

HARMONY IN CONFLICT: ABMT AT THE INTERFACE OF THE BBNJ AND THE IMO MECHANISM

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OUTLINES



Research Questions



Selected Thesis: **Could the BBNJ Mechanism Address the Limitation of the IMO's PSSA?**



Preliminary Observations

RESEARCH QUESTIONS



What are the impacts of shipping in the high sea?

How to balance the interests of shipping and environmental protection in the high sea?

Can the BBNJ fix the limitation of ABMTs of IMO?

How to foster cooperation between the IMO and the BBNJ mechanism?

The background of the slide is a collage of images. At the top left, a group of people in silhouette looks out at a large, white, crystalline structure under a starry night sky. To the right, a scuba diver with a flashlight explores a vibrant coral reef. Further right, a close-up shows the roots of a mangrove tree. At the bottom left, a row of offshore wind turbines stands in the ocean. At the bottom center, there is a close-up of green, circular organisms on a dark, textured surface. At the bottom right, a person's hands are shown holding a red fishing net. A thick blue horizontal bar is positioned above the bottom row of images.

Can BBNJ Fix PSSA's Limitations?

ABMTS UNDER IMO

	Special Areas and ECA	PSSAs
Procedural Guidelines	The IMO 2013 Guidelines for the Designation of Special Areas under MARPOL and Annex VI MARPOL	The IMO 2005 Revised Guideline for the Identification and Designation of Particularly Sensitive Sea Areas
Area Scope	Maritime zones of several states, enclosed or semi-enclosed seas	No limitation
Criteria for area designation	All three criteria of oceanography, ecology and vessel traffic	One of three criteria of ecological, socio-cultural and economic or scientific and education
Associated protective measures	Discharge and pollutants restriction covered by MARPOL	Existing or new IMO instruments and Article 211(6) UNCLOS
Establishment	Amendment to MARPOL	IMO Resolutions

Are PSSA legally binding?

No.	PSSA	Proposing State(s)	Associated Protective Measures*	MEPC resolution
1	Great Barrier Reef Region	Australia	IMO-recommended Australian system of pilotage; mandatory ship reporting system	16 Nov 1990 (MEPC.44(30))
	Torres Strait extension	Australia, Papua New Guinea	IMO-recommended Australian system of pilotage; two-way route	22 July 2005 (MEPC.133(53))
	South-West Coral Sea extension	Australia	Area to be avoided; traffic separation systems	May 2015 (MEPC.268(68))
2	Archipelago of Sabana-Camaguey	Cuba	Area to be avoided	25 Sep 1997 (MEPC.74(40))
3	Sea area around Malpelo Island	Colombia	Area to be avoided	8 Mar 2002 (MEPC.97(47))
4	Sea area around the Florida Keys	United States	Areas to be avoided; mandatory no anchoring areas	8 Mar 2002 (MEPC.98(47))
5	Wadden Sea	Netherlands, Denmark, Germany	Mandatory deep water route	11 Oct 2002 (MEPC.101(48))
6	Paracas National Reserve	Peru	Area to be avoided	18 July 2003 (MEPC.106(49))
7	Western European Waters	Belgium, France, Ireland, Portugal, Spain, United Kingdom	Mandatory ship reporting system	15 Oct 2004 (MEPC.121(52))
8	Canary Islands	Spain	Areas to be avoided; traffic separation systems; recommended routes; mandatory ship reporting system	22 Mar 2004 (MEPC.134(53))
9	Galapagos Archipelago	Ecuador	Area to be avoided; mandatory ship reporting system; recommended tracks	22 Mar 2004 (MEPC.135(53))
10	Baltic Sea Area	Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden	Traffic separation schemes; deepwater route; Areas to be avoided; mandatory ship reporting system; MARPOL Special Area; MARPOL SO _x ECA	22 Mar 2004 (MEPC.136(53))
11	Papahānaumokuākea Marine National Monument	United States	Areas to be avoided; recommended/mandatory ship reporting system	4 April 2008 (MEPC.171(57))
12	Strait of Bonifacio	France, Italy	Recommendation on navigation	15 July 2011 (MEPC.204(62))
13	Saba Bank (Caribbean Island of Saba)	Netherlands (Kingdom of the)	Area to be avoided; Mandatory no anchoring area	5 Oct 2012 (MEPC.226(64))
14	Jomard Entrance	Papua New Guinea	Routeing system (four two-way routes and a precautionary area)	28 October 2016 (MEPC.283(70))
15	Tubbataha Reefs Natural Park	Philippines	Area to be avoided	7 July 2017 (MEPC.294(71))
16	North-Western Mediterranean Sea	France, Italy, Monaco, Spain	Speed reductions; appropriate safety distances; broadcasting the position of medium and large cetaceans observed; reporting of all collisions	7 July 2023 (MEPC.380(80))

