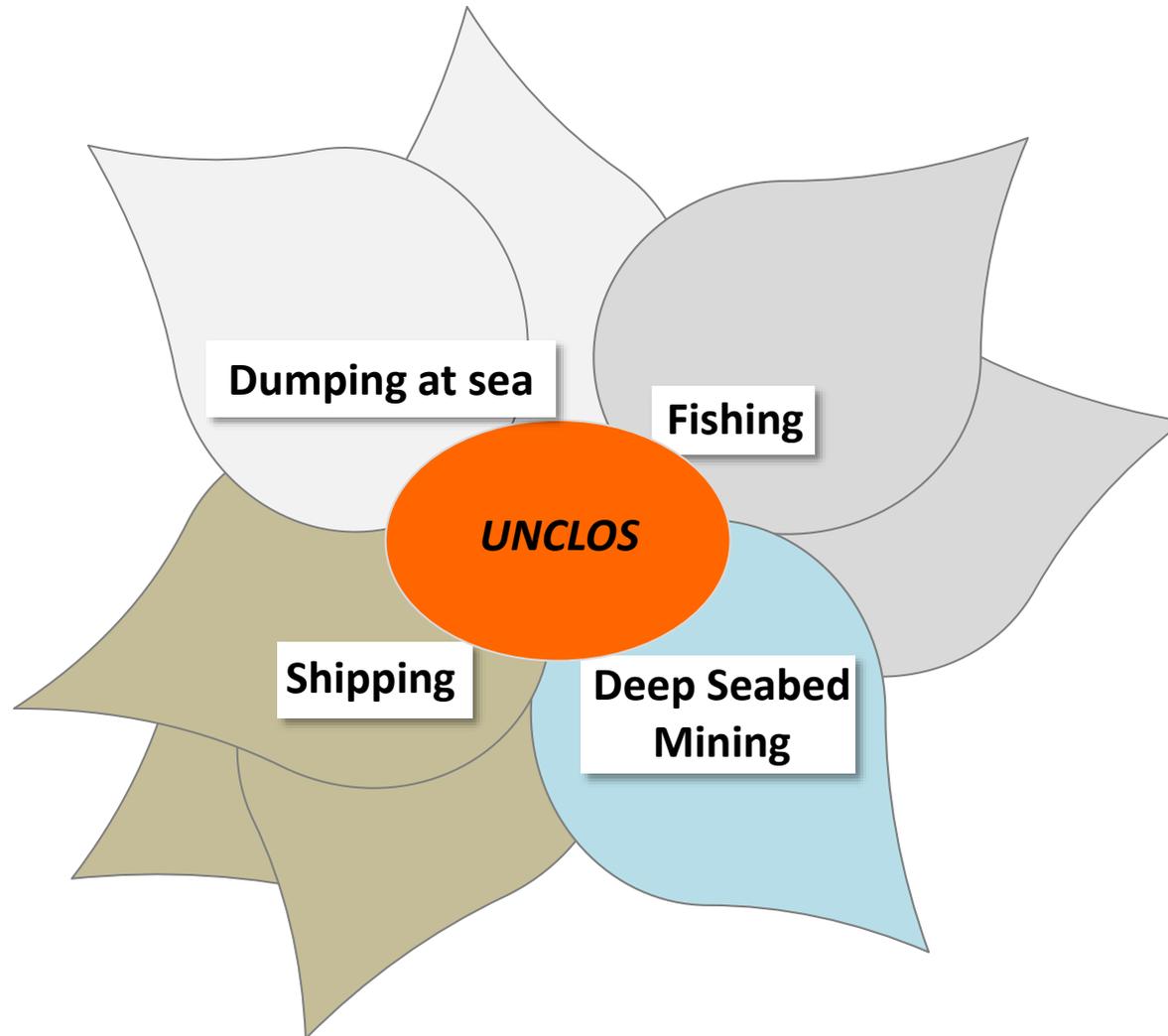
Consistency of the existing ocean governance framework

- The arbitral tribunal further decided that the content of the obligation provided in Article 192 of UNCLOS is informed by other applicable rules of international law which, together, form the corpus of international law on the protection and preservation of the marine environment and includes the CBD
- Other provisions of UNCLOS which may be informed by other applicable rules of international law are those that relate to assessment of transboundary impacts from activities that may have serious impacts on the marine environment and the publication of reports
- Gaps can be filled within the framework

