



International Ocean Governance: Policy

Brief

2014

Introduction

There are a range of legal instruments, institutions, and organizations that collectively establish rules and policies for managing, conserving, and using the ocean. The United Nations Convention on the Law of the Sea (UNCLOS) provides the overarching legal framework for ocean governance and management on a global scale, but there are a number of other important ocean governance-related institutions, instruments and processes.

This document provides a brief overview of those institutions and processes that are most relevant to multi-sectoral business and industry interests, with a particular emphasis on opportunities for industry to get involved in the policy-making process. It does not include policies, institutions, and processes that are primarily relevant to a single sector. After first reviewing key aspects of UNCLOS, this document discusses other key ocean policy and governance processes and bodies. A glossary of terms is provided at the end of the document (items defined in the glossary are indicated in **bold** within the text). For reference, Table 1 provides a more inclusive list of ocean governance instruments, processes, and institutions and indicates which of these are covered in detail in this document.

Table 1. Major International Ocean Institutions and Instruments
(Items in *black font* are covered in detail.)

Short Name	Full Name	Type
UNCLOS	United Nations Convention on the Law of the Sea	Instrument
ITLOS	International Tribunal on the Law of the Sea	Institution
ISA	International Seabed Authority	Institution
RFMOs	Regional Fisheries Management Organizations	Institution
FSA	Agreement For The Implementation Of The Provisions Of UNCLOS Relating To The Conservation And Management Of Straddling Fish Stocks And Highly Migratory Fish Stocks	Instrument
Part XI	Agreement relating to the Implementation of Part XI of the United Nations convention on the Law of the Sea of 10 December 1982	Instrument
<i>Other United Nations Ocean Governance Arrangements</i>		
DOALOS	Division for Ocean Affairs and Law of the Sea	Institution
SPLOS	States Parties to the Law of the Sea	Process
ICP	Informal Consultative Process on Oceans and the Law of the Sea	Process
BBNJ	<i>Ad Hoc</i> Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction	Process
UNCED UNSD	United Nations Conference on Environment and Development (UNCED, Rio de Janeiro, 1992) (Rio Conference); World Summit on Sustainable Development (WSSD, Johannesburg, 2002); Rio+20 (Rio De Janeiro, 2012)	Process
<i>Sustainable Development Goals</i>		
<i>Other Important Intergovernmental Arrangements</i>		
CBD	Convention on Biological Diversity	Instrument
COP	Conference of the Parties	Process
RSC	Regional Seas Conventions	Instruments
CMS	Convention on Migratory Species	Instrument
GPA	Global Programme of Action for the Protection of the Marine Environment from land-based Activities	Instrument
IWC	International Whaling Convention/Commission	Instrument Institution
CITES	Convention on International Trade in Endangered Species	Instrument

1. UNCLOS

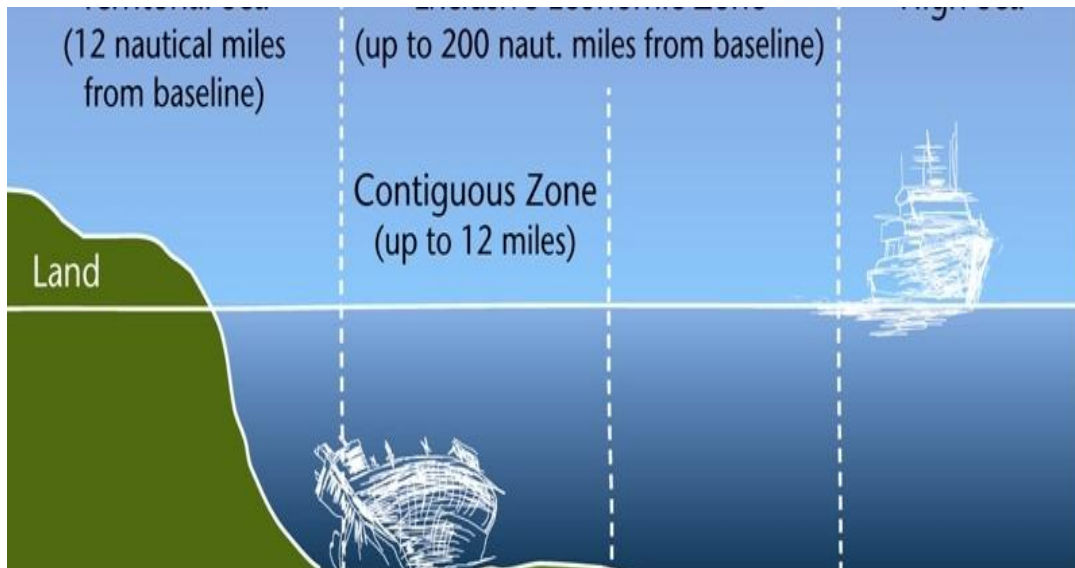
The United Nations Convention on the Law of the Sea

