

Areas Beyond National Jurisdiction: A Need to Improve Governing Frameworks and Enhance a Global Commitment to Conservation

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Areas Beyond National Jurisdiction (ABNJ) are home to a wealth of ocean resources that are taken for granted. Located beyond the zone over which any national governing entity has explicit jurisdiction, these areas of the high seas comprise 64 percent of the global ocean surface and 95 percent of its volume (GEF, 2021). In addition to being a source of food stability for millions due to the abundant fisheries in these areas, ABNJ also promote economic security, ecosystem integrity, and human health across sectors from transportation and communication to medicine and genetic research.

Despite all of the vital services and resource banks that are supported and sustained by ABNJ, however, a cohesive, legally binding instrument for their governance does not exist. Fragmented governance of ABNJ has not only enabled resource overexploitation but has also contributed to practices that exacerbate the effects of climate change on marine ecosystems in ABNJ (IUCN, n.d.). In order to remedy these issues and to promote healthy ecosystems and sustainable resource use in ABNJ, further steps must be taken to inspire and implement more cohesive, cross-sectoral, international governing systems and strategies.

ABNJ face numerous threats. In addition to overfishing and overexploitation of resources, other human activities and disturbances are also imposing harmful effects on these ocean areas of vital importance. These activities include: (1) noise and the release of toxic oil from ships, which “can disrupt communication among animals and displace them from their preferred breeding or feeding grounds” (IUCN, n.d.); (2) deep-sea mining, which is responsible for the destruction of ecosystems and animal habitats; and (3) the release into the ocean of marine debris, which can cause entanglement and, in many cases, the death of animals. Climate change has exacerbated and continues to exacerbate these other human-generated harms by altering the heat and carbon content of the oceans, thus reducing their ability to sequester carbon; intensifying ocean acidification; and disrupting the migration patterns and reproductive behaviors of many marine species (IUCN, n.d.).

Currently, the major international governance framework for ABNJ is the United Nations Convention on the Law of the Sea (UNCLOS). Adopted in 1982, UNCLOS’s framework extends to ABNJ areas of the high seas, which are defined as those areas beyond the continental shelf of any nation. Provisions under UNCLOS confer the right to all nations, even those that are landlocked, to navigate, fish, conduct scientific research, lay cables and pipelines, and construct artificial island structures within the bounds of ABNJ (Zacharias and Ardron, 2020, p.72).

Restrictions of these activities under UNCLOS, however, are limited to only two provisions. Article 118 addresses the responsibility of nations to “cooperate with each other in

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the conservation and management of living resources in the areas of the high seas,” (UNCLOS, 1982) and mandates that nations involved in the use or exploitation of these resources should enter into negotiations to determine how to best share and allocate these resources. Article 119 provides guidelines for the proper management of living fisheries resources to enhance conservation efforts, advising that states use the most recent scientific data available to them regarding species and catch statistics to monitor consumption, prevent overfishing, and allow stocks the necessary time to regenerate.

In addition to the limited number of restrictions that it imposes on resource exploitation, there are other issues with UNCLOS as the primary international legal framework for the governance of ABNJ. First, UNCLOS is anthropocentric, having been created in 1982 before the push for environmental governance to consider the needs of the environment began. It advocates for the preservation of marine fisheries resources only to the extent that they continue to sustain human populations and that disputes between nations do not arise over the depletion of shared fishery stocks (UNCLOS, 1982). Second, UNCLOS leaves it up to each member state to obtain the most recent scientific data available pertaining to the conservation of particular fisheries and does not provide a system through which to circulate updated information to all users of resources in ABNJ. This system causes fragmentation of knowledge between states engaged in the exploitation of the same resources, especially between those at different stages of development that possess varying amounts of technological and scientific resources and expertise, and leaves room for overexploitation where gaps exist in understanding of the maintenance of marine ecosystems.

UNCLOS is also weakened by a flaw common to international law instruments. While the treaty is binding on states that are party to it, the International Tribunal for the Law of the Sea (ITLOS) and the International Seabed Authority (ISA) have no enforcement power and cannot impose any form of punishment on nations that violate UNCLOS’s provisions (Zacharias and Ardron, 2020, p. 85). As such, member states are responsible to develop, implement, and enforce measures for ocean resources in ABNJ. Negotiations are underway to create a legally binding instrument under UNCLOS to govern biodiversity conservation and marine resource usage in ABNJ (Collins et. al, 2020, p.1). While these talks progress, however, several programs and initiatives seeking to remedy the shortcomings of UNCLOS as a governing body for ABNJ already exist. The UNEP-WCMC Deep Seas Project, for example, aims to “improve biodiversity conservation and the sustainable use of deep-sea living resources” (UNEP-WCMC, n.d.) in a collaborative ecosystem-based approach to ABNJ management. This project addresses four focus areas: (1) improvement of existing legal frameworks governing biodiversity and fisheries conservation in ABNJ; (2) reduction of harmful impacts on ecologically significant and vulnerable marine areas; (3) improvement of planning and deep-sea fisheries management; and (4) development of “and testing a methodology for area-based planning.” (UNEP-WCMC, n.d.).

