

**Glossary of  
Ocean Governance Terms**

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## List of Acronyms

<b>ABMT</b>	Area-based Management Tool
<b>ABNJ</b>	Areas beyond National Jurisdiction
<b>ABS</b>	Access and Benefit Sharing
<b>AHTEG</b>	Ad Hoc Technical Expert Group
<b>APEI</b>	Area of Particular Environmental Interest
<b>BBNJ</b>	Biodiversity beyond National Jurisdiction
<b>CBD</b>	Convention on Biological Diversity
<b>CCAMLR</b>	Commission for the Conservation of Antarctic Marine Living Resources
<b>CCSBT</b>	Commission for the Conservation of Southern Bluefin Tuna
<b>CCZ</b>	Clarion-Clipperton Zone
<b>CHM</b>	Clearing-house Mechanism
<b>CITES</b>	Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>CMS</b>	Convention on the Conservation of Migratory Species of Wild Animals
<b>COP</b>	Conference of Parties
<b>CPPS</b>	Comisión Permanente del Pacífico Sur/Permanent Commission for the South Pacific
<b>EEF</b>	Ecosystem Approach to Fisheries
<b>EBSA</b>	Ecologically or Biologically Significant Marine Area
<b>EEZ</b>	Exclusive Economic Zone
<b>EIA</b>	Environmental Impact Assessment
<b>FAD</b>	Fish Aggregating Device
<b>FAO</b>	Food and Agriculture Organization of the UN
<b>IASS</b>	Institute for Advance Sustainability Studies
<b>IATTC</b>	Inter-American Tropical Tuna Commission
<b>IBA</b>	Important Bird and Biodiversity Area
<b>ICCAT</b>	International Commission for the Conservation of Atlantic Tunas
<b>ICJ</b>	International Court of Justice
<b>IGC</b>	Intergovernmental Conference
<b>IMMA</b>	Important Marine Mammal Area
<b>IMO</b>	International Maritime Organization
<b>IOC-UNESCO</b>	Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization
<b>IOM</b>	Integrated Oceans Management
<b>IPBES</b>	Intergovernmental Platform on Biodiversity and Ecosystem Services
<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>IPOA</b>	International Plan of Action
<b>ISA</b>	International Seabed Authority
<b>ITPGRFA</b>	International Treaty on Plant Genetic Resources for Food and Agriculture
<b>IUCN</b>	Intergovernmental Union for Conservation of Nature
<b>IUU</b>	Illegal, Unreported and Unregulated (Fishing)
<b>IWC</b>	International Whaling Commission
<b>KBA</b>	Key Biodiversity Area
<b>MARPOL</b>	International Convention for the Prevention of Pollution from Ships
<b>MCS</b>	Monitoring, Control and Surveillance
<b>MGR</b>	Marine Genetic Resources
<b>MOU</b>	Memorandum of Understanding

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<b>MPA</b>	Marine Protected Area
<b>MSP</b>	Marine Spatial Planning
<b>NCP</b>	Nature's contributions to people
<b>OA</b>	Ocean Acidification
<b>OECM</b>	Other effective area-based conservation measure
<b>PSMA</b>	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
<b>PSSA</b>	Particularly Sensitive Sea Area
<b>REMP</b>	Regional Environmental Management Plan
<b>RFB</b>	Regional Fisheries Bodies
<b>RFMO</b>	Regional Fisheries Management Organisation
<b>RSP</b>	Regional Seas Programme
<b>SEA</b>	Strategic Environmental Assessment
<b>SEAFO</b>	South East Atlantic Fisheries Organisation
<b>SPRFMO</b>	South Pacific Regional Fisheries Management Organisation
<b>TK</b>	Traditional knowledge
<b>UN</b>	United Nations
<b>UN DESA</b>	United Nations Department of Economic and Social Affairs
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>UNDP</b>	United Nations Development Programme
<b>UNEP</b>	United Nations Environment Programme
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>UNFSA</b>	United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
<b>UNGA</b>	United Nations General Assembly
<b>VCLT</b>	Vienna Convention on the Law of Treaties
<b>VME</b>	Vulnerable Marine Ecosystem
<b>WCPFC</b>	Western and Central Pacific Fisheries Commission
<b>WOA</b>	UN Integrated World Ocean Assessment

# Introduction

## The relevance of a glossary

As in most areas of knowledge or activity, the field of ocean governance is associated with specialized terminology, or jargon. The use of specific terms is essential for clear communication, particularly among peers, but also to a wider audience. However, as one area becomes more specialized and consequently the use of jargons increases, the challenge for comprehensible communication also grows. The term 'ocean governance', which is central to the STRONG High Seas project, is in itself a complex one and often interpreted in different ways by different actors.

A shared understanding of terms by stakeholders engaging in policy instruments is particularly critical. Texts of policy instruments and of decisions (or similar documents, such as Resolutions or measures) under these instruments are, in some cases, legally-binding, which makes States Parties generally abide by them. In order to 'level the playing field', most policy instruments add a glossary of terms in their texts. Sometimes, terms are imported from peer-reviewed technical-scientific publications. But most commonly they are negotiated among State Parties, which adapt a technically or scientifically defined term in order to fit the political context of the treaty or State Parties' interests to achieve the needed compromise in such a political setting.

With the expected adoption of a landmark new agreement for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (the International legally binding instrument for the conservation and sustainable use of marine biological diversity beyond national jurisdiction (BBNJ) negotiated under the framework of the United Nations, is herein referred to as the BBNJ Agreement), and given the many existing frameworks concerning the ocean, it was never more relevant that deci-

sion-makers and other ocean stakeholders use terms suitably and with precision. It is envisaged that beyond filling a global governance gap for marine biodiversity protection, the future BBNJ Agreement also provides mechanisms for enhanced coordination and cooperation among the various users and beneficiaries of marine resources. Therefore, clear understanding of and communication about policies, rules, and regulations, as well as the science underpinning the terms among the various stakeholders will be crucial.

## STRONG High Seas project contributing to improved mutual understanding

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. The project is coordinated by the Institute for Advanced Sustainability Studies (IASS) and implemented by project partners based in Europe, South America, and Africa. The STRONG High Seas project is supported by the German Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection (BMUV) through the International Climate Initiative (IKI).

Working with the Secretariat of the West and Central Africa Regional Seas Programme (Abidjan Convention), the Secretariat of the Comisión Permanente del Pacífico Sur (CPPS; Permanent Commission for the South Pacific) and other stakeholders in the Southeast Atlantic and Southeast Pacific regions, the project seeks to develop and propose targeted measures to support the coordinated development of integrated, cross-sectoral approaches for ocean governance in areas beyond national jurisdiction (ABNJ).



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The project aims to develop transdisciplinary scientific assessments to provide decision-makers, both in the project target regions and glob-

ally, with improved knowledge and understanding on high seas biodiversity.

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## Glossary Objective

The objective of this glossary is to provide decision-makers and other ocean stakeholders including private sectors, scientific communities, civil society and traditional communities, with a reference lexicon on ocean governance related terms to facilitate understanding when engaging in negotiations and implementation of international and national policies and regulations.

The same word could have different meaning to different audiences and at different times. Having a common understanding of a term will, therefore, ease communication and, ultimately, help decision-makers achieve agreement in a political context.<sup>1</sup>

<sup>1</sup><https://www.unifiedcompliance.com/education/the-various-types-of-definitions/>

## Approach

The glossary contains two main types of definition of terms: i) policy or legal and ii) technical or scientific. The decision for including both ‘types’ of definitions (when available) in this Glossary was based on the fact that one can witness variations around the same term, in these two contexts: political or legal and technical or scientific. Technical or scientific definitions are usually based on concepts and differentiating characteristics of the idea being conveyed, often times resulting from peer exchanges of knowledge.<sup>2</sup> Policy or legal definitions, nonetheless, result from negotiated text under an international instrument. There are cases, however, where a legal definition is fully based, verbatim, on the technical or scientific definition of term. The interest in contrasting these potentially different terms lies in showcasing the eventual limitations of a policy or legal definitions may have, given its negotiated nature. Therefore, when seeking rigour in the meaning of a term, the technical or scientific definitions should be the one primarily consulted.

The policy and the legal definitions are extracted from international instruments related to ocean governance, which are either legally-binding (e.g. treaties) or non-legally-binding on States Parties (e.g. decisions adopted by Conference of the Parties (COP) to specific conventions). The compilation of terms within regional instruments (e.g. Regional Seas Conventions and Action Plans, Regional Fisheries Management Organizations) focused solely on those with mandate in target regions of the STRONG High Seas project, namely the Southeast Atlantic and the Southeast Pacific.

The technical or scientific definitions derive from technical or scientific documents or literature, such as guidelines, journals, etc. Often times, there exists more than one technical or scientific definition for one single term. It was not the objective of this Glossary to demonstrate all possible definitions of a term or to outline or assess these differences. We understand that the more accepted the term by any one group of stakeholders, the higher probability it will be used to communicate. On this basis, we gave preference to widely accepted sources, including, but not restricted to, technical series or reports of international and regional conventions and knowledge products produced by IUCN.

Not all policy or legal terms contained in the current Glossary are expressly defined in an international instrument. Hence, when adding a relevant policy or legal term where a formal definition is not yet agreed upon under a given instrument, we used a description of these terms. That description, however, is based on the wording of the official documentation where it was extracted from. That is, despite the fact these descriptions are not considered as a definition per se, they are also agreed text by State Parties under such instruments. We therefore avoided elaborating our own interpretations of any single term in this glossary. In the case of terms withdrawn from the draft text of the BBNJ Agreement, we used the draft (tentative) definitions and descriptions included in the revised draft text of the BBNJ Agreement dated November 2019.<sup>3</sup> These terms are included in this glossary in their current form and readers must bear in mind that they could change upon the adoption of the treaty.

<sup>2</sup> <https://www.unifiedcompliance.com/education/how-to-write-definitions/#The-Basics>

<sup>3</sup> Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, President's revisions to the draft text (A/CONF.232/2019/6, 27 November 2019). Online: [https://www.un.org/bbnj/sites/www.un.org.bbnj/files/revised\\_draft\\_text\\_a\\_conf\\_232.2020.11\\_advance\\_unedited\\_version\\_mark-up.pdf](https://www.un.org/bbnj/sites/www.un.org.bbnj/files/revised_draft_text_a_conf_232.2020.11_advance_unedited_version_mark-up.pdf) (accessed on 25 Nov 2021) (draft BBNJ Agreement, 2019)

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# Introducción

## La importancia de un glosario

Como en la mayoría de las áreas de conocimiento o actividad, el campo de la gobernanza de los océanos está asociado a una terminología especializada, o jerga. El uso de términos específicos es esencial para una comunicación clara, sobre todo entre colegas, pero también para un público más amplio. Sin embargo, a medida que un área se vuelve más especializada y, en consecuencia, aumenta el uso de la jerga, también crece el reto de la comunicación comprensible. El término 'gobernanza de los océanos', que es fundamental para el proyecto STRONG High Seas, es en sí mismo complejo y a menudo es interpretado de diferentes maneras por distintos actores.

Es especialmente importante que las partes interesadas que participan en los instrumentos políticos compartan los términos. Los textos de los instrumentos políticos y de las decisiones (o documentos similares, como las resoluciones o las medidas) en el marco de estos instrumentos son, en algunos casos, jurídicamente vinculantes, lo que hace que los Estados Parte se atengan generalmente a ellos. Con el fin de 'nivelar el campo de juego', la mayoría de los instrumentos políticos añaden un glosario de términos en sus textos. A veces, los términos se importan de publicaciones técnico-científicas revisadas por expertos. Pero lo más habitual es que se negocien entre los Estados Parte que adaptan un término definido técnica o científicamente para que encaje en el contexto político del tratado o en los intereses de los Estados Parte para lograr el compromiso necesario en ese entorno político.

Con la esperada adopción de un nuevo acuerdo histórico para la conservación y el uso sostenible de la biodiversidad marina de las áreas situadas fuera de la jurisdicción nacional (el instrumento internacional jurídicamente vinculante para la conservación y el uso sostenible de la diversidad

biológica marina fuera de la jurisdicción nacional (BBNJ), negociado en el marco de las Naciones Unidas, se denomina en lo sucesivo Acuerdo BBNJ), y teniendo en cuenta los numerosos marcos existentes en relación con el océano, nunca ha sido más pertinente que los responsables de la toma de decisiones y otras partes interesadas en el océano utilicen los términos de forma adecuada y precisa. Se prevé que, además de colmar una laguna de gobernanza mundial para la protección de la biodiversidad marina, el futuro Acuerdo BBNJ proporcione también mecanismos para mejorar la coordinación y la cooperación entre los distintos usuarios y beneficiarios de los recursos marinos. Por lo tanto, será fundamental que las distintas partes interesadas comprendan y comuniquen claramente las políticas, normas y reglamentos, así como la ciencia en la que se basan los términos.

## El proyecto STRONG High Seas contribuye a mejorar la comprensión mutua

El proyecto STRONG High Seas es un proyecto de cinco años de duración cuyo objetivo es reforzar la gobernanza regional de los océanos para la conservación y el uso sostenible de la biodiversidad marina en las áreas situadas fuera de la jurisdicción nacional. El proyecto está coordinado por el Institute for Advanced Sustainability Studies (IASS) y ejecutado por socios del proyecto con sede en Europa, Sudamérica y África. El proyecto STRONG High Seas cuenta con el apoyo del Ministerio Federal de Medio Ambiente, Conservación de la Naturaleza, Seguridad Nuclear y Protección del Consumidor (BMUV) de Alemania a través de la Iniciativa Internacional sobre el Clima (IKI).

En colaboración con la Secretaría del Programa de Mares Regionales de África Occidental y Central (Convenio de Abiyán), la Secretaría de la Comisión Permanente del Pacífico Sur (CPPS) y otras partes interesadas de las regiones del

Atlántico Sudeste y del Pacífico Sudeste, el proyecto pretende elaborar y proponer medidas específicas para apoyar el desarrollo coordinado de enfoques integrados e intersectoriales para la gobernanza de los océanos en las áreas situadas fuera de la jurisdicción nacional (ABNJ, por sus siglas en inglés).

El proyecto tiene como objetivo desarrollar evaluaciones científicas transdisciplinarias para proporcionar a los responsables de la toma de decisiones, tanto en las regiones objetivo del proyecto como a nivel mundial, un mejor conocimiento y comprensión de la biodiversidad de alta mar.

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## Objetivo del glosario

El objetivo de este glosario es proporcionar a los responsables de la toma de decisiones y a otras partes interesadas en los océanos, incluidos el sector privado, las comunidades científicas, la sociedad civil y las comunidades tradicionales, un léxico de referencia sobre los términos relacionados con la gobernanza de los océanos, para facilitar su comprensión cuando participen en las negociaciones y en la aplicación de políticas y reglamentos internacionales y nacionales.

La misma palabra puede tener un significado diferente para distintos públicos y en distintos momentos. Por lo tanto, tener una comprensión común de un término facilitará la comunicación y, en última instancia, ayudará a los responsables de la toma de decisiones a lograr un acuerdo en un contexto político.<sup>4</sup>

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## Enfoque

El glosario contiene dos tipos principales de definiciones de términos: i) políticas o jurídicas y ii) técnicas o científicas. La decisión de incluir ambos 'tipos' de definiciones (cuando están disponibles) en este Glosario se basó en el hecho de que se pueden observar variaciones en torno al mismo término, en estos dos contextos: político o jurídico y técnico o científico. Las defini-

ciones técnicas o científicas suelen basarse en conceptos y características diferenciadoras de la idea que se transmite, a menudo resultantes de intercambios de conocimientos entre pares.<sup>5</sup> Las definiciones políticas o jurídicas, en cambio, son el resultado de un texto negociado en el marco de un instrumento internacional. Sin embargo, hay casos en los que una definición jurídica se

<sup>4</sup> <https://www.unifiedcompliance.com/education/the-various-types-of-definitions/>

<sup>5</sup> <https://www.unifiedcompliance.com/education/how-to-write-definitions/#The-Basics>

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basa totalmente, al pie de la letra, en la definición técnica o científica del término. El interés de contrastar estos términos potencialmente diferentes radica en mostrar las eventuales limitaciones que pueden tener las definiciones técnicas o jurídicas, dado su carácter negociado. Por lo tanto, cuando se busca el rigor en el significado de un término, las definiciones técnicas o científicas deben ser las que se consulten principalmente.

Las definiciones políticas y jurídicas se han extraído de los instrumentos internacionales relacionados con la gobernanza de los océanos que son jurídicamente vinculantes (por ejemplo, los tratados) o no vinculantes para los Estados Parte (por ejemplo, las decisiones adoptadas por la Conferencia de las Partes (COP) de convenios específicos). La recopilación de términos dentro de los instrumentos regionales (por ejemplo, convenios y planes de acción de los mares regionales, organizaciones regionales de gestión de la pesca) se centró únicamente en los que tienen un mandato en las regiones objetivo del proyecto STRONG High Seas, a saber, el Atlántico Sudeste y el Pacífico Sudeste.

Las definiciones técnicas o científicas proceden de documentos o literatura técnica o científica, como directrices, revistas, etc. A menudo, existe más de una definición técnica o científica para un mismo término. El objetivo de este Glosario no era mostrar todas las posibles definiciones de un término ni esbozar o evaluar estas diferencias. Entendemos que cuanto más aceptado sea el término por un grupo de interesados, mayor será la probabilidad de que se utilice para comunicarse. Sobre esta base, dimos preferencia a las fuentes ampliamente aceptadas, incluyendo, pero sin limitarse a ello, las series técnicas o los informes de los convenios internacionales y regionales y los productos de conocimiento elaborados por la UICN.

No todos los términos políticos o jurídicos que figuran en el Glosario actual están definidos expresamente en un instrumento internacional. Por ello, al añadir un término político o jurídico pertinente cuando aún no se ha acordado una definición formal en un instrumento determinado, hemos utilizado una descripción de estos términos. Esa descripción, sin embargo, se basa en la redacción de la documentación oficial de la que se extrajo. Es decir, a pesar de que estas descripciones no se consideran una definición en sí, también son un texto acordado por los Estados Parte en el marco de dichos instrumentos. Por lo tanto, hemos evitado elaborar nuestras propias interpretaciones de cualquier término en este glosario. En el caso de los términos retirados del proyecto de texto del Acuerdo BBNJ, hemos utilizado los proyectos de definiciones y descripciones (provisionales) incluidos en el proyecto de texto revisado del Acuerdo BBNJ de noviembre de 2019.<sup>6</sup> Estos términos se incluyen en este glosario en su forma actual y los lectores deben tener en cuenta que podrían cambiar tras la adopción del tratado.