Introduction

The United Nations Convention on the Law of the Sea (**UNCLOS**) is an international treaty often recognized as the “constitution for the oceans.” Although governments adopted the treaty text in 1982, UNCLOS did not have enough ratifications to enter into force until 1994. To date, [157 countries](#) have signed and agreed to UNCLOS; notably, the U.S. is one of the few countries that have not signed this treaty. With very important implications on political and economic authority for various activities, UNCLOS establishes a number of key definitions for delineating areas of the ocean (Figure 1):

- *Territorial Sea*: Water column and seabed extending 12 nautical miles from the coast.
- *Contiguous Zone*: Water column and seabed extending up to 12 nautical miles from the boundary of the territorial sea.
- *Exclusive Economic Zone (EEZ)*: Water column and seabed extending up to 200 nautical miles from the coast.
- *Continental Shelf*: Relatively shallow area of seafloor adjacent to the coast that, in some instances, may extend beyond the EEZ.
- *High Seas*: Water column beyond the EEZ.
- *The Area*: Seabed beyond the EEZ.

Figure 1. Maritime Zones established by UNCLOS



(Figure credit: UNESCO)

Activities Governed by UNCLOS

UNCLOS establishes regulations for a number of different maritime activities, including shipping, mining, fishing, laying of cables and pipelines, marine environmental protection, and marine scientific research (MSR).

Shipping

UNCLOS affords vessels the right of innocent passage in almost all areas of the ocean. However, UNCLOS gives coastal states a great deal of authority within their territorial waters, and these states have the right to apply and enforce their own laws on foreign merchant shipping. These laws can include anything from the prohibition of specific substances being carried (e.g. nuclear or noxious substances) to the temporary suspension of innocent passage. Rights of innocent passage are much less restricted in the EEZ, with the notable exception that coastal states may take enforcement action in response to any egregious violations of their pollution control legislation. The International Maritime Authority (IMO) governs shipping activities on the high seas.

Mining

Mining activities within the territorial sea and EEZ are subject to the rules and regulations established by the coastal state. UNCLOS established the International Seabed Authority (**ISA**) to govern all mining activities occurring in the Area (the seabed beyond national jurisdiction). The third chapter of this document discusses the ISA in greater detail.

Fishing

Foreign vessels may not fish within a coastal state's territorial waters. A coastal state may allow foreign vessels to fish within its EEZ and may also charge foreign fishing vessels an access fee in addition to imposing specific regulations, quotas, and requirements for fishing within its EEZ. There is no centralized authority for fishing in the high seas, although a number of Regional Fisheries Management Organizations (**RFMOs**) have been established to govern particular areas and/or fish stocks of the high seas.

Cables and Pipelines

All states are allowed to lay cables and pipelines in the EEZ, Continental Shelf, and on the high seas. However, within the EEZ and on the Continental shelf, the states or parties laying the submarine cables or pipelines must obtain the consent of the relevant coastal state with respect to the course of the cables/pipelines. In all areas, states must take into account existing infrastructure, the interests of other marine users, and environmental impacts.

Environmental Protection

UNCLOS outlines the protection and preservation of the marine environment as a fundamental duty of states and it calls for states to cooperate on a global scale in carrying out this duty. The IMO is identified as the authority through which vessels must address vessel-source pollution. The 1973 International Convention for the Prevention of Pollution from Ships, as Modified by the Protocol of 1978 Related

There to **(MARPOL)** is the primary source of international standards for controlling incidental vessel-source pollution and it is arguably the most important convention under the IMO. Marine pollution by dumping of wastes is regulated by the 1972 IMO London Convention and the 1996 Protocol to the London Convention **(LC/LP)**. With respect to land-based and atmospheric pollution (which constitutes almost 80% of marine pollution), UNCLOS obliges states to adopt laws and regulations to prevent, reduce, and control pollution from land-based sources. The 1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities **(GPA)** provides national and regional authorities with guidance on establishing these regulations. The United Nations Environment Programme **(UNEP)** administers and coordinates the GPA program.

