

**The Role of Regional
Cooperation in
Strengthening High Seas
Governance:**
Conceptual Framework and
Key Recommendations

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Executive Summary

The ocean is home to an incredible amount of life that supports the very existence of all species on Earth, with amazing creatures, seascapes, and the ability to produce one of the most precious elements: the oxygen we breathe. However, it faces several critical threats that jeopardise basic ecological processes, including in those in coastal areas as well as inland where most human communities live. Unprecedented loss of biodiversity and drivers of global change are taking place on each corner of the globe (IPBES, 2019), threatening critical ecosystems which sustain human populations. The health of the ocean vastly depends on the decisions and behaviours of humankind, including how human activities are undertaken and governed in marine spaces. This raises an important question: how can the ocean be managed and governed in an effective manner to benefit all?

This is a question that States and international organisations have been asking for decades, and which now has a tangible opportunity to become a powerful legal instrument with a global mandate to lead the entire international community into the future. The legally binding agreement for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ Agreement) will be central for improving regulations, enhancing collaboration between and capacity within States and institutions, developing broad

and cross-sectoral governance strategies and ultimately ensuring the conservation and sustainable use of marine biodiversity.

But its future success will depend on scientific findings and knowledge-based decision-making, regional cooperation, and partnerships among public and private initiatives, and perhaps most importantly, States willing to champion the conservation and sustainable use of marine biodiversity, addressing climate change, and advancing globally agreed sustainable development goals. In turn, they can also learn from best practices and experience from the dialogues already underway in the Southeast Pacific and Southeast Atlantic regions, within a global context of seeking to link biodiversity, climate, and sustainable development for the coming decades.

This policy brief provides an overview of the key concepts and discussions currently underway regarding global ocean governance. It is based on the ongoing work of the [STRONG High Seas](#) project; it highlights key considerations for States and stakeholders seeking an introduction into ocean governance and makes initial suggestions for improving and enhancing the conservation and sustainable use of marine biodiversity across global policy processes.



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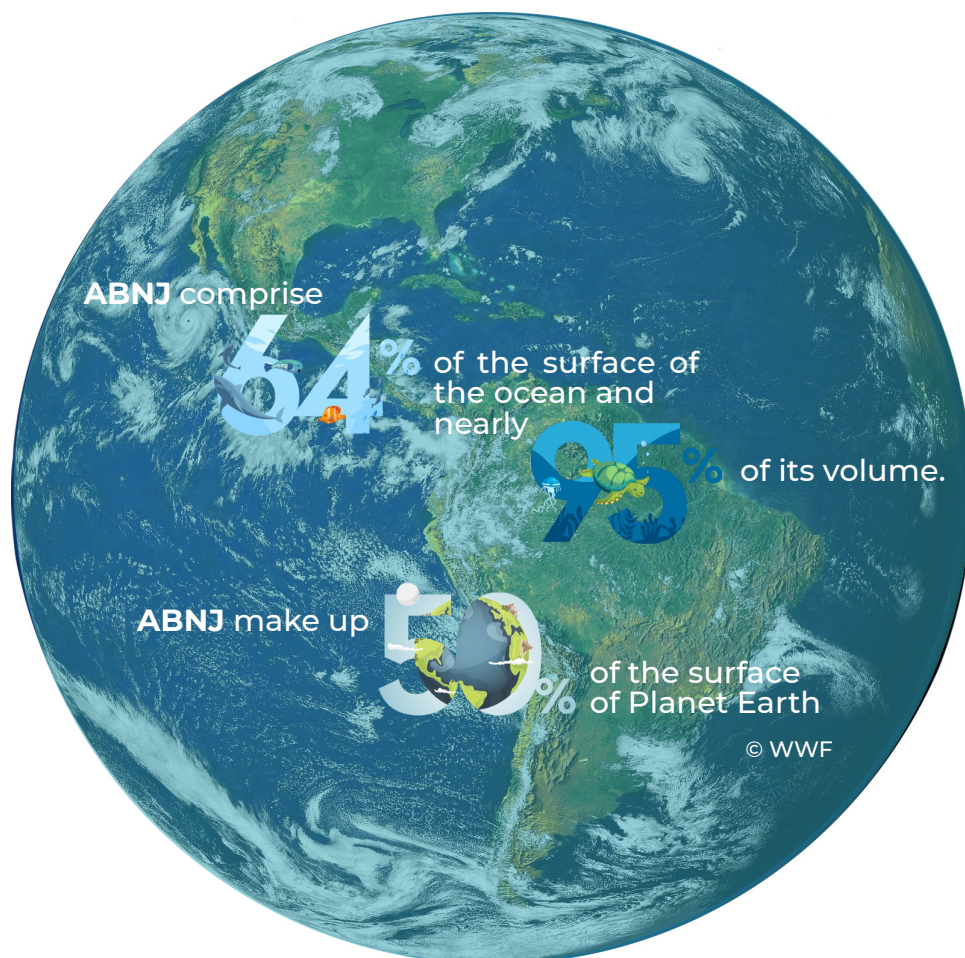
1. Areas Beyond National Jurisdiction (ABNJ)

