

2023海洋治理與國家實踐國際論壇

International Forum on
Ocean Governance & National Implementation
Taipei, October 4-5, 2023

Session III: BBNJ & Ocean Governance

2023 High Seas Treaty and the International Regulation of Shipping

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Part 1

Regulation of Shipping - UNCLOS & IMO

Freedom of the High Seas

- The fundamental principle governing the high seas is “Freedom of the Seas”
- This principle was codified in Article 87 of 1982 UNCLOS
- Every State has the right to sail ships flying its flag on the high seas, and ships on the high seas are subject to the exclusive jurisdiction of the flag State

High Seas – Areas Seaward of Limit of 200 NM Exclusive Economic Zone (64% of oceans)

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- Founded in 1948 as UN Specialized Agency responsible for the regulation of international shipping
- Headquarters in London
- 175 Member States and 3 Associate Members
- Non-Governmental NGOs and Intergovernmental organizations have observer status

1982 UNCLOS and the IMO

- 1982 UNCLOS was drafted to take into that the IMO is the UN specialized agency responsible for the regulation of commercial shipping
- 1982 UNCLOS provisions “incorporate by reference” the conventions and annexes of the IMO on ship-source pollution
- The work of the IMO on ship-source pollution is the responsibility of the Marine Environment Protection Committee (MEPC)
- The IMO has two mechanisms for imposing stricter regulations on ships in particular areas in order to prevent pollution of the marine environment:
 1. MARPOL Special Areas
 2. Particularly Sensitive Sea Areas (PSSAs)

1982 UNCLOS and Ship-source Pollution

Article 211. Pollution from Vessels

2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from **vessels flying their flag** or of their registry.

Such laws and regulations shall at least have the same effect as that of **generally accepted international rules or standards established through the competent international organization** or general diplomatic conference.

Note: language in red refers to the conventions and annexes adopted the International Maritime Organization (IMO), including MARPOL 73/78 and its Annexes

IMO and Protected Areas

- **MARPOL Special Areas** are areas where ships must comply with stricter regulations with respect to the discharge of substances that can pollute the marine environment such as oil, sewage & garbage
- **PSSAs** are areas established by the IMO where ships **restrictions are imposed on the passage of ships (such are routing measures or traffic separation schemes)** in order to protect the marine environment.
- The IMO has not established any MARPOL Special Areas or PSSAs on the high seas
- There is nothing in the IMO Conventions and regulations that would prevent the establishment of protected areas on the high seas