Marine Scientific Research

UNCLOS recognizes the right of *all* states, not only those that are a signatory to UNCLOS, to conduct MSR. Four principles limit this right on the high seas:

1. Peaceful purposes.
2. Use of appropriate scientific methods.
3. Without interfering with other oceanic uses.
4. Compliance with regulations for the protection and preservation of the marine environment.

MSR in the EEZ is subject to the consent of the coastal state. However, UNCLOS stipulates that coastal states give consent for MSR if it is carried out “exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind.” However, coastal states may withhold consent for MSR related to the exploration and/or exploitation of natural resources. MSR is most restricted within territorial waters, where any parties wishing to engage in MSR must gain the express consent of the coastal state and submit to any rules or conditions outlined by the coastal state. There is no obligation for the coastal state to give its consent to MSR within territorial waters, regardless of the nature of the MSR.

2. DOALOS

The United Nations Division for Ocean Affairs and the Law of the Sea

Introduction

Three processes actively deal with UNCLOS-related issues, all of which are hosted by the United Nations Division for Ocean Affairs and Law of the Sea (**DOALOS**):

1. States Parties to the Law of the Sea (SPLOS).
2. Informal Consultative Process on Oceans and the Law of the Sea (ICP).
3. Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ).

The latter two are open to non-party states and observers and are discussed in greater length later in this chapter. The annual SPLOS meetings are restricted to UNCLOS parties, with additional meetings as necessary. Some of the primary functions of the SPLOS meetings are to elect members of the Commission on the Limits of the Continental Shelf (**CLCS**) and to elect members to the International Tribunal for the Law of the Sea (**ITLOS**).

ICP: Informal Consultative Process on Oceans and the Law of the Sea

The ICP was created in 1999 by the UN General Assembly (UNGA), largely in response to the UN Commission on Sustainable Development's recommendation for greater international coordination and cooperation on ocean governance. The purpose of the ICP is to facilitate the UNGA's annual review of developments in ocean affairs and the law of the sea. In particular, the ICP suggests particular issues that the UNGA should consider and highlights areas where cooperation and coordination of ocean governance can be improved.

The ICP meets annually and has a discussion panel on specific topics each year. The most recent discussion topics have been: Marine Renewable Energies (2012); Impacts of Ocean Acidification on the Marine Environment (2013); and the Role of Seafood in Food Security (2014).

ICP and the Ocean Business Community

The ICP plays a role in setting the ocean agenda at the international level and is a venue for dialogue between interested parties on the annual topics. The business community can participate in the following ways: becoming or coordinating with an observer, participating in one of the formal side events, or serving on (or coordinating with a member of) a Discussion Panel.

ICP meetings are open to all UN member states, parties to UNCLOS, intergovernmental agencies with ocean competence, and entities invited to participate as observers. The complete list of persons and entities that participated at the most recent ICP meeting can be found on the [UN's ICP webpage](#). The ocean business community has participated via the WOC during some years. In addition, the shipping industry sometimes participates via the International Chamber of Shipping.

The ICP allows for observers and other entities to give presentations during side events, which are often well attended by government representatives. The Discussion Panel constitutes a bulk of the agenda of the ICP meetings, and experts from government and elsewhere are invited serve on the panel. The [list of panelists for the most recent ICP meeting](#), as well as their presentations, can be found on the ICP website.

The exact dates of the 2015 ICP meeting have not yet been set. However, the meeting is likely to occur in late May/early June 2015.

BBNJ: Working Group on Marine Biodiversity in Areas Beyond National Jurisdiction

Introduction

The *Ad Hoc* Open-ended Informal Working Group meeting to study issues relating to the conservation and sustainable use of BBNJ is hosted by DOALOS and sometimes occurs multiple times per year in order to provide recommendations to the UNGA. The first BBNJ meeting occurred in 2006. Initially, the meetings were tasked with studying four topics:

1. Past and present UN activities related to BBNJ.
2. Scientific, technical, economic, legal, environmental, socio-economic, and other aspects of the issues.
3. Questions and issues that require more detailed background studies.
4. Options for international cooperation for conserving and sustainably using BBNJ.