Es importante señalar que algunos términos se utilizan en contextos específicos (por ejemplo, sectorialmente, regionalmente, en relación con mandatos específicos de un determinado tratado, en relación con Estados Parte específicos, etc.), pero al reunir estos términos, es posible darse cuenta de cómo se pueden promover sinergias para un régimen de gobernanza más coherente aplicable al océano mundial.

*Tenga en cuenta que, dado que no todas las definiciones están actualmente disponibles de forma oficial en español (por ejemplo, el proyecto del Acuerdo BBNJ) y para evitar cualquier malentendido que pudiera resultar de la traducción, este Glosario sólo está disponible en inglés.*

<sup>6</sup> Proyecto de texto revisado de un acuerdo en el marco de la Convención de las Naciones Unidas sobre el Derecho del Mar relativo a la conservación y la utilización sostenible de la diversidad biológica marina de las áreas situadas fuera de la jurisdicción nacional, revisiones de la Presidente al proyecto de texto (A/CONF.232/2019/6, 27 de noviembre de 2019). En línea: [https://www.un.org/bbnj/sites/www.un.org/bbnj/files/revised\\_draft\\_text\\_a.conf\\_232.2020.11\\_advance\\_unedited\\_version\\_mark-up.pdf](https://www.un.org/bbnj/sites/www.un.org/bbnj/files/revised_draft_text_a.conf_232.2020.11_advance_unedited_version_mark-up.pdf) (consultado el 25 de noviembre de 2021) (proyecto de acuerdo BBNJ, 2019)

## Introduction

### La pertinence d'un glossaire

Comme dans la plupart des domaines de connaissance ou d'activité, le domaine de la gouvernance des océans est associé à une terminologie spécialisée, ou jargon. L'utilisation de termes spécifiques est essentielle pour une communication claire, en particulier entre pairs, mais aussi vers un public plus large. Cependant, à mesure qu'un domaine devient plus spécialisé et que l'utilisation de jargons augmente en conséquence, le défi d'une communication compréhensible s'accroît également. Le terme 'gouvernance des océans', qui est au cœur du projet STRONG High Seas, est en soi complexe et souvent interprété de différentes manières par différents acteurs.

Une compréhension commune des termes par les parties prenantes s'engageant dans les instruments politiques est particulièrement critique. Les textes des instruments politiques et des décisions (ou documents similaires, tels que les résolutions ou les mesures) au titre de ces instruments sont, dans certains cas, juridiquement contraignants, ce qui oblige les États parties à s'y conformer. Afin d'uniformiser les règles du jeu, la plupart des instruments politiques ajoutent un glossaire dans leurs textes. Parfois, les termes sont importés de publications technico-scientifiques évaluées par des pairs. Mais le plus souvent, ils sont négociés entre les États parties, qui adaptent un terme techniquement ou scientifiquement défini afin de l'adapter au contexte politique du traité ou aux intérêts des États parties pour obtenir le compromis nécessaire dans un tel contexte politique.

Avec l'adoption prévue d'un nouvel accord historique pour la conservation et l'utilisation durable de la biodiversité marine des zones situées au-delà de la juridiction nationale (l'instrument international juridiquement contraignant pour la conservation et l'utilisation durable de la biodiversité marine au-delà de la juridiction natio-

nale (BBNJ) négocié dans le cadre des Nations Unies, est ci-après dénommé l'accord BBNJ), et compte tenu des nombreux cadres existants concernant l'océan, il n'a jamais été aussi pertinent que les décideurs et autres parties prenantes de l'océan utilisent les termes de manière appropriée et précise. Il est envisagé qu'au-delà de combler une lacune de la gouvernance mondiale en matière de protection de la biodiversité marine, le futur accord BBNJ fournisse également des mécanismes permettant de renforcer la coordination et la coopération entre les différents utilisateurs et bénéficiaires des ressources marines. Il sera donc essentiel que les différentes parties prenantes comprennent bien les politiques, les règles et les réglementations, ainsi que la science qui sous-tend ces termes, et qu'elles communiquent à ce sujet.

### Le projet STRONG High Seas contribue à une meilleure compréhension mutuelle

Le projet STRONG High Seas est un projet de cinq ans qui vise à renforcer la gouvernance régionale des océans pour la conservation et l'utilisation durable de la biodiversité marine dans les zones situées au-delà de la juridiction nationale. Le projet est coordonné par l'Institute for Advanced Sustainability Studies (IASS) et mis en œuvre par des partenaires basés en Europe, en Amérique du Sud et en Afrique. Le projet STRONG High Seas est soutenu par le Ministère fédéral allemand de l'environnement, de la protection de la nature, de la sécurité nucléaire et de la protection des consommateurs (BMUV) par le biais de l'Initiative internationale pour le climat (IKI).

En collaboration avec le secrétariat du Programme pour les mers régionales d'Afrique de l'Ouest et du Centre (Convention d'Abidjan), le secrétariat de la Comisión Permanente del Pacífico Sur (CPPS; Commission permanente du Pa-

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cifique Sud) et d'autres parties prenantes dans les régions de l'Atlantique du Sud-Est et du Pacifique du Sud-Est, le projet vise à élaborer et à proposer des mesures ciblées pour soutenir le développement coordonné d'approches intégrées et intersectorielles pour la gouvernance des océans dans les zones situées au-delà de la juridiction nationale (ABNJ, pour son acronyme en anglais).

Le projet vise à développer des évaluations scientifiques transdisciplinaires afin de fournir aux décideurs, tant dans les régions cibles du projet qu'au niveau mondial, une meilleure connaissance et compréhension de la biodiversité en haute mer.

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## Objectif du glossaire

L'objectif de ce glossaire est de fournir aux décideurs et aux autres parties prenantes de l'océan, y compris les secteurs privés, les communautés scientifiques, la société civile et les communautés traditionnelles, un lexique de référence sur les termes liés à la gouvernance des océans afin de faciliter la compréhension lors des négociations et de la mise en œuvre des politiques et réglementations internationales et nationales.

Un même mot peut avoir une signification différente selon les publics et les moments. Une compréhension commune d'un terme facilitera donc la communication et, en fin de compte, aidera les décideurs à parvenir à un accord dans un contexte politique.<sup>7</sup>

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## Approche

Le glossaire contient deux types principaux de définition des termes: i) politique ou juridique et ii) technique ou scientifique. La décision d'inclure les deux 'types' de définitions (lorsqu'elles sont disponibles) dans ce glossaire repose sur le fait que l'on peut observer des variations autour d'un même terme, dans ces deux contextes: politique ou juridique et technique ou scientifique. Les définitions techniques ou scientifiques sont

généralement basées sur les concepts et les caractéristiques différenciées de l'idée véhiculée, et résultent souvent d'échanges de connaissances entre pairs.<sup>8</sup> Les définitions politiques ou juridiques, quant à elles, résultent d'un texte négocié dans le cadre d'un instrument international. Il existe cependant des cas où une définition juridique est entièrement basée, mot pour mot, sur la définition technique ou scientifique

<sup>7</sup> <https://www.unifiedcompliance.com/education/the-various-types-of-definitions/>

<sup>8</sup> <https://www.unifiedcompliance.com/education/how-to-write-definitions/#The-Basics>

du terme. L'intérêt de contraster ces termes potentiellement différents réside dans la mise en évidence des limites éventuelles d'une définition politique ou juridique, étant donné sa nature négociée. Par conséquent, lorsque l'on recherche la rigueur dans la signification d'un terme, les définitions techniques ou scientifiques devraient être les premières consultées.

Les définitions politiques et juridiques sont extraites des instruments internationaux relatifs à la gouvernance des océans, qui sont soit juridiquement contraignants (par exemple, les traités), soit non juridiquement contraignants pour les États parties (par exemple, les décisions adoptées par la Conférence des Parties (COP) à des conventions spécifiques). La compilation des termes des instruments régionaux (par exemple, les conventions et les plans d'action relatifs aux mers régionales, les organisations régionales de gestion des pêches) s'est concentrée uniquement sur ceux dont le mandat concerne les régions cibles du projet STRONG High Seas, à savoir l'Atlantique du Sud-Est et le Pacifique du Sud-Est.

Les définitions techniques ou scientifiques sont tirées de documents ou de littérature techniques ou scientifiques, tels que des directives, des revues, etc. Souvent, il existe plus d'une définition technique ou scientifique pour un seul terme. L'objectif de ce glossaire n'était pas de présenter toutes les définitions possibles d'un terme, ni d'exposer ou d'évaluer ces différences. Nous comprenons que plus un terme est accepté par un groupe de parties prenantes, plus il est probable qu'il sera utilisé pour communiquer. Sur cette base, nous avons donné la préférence à des sources largement acceptées, y compris, mais sans s'y limiter, les séries ou rapports techniques des conventions internationales et régionales et les produits de connaissance produits par l'UICN.

Tous les termes politiques ou juridiques contenus dans le glossaire actuel ne sont pas explicitement définis dans un instrument international. Par conséquent, lorsque nous avons ajouté un terme politique ou juridique pertinent dont la définition officielle n'a pas encore été convenue dans un instrument donné, nous avons utilisé une description de ces termes. Cette description est toutefois basée sur le libellé de la documentation officielle dont elle est extraite. En d'autres termes, bien que ces descriptions ne soient pas considérées comme une définition en soi, elles constituent également un texte convenu par les États parties dans le cadre de ces instruments. Nous avons donc évité d'élaborer nos propres interprétations de chaque terme de ce glossaire. Dans le cas des termes retirés du projet de texte de l'accord BBNJ, nous avons utilisé les projets (provisaires) de définitions et de descriptions inclus dans le projet de texte révisé de l'accord BBNJ daté de novembre 2019.<sup>9</sup> Ces termes sont inclus dans ce glossaire dans leur forme actuelle et les lecteurs doivent garder à l'esprit qu'ils pourraient changer lors de l'adoption du traité.

Il est important de noter que certains termes sont utilisés dans des contextes spécifiques (par exemple, sectoriellement, régionalement, en relation avec des mandats spécifiques d'un traité donné, en relation avec des États parties spécifiques, etc.), mais en rassemblant ces termes, il est possible de réaliser comment les synergies peuvent être promues pour un régime de gouvernance plus cohérent applicable à l'océan mondial.

*Veillez noter que, comme toutes les définitions ne sont actuellement pas officiellement disponibles en français (ex. projet d'accord BBNJ) et afin d'éviter tout malentendu pouvant résulter d'une traduction, ce glossaire est uniquement disponible en anglais.*

<sup>9</sup> Projet de texte révisé d'un accord au titre de la Convention des Nations unies sur le droit de la mer sur la conservation et l'utilisation durable de la diversité biologique marine des zones situées au-delà de la juridiction nationale, révisions de la présidente au projet de texte (A/CONF.232/2019/6, 27 novembre 2019). En ligne: [https://www.un.org/bbni/sites/www.un.org/bbni/files/revised\\_draft\\_text\\_a.conf\\_232.2020.11\\_advance\\_unedited\\_version\\_mark-up.pdf](https://www.un.org/bbni/sites/www.un.org/bbni/files/revised_draft_text_a.conf_232.2020.11_advance_unedited_version_mark-up.pdf) (consulté le 25 nov 2021) (projet d'accord BBNJ, 2019).



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# Glossary

## Access (to marine genetic resources)

(LEGAL DEFINITION, UNDER NEGOTIATION): “[... the collection of marine genetic resources [, including marine genetic resources accessed in situ, ex situ [and in silico] [[and] [as digital sequence information] [as genetic sequence data]]].] (draft BBNJ Agreement (2019), Art 1(1))

The definition of “access”, with respect to marine genetic resources (MGRs), is being negotiated under the BBNJ Agreement. The definition above is the current draft formulation.

- a. In situ genetic resources are described by the CBD Secretariat as those “sourced from environments in which they occur naturally.”<sup>10</sup>
- b. Ex situ genetic resources are described by the CBD Secretariat as those sourced “from human-made collections such as botanical gardens, gene banks, seed banks and microbial culture collections”.<sup>11</sup>
- c. In silico is not legally defined by the draft BBNJ Agreement (2019) or under international law to date.

However, as noted by the CBD Ad Hoc Technical Expert Group (AHTEG) on Digital Sequence Information on Genetic Resources, “in biology and chemistry, this term is used to mean ‘performed

on computer or via computer simulation’, with the reference to silicon, the material from which computer chips are manufactured. It may refer to any data or information held or processed on a computer”.<sup>12</sup>

## Access and benefit sharing (ABS)

(TECHNICAL DESCRIPTION) “The way in which genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers)”.<sup>13</sup>

ABS is not legally defined under any current international agreement, but in the context of the Convention on Biological Diversity (CBD) and its 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable sharing of Benefits arising From their Utilization to the Convention on Biological Diversity (Nagoya Protocol), it refers to “the way in which genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers)”.<sup>14</sup>

With respect to MGRs, the CBD and the Nagoya Protocol are only applicable to areas within national jurisdiction (CBD, Art 4).

<sup>10</sup> CBD Secretariat (2010) Convention on Biological Diversity: ABS, Introduction to access and benefit-sharing. Online: <https://www.cbd.int/abs/infokit/brochure-en.pdf> (accessed on 30 Oct 2021).

<sup>11</sup> Ibid.

<sup>12</sup> CBD/DSI/AHTEG/2020/1/3 29 January 2020, at 36. Online: <https://www.cbd.int/doc/c/fe9/2f90/70f037ccc5da885dfb293e88/dsi-ahteg-2020-01-03-en.pdf> (accessed on 5 Nov 2021).

<sup>13</sup> CBD Secretariat (2010) supra.

<sup>14</sup> CBD Secretariat (2010) supra.

## Activity under a State's jurisdiction or control

(LEGAL DEFINITION, UNDER NEGOTIATION): “an activity over which a State has effective control or exercises jurisdiction.” (Draft BBNJ Agreement (2019), Art 1(2)).

The definition of “activity under a State's jurisdiction or control”, is being negotiated under the BBNJ Agreement. While there are currently no square brackets around the term, the agreement has not yet been adopted, therefore, the definition is still in draft form.

## Adaptive management

(POLICY DESCRIPTION): has “a focus on active learning derived from monitoring the outcomes of planned interventions using a sound experimental approach that allow the effects of the intervention to the accurately determined” (CBD decision VII/11 (2004), Table 1, Principle 6 (ecosystems must be managed within the limits of their functioning) of the Ecosystem Approach).

Furthermore, with regards to principle 8 of the Ecosystem Approach (long-term objectives for ecosystem management), the implementation guidelines of the CBD notes that adaptive management should:

- “include the development of long-term visions, plans and goals and address inter-generational equity, while taking into account immediate and critical needs (e.g., hunger, poverty, shelter).
- take into account trade-offs between short-term benefits and long-term goals in decision-making processes.
- take into account the lag between management action and their outcomes” (CBD decision VII/11 (2004), table 1, Implementation Guidelines 8.1–8.3).

Under Principle 9 of the Ecosystem Approach (management must recognise that change is

inevitable), the CBD Implementation Guidelines notes that adaptive management:

- “is needed to respond to changing social and ecological conditions, and to allow management plans and actions to evolve in light of experience.
- Natural resource managers must recognise that natural and human-induced change is inevitable and take this into account in their management plans.
- should be encouraged when there is a risk of degradation or loss of habitats, as it can facilitate taking early actions in response to change.
- Monitoring systems, both socio-economic and ecological, are an integral part of adaptive management, and should not be developed in isolation from the goals and objectives of management activities.
- Must identify and take account of risks and uncertainties.
- Where changes occur across national borders, the scale of adaptive management may need to be adjusted.
- While ecosystems are inherently dynamic and resilient, special adaptation and mitigation measures are needed when ecosystems may be pushed beyond the limits of natural variation. Capacity-building efforts are needed to address highly vulnerable areas such as small island states and coastal areas.” (CBD decision VII/11 (2004), table 1, Implementation Guidelines 9.1–9.7).

## Adjacency

The concept of adjacency relates to the role of coastal States and the governance of ABNJ. Currently, there is no definition of adjacency in international law. The term has been increasingly discussed in literature, though. Proposed formulations vary around the influence coastal

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States could be given on management of ABNJ resources to which they lie adjacent to.<sup>15</sup> But there is no consensus on the issue to date. Some authors have suggested that the concept of due regard would be more appropriate.<sup>16</sup>

## Adverse impacts

The term ‘adverse impacts’ is not universally defined, however, different international policy and legal instruments refer to the need to assess (usually through environmental impact assessments (EIAs)) and avoid, minimise or mitigate adverse impacts to the marine environment. For instance, Principle 17 of the Rio Declaration on Environment and Development, states that: “Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”<sup>17</sup>

Principle 19 of the Rio Declaration further specifies that “States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.”

Under UNCLOS, “When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause sub-

stantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments (...)”<sup>18</sup>

Under the CBD, Parties shall, as far as possible and as appropriate “introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures”.<sup>19</sup>

### a. Adverse effects of climate change

(LEGAL DEFINITION): “changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.” (UNFCCC, Art 1(1))

### b. Significant adverse impacts (from bottom fishing)

(POLICY DESCRIPTION): “those that compromise ecosystem integrity (i.e. ecosystem structure or function) in a manner that: (i) impairs the ability of affected populations to replace themselves; (ii) degrades the long-term natural productivity of habitats; or (iii) causes, on more than a tem-

<sup>15</sup> D.C. Dunn, G.O. Crespo, M. Vierros, D. Freestone, E. Rosenthal, S. Roady, A. Alberini, A.-L. Harrison, A. Cisneros, J.W. Moore, M.R. Sloat, Y. Ota, R. Caddell, P.N. Halpin, Adjacency: How Legal Precedent, Ecological Connectivity, and Traditional Knowledge Inform Our Understanding of Proximity. Policy Brief, Nereus Program, 2017 (Policy Brief), <https://nereusprogram.org/reports/policy-brief-adjacency-how-legal-precedent-ecological-connectivity-and-traditional-knowledge-inform-our-understanding-of-proximity/>. (accessed on 2 Dec 2021) But see also counter argument presented in J Mossop, C Schofield, “Adjacency and due regard: The role of coastal States in the BBNJ Treaty” (2020) 122 Marine Policy 103877.

<sup>16</sup> J Mossop, C Schofield, “Adjacency and due regard: The role of coastal States in the BBNJ Treaty” (2020) 122 Marine Policy 103877. See also legal and historical analysis of the parallels between this concept as being discussed in the BBNJ Agreement negotiations with multilateral creeping coastal State jurisdiction in EJ Molenaar, “Multilateral Creeping Coastal State Jurisdiction and the BBNJ Negotiations” (2021) 36 International Journal of Marine and Coastal Law 5–58.

