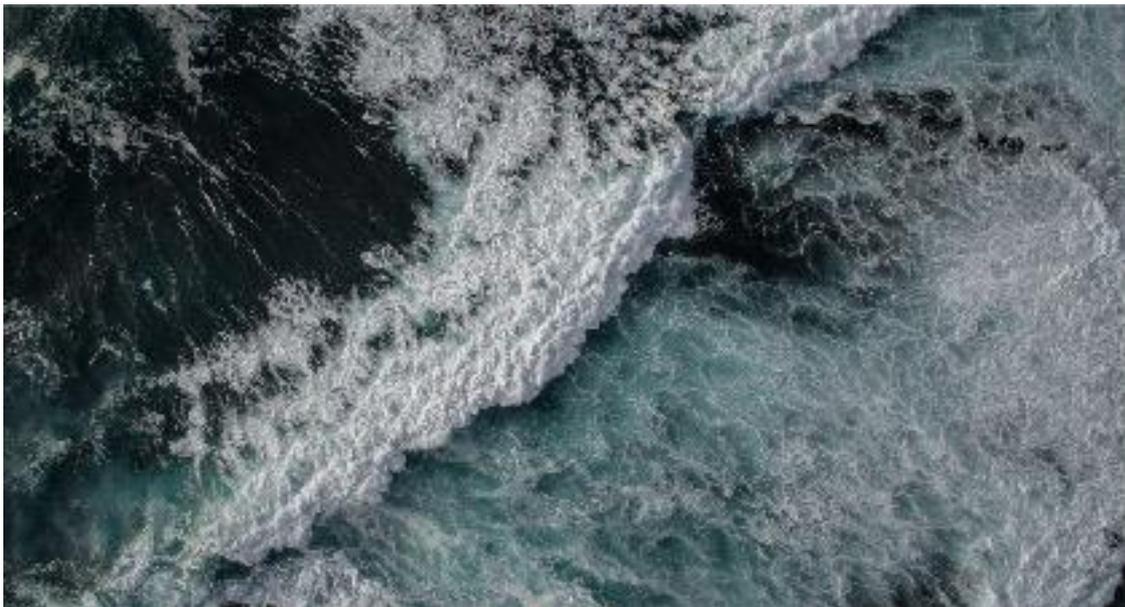


Summary report
Inter-regional Dialogues on High Seas Governance



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Member States at the United Nations (UN) are currently negotiating a new treaty for the conservation and sustainable use of high seas biodiversity in areas beyond national jurisdiction (ABNJ). While in-person negotiations at the intergovernmental conference (IGC) were interrupted by the global pandemic, intersessional discussions continued online and States continued to exchange views, reflect on their positions, and consider how an agreement might ultimately be concluded.

Seeking to facilitate these exchanges, the STRONG High Seas project and regional partners convened four inter-regional expert meetings, connecting colleagues across continents to share experiences and discuss high seas governance issues. One set of workshops, organised in collaboration with the Permanent Commission for the South Pacific (CPPS) and the Office of the Pacific Ocean Commissioner (OPOC) connected stakeholders across the Pacific. The other set of workshops, organised with the Abidjan and Nairobi Conventions, connected stakeholders from both sides of the African continent.

The first meeting focussed on the activities of regional organisations and how they may play a role in high seas governance under a future treaty. The second session focussed on the process for designating management tools and protected areas, in particular how a new agreement could support cooperation and coordination. Following informal introductions in breakout groups, the meetings began with an expert presentation introducing the state of play, exploring key issues and posing discussion questions. The majority of the time was then dedicated to open and informal discussions.

The meetings brought together a diverse group of over 70 experts and stakeholders, including representatives from: national governments, delegations to the negotiations and UN permanent missions; Regional Seas programmes; Regional Fisheries Management Organisations (RFMOs); Large Marine Ecosystem programmes (LMEs); regional economic bodies; intergovernmental organisations and sectoral bodies; funding bodies; scientific and research organisations; policy projects; and non-governmental organisations (NGOs).

As the workshop was held under the Chatham House rule, this report does not quote or cite any specific speaker or organization, nor provide further detail on the organisations and representatives that participated. It is nonetheless hoped that by sharing some key themes from these discussions, as well as illuminating some points of both consensus and contention, this summary will provide food for thought as negotiators look toward IGC5.