IMO Special Areas

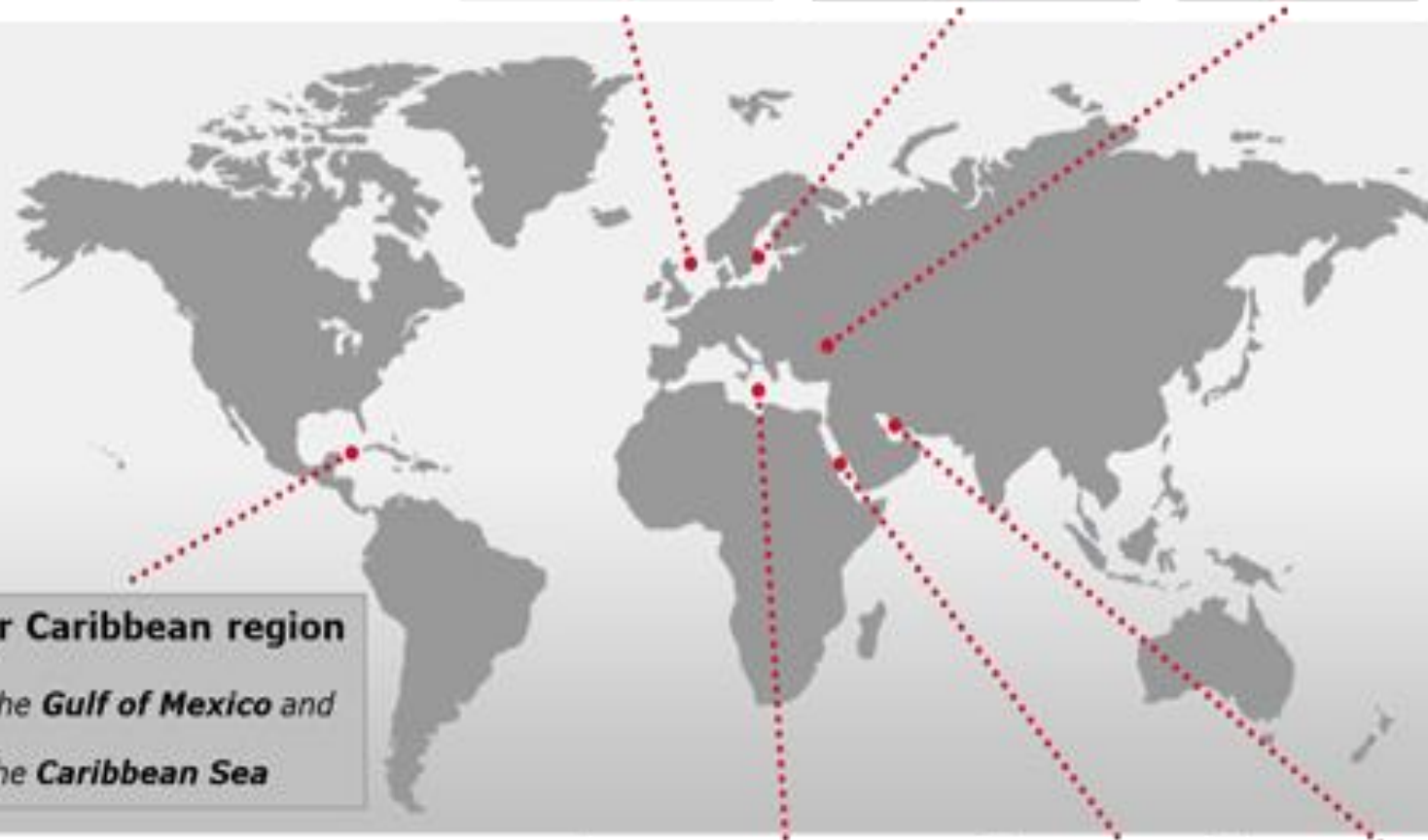
- **Special Areas** established under the Annex V of the 1973/78 International Convention for the Prevention and Reduction of Pollution from Ships (MARPOL)
 - MARPOL defines certain sea areas as "special areas" in which, for technical reasons relating to their oceanographical and ecological condition and to their sea traffic, the adoption of special mandatory methods for the prevention of sea pollution is required.
 - Under the Convention, these special areas are provided with a **higher level of protection than other areas of the sea from the operation of ships, including the discharge of oil, sewage and garbage**
 - Special Areas cannot be implemented in practice unless there are "Reception Facilities" in the region to receive the waste from ships

Marpol 73/78 Annex V - Special Areas

The North Sea

The Baltic Sea

Black Sea



Wider Caribbean region

*Incl. the **Gulf of Mexico** and
the **Caribbean Sea***

Mediterranean Sea

Red Sea

"Gulfs area"