<sup>17</sup> Rio Declaration on Environment and Development, Principle 17, UNGA, doc A/Conf. 151/26 (Vol. I), Report of the United Nations Conference on Environment and Development, Annex I, Rio de Janeiro, 3–14 June 1992.

<sup>18</sup> UNCLOS, Art. 206.

<sup>19</sup> CBD, Art 14(1).

porary basis, significant loss of species richness, habitat or community types.” (FAO Deep-sea Guidelines, para. 17)<sup>20</sup>

### c. Impact

(LEGAL DEFINITION): “any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors”. (Espoo Convention, Art. 1(vii))

### d. Transboundary impact

(LEGAL DEFINITION): “Any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party”. (Espoo Convention, Art 1(viii))

### e. Minor and transitory impacts

Minor and transitory impacts are not defined under international law. The Madrid Protocol determines that any activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area “shall be subject to

the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic environment or on dependent or associated ecosystems according to whether those activities are identified as having: (a) less than a minor or transitory impact; (b) a minor or transitory impact; or (c) more than a minor or transitory impact.” (Madrid Protocol, Art 8 (1) and (2)).

### Agreement

Agreements or “international agreements” in a general sense mean treaties.<sup>21</sup> In some circumstances, Agreements can be “less formal and deal with a narrower range of subject-matter than “treaties”.”<sup>22</sup>

### Area-based management tool (ABMT)

(LEGAL DEFINITION, UNDER NEGOTIATION): “a tool, including a marine protected area, for a geographically defined area, through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas].”(Draft BBNJ Agreement (2019), Art 1(3))

(TECHNICAL DESCRIPTION): “Area-based planning tools with associated management measures”.<sup>23</sup>

<sup>20</sup> Para 17 also determines that these “impacts should be evaluated individually, in combination and cumulatively.” Furthermore, para. 18 provides guidance in determining the scale and significance of an impact based on six factors, namely: “(i) the intensity or severity of the impact at the specific site being affected; (ii) the spatial extent of the impact relative to the availability of the habitat type affected; (iii) the sensitivity/vulnerability of the ecosystem to the impact; (iv) the ability of an ecosystem to recover from harm, and the rate of such recovery; (v) the extent to which ecosystem functions may be altered by the impact; and (vi) the timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life-history stages.” The FAO Guidelines further clarify that: “temporary impacts are those that are limited in duration and that allow the particular ecosystem to recover over an acceptable time frame. Such time frames should be decided on a case-by-case basis and should be in the order of 5–20 years, taking into account the specific features of the populations and ecosystems” (para. 19); and that “in determining whether an impact is temporary, both the duration and the frequency at which an impact is repeated should be considered. If the interval between the expected disturbance of a habitat is shorter than the recovery time, the impact should be considered more than temporary. In circumstances of limited information, States and RFMO/As should apply the precautionary approach in their determinations regarding the nature and duration of impacts” (para. 20).

<sup>21</sup> United Nations Treaty Collection, Definitions: Definition of key terms used in the UN Treaty Collection, online: [https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1\\_en.xml](https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml) (accessed on 1 Nov 21). See also 1969 Vienna Convention on the Law of Treaties.

<sup>22</sup> Ibid.

<sup>23</sup> UNEP-WCMC and Seascope Consultants Ltd. (2019). Learning from experience: Case studies of Area-Based Planning in ABNJ. Technical document Produced as part of the GEF ABNJ Deep Seas Project. Cambridge (UK): UN Environment World Conservation Monitoring Centre. 88pp, at 19

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‘Area-based planning’ has been described as “the process of identifying and agreeing spatially-explicit measures to appropriately manage human activities to meet specific objectives.”<sup>24</sup>

## Areas beyond national jurisdiction

(DEFINITION, UNDER NEGOTIATION): ABNJ encompasses “the high seas and the Area” (Draft BBNJ Agreement (2019), Art. 1(4)).

The term ABNJ has not been legally defined under UNCLOS per se (but see legal description of High Seas and legal definition of The Area below).

## Areas of Particular Environmental Interest

Areas of Particular Environmental Interest (APEIs) have been designated by the International Seabed Authority (ISA) in the context of the Regional Environmental Management Plan (REMP). So far, APEIs have been designated for the Clarion-Clipperton Zone (CCZ).

There is no specific definition of APEIs, but their operational objectives are to:

“(a) protect biodiversity and ecosystem structure and function by a system of representative seafloor areas closed to mining activities. The system must be in place before additional mining claims further compromise the ability to develop a scientifically robust design;

(b) include a wide range of the habitat types present in the Clarion-Clipperton Zone within

the areas of particular environmental interest (for example seamounts and fracture zone structures);

(c) Establish an area of particular environmental interest system to avoid overlap with the current distribution of claimant and reserve areas (...);

(d) Provide a degree of certainty to existing and prospective contractors by laying out the location of areas closed to mining activities”<sup>25</sup>

## Areas to be avoided

(POLICY DEFINITION): “A routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships” (IMO Resolution A.572(14)).<sup>26</sup>

## Ballast water

(LEGAL DEFINITION): “water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.” (Ballast Water Convention, Art 1(2))

## Ballast water management

(LEGAL DEFINITION): “means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.” (Ballast Water Convention, Art. 1(3))

<sup>24</sup> UNEP-WCMC and Seascope Consultants Ltd. (2019). Learning from experience: Case studies of Area-Based Planning in ABNJ. Technical document Produced as part of the GEF ABNJ Deep Seas Project. Cambridge (UK): UN Environment World Conservation Monitoring Centre. 88pp, at 19.

<sup>25</sup> ISA/Legal and Technical Commission (LTC), Environmental Management Plan for the Clarion-Clipperton Zone, ISBA/17/LTC/7 (13 July 2011), para 39. The size of APEIs is described in para 25 (i.e. 200 x 200 km); the scientific design is provided in para 26.

<sup>26</sup> IMO, Resolution A.572 (14) of 20 Nov 1985, Annex, para 2(12). See also Ships’ routing, online: <https://www.imo.org/en/Our-Work/Safety/Pages/ShipsRouting.aspx> (accessed on 30 Oct 2021). The adoption of ships’ routing and reporting system is conducted under the International Convention for the Safety of Life at Sea (SOLAS) and with the 2013 General Provisions on Ship’s Routing and the Guidelines and Criteria for Ship Reporting Systems. Also of relevance is the International Regulations for Preventing Collisions at Sea (1972). Furthermore, as per para 6.1.2 of the 2005 IMO Assembly Resolution A.982(24) on the Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas, a particularly sensitive sea area (PSSA) “may be designated as an area to be avoided or it may be protected by other ship’s routing or reporting systems”.

## Harmful Aquatic Organisms and Pathogens

(LEGAL DEFINITION): “means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into freshwater courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.” (Ballast Water Convention, Art. 1(8))

## Best available science, scientific information, evidence and ocean science

(DEFINITION OF BEST AVAILABLE SCIENTIFIC EVIDENCE, UNDER NEGOTIATION): “the best scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies.” (ISA, SBA/25/C/WP.1 (2019), Schedule)

There is no adopted international legal definition of best available science or best scientific information yet. UNCLOS makes use of the terms “best available science”, “best available evidence”, “available scientific information” in several instances with respect to the need to take these into consideration when ensuring proper conservation and management measures of the living resources in the EEZ (Art 61) and on the

high seas (Art 119). Best available scientific evidence shall also inform coastal States non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas in the EEZ (Art 234). The 1995 Fish Stocks Agreement also includes an obligation for coastal States and States fishing on the high seas to ensure that conservation and management measures for straddling and highly migratory fish stocks are based on “best scientific evidence available”.<sup>27</sup> The draft BBNJ Agreement (2019) includes reference to “best available [science] [scientific information and relevant traditional knowledge of indigenous peoples and local communities]”<sup>28</sup> among its principles and several provisions regarding area-based management tools and environment impact assessment. However, these terms are not defined under the draft agreement.<sup>29</sup>

“Ocean science” is defined under the UN Decade of Ocean Science for Sustainable Development Implementation Plan as encompassing “natural and social science disciplines, including interdisciplinary approaches; the technology and infrastructure that supports ocean science; the application of ocean science for societal benefit, including knowledge transfer and applications in regions that are lacking science capacity; and the science-policy and science-innovation interfaces. Ocean science embraces local and indigenous knowledge as a fundamental source of knowledge. It recognizes the

<sup>27</sup> UNFSA, Art 5 (b).

<sup>28</sup> Draft BBNJ Agreement (2019), Art 5(i).

<sup>29</sup> The Guide to the International Council for the Exploration of the Sea (ICES) advisory framework and principles can provide some useful insights on the how to ensure best available scientific advice. These principles are: (1) The guidelines and procedures to produce ICES advice are documented, openly accessible, and up-to-date; 2. Final request formulation is agreed through dialogue to clarify the requester’s needs and expectations, the ICES process, likely resource implications, timelines, format of advice, and roles and responsibilities of the engaged parties; (3) where possible, existing policy goals, objectives, and the level of acceptable risk relevant to the advice request are identified. Where these objectives and descriptions of risk are unclear, ICES will identify these in the advice, and where possible, provide options for management action and the consequences of the options and their trade-offs; (4) The deliberations of all relevant expert groups are published by the time the associated advice is published; (5) The best-available science and quality-assured data are used. ICES selects and applies relevant methods for any analysis, including the development of new methods. The methods are peer reviewed by independent experts and clearly and openly documented; (6) Data are findable, attributable, researchable, reusable, and conform to ICES data policy. Data flows are documented; (7) to ensure that the best available, credible science has been used and to confirm that the analysis provides a sound basis for advice, all analyses and methods are peer reviewed by at least two independent reviewers. For recurrent advice, the review is conducted through a benchmark process; for special requests through one-off reviews; (8) Advice is comprehensive, unambiguous, and consistent with the synthesized knowledge, while taking the peer review into account. All advice follows existing advice frameworks and any deviation from the frameworks or related, previous advice is identified and justified; (9) All ICES advice is adopted by the ICES Advisory Committee, through consensus, prior to being made available to the requester and simultaneously published on ICES website; (10) ICES provides advice as an impartial response to a request, and does not lobby the requester or any other party to implement its advice. ICES. 2020. Guide to ICES advisory framework and principles. In Report of the ICES Advisory Committee, 2020. ICES Advice 2020, section 1.1. <https://doi.org/10.17895/ices.advice.7648>.

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central role of the ocean in the earth system and includes consideration of the land-sea interface and ocean-atmosphere and ocean-cryosphere interactions.”<sup>30</sup>

In this context, the Implementation Plan also defines “indigenous and local knowledge” as “the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings. For rural and indigenous peoples, local knowledge informs decision-making about fundamental aspects of day-to-day life. This knowledge is integral to a cultural complex that also encompasses language, systems of classification, resource use practices, social interactions, ritual and spirituality.”<sup>31</sup>

### **Biological diversity**

(LEGAL DEFINITION): “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.” (CBD, Art. 2).

### **Biological resources**

(LEGAL DEFINITION): “inclusive of genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity” (CBD, Art. 2).

### **Bioprospecting**

There is no officially agreed legal definition of “bioprospecting” or “biodiversity prospecting” under international agreements to date, however the term has been defined in an information document of the CBD as “the exploration of biodiversity for commercially valuable genetic and biochemical resources. It can be defined as the process of gathering information from the biosphere on the molecular composition of genetic resources for the development of new commercial products.”<sup>32</sup>

### **Biotechnology**

(LEGAL DEFINITION): “any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use”. (CBD, Art. 2; Nagoya Protocol, Art 2(d)).

### **Blue economy**

The term “blue economy” is not defined under international law.

The World Bank and the United Nations Department of Economic and Social Affairs (UN DESA) have described blue economy as “comprising the range of economic sectors and related policies that together determine whether the use of oceanic resources is sustainable,” noting that the “concept seeks to promote economic growth, social inclusion, and the preservation or improvement of livelihoods while at the same time ensuring environmental sustainability of the oceans and coastal areas”.<sup>33</sup>

<sup>30</sup> UNESCO-IOC (2021). The United Nations Decade of Ocean Science for Sustainable Development (2021-2030) Implementation Plan. UNESCO, Paris (IOC Ocean Decade Series, 20), at 54.

<sup>31</sup> Ibid, at 53.

<sup>32</sup> CBD, Progress Report on the Implementation of the Programmes of Work on the Biological Diversity of inland Water Ecosystems, Marine and Coastal Biological Diversity, and Forest Biological Diversity, Information on marine and coastal genetic resources, including bioprospecting, Note by the Executive Secretary, UNEP/CBD/COP/5/INF/7 (20 April 2000), para 6.

<sup>33</sup> World Bank and United Nations Department of Economic and Social Affairs. 2017. The Potential of the Blue Economy: Increasing Long-term Benefits of the Sustainable Use of Marine Resources for Small Island Developing States and Coastal Least Developed Countries. World Bank, Washington DC, at vi.

The European Commission (EC) has noted that “the blue economy encompasses all sectoral and cross-sectoral economic activities related to the oceans, seas and coasts”.<sup>34</sup> In a more recent report prepared for the EC, a working definition of a sustainable blue economy is proposed as follows: “A sustainable blue economy promotes economic growth, social inclusion and improved livelihoods while ensuring the environmental sustainability of the natural capital of the oceans and seas. For the purposes of this report, the sustainable blue economy encompasses all sectoral and cross-sectoral economic activities related to the oceans, seas, and coasts. It comprises emerging sectors and economic value based on natural capital and non-market goods and services through the conservation of marine habitats and ecosystem services”.<sup>35</sup>

## Bycatch

Bycatch is not currently defined under global policy or legal instruments. The 2011 FAO International Guidelines on Bycatch Management and Reduction of Discards (which is a policy instrument) justify the absence of such standardised definition due to, inter alia, “the very diverse nature of the world’s fisheries, historical differences in how bycatch has been defined nationally, ambiguities associated with bycatch related terminologies and choices of individual fishers on how different portion of their catch will be used.”<sup>36</sup>

These guidelines describe the following characteristics of bycatch:

- “In fisheries that have a fishery management plan, species and sizes considered to be bycatch may be designated in the plan. If not designated, bycatch refers to the portion of the total catch that is not consistent with the plan. Bycatch may also be designated as catch that is prohibited in that fishery.”<sup>37</sup>
- “In multispecies/multigear fisheries where there is poor gear selectivity and where most species caught are used, bycatch refers to that part of the catch that should not have been caught, inter alia, because of detrimental ecological and/or economic consequences.”<sup>38</sup>

The 2021 FAO Technical Guidelines to Prevent and Reduce Bycatch of Marine Mammals in capture fisheries defines “bycatch” as “the catch of organisms that are not targeted”.<sup>39</sup>

Other definitions have been proposed in literature, including, but not restricted to:

- “bycatch is catch that is either unused or unmanaged”<sup>40</sup>
- “fish and invertebrate discards as well as deleterious interactions with marine mammals, seabirds and sea turtles, plus unobserved mortality due to a direct encounter with fishing gear.”<sup>41</sup>

<sup>34</sup> EC, The EU Blue Economy Report 2020 (Brussels: EC, 2020).

<sup>35</sup> EC, Sustainability Criteria for the Blue Economy (Brussels: European Commission/European Climate, Infrastructure and Environment Executive Agency, 2021), at 16.

<sup>36</sup> FAO, International Guidelines on Bycatch Management and Reduction of Discards (Rome: FAO, 2011), (FAO Bycatch Guidelines), para 2.4.1.

<sup>37</sup> FAO Bycatch Guidelines, para 2.4.2.

<sup>38</sup> FAO Bycatch Guidelines, para 2.4.3. Furthermore, the Guidelines also refer to a wide range of “problems with bycatch” including, catching: “(i) species and sizes not specifically targeted in a fishery; (ii) species that are protected, endangered or threatened; (iii) juvenile fish; and (iv) organisms for which there is no intended use.” (para 2.4.4). In addition, the guidelines also refer to the fact that “some countries include pre-catch mortality and ghost fishing in their legal definitions of bycatch, whereas others do not.” (para 2.4.5)

<sup>39</sup> FAO. 2021. Fishing operations. Guidelines to prevent and reduce bycatch of marine mammals in capture fisheries. FAO Technical Guidelines for Responsible Fisheries No.1, Suppl. 4. Rome, at 1. <https://doi.org/10.4060/cb2887en> (accessed on 7 Nov 2021).

<sup>40</sup> RWD Davies, SJ Cripps, A Nickson, G Porter, “Defining and estimating global marine fisheries bycatch” (2009) 33 (4) Marine Policy 661–672.

<sup>41</sup> MS Savoca et al, “Comprehensive bycatch assessment in US fisheries for prioritizing management” (2020) 3 Nature Sustainability 472–480.



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## Capacity building or development

Capacity building or development is not defined under international environmental treaties.

## Capacity development

(Technical definition): “the process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time” (UNDP 2009)<sup>42</sup>

## Capacity building

(TECHNICAL DEFINITION): “a process that supports only the initial stages of building or creating capacities and assumes that there are no existing capacities to start from.”<sup>43</sup>

## Catadromous species

(TECHNICAL DEFINITION): Catadromous species are those fish species that spend most of their lives in freshwater and migrate to sea to breed.<sup>44</sup>

Although not defined under UNCLOS, it contains specific rights and obligations regarding the conservation and management of catadromous species.<sup>45</sup>

## Clearing-house Mechanism

(TECHNICAL DEFINITION): Clearing-house Mechanism (CHM) is commonly understood to be the convergence of seekers and providers of goods, services or information through an agency that

matches the respective demand and supply (CBD Secretariat).<sup>46</sup>

Under the CBD, a clearing-house mechanism was envisioned as a means to facilitate technical and scientific cooperation in the field of conservation and sustainable use of biodiversity. The Convention did not define the term, but highlighted its purposes as follows: “The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.”<sup>47</sup>

Other global examples of CHM established under multilateral environmental agreements include, inter alia:

- The 2001 Stockholm Convention on Persistent Organic Pollutants which does not define CHM but determines that the “Secretariat shall serve as a clearing-house mechanism for information on persistent organic pollutants, including information provided by Parties, intergovernmental organizations and non-governmental organizations.”<sup>48</sup>
- The 2000 Cartagena Protocol on Biosafety to the CBD,<sup>49</sup> which also does not define CHM, but establishes a Biosafety Clearing-house as part of the CBD CHM to: “(a) Facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, living modified organisms; and (b) Assist Parties to implement the Protocol, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity”.<sup>50</sup>

<sup>42</sup> UNDP, Capacity Development: A UNDP Primer (UNDP, 2009). Online: [https://www.undp.org/sites/g/files/zskgke326/files/publications/CDG\\_PrimerReport\\_final\\_web.pdf](https://www.undp.org/sites/g/files/zskgke326/files/publications/CDG_PrimerReport_final_web.pdf) (accessed on 4 Dec 2021).