Recent Developments

A majority of UNCLOS Parties has felt that the current governance regime is insufficient to manage high seas resources and biodiversity. As a result, they have requested that the BBNJ meetings to focus on the scope, parameters, and feasibility of creating an “implementing instrument” for UNCLOS. The Co-Chairs of the BBNJ meeting provide a summary of the items discussed during the meeting, which is made available via [the DOALOS website](#).

Key issue: UNCLOS Implementing Agreement

The biggest issue at the most recent BBNJ meetings is whether or not the body should recommend that the UNGA adopt a resolution calling for an “implementing agreement” for UNCLOS.

To date, there have been two agreements that implement specific sections of UNCLOS:

1. The Fish Stocks Agreement establishes international standards for the use and conservation of straddling and highly migratory fish stocks.
2. UNCLOS Part XI establishes the International Seabed Authority (ISA) and subsequent mining regulations.

It should be noted that if the BBNJ does recommend that the UNGA call for an implementing agreement and if the UNGA responds positively, it would start the process of negotiating the terms of such an implementing agreement. Such negotiations would likely take many years.

Within the context of discussing an implementing agreement, several key questions are currently being debated:

Marine Genetic Resources (MGR) and Bio-prospecting

- Can genetic materials found in the high seas be patented?
- If so, is there any authority that should oversee this process?
- Are MGRs considered to be the “common heritage of mankind”?
- If so, should an access and benefit-sharing scheme be established to ensure that all mankind, particularly developing nations, enjoys the benefits of MGRs?
- What would be the parameters of such a scheme?

Area-Based Management

- If an implementing agreement were created, how would this agreement propose that areas beyond national jurisdiction be managed?
- What sorts of tools can be used to manage these areas?
- How will managing these areas impact industry, the environment, and society?

BBNJ and the Ocean Business Community

The next BBNJ meeting will be in New York City from 20-23 January 2015. This meeting is the final one scheduled before its recommendations go to the UNGA. While it is possible that an additional meeting will be called for, the group must make its recommendation to the UNGA by the end of 2015. It is unclear what the status of BBNJ meetings will be after it makes its recommendation to the UNGA. The 2015 BBNJ meeting is a critical opportunity for the ocean business community to inform and shape the Law of the Sea and ensure there is a balanced dialogue that includes industry input.

While non-state parties do not have the power to vote on matters during BBNJ, international governmental organizations (IGOs) and non-governmental organizations (NGOs) are allowed to make statements during the meeting, give presentations during the lunch break, and informally speak with government representatives. WOC has participated in the BBNJ meetings, most recently through its partnership with the International Chamber of Commerce (ICC), which has full UN accreditation.

3. ISA

Introduction

The International Seabed Authority (ISA) became fully operational in 1996. The ISA is the recognized authority for all mining activities in areas beyond national jurisdiction. There are three principal organs of the ISA: the *Secretariat*, the *Assembly*, and the *Council*.

- *Secretariat*: Primarily responsible for carrying out the administrative tasks of the ISA.
- *Assembly*: Decision-making body of the ISA, establishes general policies, and adopts regulations, rules, and procedures related to all stages of mining. This body also considers and approves rules, regulations, and procedures related to Access and Benefit-sharing (ABS). However, decisions of the Assembly must be based on the recommendations of the Council.
- *Council*: Executive arm of the ISA and has the general responsibility for supervising and coordinating the implementation of the deep seabed mining regime. There are 36 members of the Council, elected by the Assembly; there are specific regulations with respect to types of countries that must be represented on the Council. The Council approves plans of work for exploration or exploitation.

In addition to the three principal bodies, there are also two subsidiary ISA bodies: the *Finance Committee*, which oversees financing and the financial management of the ISA, and the *Legal and Technical Commission*, which deals with scientific, technical, and legal issues. One of the key duties of the Legal and Technical Commission is to review mining applications. If the application meets all criteria, the Commission passes it on to the Council, with the recommendation that the Council approve the application by simple majority. The Council then automatically approves the application *unless* two-thirds of members vote to reject an application.

