

Fisheries and ABNJ: Implementation Agreement or Alternatives

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Overview

1. Context
2. The inclusion of fisheries?
3. ABNJ Agreement and fisheries: reading between the lines
4. Options to reconcile 'in' and 'out' positions
 1. General principles
 2. Institutions and enhanced cooperation
 3. Conflicts and compatibility clause
5. Fisheries: a reality check?

ABNJ Agreement: Context

- Unfinished agenda
- Regulatory lag and governance gaps
- Fisheries: Are they in or out?

Inclusion of Fisheries?

- Political not legal issue?
- Fisheries should be **included**:
 1. Fishing is main threat to biodiversity
 2. Need for an integrated approach
 3. **As a minimum ABNJ Agreement will indirectly affect fisheries**
 4. 'Moment in time'
- Fisheries should be **excluded** because an ABNJ Agreement must not should be interpreted and applied in a manner which would not undermine existing instruments, frameworks and bodies.

ABNJ Agreement and Fisheries

- Mysterious disappearance of ‘fish’.
- Section A: areas of convergence
 - Non-prejudice of rights under UNCLOS
 - List of 21 general principles
 - Management tools: ABM and EIA
 - Need for institutional framework
- Section B: main areas of divergence:
 - CHM or Freedom of high seas
 - Precise nature of new body

Can positions be reconciled?

- Creative solutions?
 - Proper framing of fisheries in ABNJ Agreement: eg General Principles
 - Enhanced cooperation
 - Conflicts and compatibility clause



21 General Principles...'

1. Respect for the (rule of) law of the sea;
2. Protect and preserve the environment
3. Duty to cooperate
4. Science-based approach
5. Precautionary approach
6. Ecosystem-based approach
7. Sustainable and equitable use
8. Public availability of information
9. Transparent and open decision-making
10. Stewardship of the environment

	1	2	3	4	5	6	7	8	9	10
CECAF	?		+	+					?	
SWIOFC	?		+	+					?	
WECAFC	?		+	+	+	+		+	?	
APFIC	?	?	+	+				+	?	
GFCM	?	?	+	+	+	+	+	+	?	
IOTC	?		+	+			+	+	?	
RECOFI	?		+	+	+				?	
CCAMLR	?	?	+	+	?	+	+	+	?	
CCSBT	?		+	?					?	
NAFO	?	+	+	+	+	+	+	+	?	
NEAFC	?	?	+	+	+	+	+	+	?+	
SEAFO	?		+	+	+	+	+	+	?	
SRFC	?		+		+	+			?	
ICCAT	?		+	+				+	?	
SIOFA	?	+	+	+	+	+	+	+	?	
NPAFC	?		+	+				+	?	
NPFC	?	+	+	+	+	+	+	+	?	
WCPFC	?	+	+	+	+	+	+	+	?	
SPRFMO	?	+	+	+	+	+	+	+	?	
	1	2	3	4	5	6	7	8	9	10

Governance Options for ABNJ

- Institutional options??
- Role of ‘enhanced cooperation’

The text would affirm the importance of Enhanced cooperation and coordination between relevant legal instruments and frameworks and relevant global regional and sectoral bodies, with regard to area-based management tools, including marine protected areas, without prejudice to their respective mandates

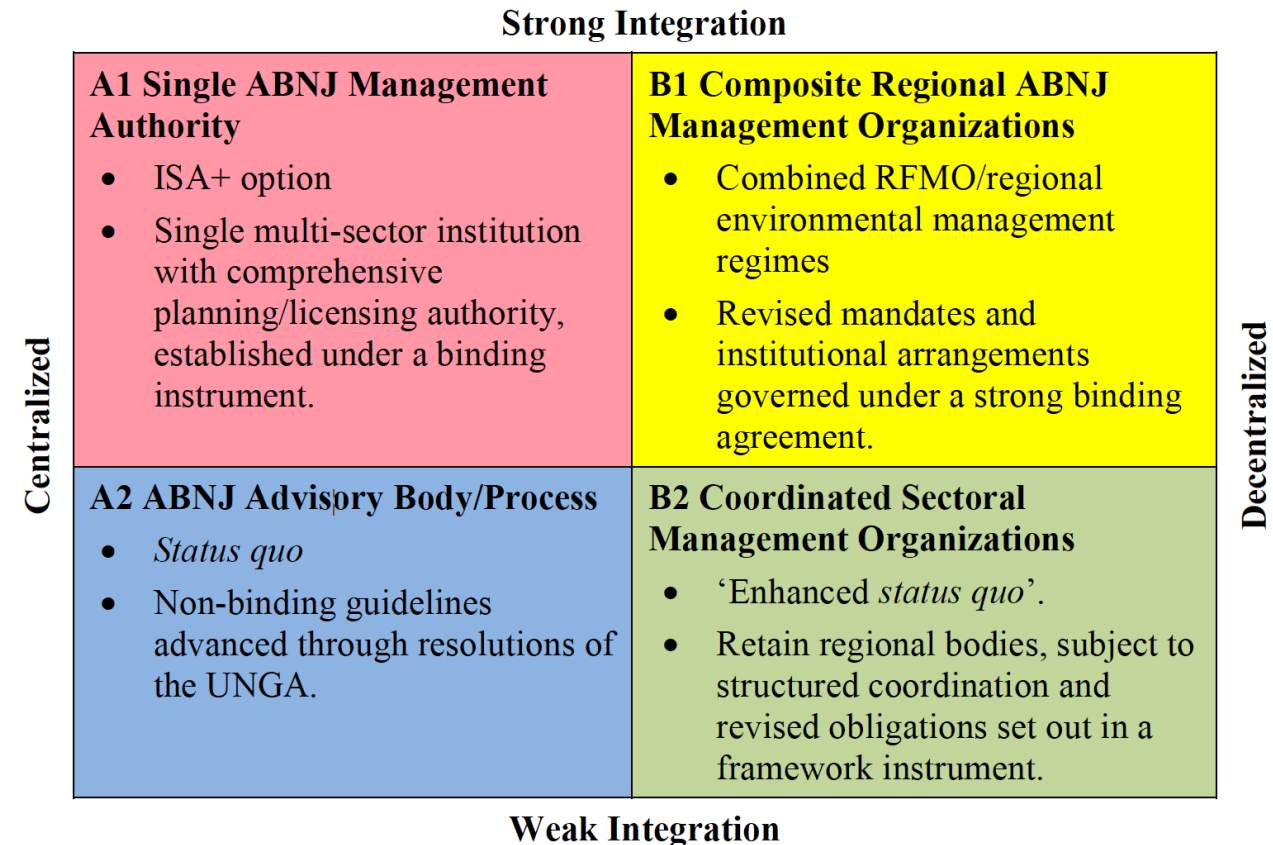


Figure 1: Scenarios and characteristics of institutional arrangements for ABNJ

Enhanced Cooperation

- ‘Ordinary Cooperation’: eg UNCLOS Articles 63(2), 64, 118, 197, 242 and 243 of UNCLOS
- Enhanced cooperation?
 - New models: non-regression, asymmetrical cooperative processes, clear targets
 - Analogies: undelimited sea areas? Responsibility to Protect
 - Cooperative structures

Conflict and Compatibility Clauses

- Art 4 UNFSA: ‘Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.’
- Art 7 UNFSA: ‘Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible ...’



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Threats to Marine Biodiversity: A fisheries reality check

- Destructive fishing practices
- Pollution
- Overfishing
- Subsidies
- Governance gaps...
 - Discreet high seas stocks