1.1. What are they and what do they cover?

Marine areas beyond national jurisdiction (ABNJ) include the water column (the high seas) and the seabed (the Area) outside of the Exclusive Economic Zone (EEZ) of coastal States. The high seas are defined by the United Nations Convention on the Law of the Sea as „all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State“ (UNCLOS, Art. 86). They represent 50 per cent of the surface of planet Earth, comprising 64 per cent of the surface area of the ocean

and almost 95 per cent of its volume (UN Environment, 2020). The Area is defined as „the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction“ (UNCLOS, Art. 1).

States cannot claim or exercise sovereignty over ABNJ. Several international organisations have management responsibilities over human activities taking place in ABNJ.



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2. Marine Biological diversity Beyond National Jurisdiction (BBNJ)

2.1. What does it consist of?

The ecosystem services provided by the ocean and the activities that depend on them are the result of the existence of a great variety of life in the ocean, often referred to as biodiversity¹. The term BBNJ refers to the marine biodiversity in those areas beyond national EEZs (ABNJ).

BBNJ encompasses a vast and valuable array of marine biodiversity, including highly sensitive and endemic deep-sea species, unique oceanographic and biological features (e.g., seamounts, hydrothermal vents, and cold seeps) and highly productive, often largely unexplored, and understudied ecosystems (Boteler et. al 2019).