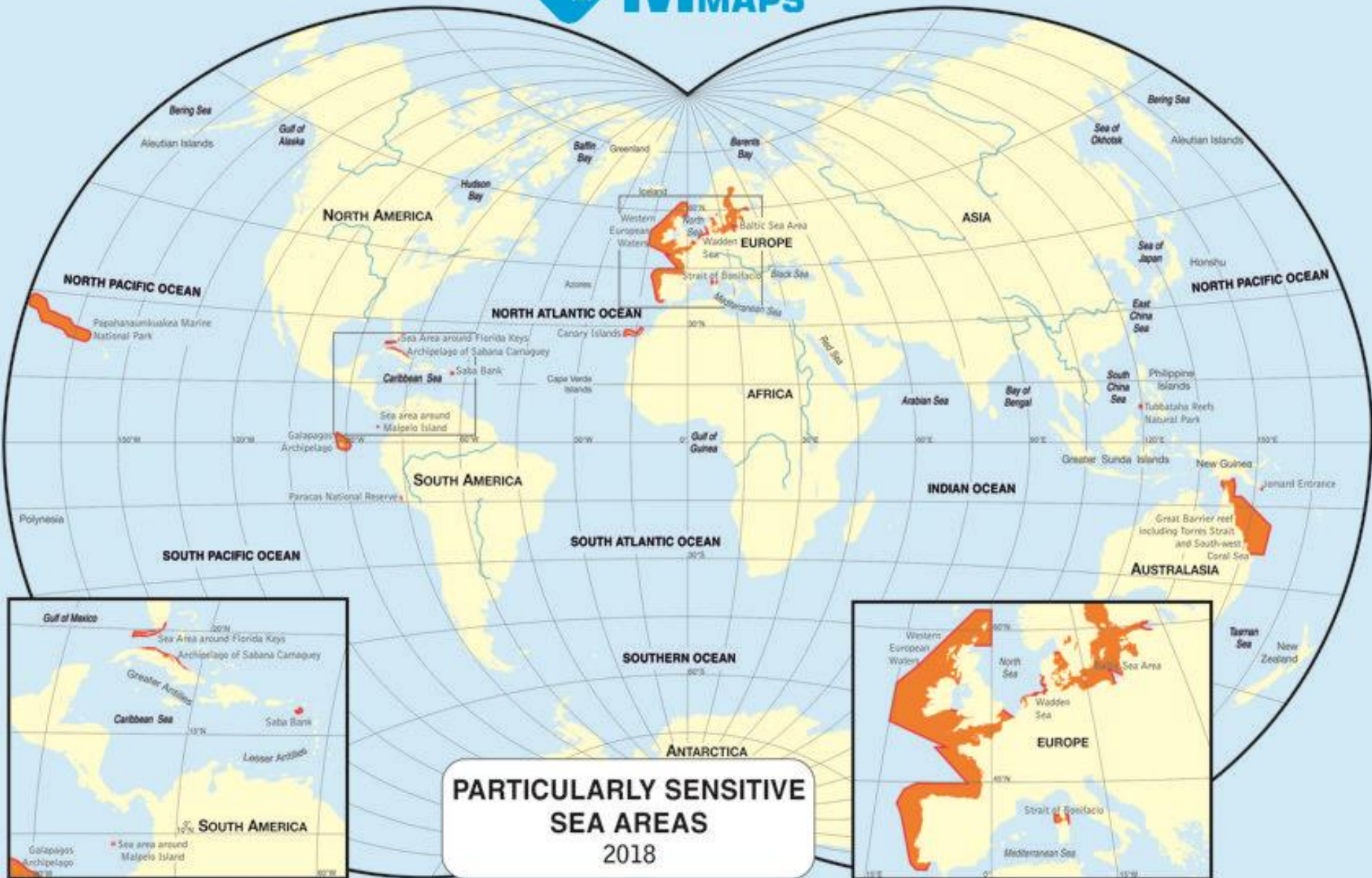
Antarctic area (south of latitude 60 degrees south)