The ISA recognizes three main stages of mining: prospecting, exploration, and exploitation. Prospecting includes “the search for deposits of polymetallic nodules in the Area...*without* any exclusive rights.” This may be freely undertaken with minimal limitations, as a prospector only needs to notify the ISA. Prospectors may recover “a reasonable amount of minerals to be used for testing.” The ISA defines exploration as “searching for deposits of polymetallic nodules in the Area *with* exclusive rights” and includes “studies of technical, economic, commercial and other appropriate factors.” Exploitation can be defined as “the recovery for commercial purposes of polymetallic nodules in the area and the extraction of minerals therefrom.” Entities interested in either exploration or exploitation activities must first submit an application to and receive approval from the ISA. Currently, the ISA has entered into 15-year contracts for exploration with [seventeen different contractors](#). A contractor can be a government or a private company that is based in and sponsored by a country that is a party to UNCLOS.

ISA and the Ocean Business Community

Developments Important to the Ocean Business Community

The ISA has recently released regulations for prospecting and exploration of deep-sea mineral resources, specifically polymetallic nodules, polymetallic sulfides, and cobalt-rich crusts. The collective regulations are referred to as the [mining code](#). The mining code outlines requirements for applications to explore deep-sea mineral resources. Important details include:

- *Sponsorship*: Applicants must obtain sponsorship from the state(s) of which it is a national or whose nationals effectively control it. The sponsoring state must be a party to UNCLOS. U.S.-based businesses cannot apply for mining contracts because the U.S. has not ratified UNCLOS.
- *Exploration*: Exclusive rights for exploration of a particular site last for 15 years. After that period ends, the contractor must: renounce its rights in the area, apply for a 5-year extension for exploration, or apply for a plan of work for exploitation.
- *Reserve*: Half of the site (of equal commercial value) must be set aside as a reserve. The ISA decides which half will be the reserve upon receipt of application. Within the reserve, exploration is allowed, but only by the ISA and/or developing states. If, within 15 years, exploration by ISA and/or developing states has not occurred, the original contractor may apply to explore the reserved site.
- *Fees*: The fee for an application for exploration is \$250,000, which must be paid at the time the application is submitted. When exploration begins, there is an additional, annual fee.

Commercial exploitation of deep-sea mineral resources cannot commence until the ISA releases regulations for the *exploitation* of mineral resources. While the ISA has yet to release such regulations, it is currently developing a regulatory framework for exploitation of mineral resources. The ISA accepted public comments on its development of the exploitation regulations from March until May 2014 and has made those comments publically available on its [website](#). Once exploitation regulations have been approved by the Legal and Technical Commission, the Council, and the Assembly, commercial exploitation of deep-sea mineral resources in areas beyond national jurisdiction will be allowed to commence.

How Businesses Can Get Involved

The ocean business community can get involved with the ISA by obtaining an exploration contract (described above), attending a [workshop](#), attending a [seminar](#), or attending (or coordinating with an NGO attending) a meeting of the Assembly, Council, or Legal and Technical Commission (as an observer).

At ISA workshops, experts from academic institutions, private and public enterprises, contractors, members of the Legal and Technical Commission, and member states exchange information on scientific and/or technical issues, discuss the ISA's programs of work, and make recommendations to the ISA.

ISA seminars bring together legal and scientific experts from the international community with national and regional governments for the purpose of improving regional cooperation in scientific research and marine mineral development.

Any NGO with a demonstrated interest in the matters discussed may request to attend meetings of the Assembly, Council, or Legal and Technical Commission as an observer. Observers are allowed to make oral and written statements during meetings. The next [annual session](#) of the ISA will be 6-24 July 2015 at the ISA headquarters in Kingston, Jamaica.

4. CBD

The Convention on Biological Diversity

Introduction

The Convention on Biological Diversity (**CBD**) was created in recognition of the value of biological diversity and in response to the rate of species extinction. It opened for signature at the 1992 UN Conference on Environment and Development (**UNCED**) and entered into force in 1993. 194 Countries are a party to the CBD, with the U.S. being a notable non-party. The CBD provides the global legal framework for action on biodiversity through three main objectives: conservation of biological diversity, sustainable use of the components of biological diversity, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

The CBD established three international bodies:

1. Conference of the Parties (COP): The COP is the governing and decision-making body of the CBD, which meets biennially to evaluate progress towards achieving CBD objectives and to make decisions that further the objectives of the CBD. COP meetings are open to observers unless at least 1/3 of the Parties object. In 2010, the COP created a Strategic Plan for Biodiversity 2011-2020 that identifies specific Biodiversity Targets.
2. Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA): The SBSTTA provides recommendations to the COP on technical aspects related to the implementation of the Convention and is comprised of government representatives and observers from scientific and other relevant organizations. It meets biennially, about 6 months in advance of the COP.
3. CBD Secretariat: The CBD Secretariat provides administrative support for CBD bodies and working groups and also supports member countries in implementing programs supported by CBD. The Secretariat operates under the auspices of the UNEP.

