



**VICTORIA  
UNIVERSITY  
WELLINGTON**

TE WHARE WĀNANGA  
O TE ŪPOKO O TE IKA A MĀUI



**BBNJ and the Limits of the Commons:  
Spatial and Functional Complexities**

Associate Professor Joanna Mossop  
Faculty of Law  
Victoria University of Wellington  
New Zealand

and

Professor Clive Schofield  
Head of Research,  
WMU-Sasakawa Global Ocean Institute  
World Maritime University  
Sweden

*Biodiversity Beyond National Jurisdiction:  
Intractable Challenges and Potential Solutions*

Center for Oceans Law and Policy

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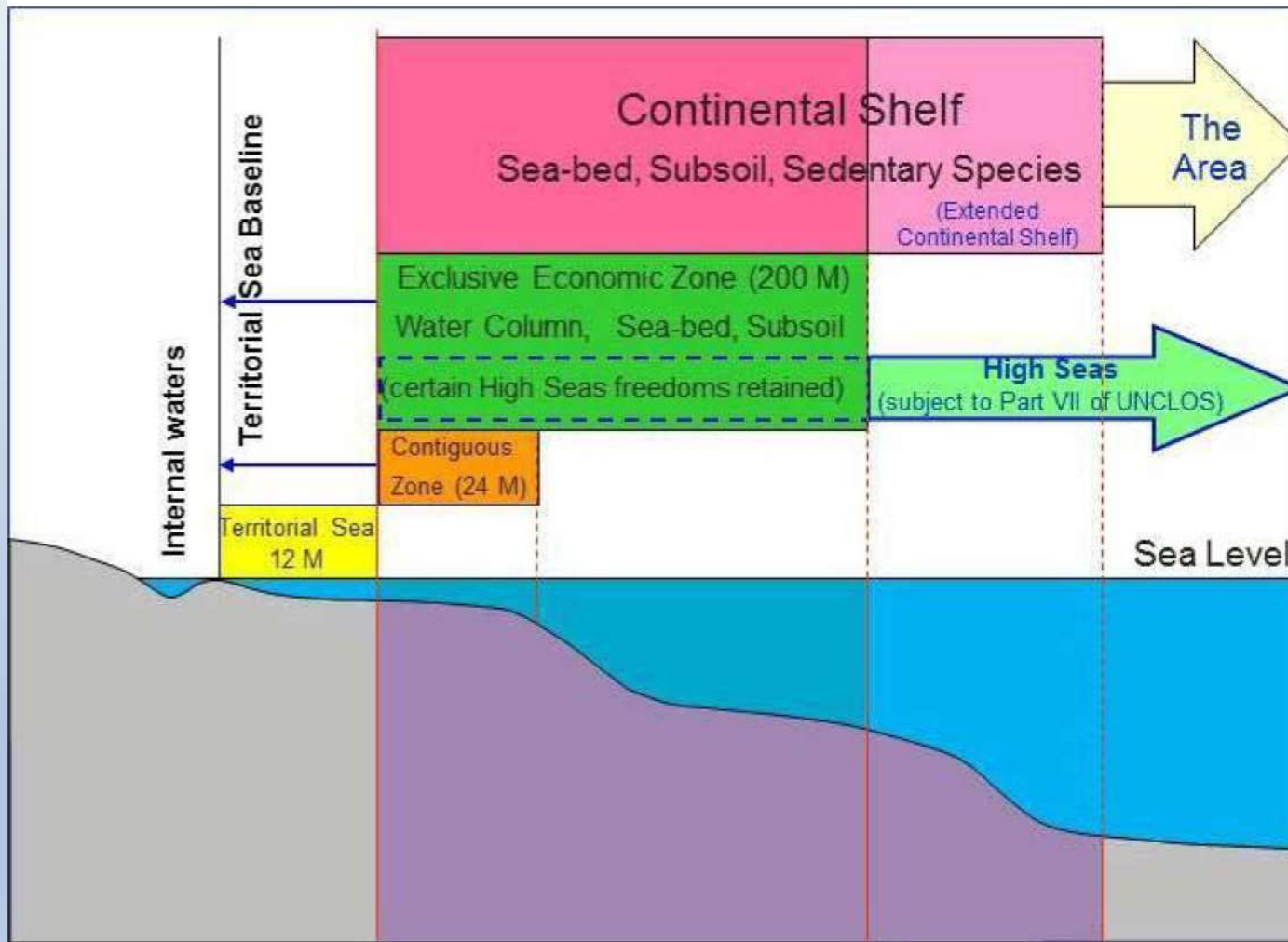
14-16 May 2019