Conservation-driven instruments



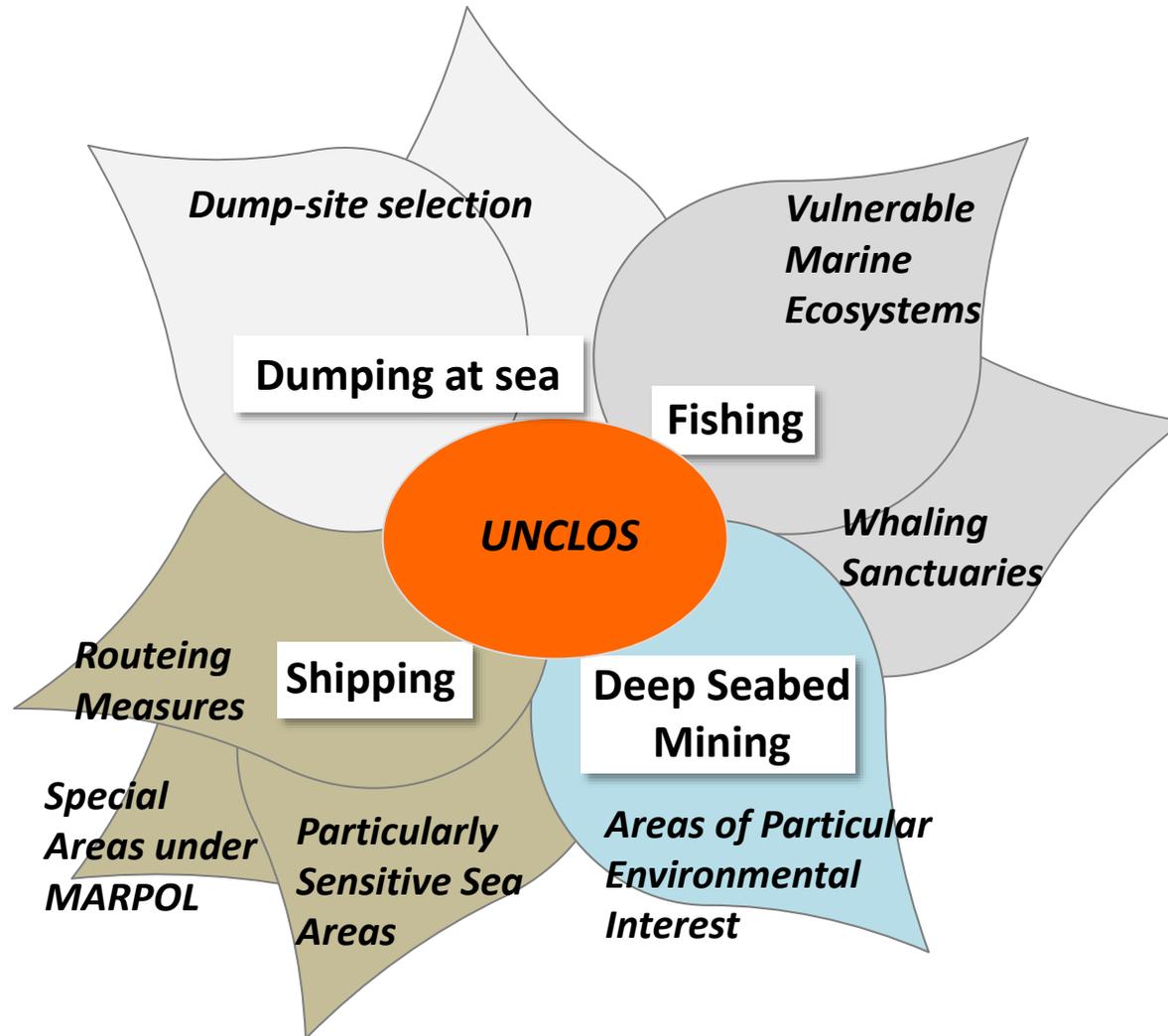
Sectoral instruments regulating uses of the sea



Part 3 – Application to the management of sensitive marine areas in ABNJ

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Sectoral instruments regulating uses of the sea