Key themes

- The Ocean, and humanity, faces unprecedented environmental threats.
- The ongoing pandemic not only highlights the fragility of our economic and governance systems, it has also hindered the cooperation needed to address a range of issues, including ocean management and conservation.
- The negotiations for a new agreement on biodiversity beyond national jurisdiction (BBNJ) represent a unique opportunity to strengthen the governance framework for the global ocean.
- There is currently limited cooperation between organisations from different regions, even where those regions are connected physically by large transboundary ecosystems or in spirit by a desire to strengthen cooperation and governance.
- Despite limited exchange to date, there is a strong appetite for collaborating across regions, both to make cross-regional proposals as the BBNJ negotiations near their conclusion, and to cooperate on implementation once in place.
- At the same time, the Secretariats of some fisheries management organisations have been proactive in cooperating with other organisations, including by sharing of data and information and mutual invitations to their respective meetings. The extent of such cooperation is nonetheless limited by the provisions of their founding instruments and the need to faithfully represent the views of their members (i.e. fishing States).
- Projects such as STRONG high seas have often provided the only opportunities for engaging in dialogue that spurs cooperation. Perhaps just as important are the personal connections made in these informal settings. As cooperation is ultimately between individual human beings, these moments to meet and build rapport and trust are essential.
- While these ad hoc platforms have proven to be valuable, they are often part of donor-funded time-limited projects. This means that the sustainability and longevity of these meeting points is always uncertain. There is thus a clear need for long-term structures for supporting cross-regional dialogue.
- The various ongoing international policy processes regarding the ocean ought to be better coordinated, with the UN Decade for Ocean Science being supported as a way to strengthen scientific capacity and produce knowledge relevant to all of these processes.
- Financing will be critical, yet despite various and vast commitments, the necessary funds continue to flow far too slowly, often on a project-by-project basis and with burdensome reporting requirements.

The role of regional organisations

- Regional organisations occupy a unique position, from which they are able to see the bigger picture and facilitate coordinated solutions. Many such organisations have been around a long time, demonstrating durability amidst the rapidly developing planetary crisis and ever-changing political dynamics within States and regions.
- Many regional organisations already develop strategic action plans, with planned updates or working groups to consider how to account for the growing recognition of the importance of BBNJ and the possible role different organisations may be asked to play in implementing a new treaty.
- The diversity of regional organisations was readily identified as a strength, enabling States and stakeholders to work together in different ways and to different ends. For example, Regional Seas programmes bring together representatives from environment ministries, while other regional initiatives have focussed on generating political will and seeking expert advice that can inform coordinated positions, thereby allowing States to more effectively engage in international processes and amplify their voice in negotiations.
- Regional organisations will undoubtedly play an important role in facilitating the cooperation and coordination that will be critical for the successful implementation of the agreement. However, it is not yet clear how this will integrate with an eventual BBNJ framework or what the role of international (i.e. sectoral) organisations will be.
- In this regard, many regional organisations already have regular contact, or even formal memoranda of understanding (MoU), with international organisations. The success of these arrangements has been varied, as has the extent of ongoing political will and financial support needed to realise the full potential of such arrangements.

Regional specificities

Southeast Pacific

- States face significant challenges in managing their own large exclusive economic zones (EEZ), which is more immediately critical than ABNJ issues, but they still put efforts into cooperating on transboundary and high seas issues.
- A recent declaration on illegal, unreported and unregulated (IUU) fishing and the discussions at STRONG workshops on monitoring, control and surveillance (MCS) demonstrate that these particular issues could provide a shared basis for developing deeper cooperation.

Southwest Pacific

- A highly diverse range of States and governance bodies that cooperate closely and ensure that their regional voice is heard in international policy processes, particularly on climate and ocean issues.
- A focus on ensuring that the regions diverse and rich shared culture and history are reflected of all areas of international policymaking, e.g. by advocating that traditional knowledge and the special circumstances of small island developing States (SIDS) are recognised in the BBNJ agreement.
- The “High Seas pockets” – areas of the Pacific enclosed by States' EEZs are likely to be particularly affected by increasing pressure on the ocean.

Southeast Atlantic

- A large number of States with different cultures, languages and resources, as well as interests and needs, in terms of the conservation and sustainable use of BBNJ.
- Limited adoption of binding management measures outside those adopted in relation to fisheries and limited coordination between competent organisations.

West Indian Ocean

- Less impacted by anthropogenic activities compared to other regions but economies and livelihoods are strongly reliant on rich biodiversity and related ecosystem services that are increasingly threatened.

Nairobi Convention decision urges States to “cooperate in improving the governance of areas beyond national jurisdiction, building on existing regional institutions... and developing area-based management tools”.

Preparing for area-based management tools in marine regions

Context

- Early discussions on a new BBNJ framework tended to draw a clear dichotomy between global and regional approaches. Subsequently a consensus developed that some form of "hybrid" approach would be necessary in order balance the need to advance conservation through ABMTs with the requirement to "not undermine" existing bodies.
- The eventual arrangements are yet to be finalised, though there has been a growing tendency to emphasise more pluralistic or polycentric approaches that reframe "not undermine" as an opportunity to support and complement the work of existing bodies, while also empowering the Conference of Parties (CoP) itself to take action.
- Negotiators are yet to reach consensus on the process for recognising or establishing area-based management tools (ABMTs), or on the precise mandate and powers of the

future CoP, but it is clear that established regional and sectoral organisations will likely play a range of roles in these processes.