THE CRITICISM OF PSSA

Criticism 1: Area of Coverage

- All PSSA are within national jurisdiction
- Most PSSAs overlapped with existing national MPAs
- Difficult to garner political support to address “areas of the common” – **Sargasso Sea**

Criticism 2: Associated Protective Measures

- APMs employ existing IMO conventions: operational discharge, CDEM and navigational standards
- APMs replicated existing national measures
- Difficult to operate “outside of the playbook” – **Torres Strait PSSA**

BBNJ ENCOURAGES THE IMO TO ESTABLISH HIGH SEA PSSA

- “... the COP may consider and [...] may decide, as appropriate, **to develop a mechanism regarding existing area-based management tools**, including marine protected areas, adopted by [the IMO]” (Article 22.4)
- “... any area-based management tool, including a marine protected area, or related measures adopted by the COP under this Part **that subsequently falls** within the competence of such instrument, framework or body, either wholly or in part, **shall remain in force** until the COP reviews **and decides, [...] to maintain, amend or revoke** the area-based management tool, including a marine protected area, and related measures...” (Article 22.7)
- If the examined ABNJ is currently under an **existing** ABMT of IFBs, the COP will maintain **a recognition/acknowledgement role** that is limited to determining whether the existing arrangement met “the objectives and the implementation of [the Agreement].”
- If the examined ABNJ is **not yet under** any regulations by IFBs and the COP chose to establish an MPA there first, it will then have **a supervision role** that can possess full control over future measures implemented by IFBs.



“IMO believes that the future BBNJ instrument should acknowledge **IMO’s primary authority** for the designation of area-based management tools concerning international shipping activities. Any new tools developed under the future BBNJ instrument should be **complementary in nature** and not undermine the designation procedure of IMO’s own tools.”

BBNJ ENCOURAGE IMO TO ADOPT APMS OUTSIDE OF THE PLAYBOOK

Shortcomings

- Lacking scientific data
- Lacking legal basis
- Lacking enforcement and monitoring mechanism

The BBNJ COP

- Make recommendations and promote adoption through IMO (Art. 22.1(c))
- ABNJ mandate; precautionary and ecosystem approach (Art. 19)
- Implementation, Monitoring and Review (Arts. 25 and 26)

Can the BBNJ overcome the
“justified politics” at IMO?
Environment vs FON

Can the BBNJ nudge the IMO toward
a more environmentalist approach?
Mitigating vs Conservation

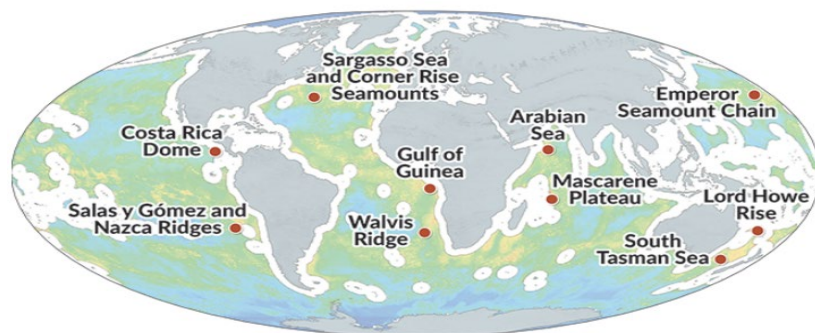


Cost vs Benefit

EVIDENCE?



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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WMU HOSTS PARTICULARLY SENSITIVE SEA AREAS (PSSA) ON THE HIGH SEAS WORKSHOP

From 13 to 15 November, the World Maritime University's WMU-Sasakawa Global Ocean Institute (GOI) hosted a workshop in Costa Rica on Particularly Sensitive Sea Areas (PSSA) on the High Seas. The workshop was delivered in partnership with the International Maritime Organization (IMO) and in collaboration with the Sargasso Sea Commission and MarViva. The workshop was supported by The Nippon Foundation, the Global Environment Facility, UNDP, SARGADOM and IOC-UNESCO.

The main objective of the workshop was to develop technical knowledge of the various measures taken by IMO to address the threats posed by international shipping, particularly regarding the process of preparing and submitting a PSSA proposal to the IMO. The workshop examined the Thermal Dome and the Sargasso Sea, two sites representative of the diversity and importance of high seas ecosystems that are facing significant challenges posed by international shipping. These two sites perfectly illustrate that ecological boundaries (the interconnectivity of the marine ecosystem) do not correspond to the legal boundaries established by the United Nations Convention on the Law of the Sea (UNCLOS), especially for those ecosystems located both within and beyond national jurisdiction.



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THANK YOU