<sup>43</sup> Ibid

<sup>44</sup> Britannica, online: <https://www.britannica.com/science/migration-animal/Catadromous-fish> (accessed on 2 Nov 2021).

<sup>45</sup> See UNCLOS Art 67.

<sup>46</sup> CBD Secretariat, CBD Clearing-house Mechanism (CHM) Introduction. Online: <https://www.cbd.int/chm/intro/> (accessed on 4 Nov 2021).

<sup>47</sup> CBD, Art. 18(3).

<sup>48</sup> Stockholm Convention, Art. 9(4).

<sup>49</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol), 29 Jan 2000, entry into force: 11 Sept 2003, 2226 UNTS 208. #

<sup>50</sup> Cartagena Protocol, Art 20(1).

➤ The Nagoya Protocol, which also does not define CHM, but establishes an Access and Benefit-sharing Clearing-House as part of the CBD CHM, to “serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.”<sup>51</sup>

## Climate change

(LEGAL DEFINITION): “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.” (UNFCCC, Art 1(2))

(TECHNICAL DEFINITION): “refers to a change in the state of the climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. Climate change may be due to natural internal processes or external forcings such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use. Note that the Framework Convention on Climate Change (UNFCCC), in its Article 1, defines climate change as: ‘a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.’ The UNFCCC thus makes a distinction between climate change attributable to human activities altering the atmospheric composition and climate variability attributable to natural causes” (IPCC 2018).<sup>52</sup>

<sup>51</sup> Nagoya Protocol, Art. 14 (1).

<sup>52</sup> IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press

<sup>53</sup> IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press

<sup>54</sup> CBD, 3<sup>rd</sup> preambular para.

<sup>55</sup> UNFCCC, 1<sup>st</sup> preambular para.

## Climate system

(LEGAL DEFINITION): “the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.” (UNFCCC, Art 1(3))

(Technical definition): “is the highly complex system consisting of five major components: the atmosphere, the hydrosphere, the cryosphere, the lithosphere and the biosphere and the interactions between them. The climate system evolves in time under the influence of its own internal dynamics and because of external forcings such as volcanic eruptions, solar variations and anthropogenic forcings such as the changing composition of the atmosphere and land-use change.” (IPCC 2018)<sup>53</sup>

## Common concern of humankind

No internationally agreed legal definition exists for this term.

Under the CBD it has been affirmed that the “conservation of biological diversity is a common concern of humankind”.<sup>54</sup>

Under the UNFCCC, it is acknowledged that “change in the Earth’s climate and its adverse effects are a common concern of humankind”.<sup>55</sup>

The term is not defined under neither of these Conventions or any other treaty, but literature suggests some characteristics of the ‘common concern’ concept or principle, which includes: (a) a common duty to cooperate; (b) common responsibility and burden-sharing; (c) a supremacy of matters of common concern over individual States’ interests; (d) the need for transparency and inclusiveness in decision-making;

and (e) the fact that common concern does not impinge on territorial claims.<sup>56</sup>

## Common heritage of mankind

Under UNCLOS, the Area and its resources<sup>57</sup> are the common heritage of mankind.<sup>58</sup> While the term is not defined per se, the legal status of the Area and its resources described under UNCLOS provide further clarity about the term, when it determines that:

“1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.

2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority<sup>59</sup> shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part<sup>60</sup> and the rules, regulations and procedures of the Authority.

3. No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area, except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.” (UNCLOS, Art 137).”

## Compatible measures

There is no international legal definition of “compatible measures”, however, in the context of straddling and highly migratory fish stocks, UNFSA determines that “conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of (these) stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.” (UNFSA, Art 7(2))<sup>61</sup>

## Compliance

(TECHNICAL DESCRIPTION): in legal documentation, “compliance” is referred to as “the action or fact of complying with a wish or command”, or the state or fact of according with or meeting rules or standards.”<sup>62</sup>

## Connectivity (ecological)

(POLICY DEFINITION): “the unimpeded movement of species and the flow of natural processes that sustain life on Earth” (CMS Resolution 12.26 (Rev. COP13), first preambular para).

<sup>56</sup> Diz et al, Background document on international trends and distinctive approaches of relevance to the CBD process on ecologically or biologically significant marine areas, CBD/EBSA/EM/2017/1/INF/1 (27 November 2017).

<sup>57</sup> In this context, “resources” is defined as “all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules” UNCLOS, Art. 133.

<sup>58</sup> UNCLOS, Art 136.

<sup>59</sup> Namely, the International Seabed Authority (ISA).

<sup>60</sup> UNCLOS, Part XI and Part XI Agreement.

<sup>61</sup> UNFSA further explains that “in determining compatible conservation and management measures, States shall: (a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures; (b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas; (c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement; (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction; (e) take into account the respective dependence of the coastal States and States fishing on the high seas on the stocks concerned; and (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.” (UNFSA, Art 7(2)).

<sup>62</sup> LEXICO/Oxford. Online: <https://www.lexico.com/definition/compliance> (accessed on 5 Nov 2021).

(SCIENTIFIC OR TECHNICAL DEFINITIONS):

- Ecological connectivity for species: “the movement of populations, individuals, genes, gametes and propagules between populations, communities and ecosystems, as well as that of non-living materials from one location to another” (IUCN 2020, at 4, box 1)
- Functional connectivity for species: A description of how well genes, gametes, propagules or individuals move through land, freshwater and seascape” (IUCN 2020, at 4, box 1)
- Structural connectivity for species: “A measure of habitat permeability based on the physical features and arrangements of habitat patches, disturbances and other land, freshwater or seascape elements presumed to be important for organisms to move through their environment. Structural connectivity is used in efforts to restore or estimate functional connectivity where measures of it are lacking” (IUCN 2020, at 4, box 1)
- Ecological corridor: “A clearly defined geographical space that is governed and managed over the long term to maintain or restore effective ecological connectivity. The following terms are often used similarly: ‘linkages’, ‘safe passages’, ‘ecological connectivity areas’, ‘ecological connectivity zones’, and ‘permeability areas.’” (IUCN 2020, at 4, box 1)
- Ecological network (for conservation): “A system of core habitats (protected areas, OECMs [other effective area-based conservation measures] and other intact natural areas), connected by ecological corridors, which is established, restored as needed and maintained to conserve biological diversity in systems that have been fragmented.” (IUCN 2020, at 4, box 1)<sup>63</sup>

## Conservation (in situ and ex situ)

### In situ conservation:

(LEGAL DEFINITION): “the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.”(CBD, Art. 2)

### Ex-situ conservation:

(LEGAL DEFINITION): “the conservation of components of biological diversity outside their natural habitats.” (CBD, Art 2)

## Coordination

“International coordination” is not defined in international agreements, however, the obligation to cooperate on a global or regional basis is provided under UNCLOS and several other treaties. Article 197 of UNCLOS further elaborates on this by determining that:

“States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.” (UNCLOS, Art 197)

## Conservation and management measures

(LEGAL DEFINITION): “measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention (UNCLOS) and this Agreement”. (UNFSA, Art 1(1)(b))

<sup>63</sup> ilty, J., Worboys, G.L., Keeley, A., Woodley, S., Lausche, B., Locke, H., Carr, M., Pulsford I., Pittock, J., White, J.W., Theobald, D.M., Levine, J., Reuling, M., Watson, J.E.M., Ament, R., and Tabor, G.M. (2020). Guidelines for conserving connectivity through ecological networks and corridors. Best Practice Protected Area Guidelines Series No. 30. Gland, Switzerland: IUCN.

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A similar definition is provided under the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Agreement/PSMA), however, in this definition, the reference to UNFSA is omitted.<sup>64</sup>

## Conservation status

Conservation status of a migratory species:

➤ (LEGAL DEFINITION): “conservation status of a migratory species” means the sum of the influences acting on the migratory species that may affect its long-term distribution and abundance” (CMS, Art. (1) (b)).

CMS classifies “conservation status” as favourable or unfavourable, as follows:

“a **“conservation status” will be taken as “favourable”** when: (1) population dynamics data indicate that the migratory species is maintaining itself on a long-term basis as a viable component of its ecosystems; (2) the range of the migratory species is neither currently being reduced, nor is likely to be reduced, on a long-term basis; (3) there is, and will be in the foreseeable future, sufficient habitat to maintain the population of the migratory species on a long-term basis; and (4) the distribution and abundance of the migratory species approach historic coverage and levels to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management” (CMS, Art I (1) (c), emphasis added).

Conversely, “conservation status” will be taken as **“unfavourable”** if any of the conditions (above) is not met” (CMS, Art (1) (d), emphasis added).

More broadly (not restricted to migratory species), the IUCN provides a technical categorisation of species conservation status through the IUCN Red List, namely:<sup>65</sup>

➤ **Extinct:** “A taxon is extinct when there is no reasonable doubt that the last individual has died. A taxon is presumed Extinct when exhaustive surveys in known and/or expected habitat, at appropriate times (diurnal, seasonal, annual), throughout its historic range have failed to record an individual. Surveys should be over a time frame appropriate to the taxon’s life cycle and life form.”<sup>66</sup>

➤ **Extinct in the wild:** “A taxon is extinct in the wild when it is known only to survive in cultivation, in captivity or as a naturalized population (or populations) well outside the past range. A taxon is presumed extinct in the wild when exhaustive surveys in known and/or expected habitat, at appropriate times (diurnal, seasonal, annual), throughout its historic range have failed to record an individual. Surveys should be over a time frame appropriate to the taxon’s life cycle and life form.”<sup>67</sup>

➤ **Critically endangered:** “A taxon is critically endangered when the best available evidence indicates that it meets any of the criteria A to E for Critically Endangered (...) and it is therefore considered to be facing an extremely high risk of extinction in the wild.”<sup>68</sup>

➤ **Endangered:** “A taxon is endangered when the best available evidence indicates that it meets any of the criteria A to E for Endangered (...) and it is therefore considered to be facing a very high risk of extinction in the wild.”<sup>69</sup>

<sup>64</sup> PSMA defines “conservation and management measures” as “measures to conserve and manage living marine resources that are adopted and applied consistently with the relevant rules of international law including those reflected in the Convention”

<sup>65</sup> IUCN Red List Categories and Criteria: Version 3.1, (2nd ed), (Gland: IUCN, 2000). IUCN Red List of Threatened Species, online: [https://www.iucn.org/resources/conservation-tools/iucn-red-list-threatened-species#RL\\_categories](https://www.iucn.org/resources/conservation-tools/iucn-red-list-threatened-species#RL_categories) (accessed on 5 Nov 2021).

<sup>66</sup> Ibid, at 14.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

- **Vulnerable:** “A taxon is vulnerable when the best available evidence indicates that it meets any of the criteria A to E for Vulnerable (...) and it is considered to be facing a high risk of extinction in the wild.”<sup>70</sup>
- **Near Threatened:** “A taxon is near threatened when it has been evaluated against the criteria but does not qualify for critically endangered, endangered or vulnerable now, but is close to qualifying for or is likely to qualify for a threatened category in the near future.”<sup>71</sup>
- **Least Concern:** “A taxon is least concern when it has been evaluated against the criteria and does not qualify for critically endangered, endangered, vulnerable, or near threatened. Widespread and abundant taxa are included in this category.”<sup>72</sup>
- **Data Deficient:** “A taxon is data deficient when there is inadequate information to make a direct, or indirect, assessment of its risk of extinction based on its distribution and/or population status. A taxon in this category may be well studied, and its biology well known, but appropriate data on abundance and/or distribution are lacking. Data deficient is therefore not a category of threat. Listing of taxa in this category indicates that more information is required and acknowledges the possibility that future research will show that threatened classification is appropriate. It is important to make positive use of whatever data are available. In many cases great care should be exercised in choosing between data deficient and a threatened status. If the range of a taxon is suspected to be relatively circumscribed, and a considerable period of time has elapsed since the last record of the taxon, threatened status may well be justified.”

<sup>70</sup> Ibid.

<sup>71</sup> Ibid, at 15.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Continental margin “comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof” (UNCLOS, Art 76(3)).

- **Not evaluated:** “A taxon is not evaluated when it has not yet been evaluated against the criteria.”<sup>74</sup>

## Contiguous zone

(LEGAL DESCRIPTION): a zone contiguous to the territorial sea and that should not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured (UNCLOS, Art. 33).

## Continental shelf

(LEGAL DEFINITION): “the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin,<sup>75</sup> or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.” (UNCLOS, Art. 76(1))

The outer limits of the continental shelf (colloquially referred to as ‘extended continental shelf’) “shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metro isobath, which is a line connecting the depth of 2,500 metres” (UNCLOS, Art 76 (5)). Article 76 of UNCLOS provides an in-depth description of how to measure the outer edge of the continental shelf, which coastal States shall establish whenever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (UNCLOS, Art. 76(4)).

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## Contingency plan against pollution

Contingency plans are not defined per se under the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPPRC) and its 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances. However, under the OPRRC ships are required to have an oil pollution emergency plan, and coastal States are required to establish a national system for promptly responding to oil pollution incidents, including through the development of national contingency plans (OPPRC, Art 6(1)).

As an example, the US defines an oil contingency plan as “a detailed oil spill response and removal plan that addresses controlling, containing, and recovering an oil discharge in quantities that may be harmful to navigable waters or adjoining shorelines”.<sup>76</sup>

## Convention

“Convention” can have a broad or specific meaning under international law.<sup>77</sup> As per the Statute of the International Court of Justice (ICJ), international conventions are a source of law and embraces all international agreements similarly to treaties.<sup>78</sup>

When applied in specific contexts, the term “convention” used to refer to bilateral agreements, but more recently, the term “is generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states.”<sup>79</sup>

## Cross-sectoral

(TECHNICAL DEFINITION): “relating to interactions between sectors (that is, the distinct parts of society, or of a nation's economy), such as how one sector affects another sector, or how a factor affects two or more sectors.” (IPBES online glossary)<sup>80</sup>

The term is often referred to in the context of (cross-sectoral) management.

## Cumulative impacts

(LEGAL DEFINITION, UNDER NEGOTIATION, BRACKETED TEXT): “[impacts on the same ecosystems resulting from different activities, including past, present or reasonably foreseeable activities or from the repetition of similar activities over time, including climate change, ocean acidification and related impacts]”. (Draft BBNJ Agreement (2019), Art. 1(3)).

(TECHNICAL DEFINITION): “effect resulting from the incremental impacts of an action when added to other past, present, and reasonably foreseeable future actions on the same resource, combined with effects of other threats and pressures in the environment”.<sup>81</sup>

The second UN Integrated World Ocean Assessment (WOA) notes that the terms “cumulative impacts” and “cumulative effects” is often used interchangeably to describe ecosystem pressures, and with varying definitions in literature.<sup>82</sup> WOA uses the term “effects” to indicate changes to the environment, and “impacts” to describe the consequences of such change.<sup>83</sup> It describes four general types of cumulative effects, namely: “additive, synergist, antagonis-

<sup>76</sup> See US Environmental Protection Agency (EPA), What is an oil spill contingency plan?. Online: <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/what-oil-spill-contingency-plan> (accessed on 7 Nov 2021).

<sup>77</sup> UN Treaty Collection, Definitions, Convention. Online: [https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1\\_en.xml#conventions](https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml#conventions) (accessed on 7 Nov 2021).

<sup>78</sup> UN Treaty Collection, *ibid.* See also ICJ Statute, Art 38(1) (a).

<sup>79</sup> *Ibid.*

<sup>80</sup> IPBES, Glossary, Cross-Sectoral. Online: <https://ipbes.net/glossary/cross-sectoral> (accessed on 30 Oct 2021).

<sup>81</sup> S Brownlie and J Treweek, (2018) Biodiversity and Ecosystem Services in Impact Assessment. Special Publication Series No. 3. Fargo, USA: International Association for Impact Assessment, at 11.

<sup>82</sup> UN World Ocean Assessment (WOA) II, Vol II, Chapter 25 (NY: UN, 2021), online: <https://www.un.org/regularprocess/sites/www.un.org/regularprocess/files/2011859-e-woa-ii-vol-ii.pdf> (accessed on 30 Nov 2021).

<sup>83</sup> *Ibid.*, at 398.

tic (compensatory) and masking. Additive effects are incremental additions to the pressures caused by an activity, with each increment adding to previous increments over time. Synergistic effects, also referred to as amplifying or exponential effects, magnify the consequences of individual pressures to produce a joint consequence that is greater than the additive effect. Antagonistic or compensatory effects produce a joint consequence that is less than additive. Masking effects produce essentially the same consequence for the ecosystem or social component as would occur with exposure to one of the pressures alone.”<sup>84</sup>

## Derivative

(LEGAL DEFINITION): “a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.” (Nagoya Protocol, Art 2 (e))

## Discharge of harmful substance

### ➤ Discharge (of harmful substance):

(LEGAL DEFINITION): “any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying”. (MARPOL, Art 2(3)(a))<sup>85</sup>

### ➤ Harmful substance:

(LEGAL DEFINITION): “any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by the present Convention.” (MARPOL, Art 2(2))

## Dumping

(LEGAL DEFINITION): “any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structure at sea;” “any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea” (London Convention, Art III (1) (a); London Protocol, Art 1 (4) (1)); “any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal” (London Protocol, Art 1(4) (1)).

## Ecologically or Biologically Significant Marine Areas (EBSAs)

(POLICY DEFINITION): “geographically or oceanographically discrete areas that provide important services to one or more species/populations of an ecosystem or to the ecosystem as a whole, compared to other surrounding areas or areas of similar ecological characteristics, or otherwise meet the criteria as identified in annex I to decision IX/20” (CBD decision IX/20, para 24)<sup>86</sup>

<sup>84</sup> Ibid, at 398. It is important to note that “Impacts that can be considered cumulative may result from a single activity that repeatedly produces a single pressure, a single activity that produces multiple pressures, multiple activities that produces multiple pressures, multiple activities that produce a single pressure or multiple activities that produce multiple pressures over time.” (WOA II, at 398).