IMO PSSAs

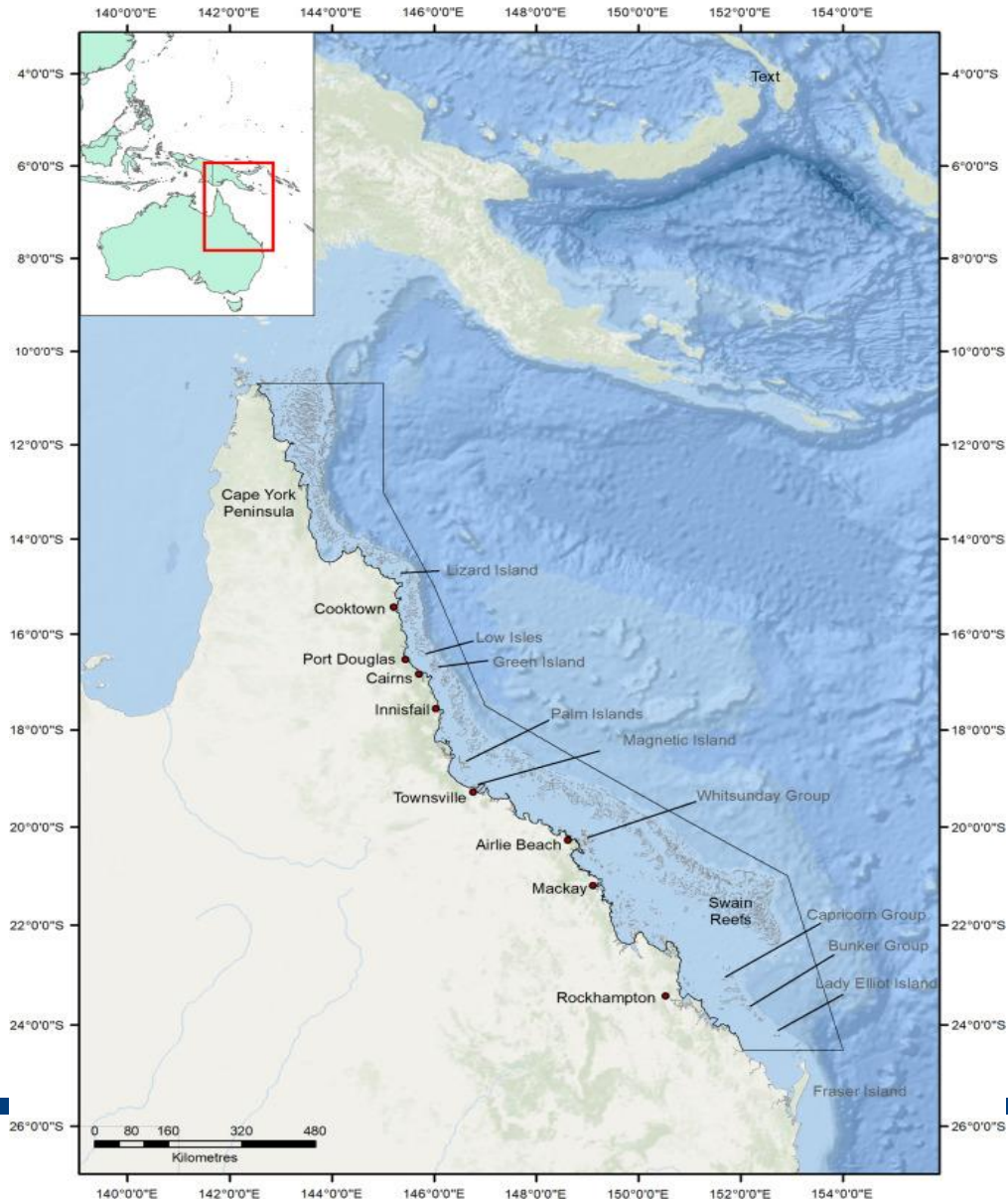
- When an area is approved as a PSSA, specific measures can be used to control the maritime activities in that area, such as:
 - routing measures,
 - strict application of MARPOL discharge and equipment requirements for ships, such as oil tankers; and
 - installation of Vessel Traffic Services (VTS).
- When a State applies to the IMO for the designation of an area as a PSSA, it must include in its application a description of the associate protective measures it intends to request the IMO to adopt in order to regulate maritime activities in the PSSA

IMO PSSAs

- **Particularly Sensitive Sea Areas (PSSAs)** - an area that needs special protection through action by IMO because of its significance for recognized ecological or socio-economic or scientific reasons and which may be vulnerable to damage by international maritime activities.
- PSSA guidelines include criteria to allow areas to be designated a PSSA if they fulfil a number of conditions, including:
 - **ecological criteria**, such as unique or rare ecosystem, diversity of the ecosystem or vulnerability to degradation by natural events or human activities;
 - **social, cultural and economic criteria**, such as significance of the area for recreation or tourism; and
 - **scientific and educational criteria**, such as biological research or historical value.



Great Barrier Reef PSSA



Part 2

2023 High Seas Treaty – General Objective and International Cooperation

ARTICLE 2

GENERAL OBJECTIVE

The objective of this Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.

Article 8. International Cooperation

1. Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and **relevant global**, regional, subregional **and sectoral bodies** in the achievement of the objectives of this Agreement.