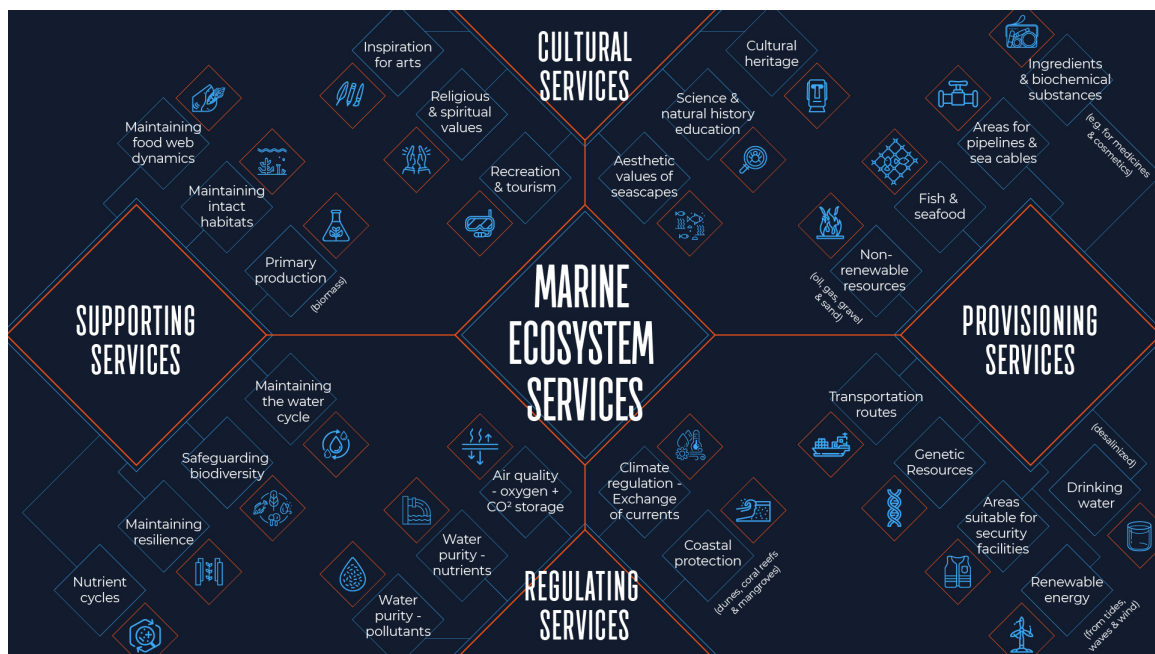


Figure 1: Map of Key Ecosystem Services² | © WWF Colombia

2.2. Why does it matter for the countries?

➤ **Ecological connectivity:** The ocean is naturally connected, and marine species move between and across national and international waters. The migratory activity of a number of species (e.g., marine mammals, turtles, sharks, fish) and the distribution of resources resulting from currents (e.g., plankton and other nutrients) are unable to recognise the geopolitical divisions of the

ocean, being extremely dependent upon the functional connectivity of the ocean across these invisible boundaries. In addition, impacts of human activities in rivers, along the coast and inland generate cumulative effects offshore, affecting those critically important species and ecosystem services that sustain life on Earth, e.g., by providing food and oxygen.

1 Biodiversity is defined in Article 2 of the Convention on Biological Diversity (CBD) as 'the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems'.
 2 adapted from <https://worldoceanreview.com/en/wor-4/how-the-sea-serves-us/the-bounty-of-the-sea/overview-of-marine-ecosystem-services/>

➤ **Social-ecological importance, health and well-being beyond national waters:** According to Boteler et. al (2019), ecological connectivity is essential for the health of marine ecosystems worldwide and requires transboundary and multi-sectoral governance approaches for the conservation and sustainable use of biodiversity, as disturbances to marine biodiversity can have effects far beyond the immediate area of impact.

Unprecedented biodiversity loss and drivers of global change are occurring in all corners of the globe (IPBES, 2019), particularly affecting resources that face pressures to sustain human populations. Commercial fishing currently causes the most significant pressure on marine biodiversity, and many marine mammals and other megafauna are threatened by human activities such as overfishing and pressures such as pollution, as well as fundamental changes to the marine ecosystem and their habitats. These species play an important role in maintaining ecological and trophic balance (Boteler et. al, 2019) and are therefore essential for human survival. Deep-sea benthic habitats support rich and diverse oceanic communities and contain some of the largest deposits of biomass and mineral resources on the planet, as well as harbouring microbial processes essential for biogeochemical cycles.

Marine pollution is one of the main threats to marine biodiversity. Major sources of pollution include land-based activities (approximately 80%), shipping and mining. Pollutants of greatest concern to ABNJ include hazardous substances and contaminants from a range of pollutants, causing ecosystem degradation and compromising human health. Marine litter – es-

pecially plastics – is transported by winds and currents and there is strong evidence of areas of concentrated litter, posing a threat to marine life, particularly through entanglement and ingestion, with impacts reported for several taxonomic groups. They are also a vector for the translocation of alien species across the ocean.

The main pressures causing physical disturbance and destruction of the seabed are bottom trawling, the laying of submarine cables and deep sea mining (although deep sea mining is still in an exploratory phase). The pressure of underwater energy is at present mainly caused by underwater noise, related to maritime transport, including cargo shipping, fishing or passenger vessels, and military exercises in ABNJ. A number of adverse effects on marine species are occurring in ABNJ due to underwater noise, including interference with key biological functions such as communication, foraging, reproduction, navigation and predator avoidance. Last but not least, the Intergovernmental Panel on Climate Change (IPCC, 2019) confirms that sea levels are rising, and the waters are warming, acidifying and losing oxygen, resulting in even more serious impacts on marine ecosystems. Although the exact scope and effects are yet to be determined, climate change is certainly one of the main concerns and strategies to cope with its effects must be informed by science.