<sup>85</sup> The Convention further clarifies that ““discharge” does not include: (i) dumping within the meaning of the (London Convention); (ii) releases of harmful substances directly arising from the exploration, exploitation and associated offshore processing of sea-bed mineral resources; or (iii) release of harmful substances for the purposes of legitimate scientific research into pollution abatement or control.” (MARPOL, Art 2(3)(b)).

<sup>86</sup> Annex I of the same decision includes the scientific criteria, namely: uniqueness or rarity; special importance for life-history stages of species; importance for threatened, endangered or declining species and/or habitats; vulnerability, fragility, sensitivity, or slow recovery; biological productivity; biological diversity; and naturalness. See CBD decision IX/20, Annex I.



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## Ecologically related species

(LEGAL DEFINITION): “living marine species which are associated with southern bluefin tuna, including but not restricted to both predators and prey of southern bluefin tuna”. (Convention for the Conservation of Southern Bluefin Tuna, Art. 2(a))

## Ecosystem

(LEGAL DEFINITION): “a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit”. (CBD, Art. 2)

## Ecosystem approach

(POLICY DESCRIPTION): “a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way.” (CBD decision V/6 (2000), section A (1))

In a posterior CBD COP decision, it was also agreed that the ecosystem approach is “the primary framework for addressing the three objectives of the Convention in a balanced way” (CBD decision VII/11 (2004), para 2).

## Ecosystem approach to fisheries (EAF)

(TECHNICAL DEFINITION): a strive to “balance diverse and societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries.” (FAO 2003)<sup>87</sup>

## Ecosystem services

(TECHNICAL DEFINITION): “the benefits people obtain from ecosystems.

In the Millennium Ecosystem Assessment, ecosystem services are divided into supporting, regulating, provisioning and cultural. This classification, however, has been superseded in IPBES assessments by the term “nature’s contributions to people”. This is because IPBES recognises that many services fit into more than one of the four categories. For example, food is both a provisioning service and also, emphatically, a cultural service, in many cultures.” (IPBES glossary)<sup>88</sup>

## Enforcement

The term “enforcement” is generally understood as the “act of compelling observance of or compliance with a law, rule or obligation”.<sup>89</sup>

## Environmental Impact Assessment (EIAs)

(LEGAL DEFINITION (OPTION 1), UNDER NEGOTIATION): “[... a process to evaluate the environmental impact of an activity [to be carried out in areas beyond national jurisdiction [with an effect on areas within or beyond national jurisdiction]] [, taking into account [, inter alia,] inter-related [socioeconomic] [social and economic], cultural and human health impacts, both beneficial and adverse].]” (Draft BBNJ Agreement (2019), Art 1(7.Alt 1).

(LEGAL DEFINITION (OPTION 2), UNDER NEGOTIATION): “[... a process for assessing the potential effects of planned activities, carried out in areas beyond national jurisdiction, under the jurisdiction or control of States Parties that may cause substantial pollution of or significant and harmful changes to the marine environment.]” (Draft BBNJ Agreement (2019), Art 1 (7. Alt 2)).

(LEGAL DEFINITION): “a national procedure for evaluating the likely impact of a proposed activity on the environment”. (Espoo Convention, Art. 1(vi))

<sup>87</sup> FAO Fisheries Department, The ecosystem approach to fisheries. FAO Technical Guidelines for Responsible Fisheries. No. 4, Suppl. 2. Rome, FAO. 2003., at 6.

<sup>88</sup> IPBES, Glossary, Ecosystem Services. Online: <https://ipbes.net/glossary/ecosystem-services> (accessed on 7 Nov 2021).

<sup>89</sup> LEXICO/Oxford. Online: <https://www.lexico.com/definition/enforcement> (accessed on 7 Nov 2021).

At the policy level, Principle 17 of the 1992 Rio Declaration on Environment and Development refers to EIAs “as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”

(POLICY DEFINITION): “an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development.” (UNEP 1987)<sup>90</sup>

(TECHNICAL DEFINITION): “the process of identifying, predicting, evaluating and mitigating the bio-physical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.” (IAIA 2009)<sup>91</sup>

## Equality

While not providing a specific definition, per se, the term “equality” is used in the 1948 Universal Declaration of Human Rights, which affirms that “Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”<sup>92</sup> The Universal Declaration of Human Rights also determines that “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”<sup>93</sup>

<sup>90</sup>UNEP, Goals and Principles of Environmental Impact Assessment, UNEP/WG.152/4 Annex (1987), adopted by UNEP Governing Council at its 14th Session (Dec 14/25 (1987)).

<sup>91</sup>IAIA, What is Impact Assessment? (2009), at 1. Online: [https://www.iaia.org/pdf/special-publications/What%20is%20IA\\_web.pdf](https://www.iaia.org/pdf/special-publications/What%20is%20IA_web.pdf) (accessed on 5 Nov 2021).

<sup>92</sup>1948 UN Universal Declaration of Human Rights, Art 2.

<sup>93</sup>Ibid, Art 7. See also Arts 2(1), 14, 20(2), 25, 26, 27 of the 1966 International Covenant on Civil and Political Rights on the right to equality and freedom from discrimination; See also the International Covenant on Economic Social and Cultural Rights, Arts 2(2), 3; among several other human rights Conventions that protect the right to equality.

## Equity

Although not internationally legally defined, “equity” has been characterised under a CBD decision on protected areas and other effective area-based conservation measures as “one element of good governance. Equity can be broken down into three dimensions: recognition, procedure and distribution: “Recognition” is the acknowledgement of and respect for the rights and the diversity of identities, values, knowledge systems and institutions of rights holders and stakeholders; “Procedure” refers to inclusiveness of rule- and decision-making; “Distribution” implies that costs and benefits resulting from the management of protected areas must be equitably shared among different actors.” (CBD decision 14/8 (2018), Annex II, para 9).

## Exclusive Economic Zone (EEZ)

(LEGAL DEFINITION): “an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in (Part V), under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.” (UNCLOS, Art 55)

Furthermore, UNCLOS also determines that the EEZ “shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.” (UNCLOS, Art 57)

## Exploration and exploitation (deep seabed mining)

### Exploitation:

(LEGAL DEFINITION, REGARDING POLYMETALLIC SULPHIDES): “the recovery for commercial purposes of polymetallic sulphides in the Area and the extraction of minerals therefrom, including the

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construction and operation of mining, processing and transportation systems, for the production and marketing of metals". (ISA Regulations on prospecting and exploration for polymetallic sulphides in the Area, ISBA/16/A/12/Rev.1, Annex (2010), Reg 1(3) (a))

The Cobalt Crusts Exploration Regulations provide the same definition of exploitation but adjusted to "cobalt crusts in the Area" rather than "polymetallic sulphides". (ISA Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area, ISBA/18/A/11 (2012), Reg 1(3) (b))

The ISA Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area provide the same definition in relation to polymetallic nodules. (Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, ISBA/19/C/17, Annex, Reg 1 (3) (a))

#### **Exploration:**

(LEGAL DEFINITION, REGARDING POLYMETALLIC SULPHIDES): "searching for deposits of polymetallic sulphides in the Area with exclusive rights, the analysis of such deposits, the use and testing of recovery systems and equipment, processing facilities and transportation systems, and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in exploitation". (ISA Regulations on prospecting and exploration for polymetallic sulphides in the Area, ISBA/16/A/12/Rev.1, Annex (2010), Reg 1(3) (b))

The same definition of exploration, but adjusted to cobalt crusts, is provided under the ISA Cobalt Crust Exploration Regulations. (ISA Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area, ISBA/18/A/11 (2012), Reg 1 (3) (C))

The ISA Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area provide the same definition in relation to polymetallic nodules. (Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, ISBA/19/C/17, Annex, Reg 1 (3) (b))

## **Fairness**

Fairness is not legally defined in international environmental treaties, but literature describes "fairness" under public international law as encompassing two elements: "the requirement of legitimacy and that of distributive justice. Legitimacy is fundamentally a question of procedure – the requirement that proper mechanisms are in place to ensure the creation, interpretation and application of the law. Distributive justice is concerned, on the other hand, with the substantive worth of rules: is an appropriate or proper allocation of burdens and benefits secured throughout society by the rules themselves?"<sup>94</sup>

## **Fish, fishery resources, and stock status**

### **Fish:**

(LEGAL DEFINITION): "includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77" of UNCLOS. (UNFSA, Art. 1(1)(c)).

(LEGAL DEFINITION): "all species of living marine resources, whether processed or not". (PSMA, Art 1(d))

At the regional level on the SE Atlantic and SE Pacific, the Conventions that govern the South East Atlantic Fisheries Organisation (SEAFO) and South Pacific Regional Fisheries Management Organization (SPRFMO) define "fishery resources" as per below:

### **Fishery Resources:**

(LEGAL DEFINITION): "resources of fish, molluscs, crustaceans and other sedentary species within the Convention Area, excluding: i. sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77 paragraph 4 of the 1982 Convention; and ii. highly migratory species listed in Annex I of the 1982 Convention". (SEAFO Convention, Art. 1 (I))

<sup>94</sup> I Scobbie, "Tom Franck's Fairness" (2002) 13 (4) EJIL 909–925, at 910.

(LEGAL DEFINITION): “all fish within the Convention Area, including: molluscs; crustaceans; and other living marine resources as may be decided by the Commission; but excluding:

(i) sedentary species in so far as they are subject to the national jurisdiction of coastal States pursuant to Article 77 paragraph 4 of the 1982 Convention;

(ii) highly migratory species listed in Annex I of the 1982 Convention;

(iii) anadromous and catadromous species; and

(iv) marine mammals, marine reptiles and sea birds”. (SPRFMO Convention, Art. 1(1)(f))

#### **Stock status (FAO):**

In assessing the status of fisheries resources, the FAO classifies fish stocks into three categories: (i) overfished stocks, which are those “considered biologically unsustainable;”<sup>95</sup> (ii) maximally sustainably fished stocks; and (iii) underfished stocks. The last two are considered by FAO to be “biologically sustainable”.<sup>96</sup>

#### **Fish aggregating device (FAD)**

(TECHNICAL DEFINITION): “permanent, semi-permanent or temporary structure or device made from any material and used to lure fish”

#### **Fishing**

(LEGAL DEFINITION): “searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish”. (PSMA, Art 1(c))

At the regional level, the Conventions governing regional fisheries management organisations (RFMOs) define the term “fishing” slightly differently, as described below with respect to the Southeast Pacific and Southeast Atlantic.<sup>97</sup>

➤ **Southeast Atlantic:** In the SE Atlantic, the CCSBT and SEAFO Conventions have defined the term as below:

➤ Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

(LEGAL DEFINITION): “the catching, taking or harvesting of fish, or any activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or any operation at sea in preparation for or in direct support of any activity described (...) above”. (Convention for the Conservation of Southern Bluefin Tuna, Art 2 (b))

➤ South East Atlantic Fisheries Organisation (SEAFO)

(LEGAL DEFINITION): “the actual or attempted searching for, catching, taking or harvesting of fishery resources; engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research; placing, searching for or recovering any aggregating device for fishery resources or associated equipment including radio beacons; any operation at sea in support of, or in preparation for, any activity described in this definition, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel; or the use of an aircraft in relation to any activity described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a vessel” (Convention on The Conservation and Management of Fishery Resources in The South East Atlantic Ocean, Art 1(h))

➤ **Southeast Pacific:**

➤ Inter-American Tropical Tuna Commission (IATTC)

(LEGAL DEFINITION): “(a) the actual or attempted searching for, catching, or harvesting of the fish stocks covered by this Convention; (b) engaging in any activity which can reasonably

<sup>95</sup> FAO. 2020. The State of World Fisheries and Aquaculture 2020. Sustainability in action. Rome, at 130. <https://doi.org/10.4060/ca9229en>

<sup>96</sup> Ibid.

<sup>97</sup> FAO, Fish Aggregating Device. Online: <https://www.fao.org/fishery/equipment/fad/en> (accessed on 8 Nov 2021).

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be expected to result in the locating, catching, harvesting of these stocks; (c) placing, searching for or recovering any fish-aggregating device or associated equipment, including radio beacons; (d) any operation at sea in support of, or in preparation for, any activity described in sub-paragraphs (a), (b) and (c) of this paragraph, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel; (e) the use of any other vehicle, air- or sea-borne, in relation to any activity described in this definition except for emergencies involving the health or safety of crew members or the safety of a vessel". (Antigua Convention, Art I (2))

➤ South Pacific Regional Fisheries Organization (SPRFMO):

(LEGAL DEFINITION): "(i) the actual or attempted searching for, catching, taking or harvesting of fishery resources; (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose; (iii) transshipment and any operation at sea in support of, or in preparation for, any activity described in this definition; and (iv) the use of any vessel, vehicle, aircraft or hovercraft, in relation to any activity described in this definition; but does not include any operation related to emergencies involving the health or safety of crew members or the safety of a vessel". (SPRFMO Convention, Art 1(1) (g))

## Fishing related activities

(LEGAL DEFINITION): "any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea". (PSMA, Art. 1(d))

## Freedom of the high seas

(LEGAL DESCRIPTION): "the high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under

the conditions laid down by this Convention (UNCLOS) and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2 (of Part VII);

(f) freedom of scientific research, subject to Parts VI and XIII." (UNCLOS, Art 87(1))

UNCLOS further notes that "these freedoms shall be exercised with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area." (UNCLOS, Art 87 (2))

## Genetic material

(LEGAL DEFINITION): "any material of plant, animal, microbial or other origin containing functional units of heredity." (CBD, Art 2)

(LEGAL DEFINITION): "any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity" (International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), Art 2)

## ➤ Marine genetic material

(LEGAL DEFINITION, UNDER NEGOTIATION): "[... any material of marine plant, animal, microbial or other origin containing functional units of heredity.]" (Draft BBNJ Agreement (2019), Art. 1(8))

## Genetic Resources

(LEGAL DEFINITION): “genetic material of actual or potential value.” (CBD, Art. 2)

### ➤ Marine genetic resources:

(LEGAL DEFINITION, UNDER NEGOTIATION, OPTION 1): “[... any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties.]” (Draft BBNJ Agreement (2019), Art 1 (9 Alt 1))

(LEGAL DEFINITION, UNDER NEGOTIATION, OPTION 2): “[... marine genetic material of actual or potential value.]” (Draft BBNJ Agreement (2019), Art 1(9 Alt 2))

## Governance

(TECHNICAL DEFINITION): “the way the rules, norms and actions in a given organization are structured, sustained, and regulated.” (IPBES, online glossary)<sup>98</sup>

(TECHNICAL DEFINITION): “structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation. Governance also represents the norms, values and rules of the game through which public affairs are managed in a manner that is transparent, participatory, inclusive and responsive. Governance therefore can be subtle and may not be easily observable. In a broad sense, governance is about the culture and institutional environment in which citizens and stakeholders interact among themselves and participate in public affairs. (...) The 2009 Global Monitoring Report sees governance as ‘power relationships,’ ‘formal and informal processes of formulating policies and

allocating resources,’ ‘processes of decision-making’ and ‘mechanisms for holding governments accountable.’

Often there is a tendency to equate governance with management, the latter primarily referring to the planning, implementation, and monitoring functions in order to achieve pre-defined results. Management encompasses processes, structures and arrangements that are designed to mobilize and transform the available physical, human and financial resources to achieve concrete outcomes. Management refers to individuals or groups of people who are given the authority to achieve the desired results. Governance systems set the parameters under which management and administrative systems will operate. Governance is about how power is distributed and shared, how policies are formulated, priorities set and stakeholders made accountable.” (UNESCO International Bureau of Education, online resource)<sup>99</sup>

## Habitat

(LEGAL DEFINITION): “the place or type of site where an organism or population naturally occurs.” (CBD, Art 2)

(LEGAL DEFINITION): “all areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route”. (CMS, Art 1(1) (g))

## High seas

(LEGAL DESCRIPTION): “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)

<sup>98</sup> IPBES, Glossary, Governance. Online: <https://ipbes.net/glossary/governance> (accessed on 9 Nov 2021).

<sup>99</sup> UNESCO International Bureau of Education, Concept of Governance. Online: <http://www.ibe.unesco.org/en/geqaf/technical-notes/concept-governance> (accessed on 8 Nov 2021).

## Highly migratory species

UNCLOS does not define “highly migratory species” but contains a list of these species in its Annex I, to which States must cooperate to ensure conservation and the promotion of optimum utilisation of such species throughout regions that spans within and beyond the exclusive economic zone ( See UNCLOS, Art. 64(1), and Annex I).

The term is not defined by the tuna regional fisheries management organisations with mandates on the Southeast Atlantic or Southeast Pacific. However, in the Central and Western Pacific, the term has been defined under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean as “all fish stocks of the species listed in Annex 1 of (UNCLOS) occurring in the Convention Area, and such other species of fish as the Commission (Western & Central Pacific Fisheries Commission) may determine”(Convention on the Conservation and management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Art. 1(f))

(TECHNICAL DEFINITION): “fish species or stocks that carry out extensive migrations and can occur in both EEZs and high seas. This term is usually used to denote tuna and tuna-like species, marlins and swordfish.” (OECD, Glossary of Statistical Terms)<sup>100</sup>

## Illegal, unreported and unregulated (IUU) fishing

(POLICY DEFINITION):<sup>101</sup> “Illegal fishing refers to activities:

➤ conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

➤ conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

➤ in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.”(IPOA-IUU, para 3.1)

“Unreported fishing refers to fishing activities:

➤ which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

➤ undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.” (IPOA-IUU, Para 3.2)

“Unregulated fishing refers to fishing activities:

➤ in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

➤ in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.” (IPOA-IUU, Para 3.3)

<sup>100</sup> OECD, Glossary of Statistical Terms, Highly Migratory Species or Stocks. Online: <https://stats.oecd.org/glossary/detail.asp?ID=1233> (accessed on 8 Nov 2021).

<sup>101</sup> As per the FAO, International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU). Rome, FAO. 2001.

(LEGAL DEFINITION): ““illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing [IPOA-IUU as per above], hereinafter referred to as ‘IUU fishing’” (PSMA, Art. 1(e))

In relation to regional fisheries management organisations’ Conventions with mandates over the Southeast Atlantic and Southeast Pacific, only the South Pacific Regional Fisheries Management Organization Convention has defined IUU fishing as follows:

(LEGAL DEFINITION): “‘IUU fishing’ means activities as referred to in paragraph 3 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing [IPOA-IUU as per above], and other activities as may be decided by the Commission [of the South Pacific Regional Fisheries Organisation]” (Convention on the Conservation and Management of High Seas fishery Resources in the South Pacific Ocean, Art. 1 (1) (j)).