Article 8. International Cooperation

2. Parties shall endeavour to promote, as appropriate, the objectives of this Agreement **when participating in decision-making** under other relevant legal instruments, frameworks, or **global**, regional, subregional or **sectoral bodies**.

Article 5. Relationship Between this Agreement and . . . Relevant Global, .. Bodies

2. This Agreement shall be interpreted and applied in a manner that **does not undermine** relevant legal instruments and frameworks and **relevant global**, regional, subregional and **sectoral bodies** and that **promotes coherence and coordination** with those instruments, frameworks and **bodies**.

Part 3

2023 High Seas Treaty Provisions on MPAs

2023 Treaty and MPAs

**PART III. Measures such as Area-based Management Tools,
including Marine Protected Areas**

Article 17. Objectives

Article 19. Proposals

Article 21. Consultations on and Assessment of Proposals

Article 17. Objectives

- The objectives of this Part are to:
 - (a) Conserve and sustainably use areas requiring protection, including through the establishment of a comprehensive system of area-based management tools, with ecologically representative and well-connected **networks of marine protected areas**;
 - (b) Strengthen cooperation and coordination in the use of area-based management tools, including **marine protected areas**, among States, relevant legal instruments and frameworks and **relevant global**, regional, subregional and **sectoral bodies**;

Article 19. Proposals

1. **Proposals** regarding the establishment of area-based management tools, **including marine protected areas**, under this Part shall be submitted by Parties, individually or collectively, **to the secretariat**.
2. Parties shall **collaborate and consult**, as appropriate, **with relevant stakeholders**, including States and **global**, regional, subregional and **sectoral bodies**, as well as civil society, the scientific community, the private sector, Indigenous Peoples and local communities, for the development of proposals, as set out in this Part.

Article 21. Consultations on and Assessment of Proposals

1. **Consultations** on proposals submitted under article 19 shall be inclusive, transparent and open to all relevant stakeholders, including States and **global**, regional, subregional and **sectoral bodies**, as well as civil society, the scientific community, Indigenous Peoples and local communities.

Article 21. Consultations on and Assessment of Proposals

2. The secretariat shall facilitate consultations and gather input as follows:

(b) Bodies of relevant legal instruments and frameworks and **relevant global**, regional, subregional and **sectoral bodies** shall be notified and invited to submit, inter alia:

(i) Views on the merits of the proposal;

(iv) Views regarding any aspects of the measures and other elements for a draft management plan identified in the proposal that fall within the competence of that body;

Article 22. Establishment Of Area-based Management Tools, Including MPAs

1. The **Conference of the Parties**, on the basis of the final proposal and the draft management plan, taking into account the contributions and scientific input received during the consultation process established under this Part, and the scientific advice and recommendations of the Scientific and Technical Body:
 - (a) Shall take decisions on the establishment of area-based management tools, including marine protected areas, and related measures;
 - (b) May take **decisions** on measures **compatible with** those adopted by relevant legal instruments and frameworks and **relevant global**, regional, subregional and **sectoral bodies**, in cooperation and coordination with those instruments, frameworks and bodies;

Article 22. Establishment Of Area-based Management Tools, Including MPAs

(c) May, where proposed measures are within the competences of **other global**, regional, subregional or **sectoral bodies**, **make recommendations** to Parties to this Agreement and **to global**, regional, subregional and **sectoral bodies** to promote the adoption of relevant measures through such instruments, frameworks and bodies, in accordance with their respective mandates.

Article 25. Implementation

5. Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels or nationals operate in an area that is the subject of an established area-based management tool, including a marine protected area, to adopt measures supporting the decisions and recommendations of the Conference of the Parties on area-based management tools, including marine protected areas, established under this Part.

Article 26. Monitoring and Review

2. The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to provide information to the Conference of the Parties on the implementation of measures that they have adopted to achieve the objectives of area-based management tools, including marine protected areas, established under this Part.