Although the extent and precise effects are yet to be certain, climate change is undoubtedly a major concern to be overseen by the international ruling instrument, and strategies to cope with its effects to be designed by science.

3. Ocean Governance and BBNJ: Understanding and driving decision making in marine areas beyond national jurisdiction

Adequate and comprehensive governance arrangements are essential for effective conservation and sustainable use of natural resources worldwide. The ocean is no exception and require knowledge-based decision-making aimed at proper and equitable governance, especially considering the international setting in which multiple actors have an interest in, both exploiting and conserving marine resources. These necessary arrangements must comply with a minimum set of guiding principles, from the rule of law to an adaptive management approach, in order to satisfy a variety of purposes linked to sustainable development and well-being.

According to the International Union for Conservation of Nature (IUCN), international ocean governance includes the processes, agreements, rules, institutions, etc. developed to organise the way in which humans use the ocean and its resources. Excluding the territorial waters of countries, it relates to the high seas and the international seabed area, which supports vital biological resources (IUCN, 2020), although consideration to national and transboundary governance arrangements is particularly important for the definition of mechanisms and rules in completing the ocean governance map.

Under the existing international governance framework States are entitled to take decisions within their national jurisdiction (i.e., EEZ). The responsibility for marine resources located in ABNJ is scattered among various sectoral organisations, which are comprised of States who are signatories to the legal agreements. While UNCLOS provides the overarching rules and regulations to govern ABNJ, it lacks specific principles, guidance, standards, coordination and advisory mechanisms, environmental compliance and accountability frameworks for conserving and sustainably using BBNJ.

The need for a global instrument for the conservation and sustainable use of BBNJ is widely accepted by the international community and negotiations for such an instrument under the United Nations are currently ongoing (UNGA Resolution 69/292). The negotiations of this instrument encompass key discussions related to the environmental impact assessment and monitoring of human activities in ABNJ, the transfer of marine technology, capacity building, the access and benefit sharing of marine genetic resources, or the establishment of marine protected areas.

Cooperation and coordination will also be critical for the coherent and comprehensive implementation of ocean governance – including the future BBNJ instrument. Regional ocean institutions, processes and arrangements should play a significant role in advancing the conservation and sustainable use of BBNJ, thereby contributing to improved global governance of the ocean. Lessons learnt, expertise and capacity from the regional and sectoral levels should guide the development of provisions in a new BBNJ Agreement to ensure that its future implementation will be effective and adapted to the reality of its implementation in the ocean governance landscape.

The regional and sectoral levels can underpin global standards established in a new BBNJ Agreement by developing, implementing, and enforcing regional or sectoral based agreements. This allows them to consider the specificity of the region, its challenges and needs, as well as to go beyond the standards established by a new BBNJ Agreement.

3.1. What is the current governance framework of the BBNJ?

Sectoral organisations with mandates for ABNJ include the International Maritime Organization (IMO), the International Whaling Commission (IWC), the International Seabed Authority (ISA) and the regional fisheries management organisations (RFMOs), while a number of UN agencies such as the Food and Agriculture Organization (FAO), the United Nations Environment Programme (UN Environment), the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the United Nations Development Programme (UNDP) also have various functions such as for marine science and marine technologies.

Multilateral Environmental Agreements such as the Convention on Biological Diversity (CBD), Convention on Migratory Species (CMS), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) also form part

of the ocean governance framework relevant to BBNJ. There exist also various regional initiatives aimed at strengthening ABNJ governance through cooperation at the regional level (see Wright & Rochette, 2019). The private sector is particularly relevant when it comes to activities in the ocean and will be key in the implementation of the BBNJ Agreement; its engagement will be essential to ensure comprehensive outcomes and benefits for all.