# Presentation Outline

1. Spatial uncertainties
2. Legal Implications



# Overlapping Zones



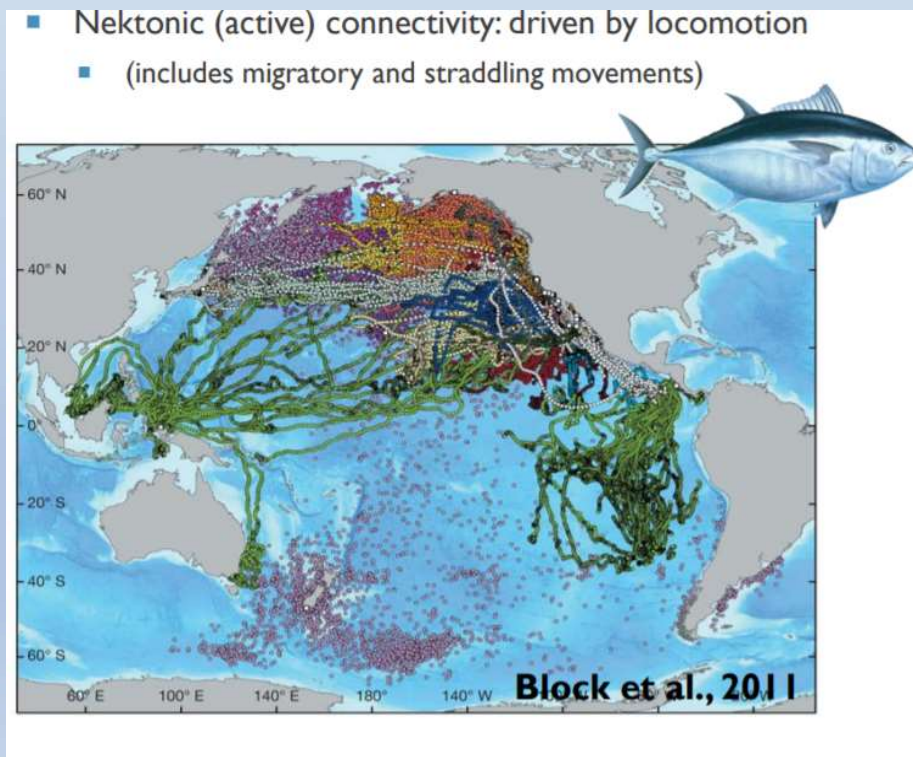


# The Challenges of Connectivity

## Between Activities, Zones, Layers and Ecosystems

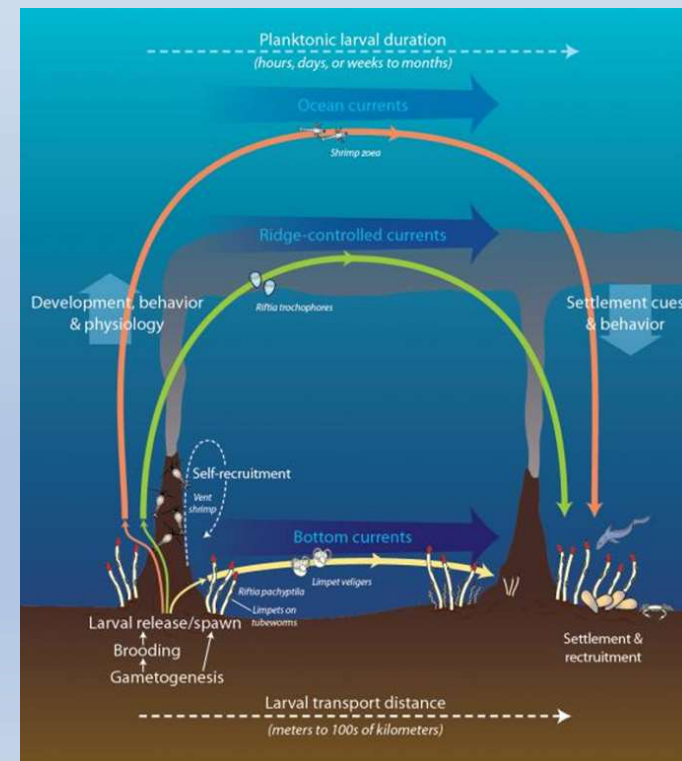
- **Activities** on the seabed impact on the water column and vice-versa
- **Ecological interconnectivity** between zones both horizontally and vertically

**Horizontal connectivity:** passive (ocean current driven) and active (e.g. migratory species)



Source: Guillermo Ortuño Crespo

**Vertical connectivity:** between seabed and water column (e.g. stages of life cycle)



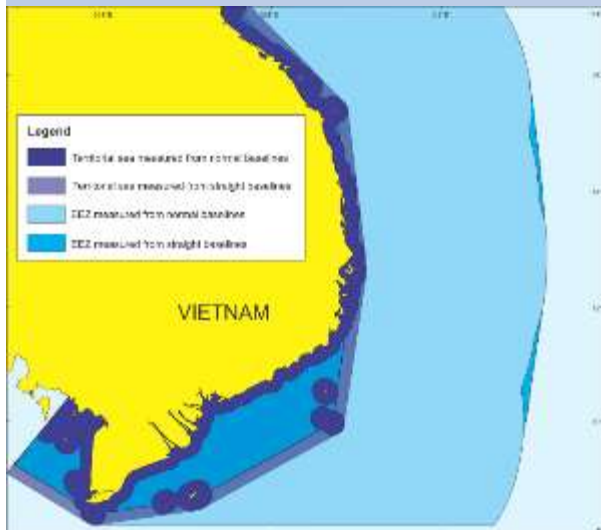
Source: Woods Hole Oceanographic Institution