Important CBD Developments

Ecologically And Biologically Significant Marine Areas (EBSAs)

In 2008, the COP approved criteria to be used in the identification of ecologically and biologically significant marine areas (EBSAs). These areas are particularly important to the health of the ocean and may require special conservation and/or management attention, which can be achieved through environmental impact assessments (EIAs), Marine Protected Areas (MPAs), and a variety of other



Figure 2. Existing EBSAs recognized by the CBD

Map credit: <http://www.cbd.int/ebsa/>

mechanisms. Individual states and competent intergovernmental organizations may identify particular areas for EBSA consideration and those sites are then described in greater detail at regional workshops. The CBD Secretariat has, to date, organized nine regional workshops to apply the criteria below in order to identify and describe potential EBSAs. After the workshops, the SBSTTA prepares a report to evaluate whether the areas identified meet the scientific criteria for EBSA consideration.

The seven EBSA criteria are:

1. Uniqueness or rarity.
2. Special importance for life-history stages of species.
3. Importance for threatened, endangered or declining species and/or habitats.
4. Vulnerability, fragility, sensitivity, or slow recovery.
5. Biological productivity.
6. Biological diversity.
7. Naturalness.

The CBD regional workshops to date have identified 47 EBSAs. The results for two of the nine regional workshops, Western South Pacific and Wider Caribbean/Western Mid-Atlantic are shown in Figure 2. The EBSAs proposed at the other seven regional workshops are still being considered.

Environmental Impact Assessment (EIA)

At its 2000 meeting, the COP called for parties, governments, and other organizations to address biodiversity concerns through the use of EIA. This tool is used to identify the environmental, social, and economic impacts of a proposed project *prior* to project commencement. The aim is to predict environmental impacts in the planning stage so that negative impacts can be eliminated, minimized, or mitigated.

In 2012, the COP adopted voluntary guidelines for the consideration of biodiversity in EIAs and strategic environmental assessments (SEAs). The CBD EIA guidelines can be found on the [CBD website](#).

Underwater Noise

At its 2012 meeting, the COP called for the CBD Secretariat to collaborate with state parties, other governments, and other competent organizations (including the IMO and the IWC) to organize an expert workshop on underwater noise and its impact on marine and coastal biodiversity. This was convened in February of 2014 and the [Workshop Report](#) is available on the CBD's website. Attendees included experts representing governments, IGOs, and NGOs (including World Wildlife Fund (WWF), International Union for Conservation of Nature (IUCN), and WOC). The workshop focused on the following issues:

1. Major sources and trends in the prevalence and magnitude of underwater noise.
2. Role of sound in the behavior and well being of marine species and ecosystems.

3. Impacts of underwater noise on various types of species, as well as broader impacts on the marine environment and biodiversity.
4. Knowledge gaps regarding consequences for marine animals and other biota in the marine environment.
5. Gaps and limitations in existing guidance to minimize and mitigate the significant adverse impacts of underwater noise on marine biodiversity.
6. Development of acoustic mapping of areas of interest.
7. Means to promote research and awareness of the issue.
8. Potential measures that can be taken to minimize adverse impacts of underwater noise on marine biodiversity.
9. Indicators and frameworks for monitoring underwater noise.
10. Best management practices and capacity-building needs.

Following the workshop, the COP called for the relevant, competent organizations, including the IMO and the IWC, to take measures within their own organizations to minimize and mitigate adverse impacts of underwater noise on marine biodiversity.

Marine Protected Areas (MPAs)

One of the targets of the CBD's Strategic Plan for Biodiversity and the Aichi targets is to protect at least 10% of marine and coastal biodiversity. MPAs are a widely accepted tool for managing, conserving, and protecting designated marine areas. The CBD's program on MPAs aims to establish and maintain MPAs that are effectively managed and contribute to a global network of MPAs. In order to achieve this goal, the CBD's Marine and Coastal Program aims to:

1. Establish and strengthen national and regional systems of MPAs.
2. Enhance the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.
3. Achieve effective management of existing MPAs.
4. Provide support for monitoring national and regional MPAs.
5. Facilitate research to identify knowledge gaps in MPA management.