## Implementing agreement

There is no definition of implementing agreement under international law.

As noted by Kojima and Vereshchetin (2013):

“The notion is often used both in academic literature and in State practice to describe methods that enhance the effectiveness of a treaty. The term implementation agreement can be viewed in two ways. Viewed broadly, any later agreement that is concluded by some or all of the parties to an original treaty for the purpose of adapting the general rules of that treaty to a specific region or to a specific topic can be regarded as an implementation agreement of

the original treaty. Generally, the creation of such an agreement is not anticipated by the original treaty, and thus there is no direct relationship between the two instruments. However, the agreement arguably enhances the effectiveness of the original treaty.

Viewed narrowly, an implementation agreement is an agreement that is directly linked to the original treaty for the purpose of its implementation. Such an agreement is often envisaged by the original treaty and may be negotiated and signed together with the original treaty or separately. The objective of an implementation agreement in this narrow sense is generally to supplement the original treaty, with regard to both substantive and procedural rules. This kind of implementation agreement may specify the details of obligations undertaken by the parties to the original treaty. It may also provide a structure for monitoring implementation of the original treaty or a mechanism for the resolution of disputes arising out of the original treaty.”<sup>102</sup>

## Important Bird and Biodiversity Area (IBA)

(TECHNICAL DEFINITION): “IBAs are sites identified as being internationally important for the conservation of bird populations on the basis of a standardised set of criteria. IBAs are the subset of KBAs identified for birds”.<sup>103</sup>

## Important Marine Mammal Area (IMMA)

(TECHNICAL DEFINITION): “discrete portions of habitat, important to marine mammal species, that have the potential to be delineated and managed for conservation.” (IUCN, IMMA)<sup>104</sup>

<sup>102</sup> C Kojima, VS Vereshchetin, Implementing Agreements, Max Planck Encyclopedias of International Law (2013). Online: Oxford Public International Law, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1419?rs-key=ohMmmv&result=5&prd=OPIL> (accessed on 30 Oct 2021).

<sup>103</sup> BirdLife International, Data Zone, online: <http://datazone.birdlife.org/site/ibacriteria> (accessed on 7 Nov 2021). The IBA criteria is sub-divided into global (<http://datazone.birdlife.org/site/ibacritglob>), regional (<http://datazone.birdlife.org/site/ibacritreg>), and sub-regional criteria (<http://datazone.birdlife.org/site/ibacritsubreg>)

<sup>104</sup> IUCN Marine Mammal Protected Areas Task Force, IMMA. Online: <https://www.marinemammalhabitat.org> (accessed on 9 Nov 2021).



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## Innocent passage

(LEGAL DESCRIPTION): “not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.” (UNCLOS, Art 19 (1))

## Integrated approach and integrated management

Integrated approach and management are not defined under international law.

In literature it has been described for instance as: “IOM is a holistic, ecosystem-based and knowledge-based approach that aims to ensure the sustainability and resilience of marine ecosystems while integrating and balancing different ocean uses to optimize the overall ocean economy”<sup>105</sup>

## Instrument

An “international instrument” is not defined under international law. However, it is generally understood that the term encompasses instruments which are legally-binding as well as those which are non-legally binding. In this sense, Barrett and Beckman note that:

“Treaties are only one kind of international instrument. There are many other kinds of international instruments, some of which have legal status of some kind, and others which do not. There are several other kinds of international instruments that can contain binding obligations; (...) There is an even larger variety – perhaps infinite – of international instruments of a non-binding nature. Some of these might contain commitments, set standards for future conduct, or

establish frameworks or institutions for international co-operation. They may take the form of a declaration, MOU, guidelines or arrangements, just to give a few examples.”<sup>106</sup>

## Intellectual property rights

(TECHNICAL DESCRIPTION): “creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce. IP rights aim to reward such creative human endeavor, thereby promoting innovation, economic growth and a higher quality of life.”<sup>107</sup>

There are over 25 international treaties on intellectual property administered by the World Intellectual Property Organization (WIPO).<sup>108</sup> In the context of genetic resources, it is the utilisation of these resources in the form of information, products and processes (creation of the mind) that may create IP subject to IP protection, and not the genetic resources per se.<sup>109</sup>

## Invasive alien species

(POLICY DEFINITION): ““alien species” refers to a species, subspecies or lower taxon, introduced outside its natural past or present distribution; includes any part, gametes, seeds, eggs, or propagules of such species that might survive and subsequently reproduce; “invasive alien species” means an alien species whose introduction and/or spread threaten biological diversity (For the purposes of the present guiding principles, the term “invasive alien species” shall be deemed the same as “alien invasive species” in decision V/8 of the Conference of the Parties to the Convention on Biological Diversity.)” (CBD decision VI/23 (2002), footnote 57)

<sup>105</sup>J-G Winther et al, “Integrated Ocean Management for a Sustainable Ocean Economy” (2020) 4 Nature Ecology & Evolution 1451–1458, at 1451.

<sup>106</sup>J Barrett, R Beckman, “Treaties and Other Kinds of International Instruments” in Barrett, Beckman (eds), Handbook on Good treaty Practice (Cambridge: Cambridge University Press, 2020), ch 3, at 80-81. DOI: <https://doi.org/10.1017/9781316282335> (accessed on 9 Nov 2021).

<sup>107</sup>World Intellectual Property Organization (WIPO) (2018) A Guide to Intellectual Property Issues in Access and Benefit-sharing Agreements. WIPO: Geneva.

<sup>108</sup>WIPO (2020) What is Intellectual Property? WIPO: Geneva. See also Article 27 of the Universal Declaration of Human Rights. There are two general categories of IP, namely: industrial property covering patents for inventions, industrial designs, trademarks and geographical indications; and copyright and related rights covering literary, artistic and scientific work. (WIPO 2020)

<sup>109</sup>WIPO 2018, supra.

(TECHNICAL DEFINITION): “species that are introduced, accidentally or intentionally, outside of their natural geographic range and that become problematic. They are often introduced as a result of the globalisation of economies through the movement of people and goods, for instance via shipping, consignments of wood products carrying insects, or the transport of ornamental plants to new areas.” (IUCN, online resource)<sup>110</sup>

See also IMO’s definition of ‘Harmful Aquatic Organisms and Pathogens’ above in relation to ballast water.

## Jurisdiction

There is no single definition of jurisdiction, and in general, under international law, States jurisdiction refers to the following characteristics:

“(a) jurisdiction to prescribe, i.e., a country’s ability to make its law applicable to persons, conduct, relations, or interests;

(b) jurisdiction to adjudicate, i.e., a country’s ability to subject persons or things to the process of its courts or administrative tribunals. (...);

(c) jurisdiction to enforce, i.e., a country’s ability to induce or compel compliance or to punish noncompliance with its laws or regulations.”<sup>111</sup>

## Key Biodiversity Area (KBA)

(TECHNICAL DEFINITION): “KBA are sites that contribute significantly to the global persistence of biodiversity, on land, in freshwater or on the sea.”. Sites qualify as global KBAs if they meet one or more of the 11 globally agreed scientific criteria, clustered into five higher level categories: threatened biodiversity, geographic restricted biodiversity, ecological integrity, biological processes, and irreplaceability”.<sup>112</sup>

<sup>110</sup> IUCN, Europe, Invasive alien species. Online: <https://www.iucn.org/regions/europe/our-work/biodiversity-conservation/invasive-alien-species> (accessed on 7 Nov 2021).

<sup>111</sup> Am. Soc’y Int’l L., “Jurisdictional, Preliminary, and Procedural Concerns,” in Benchbook on International Law § II.A (Diane Marie Amann ed., 2014), available at [www.asil.org/benchbook/jurisdiction.pdf](http://www.asil.org/benchbook/jurisdiction.pdf) (accessed on 31 Oct 2021).

<sup>112</sup> KBA, KBA criteria. Online: <https://www.keybiodiversityareas.org/working-with-kbas/proposing-updating/criteria>

<sup>113</sup> Middleton, L Thomas, Guidelines for management planning of protected areas (IUCN, 2003).

## Management plans (of MPAs)

Management plans of MPAs are not defined under international law.

(TECHNICAL DEFINITION IN THE CONTEXT OF PROTECTED AREAS): “a document which sets out the management approach and goals, together with a framework for decision making, to apply in a specific protected area over a given period of time. Critical to the plan is the widest possible consultation with stakeholders and the development of objectives that can be agreed and adhered to by all who have an interest in the use and ongoing survival of the area concerned.” (IUCN 2003)<sup>113</sup>

## Marine pollution

(LEGAL DEFINITION): “the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities” (UNCLOS, Art. 1(1) (4)).

With respect to the SE Atlantic and SE Pacific, the terms “pollution”/“pollution of the marine environment” have been defined under regional seas conventions as follows:

### Southeast Atlantic:

➤ (LEGAL DEFINITION OF “POLLUTION”): “the introduction by man, directly or indirectly, of substances or energy into the marine environment, coastal zones, and related inland waters resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing,

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impairment of quality for use of sea-water and reduction of amenities.” (Abidjan Convention, Art 2(1))<sup>114</sup>

### **Southeast Pacific:**

➤ LEGAL DEFINITION OF “POLLUTION OF THE MARINE ENVIRONMENT”): “the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities” (Lima Convention, Art 2(a)).

### **Marine Protected Area (MPA)**

(LEGAL DEFINITION, UNDER NEGOTIATION): “a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas]. (Draft BBNJ Agreement (2019), Art 1(11))

(LEGAL DEFINITION OF PROTECTED AREA): “a geographically defined area which is designated

or regulated and managed to achieve specific conservation objectives” (CBD, Art 2).

(TECHNICAL DEFINITION OF MPA): “any defined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings.” (CBD decision VII/5 (2000), footnote 1 in para 10)

(TECHNICAL DEFINITION OF MPA AND PROTECTED AREA): “a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.” (IUCN 2012)<sup>115</sup>

See also definition of area-based management tool (ABMT) above, since MPA is considered a type of ABMT.

In relation to MPA networks, the CBD COP has adopted scientific guidance for designing ecologically representative networks of MPAs, including in open waters and deep-sea habitats based on five required network properties and components, namely: ecologically or biologically significant marine areas (EBSAs); represen-

<sup>114</sup> Abidjan Convention, Art 2(1).

<sup>115</sup> ADay J., Dudley N., Hockings M., Holmes G., Laffoley D., Stolton S. & S. Wells, 2012. Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas. Gland, Switzerland: IUCN. At 12. These guidelines refer to the 2008 protected areas guidelines' categories of protected areas, namely: “Ia: Category Ia are strictly protected areas set aside to protect biodiversity and also possibly geological/ geomorphological features, where human visitation, use and impacts are strictly controlled and limited to ensure protection of the conservation values. Such protected areas can serve as indispensable reference areas for scientific research and monitoring. Ib: Category Ib protected areas are usually large unmodified or slightly modified areas, retaining their natural character and influence, without permanent or significant human habitation, which are protected and managed so as to preserve their natural condition.

II: Category II protected areas are large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities. III: Category III protected areas are set aside to protect a specific natural monument, which can be a landform, sea mount, submarine caverns, geological feature such as a caves or even a living feature such as an ancient grove. They are generally quite small protected areas and often have high visitor value. IV: Category IV protected areas aim to protect particular species or habitats and management reflects this priority. Many category IV protected areas will need regular, active interventions to address the requirements of particular species or to maintain habitats, but this is not a requirement of the category. V: Category V protected areas are where the interaction of people and nature over time has produced an area of distinct character with significant ecological, biological, cultural and scenic value: and where safeguarding the integrity of this interaction is vital to protecting and sustaining the area and its associated nature conservation and other values. VI: Category VI protected areas conserve ecosystems and habitats together with associated cultural values and traditional natural resource management systems. They are generally large, with most of the area in natural condition, where a proportion is under sustainable natural resource management and where low-level non industrial use of natural resources compatible with nature conservation is seen as one of the main aims of the area.” (at 9–10).

tativity; connectivity, replicated ecological features, and adequate and viable sites.<sup>116</sup>

## Marine Spatial Planning (MSP)

(TECHNICAL DEFINITION): “a public process of analysing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic and social objectives that have been specified through a political process.”<sup>117</sup>

CBD COP has “recognised” that “marine spatial planning is a participatory tool to facilitate the application of the ecosystem approach, expedite progress towards achieving the Aichi Biodiversity Targets in marine and coastal areas and support mainstreaming of biodiversity into public policies related to human and economic development, and that long-term investment in the development of human and institutional capacity for marine spatial planning-related activities is essential for success”.<sup>118</sup>

## Mesopelagic

The term “mesopelagic” is not defined under international instruments.

(TECHNICAL DEFINITION OF “MESOPELAGIC ZONE”): is the “pelagic zone between the depths of about 200 and 1000m”.<sup>119</sup>

An identification guide to the mesopelagic fishes of the Central and Southeast Atlantic Ocean has been developed by FAO.<sup>120</sup>

## Migratory species

(LEGAL DEFINITION): “the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries” (CMS, Art I (1) (a))

## Mineral Resources

(LEGAL DEFINITION OF “RESOURCES” IN RELATION TO THE AREA): “all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules”. (UNCLOS, Art 133(a))

UNCLOS further clarifies that “resources, when recovered from the Area, are referred to as “minerals”.” (UNCLOS, Art 133 (b))

## Mitigation and Adaptation (from climate change)

(TECHNICAL DEFINITION OF ADAPTATION): “In human systems, the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial oppor-

<sup>116</sup> CBD decision IX/20 (2008), para 14, and Annex II. These network properties and components are defined under Annex II of this decision as follows: EBSAs: “are geographically or oceanographically discrete areas that provide important services to one or more species/populations of an ecosystem or to the ecosystem as a whole, compared to other surrounding areas or areas of similar ecological characteristics, or otherwise meet the criteria as identified in annex I to decision IX/20”; “Representativity is captured in a network when it consists of areas representing the different biogeographical subdivisions of the global oceans and regional seas that reasonably reflect the full range of ecosystems, including the biotic and habitat diversity of those marine ecosystems.” “Connectivity in the design of a network allows for linkages whereby protected sites benefit from larval and/or species exchanges, and functional linkages from other network sites. In a connected network individual sites benefit one another.” “Replication of ecological features means that more than one site shall contain examples of a given feature in the given biogeographic area. The term “features” means “species, habitats and ecological processes” that naturally occur in the given biogeographic area.” “Adequate and viable sites indicate that all sites within a network should have size and protection sufficient to ensure the ecological viability and integrity of the feature(s) for which they were selected.”

<sup>117</sup> IOC-UNESCO, Marine Spatial Planning. Online: <https://ioc.unesco.org/our-work/marine-spatial-planning> (accessed on 9 Nov 2021).

<sup>118</sup> CBD decision XIII/9 (2016), para 2.

<sup>119</sup> Sutton, T.T., Hulley, P.A., Wienerroither, R., Zaera-Perez, D. and J.R. Paxton. 2020. Identification guide to the mesopelagic fishes of the central and south east Atlantic Ocean. FAO Species Identification Guide for Fishery Purposes. Rome, FAO. 2020, at 316. <https://doi.org/10.4060/cb0365en>

<sup>120</sup> Ibid.

tunities. In natural systems, the process of adjustment to actual climate and its effects; human intervention may facilitate adjustment to expected climate and its effects.” (IPCC 2018)<sup>121</sup>

(TECHNICAL DEFINITION OF MITIGATION OF CLIMATE CHANGE): “A human intervention to reduce emissions or enhance the *sinks of greenhouse gases*” (IPCC 2018).

### Sink, greenhouse gases

(LEGAL DEFINITION): “means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere”. (UNFCCC Art.1 (8)).

(TECHNICAL DEFINITION): “A reservoir (natural or human, in soil, ocean, and plants) where a greenhouse gas, an aerosol or a precursor of a greenhouse gas is stored.” (IPCC 2018).

### Monitoring, control and surveillance (MCS)

The term monitoring, control and surveillance (MCS) is not globally defined under international treaties, but it is commonly used in fisheries context by different RFMOs.

(TECHNICAL DEFINITION): “(i) monitoring – the continuous requirement for the measurement of fishing effort characteristics and resource yields. (ii) control – the regulatory conditions under which the exploitation of the resource may be conducted. (iii) surveillance – the degree and types of observations required to maintain compliance with the regulatory controls imposed on fishing activities” (FAO, online resource).<sup>122</sup>

In literature, the term has focused on “monitoring of fishing effort and resource yields, controlling fishing activity with regulations, and

conducting surveillance to ensure compliance with such regulations. However, MCS has a range of applications including:

- Monitoring of human activities (e.g. in the form of data collection and reporting);
- Control of human activities and their impacts on marine biodiversity (e.g. through regulation, licensing, and controls on how, where and when activities in the ocean take place);
- Surveillance of vessels (e.g. through observer programmes and electronic surveillance systems);
- Encouraging compliance with regulations through transparency, sanctions and other measures (e.g. sustainability certification schemes);
- Enforcement actions, e.g. to tackle illegal, unreported and unregulated (IUU) fishing and transnational illegal activities, such as human trafficking, forced labour, and trafficking in arms, drugs and wildlife.”<sup>123</sup>

### Nature’s contributions to people (NCP)

(Technical definition): “all the contributions, both positive and negative, of living nature (i.e. diversity of organisms, ecosystems, and their associated ecological and evolutionary processes) to the quality of life for people. Beneficial contributions from nature include such things as food provision, water purification, flood control, and artistic inspiration, whereas detrimental contributions include disease transmission and predation that damages people or their assets. Many NCP may be perceived as benefits or detriments depending on the cultural, temporal or spatial context.” (IPBES glossary)<sup>124</sup>

<sup>121</sup> IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press

<sup>122</sup> FAO, Monitoring Control and Surveillance: Definition and Context. Online: <https://www.fao.org/3/v4250e/v4250e03.htm#ref2> (accessed on 3 Nov 2021).

<sup>123</sup> K Cremers, M Bouvet, G Wright, J Rochette, “Options for Strengthening Monitoring, Control and Surveillance of Human Activities in the Southeast Atlantic Region” STONG High Seas Project, 2021, at 6.

<sup>124</sup> IPBES, Glossary, Nature Contributions to Peoples, online: <https://ipbes.net/glossary/natures-contributions-people> (accessed on 9 Nov 2021).

## Ocean acidification (OA)

Ocean acidification is not defined under international instruments.