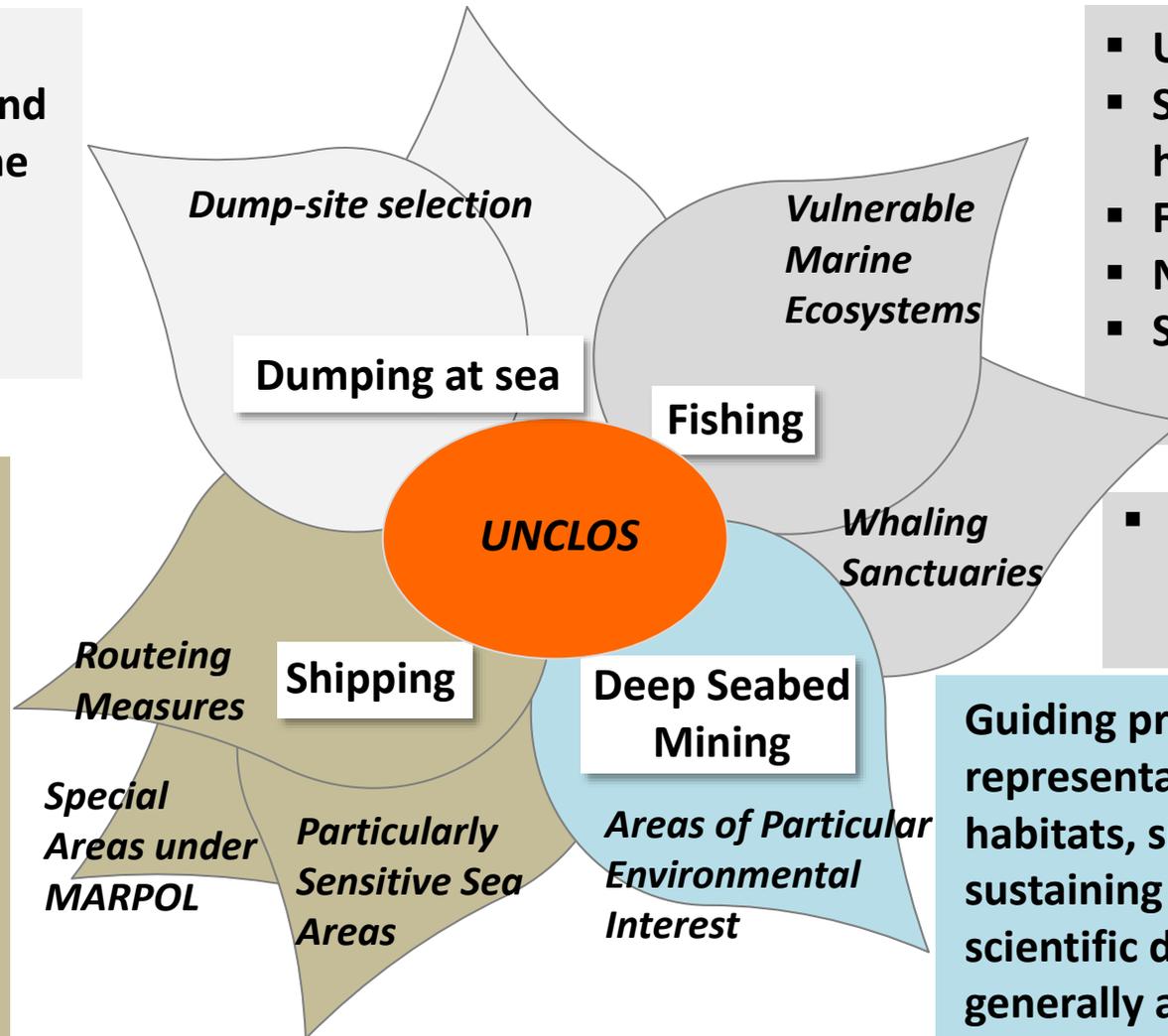
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Sectoral instruments regulating uses of the sea

- Ecological criteria
- Socio-economic and cultural uses of the sea
- Scientific and engineering uses

- Different criteria for different tools
- PPSA: 11 ecological criteria + social, cultural and economic + scientific and educational



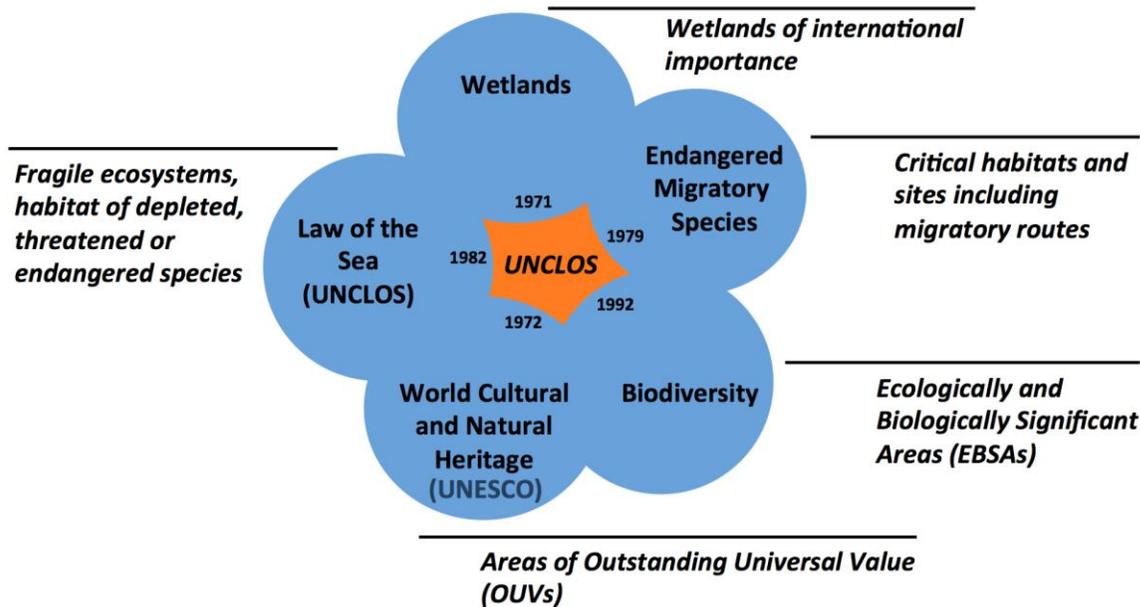
- Uniqueness or rarity
- Significance of habitat
- Fragility
- Needed for recovery
- Structural complexity