Like the Deep Seas Project, the Common Oceans ABNJ project seeks to build international cooperation in the governance of marine resources in ABNJ. From 2014-2019, this project, “funded by the Global Environment Facility (GEF) and led by the Food and Agriculture Organization of the United Nations (FAO)” (FAO, 2021, p.3), convened global ocean stakeholders from international organizations including the United Nations Environment Programme (UNEP) and the World Bank; regional fisheries management organizations

(RFMOs); and “national governments, the private sector, civil society, and academia” (FAO, 2021, p.3) to promote conservation of marine biodiversity and more effective fisheries management in ABNJ. Through four projects in tuna fisheries management, deep seas resource management, capacity building to increase global and regional coordination in the governance of ABNJ, and incentivizing business investments into the sustainable management of migratory fish stocks, the Common Oceans Project has been able accomplish a wide range of goals. These include (but are not limited to) education of people in local fishing communities in the Pacific to fish sustainably using eco-friendly practices, tools, and materials (FAO, 2021, p. 11); publication of scientific reviews on the current state of key deep-sea species (FAO, 2021, p. 15); promotion of cross-sectoral dialogues to increase global understanding of ocean issues; and engagement in activities to build the capacities of global communities to adopt sustainable practices for harvesting resources in ABNJ (FAO, 2021, p. 18).

Initiatives such as the Deep Seas Project and the Common Oceans ABNJ Project have been effective steps forward to support sustainable management of ABNJ. While such initiatives promote cross-sectoral conversations and capacity-building exercises that both inform global governing entities and increase the ability of both national governments and local communities to engage in sustainable practices regarding resource use in ABNJ, they are largely non-binding, and their long-term success is dependent on non-binding regional and international agreements. The creation of a legally binding instrument for ABNJ management under UNCLOS would support these non-binding initiatives and fill existing gaps in ABNJ management while creating a uniform and enforceable system of governance. Such a framework, coordinated by the IUCN, could include (1) a network of marine protected areas, (2) equitable sharing of marine genetic resources between nations, (3) mandatory minimum standards for environmental impact statements, and (4) mechanisms for capacity building and the transfer of vital technology to allow nations most in need to engage in the protection of biodiversity in ABNJ (IUCN, n.d.).

ABNJ are of vital importance to human health and survival. They supply transportation routes; seabed areas across which to lay telephone cables and pipelines; storage of carbon dioxide and generation of over half of the world’s oxygen; climate regulation; and compounds and organisms from which medicines to treat diseases such as Alzheimer’s, heart disease, arthritis, and cancer are derived (IUCN, n.d.). ABNJ also provide sites and materials for scientific research, including research in the area of marine genetic resources (Collins et. al, 2020, p.1). These important areas of the high seas are highly at risk, under threat from unsustainable human activities and the effects of global climate change. UNCLOS’s fragmented framework for resource use and conservation in ABNJ is insufficient to provide solutions to these issues. Initiatives such as the Deep Seas Project and the Common Oceans ABNJ Project are valuable first steps in building global sustainable management systems for ABNJ, but much work remains to protect these marine ecosystems to ensure both the health of the environment and the availability of ABNJ marine resources. A new UNCLOS framework that addresses cross-sectoral concerns and promotes capacity-building initiatives while also providing enforceable restrictions on international use of resources in the high seas is vital to preserving the health and biodiversity of ABNJ.

References

- Collins, J., Huys, I., & Vanagt, T. (2020). Stakeholder Perspectives on Access and Benefit-Sharing for Areas Beyond National Jurisdiction. *Frontiers in Marine Science*, 1. <https://doi.org/10.3389/fmars.2020.00265>
- Food and Agricultural Organization of the United Nations (FAO). (2019). Not a drop in the ocean: Key successes - Common Oceans ABNJ Program 2014-2019, 1-18. <http://www.fao.org/3/cb3698en/cb3698en.pdf>
- Global Environment Facility (GEF). (2021). Areas Beyond National Jurisdiction. <https://www.thegef.org/topics/areas-beyond-national-jurisdiction>
- International Maritime Organization (IMO). (n.d.). United Nations Convention on the Law of the Sea. <https://www.imo.org/en/OurWork/Legal/Pages/UnitedNationsConventionOnTheLawOfTheSea.aspx>
- IUCN. (n.d.). Governing areas beyond national jurisdiction. <https://www.iucn.org/resources/issues-briefs/governing-areas-beyond-national-jurisdiction>
- UN Environment World Conservation Monitoring Centre (UNEP-WCMC). (n.d.). ABNJ Deep Seas Project. <https://www.unep-wcmc.org/featured-projects/abnj-deep-seas-project>
- United Nations Convention on the Law of the Sea (UNCLOS), United Nations, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- Zacharias, M. and Ardron, J. (2020). *Marine Policy: An Introduction to Governance and International Laws of the Oceans* (2). Routledge.