(TECHNICAL DEFINITION OF “ACIDIFICATION”): “Ongoing decrease in pH away from neutral value of 7. Often used in reference to oceans, freshwater or soils, as a result of uptake of carbon dioxide from the atmosphere.” (IPBES glossary)<sup>125</sup>

(TECHNICAL DEFINITION OF OA): “refers to a reduction in the pH of the ocean over an extended period, typically decades or longer, which is caused primarily by uptake of carbon dioxide (CO<sub>2</sub>) from the atmosphere, but can also be caused by other chemical additions or subtractions from the ocean. Anthropogenic ocean acidification refers to the component of pH reduction that is caused by human activity” (IPCC 2018)<sup>126</sup>

## Other effective area-based conservation measures (OECMs)

(POLICY DEFINITION): “a geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values” (CBD decision 14/8 (2018), para 2).

The same COP decision also includes Scientific and Technical Advice on OECMs, which contains criteria for identification of area-based management tools that meet the OECM criteria.<sup>127</sup>

## Outstanding Universal Value

(POLICY DEFINITION): “cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole. The Committee defines the criteria for the inscription of properties on the World Heritage List.” (Operational Guidelines to the World Heritage Convention, para 49.)<sup>128</sup>

## Particularly Sensitive Sea Areas (PSSAs)

(POLICY DEFINITION): PSSAs are “areas that needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities.” (Revised PSSA Guidelines, para 1.2)<sup>129</sup>

## Associated protective measures (to PSSAs)

(POLICY DESCRIPTION): When designating a PSSA, “associated protective measure(s)” that conforms with the requirements of the legal instruments establishing such measure(s) “must have been approved or adopted by IMO to prevent, reduce, or eliminate the threat or identified vulnerability.” (Revised PSSA Guidelines, para 1.2)

<sup>125</sup> IPBES, Glossary, Acidification, online: <https://ipbes.net/glossary/acidification-0> (accessed on 10 Nov 2021).

<sup>126</sup> IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)].

<sup>127</sup> CBD decision 14/8 (2018), Annex III.

<sup>128</sup> UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, Operational Guidelines to the World Heritage Convention, WHC.19/01 (2019), para 49.

<sup>129</sup> IMO Assembly Resolution A.982(24) on the Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas, a particularly sensitive sea area (2005), para 1.2 (Revised PSSA Guidelines).

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## Polluter pays principle

The polluter pays principle is referred to by the Rio Declaration on Environment and Development, and under which “the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”<sup>130</sup>

## Port

(LEGAL DEFINITION): “includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying” (PSMA, Art 1(g)).

Southeast Atlantic RFMOs do not contain a definition of “port” in their Conventions. In the Southeast Pacific, only the South Pacific Regional Fisheries Management Organization (SPRFMO) has a definition in its Convention. SPRFMO includes the exact same definition as the Port State Measures Agreement’s, as transcribed above, in its convention text (Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, Art 1(1) (l)).

## Precautionary approach/principle

(LEGAL DEFINITION):<sup>131</sup> “where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” (Rio Declaration, Principle 15).<sup>132</sup>

(LEGAL DEFINITION): “where there is a threat of significant reduction or loss of biological diver-

sity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.” (CBD, 9<sup>th</sup> preambular para)

In the context of climate change, under UNFCCC, article 3(3) of the Convention reflects the precautionary approach or principle by stating that: “the Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic context, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.”<sup>133</sup>

## Preservation reference zones

(LEGAL DEFINITION): “areas in which no mining shall occur to ensure representative and stable biota of the seabed in order to assess any changes in the biodiversity of the marine environment” (Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (ISBA/16/A/12/Rev.1), Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (ISBA/18/A/11), and Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, Reg 33 (6)).

<sup>130</sup> Rio Declaration on Environment and Development, A/CONF.151/26 (Vol. I) (1992), Principle 16.

<sup>131</sup> The choice of classifying the precautionary approach as a legal definition is based on scholarship and jurisprudence indicating that there is a trend towards making the precautionary approach part of customary international law. See International Tribunal for the Law of the Sea (ITLOS), Responsibilities and Obligations of States Sponsoring Persons and Entities With Respect to Activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), Case n. 17, Advisory Opinion, 1 February 2011, para 135. See also A Cancado Trindade, “Principle 15: Precaution” in VE Vinuales (ed) *The Rio Declaration on Environment and Development: A Commentary* (Oxford: OUP, 2015).

<sup>132</sup> Rio Declaration on Environment and Development, A/CONF.151/26 (Vol. I) (1992), Principle 15.

<sup>133</sup> UNFCCC, Art 3(3).

## Principle of Non-Regression

The principle of non-regression has been defined in literature as “a prohibition on state conduct that results in environmental degradation or in weakening of environmental laws”.<sup>134</sup>

## Protocol

Under international law, “protocol” is used in contexts such as:

“a. A Protocol of Signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a Protocol deals with ancillary matters such as the interpretation of particular clauses of the treaty, those formal clauses not inserted in the treaty, or the regulation of technical matters. Ratification of the treaty will normally ipso facto involve ratification of such a Protocol.

b. An Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty. It is usually adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a “two-tier system”. The Optional Protocol to the International Covenant on Civil and Political Rights of 1966 is a well-known example.

c. A Protocol based on a Framework Treaty is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. Such protocols ensure a more simplified and accelerated treaty-making process and have been used particularly in the field of international environmental law. An example is the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer adopted on the basis of Arts.2

and 8 of the 1985 Vienna Convention for the Protection of the Ozone Layer.

d. A Protocol to amend is an instrument that contains provisions that amend one or various former treaties, such as the Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs.

e. A Protocol as a supplementary treaty is an instrument which contains supplementary provisions to a previous treaty, e.g. the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.

f. A Process-Verbal is an instrument that contains a record of certain understandings arrived at by the contracting parties.”<sup>135</sup>

## Range and range State

### Range:

(LEGAL DEFINITION): “all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route” (CMS, Art. I (1) (f)).

### Range State:

(LEGAL DEFINITION): “in relation to a particular migratory species means any State (and where appropriate any other Party (e.g. regional economic integration organization) that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species” (CMS, Art I (1) (h)).

## Reciprocity

Reciprocity in international law is understood to refer to “the status of a relationship between two or more States under which a certain conduct by one party is in one way or another juridical-

<sup>134</sup> L Collins, “Principle of non-regression” in J-F Morin, A Orisini (eds) *Essential Concepts of Global Environmental Governance* (2<sup>nd</sup> ed) (Routledge, 2020)

<sup>135</sup> UN Treaty Collection, Definition of key terms used in the UN Treaty Collection, online: [https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1\\_en.xml#protocols](https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml#protocols) (accessed on 10 Nov 2021).



ly dependent upon that of the other party. Such conduct will in most instances, but not necessarily, amount to identical or equivalent treatment. Most attempts at definition add the element of a subjective interrelation of action and counteraction according to which the conduct of one party, whether consummated or expected, provides the motivation for that of the other (...). However, as a sociological category, motivations prompted by the expectation of reciprocity should clearly be distinguished from reciprocity as an objective aspect of a given legal relationship. The designation of reciprocity as a principle of international law (...) should only be applied to conclusions derived from the analysis of the latter—above all to the maxim that a State basing a claim on a particular norm of international law must accept that rule as also binding upon itself.”<sup>136</sup>

### **Regional Environmental Management Plan (REMP)**

(Policy description): “REMPs are not themselves legal instruments but rather instruments of environmental policy. For instance, it is by the decision of the Council stemming from the powers and functions allocated to it by the Convention that a representative network of nine areas of particular environmental interest (APEIs) were established in the Clarion-Clipperton Zone (CCZ), where no exploration or exploitation should be conducted for five years or until further review by the LTC (Legal and Technical Commission). Those provisions do not supersede the specific legal rights and obligations established under the Convention, nor do they supersede the rules, regulations and procedures of the ISA. Rather, they clarify how the Council intends to apply those rules, regulations and procedures in the light of the need to take a precautionary approach to the development of activities in the Area. Likewise, various measures that have been identified in the environmental management plan of the CCZ to be undertaken by different

entities, including the secretariat, contractors, sponsoring States and scientific researchers, are not expressed in the form of binding legal obligations.”<sup>137</sup>

### **Regional Fisheries Bodies (RFBs) and Regional Fisheries Management Organisations (RFMOs)**

(TECHNICAL DEFINITION OF RFBs): “intergovernmental bodies through which States cooperate on the management of fisheries in specific regions. Some RFBs have a mandate to adopt measures that are binding on their Members. These bodies are referred to as regional fisheries management organisations or arrangements (RFMO/As) and are a subset of RFBs.”<sup>138</sup>

While many RFBs have a mandate over waters under national jurisdiction, some have competence areas that extend to the areas beyond national jurisdiction. Some RFBs deal with specific stocks only, for example, tuna and tuna-like species or deep-sea stocks.

There is no formal definition of RFMOs under the UNFSA. The term was defined under the Agreement on Port State Measures and it is considered as a working definition under the FAO.

(LEGAL DEFINITION, RFMOs): “an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures” (PSMA, Art. 1(i)).

### **Regional Seas Programme**

(TECHNICAL DESCRIPTION): “an action-oriented programme that implements region-specific activities, bringing together stakeholders including governments, scientific communities and civil societies.” (UNEP, online resource)<sup>139</sup>

<sup>136</sup> B Simma, Reciprocity (Max Planck Encyclopedias of International Law, 2008). Online: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1461?rsk=1VNkvD> (accessed on 10 Nov 2021).

<sup>137</sup> ISA Secretariat, Guidance to facilitate the development of Regional Environmental Management Plans (REMPs) (ISA, 2019) at 13, online: [https://www.isa.org.jm/files/files/documents/rempe\\_guidance\\_.pdf](https://www.isa.org.jm/files/files/documents/rempe_guidance_.pdf) (accessed on 5 Dec 2021). See also ISBA/25/C/4

<sup>138</sup> FAO, Regional bodies involvement in the management of deep-sea fisheries. Online: <https://www.fao.org/in-action/vulnerable-marine-ecosystems/background/regional-fishery-bodies/en/> (accessed on 31 Oct 2021).

<sup>139</sup> UNEP, Regional Seas Programme. Online: <https://www.unep.org/explore-topics/oceans-seas/what-we-do/regional-seas-programme> (accessed on 11 Nov 2021).

This programme is implemented through the development and implementation of Regional Seas Conventions and Action Plans, which are described by UNEP as “The Regional Seas Conventions and Action Plans provide inter-governmental frameworks to address the degradation of the oceans and seas at a regional level, initially focusing on pollution at sea, such as oil spills and movement of hazardous waste, as well as land-based sources of pollution, for example plastics, wastewater and excess nutrients. Now, many have embraced the ecosystems approach to managing marine resources and have protocols on protected areas, marine litter, combating oil spills, pollution from ships, transboundary movement of waste including their disposal, integrated coastal zone management (ICZM) and land-based sources of pollution (LBS) through which disaster reduction, climate change adaptation and sustainable consumption and production issues can be addressed. The focus is on promoting regional oceans governance to deliver the global oceans agenda and respond to emerging issues, new policies and initiatives such as the Blue Economy.”<sup>140</sup>

Under the UNEP Regional Seas Programme, there are three types of Regional Seas Conventions and Action Plans (RSCAPs): UNEP-administered (e.g. Abidjan Convention on the Southeast Atlantic), non-UNEP administered (e.g. CPPS on the Southeast Pacific) and independent (e.g. CCAMLR on the Antarctic region)

## Resilience

(TECHNICAL DEFINITION): “The level of disturbance that an ecosystem or society can undergo without crossing a threshold to a situation with different structure or outputs. Resilience depends on factors such as ecological dynamics as well as the organizational and institutional capacity to understand, manage, and respond to these dynamics.” (IPBES glossary)<sup>141</sup>

<sup>140</sup> Ibid.

<sup>141</sup> IPBES, Glossary, Resilience, online: <https://ipbes.net/glossary/resilience> (accessed on 10 Nov 2021).

(TECHNICAL DEFINITION): “The capacity of social, economic and environmental systems to cope with a hazardous event or trend or disturbance, responding or reorganizing in ways that maintain their essential function, identity and structure while also maintaining the capacity for adaptation, learning and transformation.” (IPCC 2018)

## Serious harm (to the marine environment from deep seabed mining)

(POLICY DEFINITION): “any effect from activities in the Area on the marine environment which represents a significant adverse change in the marine environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices.” (ISBA/16/A/12/Rev.1 (2010), Reg 1 (3)(f); ISBA/19/C/17 (2013), Reg 1 (3) (f); and ISBA/18/A/11 (2012), Reg 1 (3) (f))

## Serious violation

(LEGAL DEFINITION):

“(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3 (a);

(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

- (e) using prohibited fishing gear;
- (f) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (g) concealing, tampering with or disposing of evidence relating to an investigation;
- (h) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (i) such other violations as may be specified in procedures established by the relevant sub-regional or regional fisheries management organization or arrangement.” (UNFSA, Art 21 (11))

The Conventions that govern the regional fisheries management organisations in the Southeast Atlantic do not define serious violation, and infractions are to be determined by their respective decision-making bodies. In the Southeast Pacific, the SPRFMO Convention has adopted a definition, which is the same as UNFSA's, and added that “other violations ... may be specified by the (SPRFMO) Commission” (Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, Art 1(1)(n))

## Shared stocks

(Legal description): “stocks occurring within the exclusive economic zones of two or more States” (UNCLOS, Art 63 (1)).

## Small scale fishing

The FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries<sup>142</sup> recognise “the

great diversity of small-scale fisheries and that there is no single, agreed definition of the sub-sector.”<sup>143</sup>

(TECHNICAL DESCRIPTION): “There is no universal definition of 'artisanal' or 'small-scale' fisheries or aquaculture. In general, these terms describe fisheries and aquaculture that use relatively small production units with relatively low input and low output, and limited levels of technology and small capital investment. They are commonly managed on a family level, sometimes with a small group of employees, or at a community level. The fish are often sold in local markets, but can also reach national and international markets. For the purpose of IYA-FA (International Year of Artisanal Fisheries and Aquaculture), small-scale and artisanal are used interchangeably. Note that fishing for sport or recreation are commonly not called 'artisanal' or 'small-scale'.” (FAO glossary)<sup>144</sup>

In literature, small scale fishers have been characterised as: “those who, by virtue of their limited fishing range and a host of related socio-economic characteristics, are confined to a narrow strip of land and sea around their community, are faced with a limited scope of options, if any, and are intrinsically dependent on the local resources.”<sup>145</sup>

In a systematic review of peer-reviewed scientific literature of 1,723 articles published on the topic between 1960 and 2015, Smith and Basurto (2019) conclude that “Comparing definitions over time, we identified two notable trends over the 65-year time period studied: a decreasing proportion of articles that defined SSF and an increasing reliance on technological dimensions like boats relative to sociocultural characteristics.”<sup>146</sup>

<sup>142</sup> FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Alleviation (Rome, FAO, 2015).

<sup>143</sup> Ibid, para 2.4.

<sup>144</sup> FAO, glossary of terms, online: <https://www.fao.org/faoterm/en/> (accessed on 11 Nov 2021).

<sup>145</sup> A Charles, Sustainable Fishery Systems (Blackwell Science, 2001), at 46.

<sup>146</sup> H Smith, X Basurto, “defining small-scale fisheries and examining the role of science in shaping perceptions of who and what counts: A systematic review (2019) Front. Mar. Sci. 6:236. doi: 10.3389/fmars.2019.00236

## Sovereignty and Sovereign rights

“Sovereignty” is not defined per se under international treaties, but “in international law, it is an essential aspect of sovereignty that all states should have supreme control over their internal affairs, subject to the recognized limitations imposed by international law. These limitations include, in particular, the international law of human rights and the rules forbidding the use of force. However, no state or international organization may intervene in matters that fall within the domestic jurisdiction of another state. The concept of state sovereignty was outlined, among other things, in a declaration on Principles of International Law (Resolution 2625), proclaimed by the General Assembly of the United Nations in 1970.”<sup>147</sup>

Under UNCLOS, the concept of coastal State sovereignty applies to the internal waters and territorial sea, as well as to the air space over the territorial sea as well as to its bed and subsoil, subject to the Convention and to other rules of international law.<sup>148</sup> While with respect to the EEZ coastal States have “sovereign rights” “for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone (EEZ), such as the production of energy from the water, currents and winds.”<sup>149</sup>

With respect to the continental shelf (including the extended continental shelf), the coastal State “exercises ... (exclusive) sovereign rights for the purpose of exploring it and exploiting its natural resources”, which in this context refers to “mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to

say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.”<sup>150</sup>

## Special Areas

(Legal definition): “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” so that a “higher level of protection” is granted to those areas. (MARPOL, Annexes I, II, IV, V, VI)<sup>151</sup>

## State

(LEGAL DESCRIPTION): “(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states” (1933 Montevideo Convention on Rights and Duties of States, Art. 1).

### a. Coastal States

The term “coastal States” is not defined by UNCLOS but is “universally understood to be States with a sea-coastline.”<sup>152</sup>

### b. Flag State

UNCLOS provides for the rights and obligations of flag States when navigating in different maritime zone but does not define the term. UNCLOS also includes rules on nationality of ships, which determines that “every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. There must exist a genuine link between the State and the ship.” (UNCLOS, Art 91(1)).

<sup>147</sup> Oxford Reference, Sovereignty, online: <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100520397> (accessed on 10 Nov 2021).

<sup>148</sup> UNCLOS, Art. 2.

<sup>149</sup> UNCLOS, Art 56(1) (a).

<sup>150</sup> UNCLOS, Art 77.

<sup>151</sup> IMO, Special Areas under MARPOL, online: <https://www.imo.org/en/OurWork/Environment/Pages/Special-Areas-Marpol.aspx> (accessed on 10 Nov 2021).

<sup>152</sup> E Molenaar, “Port and Coastal States” in Rothwell, Oude Elferink, Scott, Stephens (eds) *The Oxford Handbook of the Law of the Sea* (OUP: 2015) DOI: 10.1093/law/9780198715481.003.0013

The International Maritime Organization's (IMO) rules complements UNCLOS' general obligations by introducing measures such as the IMO Ship Identification Number Scheme, IMO Unique Company and Registered Owner Identification Number Scheme (SOLAS regs XI-1/3, XI-1/3-1), resolution to prevent registration of phantom ships (Resolution A.923(22)), among others. However, there is no international treaty regulating the ships' registration process. The 1986 UN Convention on Conditions for Registration of Ships sets international registration standards, including with respect to genuine link, ownership, accountability, and the role of the flag State, but this Convention has not yet entered into force.<sup>153</sup>

With respect to regional fisheries management organisations, in the Southeast Atlantic, only SEAFO defines "flag State" as (unless otherwise indicated): "(i) a state whose vessels are entitled to fly its flag; or (ii) a regional economic integration organisation in which vessels are entitled to fly the flag of a member State of that regional economic integration organisation."<sup>154</sup> In the Southeast Pacific, the same definition is provided under the SPRFMO Convention Art 1(1)(i), and the IATTC Convention, Art 1(4).