- In the Indian Ocean and in the Southern Ocean

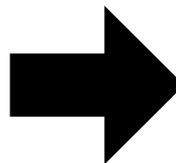
Guiding principles:
representative of full range of habitats, size covering self-sustaining population, scientific design based on generally accepted principles

Part 3 – Application to the management of sensitive marine areas

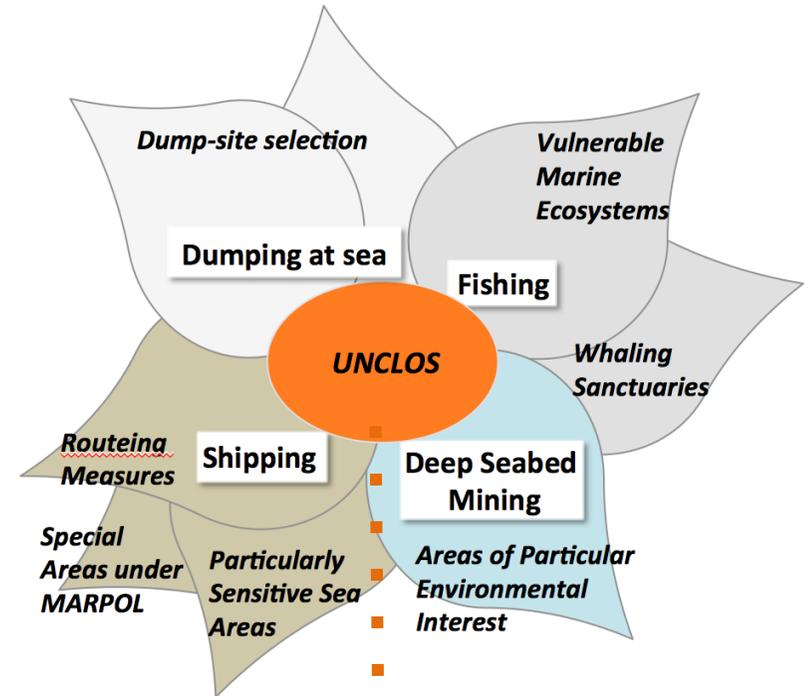
In conservation-driven treaties



Art. 192, 194(5)



In sectoral instruments regulating uses of the sea



Provisions on rights, duties and jurisdiction, and dispute resolution mechanisms

- **Criteria identified in some research to be missing from the perspective of building resilience from climate change would benefit from being brought up to the same level than the existing criteria**
- **Examples include areas that present ‘ecological functions (rather than species)’ that could support the establishment of a resilient network of Area-Based Management Tools (ABMTs) as well as refugia (which may not qualify under current criteria due to relatively lower biomass or density)**
- **Criteria to identify sensitive marine areas that have not been adopted by a ‘competent organization’ or otherwise legitimate authority, may encounter resistance in implementation**
- **General and cross-sectoral SDGs language can appear at odd with the legal governance framework: SDG targets and means of implementation may be more effective if better aligned to the legal framework**
- **Gaps in legal and institutional framework create limits in implementation that must be filled**

Part 5 – Sensitive Marine Areas in APAC

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EBSAs (CBD)



Marine Protected Areas in Protected Planet (WCMC-WDPA database)

- **The existing international marine law including UNCLOS is key to achieving the targets of SDG 14 (legal gaps must be filled)**
- **Much potential in better using it**
- **Capacity building on UNCLOS and the legal governance framework could improve implementation of SDG14**
- **Better partnership between scientists and international marine lawyers could facilitate the development of legally and institutionally feasible policy proposals**
- **UNCLOS and other relevant international instruments require data framed so as to inform their application; otherwise they cannot be used effectively**
- **Avenue adopted to fill gaps will impact effectiveness**

Thank you!

Questions?

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