# A Strange Kind of Fish...

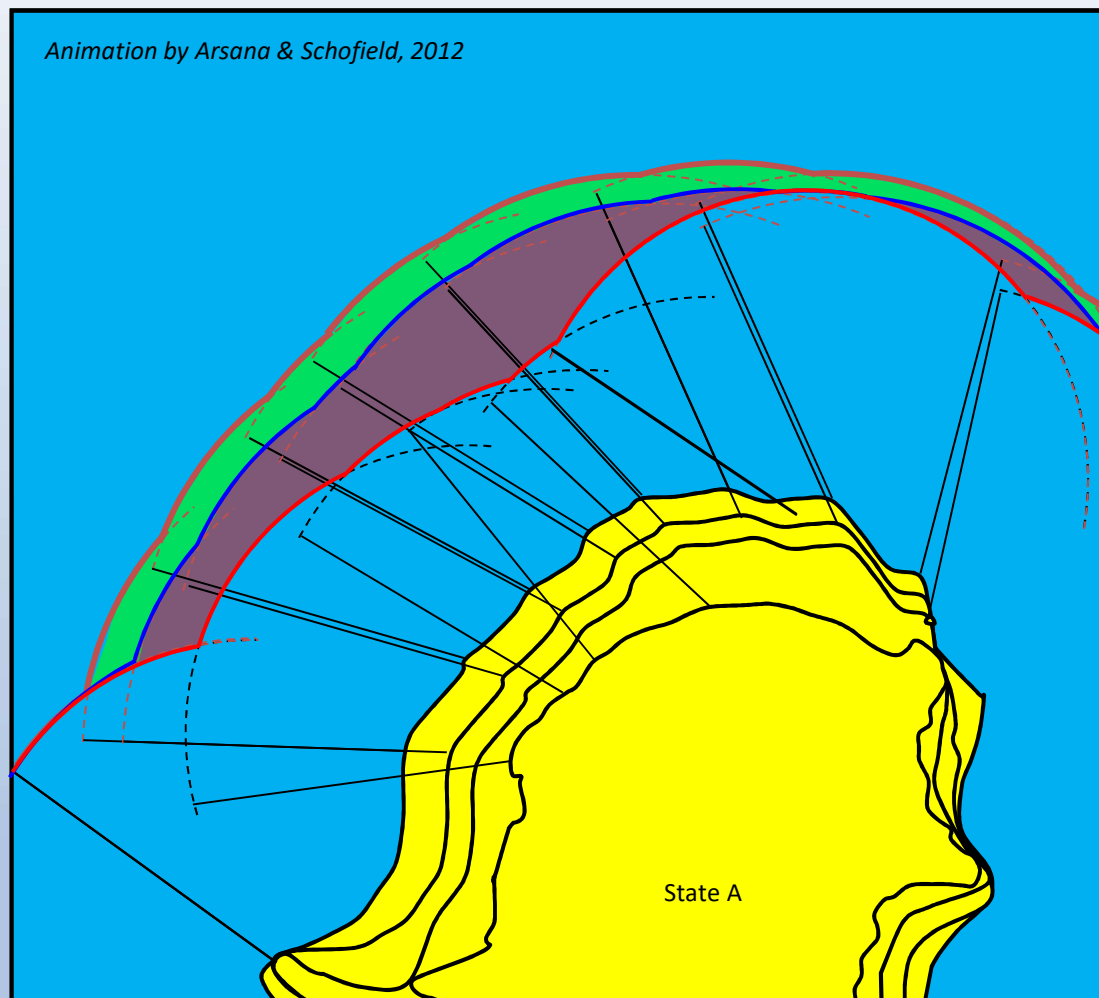


# Uncertain Outer Limits

- Many States make unclear ambit claims and have yet to deposit charts or coordinates with UN (LOSC, Article 75)
- Excessive claims:
  - Excessive straight baseline claims
  - Overly expansive claims from islands
- Disputed areas
- Dynamic coasts



# Ambulatory Baselines and Shifting Limits





# Slow Progress in Delineating Outer Continental Shelf Limits Beyond 200 M

- Coastal States must submit information to the CLCS (LOSC, Article 76(8))
- 83 submissions so far
  - Plus 47 submissions of preliminary information with 19 still outstanding
- Over **37 million km<sup>2</sup>** seawards of 200 M EEZ limits
- Less than one-third have received recommendations from CLCS
- Numerous overlaps between submissions totalling over **3.3 million km<sup>2</sup>**
- CLCS not mandated to deal with outer continental shelf disputes



# Legal Implications: Scope of the Treaty

“*Decides* to convene an intergovernmental conference ... to elaborate the text of an international legally binding instrument 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” UNGA Res 72/249

- Does the treaty only apply only to ***activities*** in ABNJ?
- Can it also elaborate on coastal state rights and duties?



# Managing Complexity

**Issue One:** How to manage the interaction between extended continental shelves and the ABNJ?

- A particular issue for MGRs: what does “sedentary species” mean in that context?
  - A new definition for the purposes of MGR?
  - Expanded role for coastal state in return for additional responsibilities?
- But also: ABMT/MPAs and EIAs

# Managing Complexity

**Issue Two:** How to manage uncertainty over boundaries/jurisdiction?

- Where no CLCS recommendation
  - Treat as within national jurisdiction until a CLCS recommendation is issued
  - With overlapping claims, could request agreement on extent of the outer limits for the purposes of the BBNJ Treaty.
- Where more than one State claims an EEZ or CS: who is the coastal State?
  - Assume both are the coastal State? (MPAs/EIAs)
  - Trust arrangement until settlement of claims? (MGRs)



# *Thank you!*



*"I don't know why I don't care about the bottom  
of the ocean, but I don't."*