The CBD Secretariat issued a report providing technical advice for the establishment of MPAs, which can be found on its [website](#).

Access and Benefit-Sharing (ABS)

The CBD's Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol) entered into force on October 12, 2014. The Nagoya Protocol establishes a legal framework for ABS of genetic resources, including marine genetic resources within the EEZ through: domestic-level access obligations, domestic-level benefit-sharing obligations, and compliance obligations. The domestic-level access obligations for marine genetic resources within EEZs include:

1. Create legal certainty, clarity and transparency.
2. Provide fair and non-arbitrary rules and procedures.
3. Establish clear rules and procedures for prior informed consent and mutually agreed terms.
4. Provide for issuance of a permit or equivalent when access is granted.

Create conditions to promote and encourage research contributing to biodiversity conservation and sustainable use.

1. Pay due regard to cases of present or imminent emergencies that threaten human, animal or plant health.
2. Consider the importance of genetic resources for food and agriculture for food security.

The CBD outlines domestic-level benefit-sharing obligations, including that measures should provide for the fair and equitable sharing of benefits arising from the utilization of genetic resources with the contracting party and that any benefit-sharing measures are subject to mutually agreed upon terms. The CBD also provides a few clarifying definitions on the above obligations:

- Utilization includes research and development of genetic resources and commercialization.
- Benefits may be monetary (e.g. royalties) and non-monetary (e.g. research results).

Finally, compliance obligations for Contracting Parties include:

1. Ensure that genetic resources utilized within their jurisdiction have been accessed in accordance with prior informed consent, and that mutually agreed terms have been established.
2. Cooperate in cases of alleged violation of another contracting party's requirements.
3. Encourage contractual provisions on dispute resolution in mutually agreed terms.
4. Take measures regarding access to justice.
5. Take measures to monitor the utilization of genetic resources after they leave a country including by designating effective checkpoints at any stage of the value-chain.

CBD and the Ocean Business Community

The CBD encourages greater private sector engagement and also calls upon states to promote such engagement. The CBD encourages businesses to consider the revised [2012 International Finance Corporation Performance Standards](#) and to take action that will help implement the Strategic Plan for Biodiversity as well as achieve biodiversity targets:

1. Encourage their supply chain to report on progress made on mainstreaming the objectives of the CBD and the Aichi Biodiversity Targets.

2. Analyze the impacts, dependencies, opportunities, and risks of individual sectors as they relate to biodiversity and ecosystem services.
3. Consider covering the effects of their business operations on biodiversity and their reliance on ecosystem services, and adopt practices and strategies that contribute to achieving the goals and objectives of the CBD and the Aichi Biodiversity Targets.
4. Align their investments in support of the conservation and sustainable use of biodiversity and ecosystem services.
5. Continue dialogue with government on all relevant aspects of the national and international biodiversity agenda.
6. Collaborate with relevant organizations on the development of reporting standards on biodiversity.

Why the CBD Matters to Business

The decisions made by the CBD set international conservation standards for biodiversity and influence other conventions. Additionally, the targets and reporting requirements set by the CBD are likely to be implemented through national laws and policies. The [Guidelines on biodiversity-inclusive EIAs](#) are particularly important. In addition to influencing international and national policies, the CBD also influences investment policies and public opinion. The CBD serves as a forum for public, multi-stakeholder dialogue during the setting of international policy on marine biodiversity.

How Businesses Can Get Involved

Businesses can get involved with the CBD in a variety of ways:

- Register to attend the COP or SBSTTA and make presentations at side events.
- Submit candidates to be considered for an expert position in Ad Hoc Technical Expert Groups (meeting groups on specific technical issues related to the CBD's current work).
- Engage in dialogue with CBD Parties (e.g. national governments and regional groups).

WOC has participated in several CBD COPs and SBSTTAs over the past few years.

5. IWC

The International Whaling Commission

Introduction

The **International Whaling Commission (IWC)** was established by the International Convention for the Regulation of Whaling in 1946 and is charged with governing and monitoring whaling on a global scale. To date, 88 countries have signed the IWC Convention, with notable exceptions including Canada, Venezuela, the Philippines, and Indonesia. The IWC has a number of supporting bodies:

- Scientific Committee.
- Conservation Committee.
- Finance and Administration Committee.
- Aboriginal Subsistence Whaling Sub-Committee.
- Infractions Sub-Committee.
- Working Group on Whale Killing Methods and Associated Welfare Issues.