Regional instruments, such as some of the Regional Seas Programmes (e.g., OSPAR, CCAMLR, etc.) also have a mandate to protect the marine environment in ABNJ within their convention areas. Some regional initiatives, such as the Sargasso Sea Commission, are exploring ways to conserve ABNJ within a specific region by fostering dialogue and cooperation with governments, relevant global and regional management organisations, and other stakeholders.

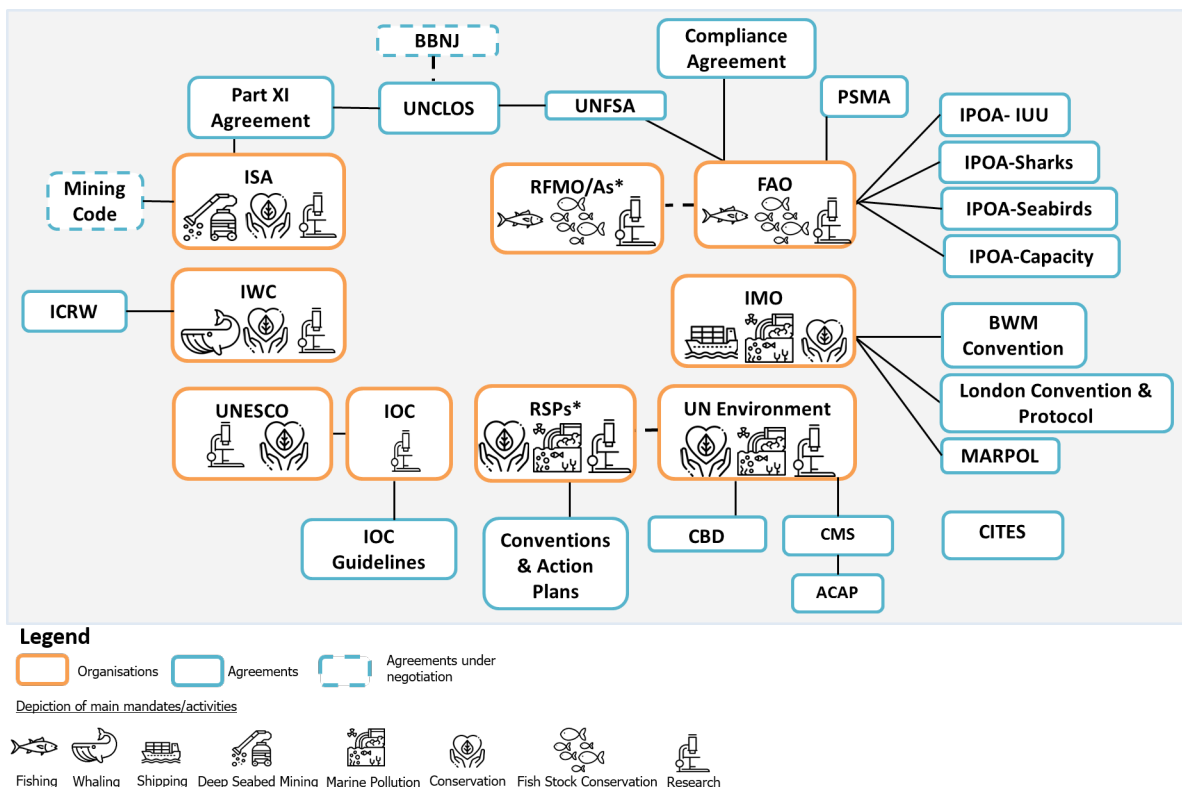


Figure 2: Legal and institutional framework of global ocean governance | © Durussel et al. 2018

3.2. Negotiations for a legally binding instrument for BBNJ

The need for a global instrument for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction is widely accepted by the international community and negotiations for such an instrument under the United Nations are currently ongoing (UNGA Resolution 69/292). This process, which began in 2006 through discussions in a working group, was then followed by 4 preparatory sessions in 2016-2017 through an Intergovernmental Conference.