### c. Port State (Control)

(TECHNICAL DEFINITION OF "PORT STATE CONTROL"): "is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules" (IMO, online resource).<sup>155</sup>

"Port State" is not defined under UNCLOS but is often referred in relation to jurisdiction or control. "Port State control" is "often used together with the term 'port State measures' (...)" in relation

to their prescription and enforcement.<sup>156</sup> "Port State jurisdiction is the competence of States to exercise prescriptive (or legislative) and enforcement jurisdiction over foreign vessels within their port".<sup>157</sup> UNCLOS provides for enforcement by port States in its Article 218.

Port State or Port State Control is not defined under RFMOs' Convention in the SE Atlantic or SE Pacific.

As an example of practice in other regions, in the Northwest Atlantic, the Northwest Atlantic Fisheries Organization (NAFO) Convention defines "port state" as "any State receiving fishing vessels in its ports, offshore terminals or other installations for, inter alia, landing, transshipping, refuelling or re-supplying" (Convention on Cooperation in the Northwest Atlantic Fisheries, Art 1(n)).

### Straddling stocks

(LEGAL DESCRIPTION): "the same stock or stocks of associated species (that) occur both within the exclusive economic zone and in an area beyond and adjacent to the zone" (UNCLOS, Art 63(2))<sup>158</sup>

### Strategic Environmental Assessments (SEAs)

(Legal definition, under negotiation): "[... the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.]" (Draft BBNJ Agreement (2019), Art 1(13)).

<sup>153</sup> FUN Treaty Collection, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XII-7&chapter=12&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&clang=en) (accessed on 1 Dec 2021).

<sup>154</sup> SEAFO Convention, Art. 1(m). See also FAO Voluntary Guidelines for Flag State Performance (2014).

<sup>155</sup> IMO, Port State Control, online: <https://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx> (accessed on 2 December 2021).

<sup>156</sup> E Molenaar, "Port and Coastal States" in Rothwell, Oude Elferink, Scott, Stephens (eds) *The Oxford Handbook of the Law of the Sea* (OUP: 2015) DOI: 10.1093/law/9780198715481.003.0013

<sup>157</sup> EJ Molenaar, *Port State Jurisdiction*, Max Planck Encyclopedias of International Law (2021). Online: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2052> (accessed on 11 Nov 2021).

<sup>158</sup> The UN Fish Stocks Agreement does not define "straddling stocks", but relies on UNCLOS's description.

Under the CBD SEAs are indirectly referred to in the context of its EIA provision in relation to “programmes and policies that are likely to have significant adverse impacts on biological diversity” (CBD, Art 14(b)).

(LEGAL DEFINITION): “the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme” (Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, Art 2(6)).

### Sustainable use

(LEGAL DEFINITION): “the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations” (CBD, Art 2).

### The Area

(LEGAL DEFINITION): “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction” (UNCLOS, Art 1(1)(1)).

The Area and its mineral resources are the common heritage of mankind (UNCLOS, Art 136). The legal status of the Area and its resources is provided under Article 137 of UNCLOS.

### Traditional knowledge

There is no generally agreed definition of traditional knowledge (TK), but it is understood to be:

➤ “TK in a general sense embraces the content of knowledge itself as well as traditional cultural expressions, including distinctive signs and symbols associated with TK.

➤ TK in the narrow sense refers to knowledge as such, in particular the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations.” (WIPO, online resource)<sup>159</sup>

### Transboundary (impact)

(LEGAL DEFINITION): “any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party” (Espoo Convention, Art. 1 (viii))

### Transfer of marine technology

(LEGAL DEFINITION, UNDER NEGOTIATION): “[... the transfer of instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean]” (Draft BBNJ Agreement (2019), Art. 1 (14)).

### Marine technology:

(Legal definition, under negotiation): “[... information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards, reference materials; sampling and methodology equipment; observation facilities and equipment (e.g., remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); equipment for in situ and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; and expertise, knowledge, skills,

<sup>159</sup> WIPO, Traditional Knowledge, online: <https://www.wipo.int/tk/en/tk/> (accessed on 11 Nov 2021).

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technical, scientific and legal know-how and analytical methods related to marine scientific research and observation.]” (Draft BBNJ Agreement (2019), Art 1 (11))

(Policy definition): “instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean and coastal areas. In this sense, marine technology includes: (a) information and data, in a user-friendly format, on marine sciences and related marine operations and services; (b) manuals, guidelines, criteria, standards, reference materials; (c) sampling and methodology equipment (e.g. for water, geological, biological, chemical samples); (d) observation facilities and equipment (e.g. remote sensing equipment, buoys, tide gauges, shipboard and other means of ocean observation); (e) equipment for in situ and laboratory observations, analysis and experimentation; (f) computer and computer software, including models and modelling techniques; and expertise, knowledge, skills, technical/scientific/legal know-how and analytical methods related to marine scientific research and observation.” (IOC/UNESCO, IOC Criteria and Guidelines on the Transfer of Marine Technology (2005), at A (2))

## Transit passage

(LEGAL DEFINITION): “the exercise in accordance with this Part (UNCLOS Part III on Straits used for International Navigation) of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.” (UNCLOS, Art 38(2))

IMO uses the same definition as UNCLOS since UNCLOS provides the overarching legal framework on this matter.

## Transshipment

(TECHNICAL DEFINITION): “the transfer of catch from one fishing vessel to either another fishing vessel or to a vessel used solely for the carriage of cargo” (FAO 2020)<sup>160</sup>

In the Southeast Atlantic, transshipment is defined by the SEAFO Convention as the “unloading of all or any of the fishery resources on board a fishing vessel to another fishing vessel either at sea or in port without the products having been recorded by a port State as landed.” (Convention on the Conservation and Management of Fishery Resources in the Southeast Atlantic Ocean, Art. 1 (p))

In the Southeast Pacific, the SPRFMO Convention defines ‘transshipment’ in this region. It defines the term more broadly, as “the unloading of all or any of the fishery resources or fishery resource products derived from fishing in the Convention Area on board a fishing vessel to another fishing vessel either at sea or in port.” (Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, Art. 1 (o))

## Treaty

(LEGAL DEFINITION): an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (1969 VCLT, Art. 2(a)).

<sup>160</sup> Mosteiro Cabanelas, A. (ed.), Quelch, G.D., Von Kistowski, K., Young, M., Carrara, G., Rey Aneiros, A., Franquesa Artés, R., Ásmundsson, S., Kuemlangan, B. and Camilleri, M. 2020. Transshipment: a closer look – An in-depth study in support of the development of international guidelines. FAO Fisheries and Aquaculture Technical Paper No. 661. Rome, FAO. <https://doi.org/10.4060/cb2339en>

## Underwater noise/ocean noise

(POLICY DEFINITION): “underwater noise or the underwater-radiated noise level, for the purposes of these Guidelines (as) noise from commercial ships,” and clarifies in a footnote that “Underwater-radiated noise level is reported in sound pressure levels in decibels and expressed as 10 times the logarithm of the square of the ratio of the rms sound pressure to a reference pressure of 1 micro Pascal. When it is a ship source level, the sound pressure level is adjusted to a level at 1 m from the source.” (IMO Guidelines for the Reduction of Underwater Noise from Commercial Shipping to Address Adverse Impacts on Marine Life MEPC.1/Circ.833, Annex, para 4.3).

(TECHNICAL DESCRIPTION): “Anthropogenic noise in the marine environment can be classed as either acute or chronic. Acute noise, such as seismic surveys or military sonar, is high in intensity, short in duration and often pulsed. Chronic noise refers to long term, low intensity noise, for example from shipping and industrial activity. Both have the potential to impact on cetacean behaviour and physiology.” (International Whaling Commission, online resource)<sup>161</sup>

The IUCN Resolution 3.068 (2004) recognises that “anthropogenic ocean noise, depending on source and intensity, is a form of pollution, comprised of energy, that may degrade habitat and have adverse effects on marine life ranging from disturbance to injury and mortality”.<sup>162</sup>

The CBD and the CMS COPs have deliberated on anthropogenic underwater noise,<sup>163</sup> but have not officially defined the term. A CBD Technical Series on underwater anthropogenic noise is awaiting publication after a peer review has been undertaken.<sup>164</sup>

## UNESCO Biosphere Reserves

(POLICY DESCRIPTION): “[learning places for sustainable development]. They are sites for testing interdisciplinary approaches to understanding and managing changes and interactions between social and ecological systems, including conflict prevention and management of biodiversity. They are places that provide local solutions to global challenges. Biosphere reserves include terrestrial, marine and coastal ecosystems. Each site promotes solutions reconciling the conservation of biodiversity with its sustainable use. Biosphere reserves are nominated by national governments and remain under the sovereign jurisdiction of the states where they are located. Biosphere Reserves are designated under the intergovernmental MAB Programme by the Director-General of UNESCO following the decisions of the MAB International Coordinating Council (MAB ICC). Their status is internationally recognized.”<sup>165</sup>

## Utilisation of (marine) genetic resources

(LEGAL DEFINITION OF MARINE GENETIC RESOURCES, UNDER NEGOTIATION): “[15. Alt. 1. “Utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources [as well as the exploitation thereof].]” (Draft BBNJ Agreement (2019), Art. 1(15))

(LEGAL DEFINITION OF GENETIC RESOURCES): “utilization of genetic resources” as “to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention (CBD)” (Nagoya Protocol, Art 2 (c)).

<sup>161</sup> IWC, Ocean Noise, online: <https://iwc.int/anthropogenic-sound> (accessed on 11 Nov 2021).

<sup>162</sup> IUCN Resolution 3.068 (2004), first preambular para.

<sup>163</sup> See CBD decision XII/23 (2012), and CMS Resolution 12.14 (2017).

<sup>164</sup> The draft document (prior to the peer review consultation) can be found here: <https://www.cbd.int/doc/notifications/2020/cbd-ts-underwater-noise-peer-review-en.pdf> (accessed on 2 December 2021).

<sup>165</sup> UNESCO, Biosphere Reserves, online: <https://en.unesco.org/node/314143> (accessed on 11 Nov 2021).



## Vessel

(LEGAL DEFINITION OF “VESSEL”): “any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.” (PSMA, Art. 1 (j))

- In the Southeast Atlantic, the Convention that govern the South East Atlantic Fisheries Organisation (SEAFO) defines the term as:
- (LEGAL DEFINITION OF “FISHING VESSEL”): “any vessel used or intended for use for the purposes of the commercial exploitation of fishery resources, including mother ships, any other vessels directly engaged in such fishing operations, and vessels engaged in transshipment” (Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, Art. 1 (j))
- In the Southeast Pacific, the Conventions that govern the Inter-American Tropical Tuna Commission (IATTC) and South Pacific Regional Fisheries Management Organization (SPRFMO) have defined the term as:

### IATTC:

- (LEGAL DEFINITION): “any vessel used or intended for use for the purpose of fishing, including support vessels, carrier vessels and any other vessels directly involved in such fishing operations.” (Antigua Convention, Art. 1(3))

### SPRFMO:

- (Legal definition of “fishing vessel”): “any vessel used or intended for fishing, in-

cluding fish processing vessels, support ships, carrier vessels and any other vessel directly engaged in fishing operations” (Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, Art 1(1)(h))

## Vulnerable marine ecosystem

Vulnerable marine ecosystems (VMEs) are not defined per se, but in the context of deep sea fishing, the FAO Deep-sea Fisheries Guidelines contain identification criteria for VMEs based on the following characteristics: i. uniqueness or rarity; ii. Functional significance of the habitat; iii. Fragility; iv. Life-history traits of component species that make recovery difficult; and structural complexity.<sup>166</sup> The application of the identification criteria together with the conservation and management measures included in the guidelines is intended to prevent significant adverse impacts on VMEs from deep-sea fishing.<sup>167</sup>

## World Heritage Site

(LEGAL DESCRIPTION): sites (or properties) listed under the Convention due to their cultural or natural heritage. “Cultural heritage” is defined as:

- “monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

<sup>166</sup> FAO, International Guidelines for the Management of Deep-sea Fisheries in the High Seas (Rome: FAO, 2008), para 42. Para 42 defines the terms used in the criteria mentioned above as follows: “i. Uniqueness or rarity – an area or ecosystem that is unique or that contains rare species whose loss could not be compensated for by similar areas or ecosystems. These include: habitats that contain endemic species; habitats of rare, threatened or endangered species that occur only in discrete areas; or nurseries or discrete feeding, breeding, or spawning areas. ii. Functional significance of the habitat – discrete areas or habitats that are necessary for the survival, function, spawning/reproduction or recovery of fish stocks, particular life history stages (e.g. nursery grounds or rearing areas), or of rare, threatened or endangered marine species. iii. Fragility – an ecosystem that is highly susceptible to degradation by anthropogenic activities. iv. Life-history traits of component species that make recovery difficult – ecosystems that are characterized by populations or assemblages of species with one or more of the following characteristics: slow growth rates; late age of maturity; low or unpredictable recruitment; or long-lived. v. Structural complexity – an ecosystem that is characterized by complex physical structures created by significant concentrations of biotic and abiotic features. In these ecosystems, ecological processes are usually highly dependent on these structured systems. Further, such ecosystems often have high diversity, which is dependent on the structuring organisms.”

<sup>167</sup> Ibid, para 11.

- groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.”( WHC, Art 1)

Under the Convention, "natural heritage" is defined as:

- “natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

- natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.” (WHC, Art 2)

Sites can also be considered as “mixed cultural and natural heritage” “if they satisfy a part or whole of the definitions of both cultural and natural heritage laid out in Articles 1 and 2 of the Convention.” (WHC Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01 (2019), para 46)

“Cultural landscapes” are defined as “cultural properties and represent the “combined works of nature and of man” designated in Article 1 of the Convention. They are illustrative of the evolution of human society and settlement over time, under the influence of the physical constraints and/or opportunities presented by their natural environment and of successive social, economic and cultural forces, both external and internal.” (WHC Operational Guidelines for the Implementation of the World Heritage Convention, para 47)

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## Annex I – List of international treaties used to develop this glossary

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 22 November 2009 (entered into force 5 June 2016) (PSMA). Also referred to as the Agreement on Port State Measures.

Convenio sobre Organizacion de la Comision Permanent de la Conferencia sobre Explotacion y Conservacion de las Riquezas Maritimas del Pacifico Sur [Convention on the Organisation of the Permanent Commission of the Conference on Exploitation and Conservation of Marine Resources of the South Pacific], 18 August 1952 (entered into force 6 May 1955).

Convention for the Establishment of an Inter-American Tropical Tuna Commission, 31 May 1949 (entered into force 3 March 1950).

Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica, 27 June 2003 (entered into force 27 August 2010) . Also referred to as the Antigua Convention.

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, 38 ILM 517 (entered into force 30 October 2001). Also referred to as the Aarhus Convention.

Convention on Environmental Impact Assessment in a Transboundary Context, 25 February 1991, 30 ILM 802 (entered into force 10 September 1997). Also referred to as the Espoo Convention.

Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, 14 November 2009, ATS 28 (entered into force 24 August 2012) corrected in 2010. Also referred to as the SPRFMO Convention.

Convention on the Conservation of Migratory Species of Wild Animals, 23 June 1979, ATS 32 (entered into force 11 January 1983) (CMS). Also referred to as the Bonn Convention.

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 29 December 1972, 1046 UNTS 120 (entered into force 30 August 1975). Also referred to as the London Convention.

Inter-American Convention for the Protection and Conservation of Sea Turtles, 1 December 1996, UNTS I-37791 (entered into force 2 May 2001).

International Convention for the Control and Management of Ships' Ballast Water and Sediments, 13 February 2004 (entered into force 8 September 2017) (Ballast Water Convention).

International Convention for the Prevention of Pollution from Ships as modified by the Protocol of 1978, 17 February 1978, ATS 9 (entered into force 2 October 1983). Also referred to as MARPOL.

International Convention for the Regulation of Whaling, opened for signature 2 December 1946, ATS 18 (entered into force 10 November 1948) amended in 1956.

International Convention for the Safety of Life at Sea, 1 November 1974, 1184 UNTS 2 (entered into force 25 May 1980). Also referred as SOLAS Convention.

International Convention on Oil Pollution Preparedness, Response and Co-operation, 30 November 1990, ATS 12 (entered into force 13 May 1995). Also referred as OPRC.

La Jolla Agreement for the Reduction of Dolphin Mortality in the Eastern Pacific Ocean, 21 April 1992 (entered into force 21 April 1992).

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 29 October 2010 (entered into force 12 October 2014). Also referred to as the Nagoya Protocol.

Protocol on Environmental Protection to the Antarctic Treaty, 4 October 1991, 30 ILM 1455 (entered into force 14 January 1998). Also referred to as the Madrid Protocol.

Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, 21 May 2003, UNTS 2685 (entered into force 11 July 2010).

Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, 7 November 1996, 36 ILM 1 (entered into force 24 March 2006) amended in 2006. Also referred to as the London Protocol.

Stockholm Convention on Persistent Organic Pollutants, 22 May 2001, 2256 UNTS 119 (entered into force 17 May 2004). Also referred to as the Stockholm Convention.

United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 8 September 1995, ATS 8 (entered into force 11 December 2001). Also referred to as the UN Fish Stocks Agreement.

United Nations Convention on Biological Diversity, 5 June 1992, ATS 32 (entered into force 29 December 1993) (CBD).

United Nations Convention on the Law of the Sea, 10 December 1982, ATS 31 (entered into force 16 November 1994).

Vienna Convention on the Law of Treaties, 23 May 1969, ATS 2 (entered into force 27 January 1980) (VCLT).

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## ViSdP

Prof. Dr. Mark G. Lawrence, Managing Scientific Director

**April 2022**



# 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

understanding 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.

**Project duration:** June 2017 – May 2022

**Coordinator:** Institute for Advanced Sustainability Studies (IASS)

**Implementing partners:** BirdLife International, Institute for Sustainable Development and International Relations (IDDRI), International Ocean Institute (IOI), Universidad Católica del Norte, WWF Colombia, WWF Germany

**Regional partners:** Secretariat of the Comisión Permanente del Pacífico Sur (CPPS), Secretariat of the Abidjan Convention

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