Part 5

High Seas MPAs and International Shipping

UN treaty to protect high seas

Countries have reached a landmark agreement to put 30 percent of international waters into protected areas by 2030

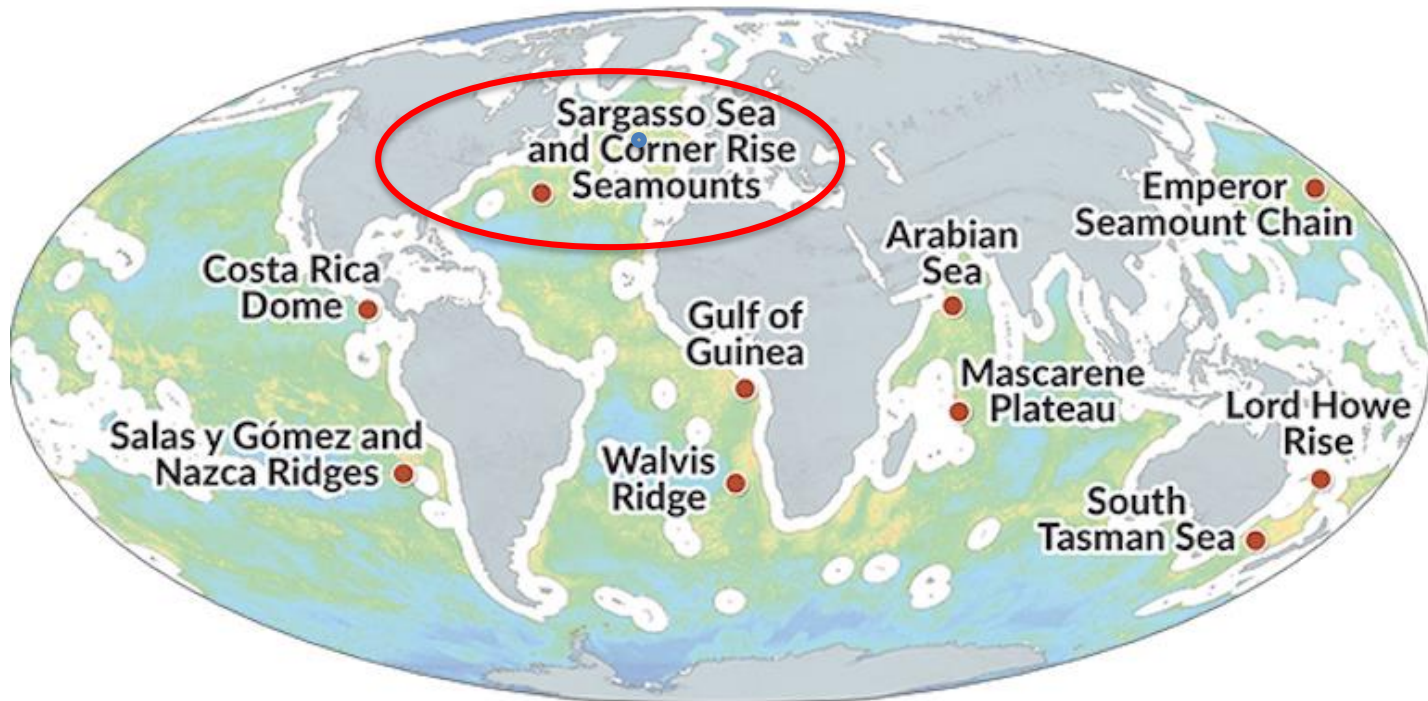


Pew Charitable Trusts – Proposed MPAs on High Seas

Map 4

Special Places in the High Seas Span the World's Oceans and Regions

Areas with high concentrations of conservation features worthy of protection



Sources: UCSB analysis; Marineregions.org; Natural Earth

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Possible Impact of 2023 Treaty on IMO and Int'l Shipping

- State Parties to 2023 Treaty and the bodies established under the Treaty and likely to take measures to encourage the IMO to:
 1. Establish MPAs on the High Seas
 2. Conduct EIAs on the impact of commercial shipping on biodiversity in areas of the high seas that have been designated as MPAs
 3. Impose requirements on ships exercising passage in MPAs established under the 2023 Treaty

Possible Impact of 2023 Treaty on IMO and Int'l Shipping

1. Process for establishment of high seas MPAs under the 2023 Treaty will put pressure on the IMO to establish MPAs on the high seas
 - Some routes normally used for international navigation by commercial ships transit areas that NGOs are proposing be made high seas MPAs
 - Environmental groups have reported that “ship strikes” kill more than 20,000 whales each year
 - Noise and other emissions from the operation of ships may have an detrimental impact on marine mammals or sensitive marine ecosystems and may also cause pollution of the marine environment