Due to the COVID-19 pandemic, the last planned negotiation session originally planned for April 2020 had to be indefinitely postponed. During this time, virtual intersessional work meetings were

organised to allow States to continue informal discussions. The last negotiation session is now tentatively planned for early 2022 and it is hoped that it will culminate with the adoption of the Agreement.

The future BBNJ Agreement will address gaps and build on existing obligations under UNCLOS to cooperate in the protection and preservation of the marine environment and the conservation of living marine resources (Gjerde & Wright, 2019). It also builds on more than a decade of global discussions and debates at the United Nations, CBD Conferences of the Parties, the Food and Agriculture Organisation of the United Nations (FAO), IUCN Congresses and other international fora (IUCN, 2020).

3.3. Main elements of the treaty under negotiation

The Agreement will focus on four central themes that are aimed at addressing the above-mentioned threats to conserve and sustainably use marine resources in ABNJ, namely area-based management

tools, environmental impact assessments, marine genetic resources, as well as capacity building and the transfer of marine technology:



Other important topics that are being discussed during the negotiations include, amongst others, the implementation of the future instrument, monitoring and compliance, as well as the sharing of the benefits resulting from the use of marine genetic resources.

The BBNJ Agreement will also establish institutional arrangements, such as a Conference of the Parties (COP), a Scientific and Technical Body, a Secretariat, and a Clearing-house mechanism. In their report, Gjerde et al. 2018 highlight possible options for underpinning a strong global BBNJ Agreement through regional and sectoral governance.

They recommend that the BBNJ Agreement should include:

1. A robust global body such as a Conference of Parties capable of taking decisions and adopting recommendations;
2. A set of regional mechanisms for integrated policy development and coordination;
3. Effective science-policy advisory mechanisms;
4. General environmental obligations and principles; and
5. Operational principles to ensure good governance.

4. Key international biodiversity conservation instruments associated with BBNJ: complementary approach in the *super year* 2020/2021

In parallel to the BBNJ negotiations, there are several global policy processes underway that require further consideration regarding the future implementation of the BBNJ instrument, especially around the effective design and implementation of area-based management tools (including marine protected areas and fisheries management measures), the use of genetic resource sequences (e.g., digital sequence information), capacity building, and the clearing-house mechanism. These include:

- Within the context of the CBD: negotiations of a post-2020 Global Biodiversity Framework, including process on identifying Ecologically or Biologically Significant Marine Areas (EBSAs) and implementation of the Nagoya Protocol
- Agenda 2030 of the United Nations, including the implementation of Sustainable Development Goal (SDG) 14
- The UN Decade of Ocean Sciences for Sustainable Development (2021-2030)
- Nationally determined contributions (NDCs) under the United Nations Framework Convention on Climate Change
- Our Oceans Conference (2021)

- 5th International Marine Protected Areas Congress (2022)
- Processes under the International Seabed Authority (ISA) related to establishing Regional Environmental Management Plans (REMPs) and the Mining Code

These global processes present important opportunities for States to create coherent ocean governance strategies across multiple policy processes and thus contribute to marine biodiversity conservation and sustainable development. By considering these processes together and taking a coherent approach to their achievement, other benefits can also be realised in the form of, for example, the utilisation of data and information, and thus resources, across multiple uses and functions, as well as capacity building, both institutional and individual, to understand the underlying ocean science, and to identify and implement the actions needed to achieve conservation goals (STRONG High Seas, 2020). Cooperation and coordination are essential for the coherent and comprehensive implementation of ocean governance – including the future BBNJ instrument – and, in the long term, to ensure healthy marine ecosystems that sustain life on Earth.

5. Regional cooperation for the high seas: the legacy of the global South

While a global BBNJ instrument is essential for effective ocean governance, regional ocean institutions, processes and arrangements should play a significant role in advancing the conservation and sustainable use of marine biodiversity in ABNJ, thereby contributing to improved global governance of the ocean. Lessons learnt, expertise and capacity from the regional and sectoral levels should guide the development of provisions in a new BBNJ Agreement to ensure that the future implementation of a new BBNJ Agreement will be effective and adapted to the reality of its implementation in the ocean governance landscape.