Discussion

- A key aim of the agreement is to give effect to the **obligations to cooperate** contained in the UN Convention on the Law of the Sea (UNCLOS).
- There is currently a **fragmented governance system** for the ocean, with diverse organisations and asymmetry in capacity, mandate, ambition, and timeframes. The BBNJ treaty will have to provide a framework where these heterogeneous arrangements can be brought together.
- This fragmentation also has advantages, enabling **coordination and cooperation** between States at the regional level or on particular issues. The BBNJ instrument is therefore critical for bringing together the different elements in a coordinated manner.
- Often there is **limited capacity** for regional bodies to fulfil their mandate, let alone drive the BBNJ discussions forward. There is therefore huge untapped potential that could be unlocked by an ambitious agreement. It is nonetheless likely to take some time for the arrangements to crystallise and reach a level of maturity that can meaningfully support existing bodies.
- Many **regional organisations do not focus on high seas issues** in particular, as they are often primarily concerned with pressing coastal issues. The BBNJ agreement could build further momentum for extending the mandates of some organisations and providing support for the capacity needed.
- A wide range of **donor-funded projects** aim to strengthen ocean governance, including in ABNJ. These projects provide valuable platforms for dialogue but must be further funded and institutionalised as regional organisations take on more of a role in ABNJ.
- There is often **limited mutual understanding and awareness** of other organisations activities, as well as limited scientific understanding of how the activities, programmes and policies taking place under one regime can affect those in others.
- Some actors have developed closer cooperation in this regard. For example, **Regional Fisheries Management Organisations** increasingly exchange data and a range of MoUs have been concluded to deepen cooperation.
- **Ecosystem-based management** is included in the draft principles for the treaty and regional organisations can provide a mediator between ecosystem considerations and State boundaries and interests.
- Similarly, **Strategic Environmental Assessments (SEAs)** have been identified as a promising tool for bringing together various elements of the treaty by providing for a collaborative scientific process that aims to establish the state of play and encourage regional cooperation.

- The process to identify **ecologically and biologically significant marine areas** (EBSAs) under the Convention on Biological Diversity (CBD) has also been noted in this context as having demonstrated the potential for regional scientific cooperation.
- Lessons can be learned from a range of existing instruments and the **Antarctic Treaty System** could be particularly illuminating: the region has complex geopolitical and boundary issues yet States have set aside their territorial differences to agree on a common framework for a unique and sensitive region. To make progress within a future BBNJ treaty, we must develop a similarly detailed understanding of the role, mandate and composition of regional and global arrangements, as well as the status of maritime boundaries and geopolitical considerations.
- Interesting considerations also arise in considering the applicability and links between and conservation **targets under the CBD Post-2020 Global Biodiversity Framework** and the BBNJ process. There is a misconception that the CBD does not apply beyond national jurisdiction, whereas it does apply to the activities and processes of States regardless of where they take place.
- Ultimately, **responsibility rests with States** to implement their obligations under UNCLOS, the CBD and other agreements, including a future BBNJ agreement. This raises issues regarding **inter-ministerial cooperation at the national level** and how to ensure coherent participation and positions in different regional and international organisations.
- A **compliance and implementation committee** will be critical in supporting Parties, the CoP and Secretariat in implementing the treaty. Following best practice, such a committee would take a facilitative and be open to States and stakeholders. Regional organisations are well-placed to contribute to such facilitative processes, e.g. by collating and contributing data and views and facilitating coordination on compliance issues.

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. It is coordinated by the Institute for Advanced Sustainability Studies (IASS) and implemented together with the Institute for Sustainable Development and International Relations (IDDRI), BirdLife International, the International Ocean Institute (IOI) – Southern Africa, the Universidad Católica del Norte (UCN), WWF Colombia, and WWF Germany. 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.

The STRONG High Seas project has the following overarching objectives:

1. Facilitate the development of improved management approaches for the conservation and sustainable use of biodiversity in areas beyond national jurisdiction in the Southeast Pacific and Southeast Atlantic regions;
2. Identify best practices and provide support to regional institutions and national authorities for implementing existing regional instruments;
3. Develop options for regional governance in a future international instrument under UNCLOS and transfer regional lessons learned to the global level to promote ocean governance.

For more information about the STRONG High Seas project, please visit: <https://www.prog-ocean.org/our-work/strong-high-seas/> or contact: stronghighseas@iass-potsdam.de.

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The STRONG High Seas project is part of the International Climate Initiative (IKI; <http://www.international-climate-initiative.com/en/>). The Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection (BMUV) supports this initiative on the basis of a decision adopted by the German Bundestag.