Possible Impact of 2023 Treaty on IMO and Int'l Shipping

1. IMO likely to resist any attempt to create MPAs imposing restrictions on commercial shipping outside the framework of IMO
2. Establishment of MPAs on the high seas could have serious impact on traditional shipping routes
3. IMO would be wise to take the initiative and study the implications of the establishment of MPAs on the high seas
4. IMO study could begin by examining the presence of international shipping routes in the proposed high seas MPAs promoted by the High Seas Alliance and other NGOs

Recommendations

IMO study should include:

1. Impact of proposed high seas MPAs on **routes normally used for international navigation**
2. **Environmental benefits** of prohibiting shipping in the MPAs or imposing restrictions on ships exercising passage through the MPAs
3. **Economic costs** of proposed measures on shipping in the MPAs, including economic and environmental costs of longer shipping routes that avoid the high seas MPAs, including use of more fuel, etc
4. IMO studies should be based on an analysis of the **economic costs** and **environmental benefits** of restrictions on shipping in high seas MPAs

Part 5

Sargasso Sea: First High Seas MPA?

First High Seas PSSA?

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SAVE THE DATE

Particularly Sensitive Sea Areas (PSSA) on the High Seas Workshop

International Maritime Organization (IMO) and WMU-Sasakawa Global Ocean Institute in collaboration with MarViva and Sargasso Sea Commission

13 - 15 November 2023
San José, Costa Rica

The aim is to develop technical knowledge of the various measures taken by the IMO to address the threats posed by international shipping, particularly regarding the process of submitting a PSSA proposal to the IMO, using the focal sites of the Thermal Dome and the Sargasso Sea.

The Workshop will focus on:

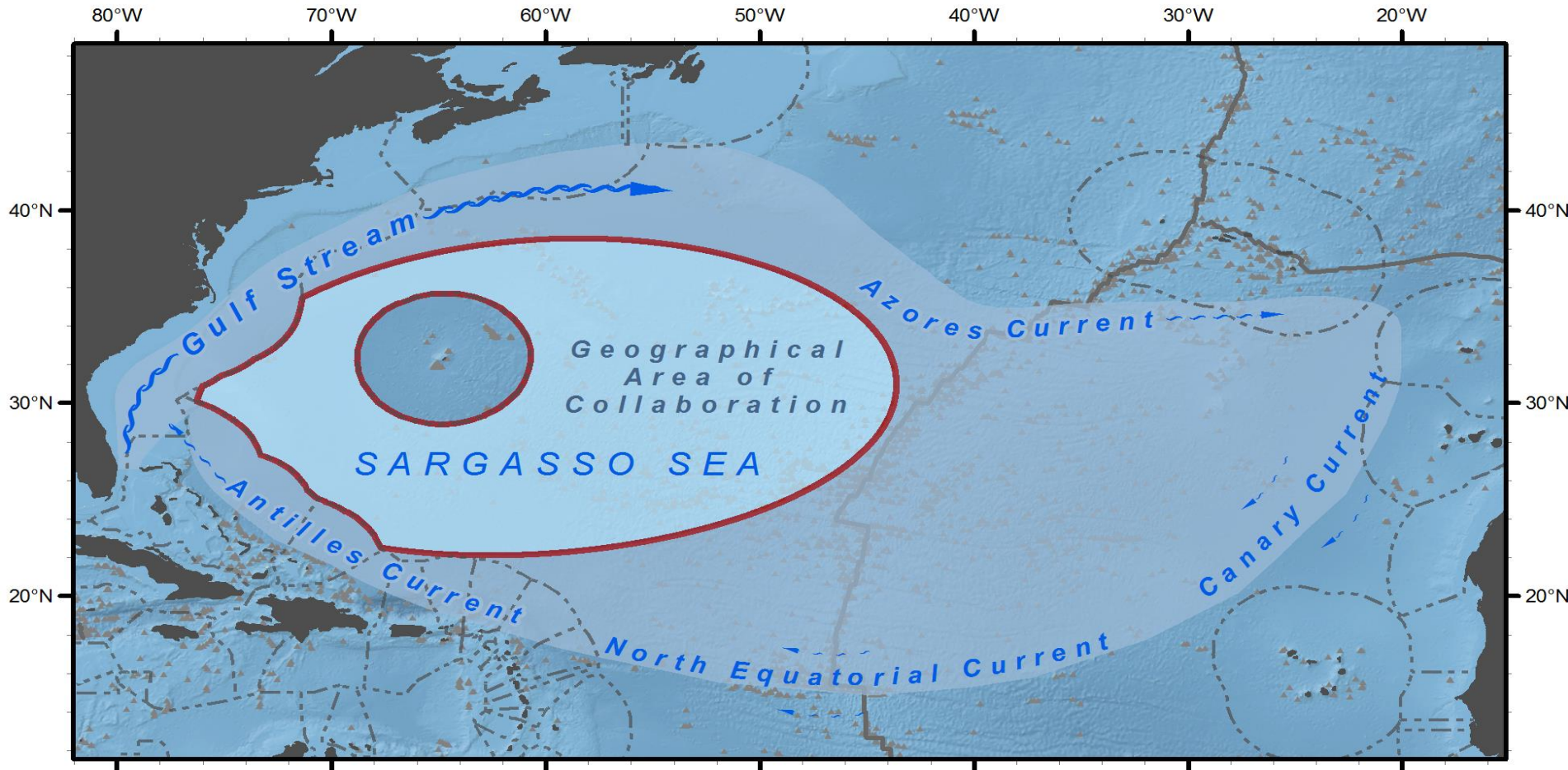
- Better understanding of the various conventions and legal instruments adopted by the IMO to regulate safe, responsible and efficient shipping and the prevention of pollution from shipping.
- Information on Associated Protection Measures.
- Recognition of requirements for the two sites to be considered PSSAs.
- Actual formulation of PSSA proposals for the Thermal Dome and the Sargasso Sea, including timelines.