The regional and sectoral levels can underpin global standards established in a new BBNJ Agreement by developing, implementing, and enforcing regional or sectoral based agreements. This allows them to consider the specificity of the region, its challenges and needs, as well as to go beyond the standards established by a new BBNJ Agreement.

Through the Permanent Commission for the South Pacific (CPPS), its member States (Chile, Colombia,

Ecuador, and Peru) are working together on several issues regarding the management and protection of the marine environment of the Southeast Pacific. The STRONG High Seas project and its partner, CPPS, provide scientific and technical support to these countries through the organisation of expert dialogues and the development of scientific assessments on the conservation and sustainable use of BBNJ in the Southeast Pacific region, which can help them with the ongoing BBNJ negotiation process and in developing future management strategies for BBNJ in the region.

The important insights from these exchanges at the regional level are certainly relevant for all regions of the world and should be promoted as an important source of information for the adoption and implementation of the BBNJ Agreement. In this respect, it is important to foster national dialogues between governmental institutions, use existing best practices, for example, for marine spatial planning, generate research and establish additional partnerships to ensure that such cooperation continues in the long term.



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6. What can States and stakeholders do for ocean governance?

- Organise initiatives at the national level to raise awareness of BBNJ issues and the ongoing BBNJ negotiations, in order to:
 - Build knowledge among national stakeholders regarding: the legal and institutional framework governing ABNJ; the current status of the BBNJ negotiations; the importance of ecological processes and threats on BBNJ; the socio-economic importance of ABNJ and trade-offs associated with policy and legal decisions; identify legal and governance options for conservation and management measures for the future implementation of the BBNJ Agreement; and identify lessons from other marine regions regarding shared challenges related to BBNJ;
 - Establish new and foster existing partnerships between national public institutions, the private sector, academia and civil society to create a community of stakeholders to advance the implementation of the future BBNJ instrument at national and regional level;
 - Identify gaps in ocean governance at national and regional level in relation to the BBNJ instrument to support its future implementation;
- Identify and develop further opportunities to promote coordinated cross-sectoral policy initiatives for the implementation of the future instrument at national and regional level.
- Support initiatives at the national and regional level to build capacity on the core elements of the BBNJ Agreement and other relevant issues associated with the instrument through, for example, organising capacity building programmes and training events; funding natural and social science research to boost knowledge creation and inform decision-making; and establishing platforms for knowledge gathering, information sharing and dissemination.
- Strengthen existing initiatives and focus on the implementation of practical solutions through regionally coordinated efforts and seeking coherence across sectors.
- Stimulate, through the post-2020 Global Biodiversity Framework and voluntary commitments under Sustainable Development Goal 14, as well as other relevant regional processes, the development and implementation of actionable regional biodiversity targets, including through better alignment of implementation activities and greater coherence between governance levels.

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About the STRONG High Seas project

The STRONG High Seas project is a five-year project that aims to strengthen regional ocean governance for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. Working with the Secretariat of the Comisión Permanente del Pacífico Sur (CPPS; Permanent Commission for the South Pacific) and the Secretariat of the West and Central Africa Regional Seas Programme (Abidjan Convention), the project will develop and propose targeted measures to support the coordinated development of integrated and ecosystem-based management approaches for ocean governance in areas beyond national jurisdiction (ABNJ). In this project, we carry out transdisciplinary scientific assessments to provide decision-makers, both in the target regions and globally, with improved knowledge and under-

standing on high seas biodiversity. We engage with stakeholders from governments, private sector, scientists and civil society to support the design of integrated, cross-sectoral approaches for the conservation and sustainable use of biodiversity in the Southeast Atlantic and Southeast Pacific. We then facilitate the timely delivery of these proposed approaches for potential adoption into the relevant regional policy processes. To enable an interregional exchange, we further ensure dialogue with relevant stakeholders in other marine regions. To this end, we set up a regional stakeholder platform to facilitate joint learning and develop a community of practice. Finally, we explore links and opportunities for regional governance in a new international and legally-binding instrument on marine biodiversity in the high seas.

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