For further information and to sign up:
Concept note: [Click here](#)
Registration: <https://rb.gy/d8hgj>

SARGASSO SEA COMMISSION **UNDP** **JARGADOH** **gef** **MARVIVA**

- Workshop in Nov 2023 is indication that IMO is willing to establish PSSAs on the high seas in the Sargasso Sea

Location of Sargasso Sea



-  Sargasso Sea Geographical Area of Collaboration
-  North Atlantic Gyre
-  Seamount
-  Mid-Atlantic Ridge
-  EEZ

Julian Roberts, Maritime Traffic in the Sargasso Sea

- Spatial analysis of vessel movements throughout the North Atlantic clearly shows that the routes passing through the Sargasso Sea, from the Gulf of Mexico/ Caribbean to Western Europe and the Mediterranean, are the most heavily trafficked routes in the region.
- In the case of the Sargasso Sea, concern should focus around the risks posed by the discharge of untreated sewage, the possible impacts of invasive species carried and discharged in ballast water and the additional contribution of garbage from shipping in the area.

http://www.sargassoseacommission.org/storage/documents/No.9.MaritimeTraffic_LO.pdf

Part 6

2023 High Seas Treaty and EIAs

2023 High Seas Treaty and EIAs

Article 28. Obligation to Conduct EIAs

1. **Parties** shall ensure that the potential impacts on the marine environment of planned activities under their jurisdiction or control that take place in areas beyond national jurisdiction are assessed as set out in this Part before they are authorized.

Article 28. Relationship between this Agreement and other EIAs

1. Parties shall promote the use of EIAs and the adoption and implementation of the standards and/or guidelines developed under article 38 in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members.

Article 2 . Relationship Between this Agreement & EIA Processes Under Relevant Global & Sectoral Bodies

- Parties shall promote the use of EIAs and the adoption and implementation of the standards and/or guidelines developed under article 38 in relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members.
- The Conference of the Parties shall develop mechanisms under this Part for the Scientific and Technical Body to collaborate with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies that regulate activities in areas beyond national jurisdiction or protect the marine environment.

Thanks for your attention!

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