At its inception, the IWC established catch limits for commercial whaling in 1985. However, the IWC issued a moratorium on all commercial whaling. Commercial whaling can and does still happen, in spite of the moratorium, either by countries that are not party to the Convention or by countries that are members to the IWC Convention that take exception to the moratorium. The two most notable examples of member parties that continue to whale are Norway and Iceland, which both engage in small-scale whaling (<1,000 whales/year). It should be noted that whaling by both of these countries takes place almost entirely within their EEZ.

The IWC does allow for the taking of whales for scientific research. These whales can be sold commercially. Japan has engaged in whaling for scientific research since 1987, some years taking over 1,000 whales. In March 2014, the International Court of Justice ruled that Japanese whaling research lacked scientific merit, which would allow the IWC to reject Japan's whaling research proposals, thus effectively banning the practice. However, in September 2014, Japan stated that it plans to continue with its whaling program.

IWC and the Ocean Business Community

The IWC does much more than establish catch limits for commercial whaling, and its work in these other areas has implication for a variety of other ocean users. Two notable examples include ship strikes and marine sound.

Ship strikes

The IWC community has grown increasingly concerned about the number of whale collisions with vessels. The IWC has been collaborating with the IMO in order to mitigate these incidents. One of the major methods proposed for reducing ship strikes is the creation or amendment of Traffic Separation Schemes (TSS). TSSs are essentially ocean traffic lanes established via the IMO, typically in areas with confined navigation zones, around capes, or where ship traffic is particularly busy. TSSs could be used to reroute traffic around areas known to have high whale densities. The IWC held a workshop in June 2014 to discuss the issue of ship strikes in greater detail, particularly emphasizing the need for even greater collaboration with the IMO on this issue as well as the need to publicize the IWC ship strikes database (which can be found on the [IWC website](#)).

Marine Sound

Increasing anthropogenic sound in marine environments is of particular concern for whales and other cetaceans because vocalizing and hearing are critical for these animals to successfully communicate and hunt. Major sources of anthropogenic sound include: seismic surveys, military sonar, shipping, construction and other industrial activities. The IWC has been active in researching the impact of marine sound on whales, particularly in response to mass whale strandings associated with increased anthropogenic sound. The IWC has collaborated with other organizations, such IUCN, in order to develop mitigation strategies for marine sound which include:

- Ensuring that the sound activity is as short as technically possible.
- Surveying the area ahead of time to look for whales in the vicinity.
- Adjusting the activity either temporally or spatially to minimize contact with whales.

How Businesses Can Get Involved

Businesses can get involved with IWC activities in various ways:

- Participating as an NGO observer at an IWC meeting or collaborating with such an observer.
- Cooperating with and adopting IMO and IWC recommendations regarding minimizing ship strikes and marine sound.
- Collaborating with other organizations to further investigate potential mitigation options for minimizing impacts from ship strikes and marine sound.

The IWC meets every other year. The last meeting was in September of 2014; the plans for the 2016 meeting are not yet available.

Glossary of Terms

The Area: The seabed beyond the EEZ.

BBNJ: United Nations *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Commission on the Limits of the Continental Shelf (CLCS): The CLCS meets twice a year to consider states' proposals for the boundary of their continental shelf when that boundary exceeds the customary 200-mile Exclusive Economic Zone (EEZ). After considering a state's application and scientific evidence, the CLCS recommends an outer limit to the state's continental shelf.

Conference of the Parties (COP): The governing and decision-making body of the CBD meets biennially to evaluate progress towards achieving CBD objectives and to make decisions that further the objectives of the CBD.

Contiguous Zone: The water column and seabed extending up to 12 nautical miles from the boundary of the territorial sea.

Continental Shelf: The relatively shallow area of seafloor adjacent to the coast. In some instances, the continental shelf may extend beyond the EEZ.

Convention on Biological Diversity (CBD): The international treaty on the conservation of biological diversity on a global scale. One of the CBD's seven thematic programs is devoted to marine and coastal biodiversity.

Division for Ocean Affairs and Law of the Sea (DOALOS): The UN agency that manages many of the UN meetings related to the ocean.

Exclusive Economic Zone (EEZ): The water column and seabed extending up to 200 nautical miles from the coast.

Global Programme of Action (GPA) for the Protection of the Marine Environment from Land-Based Activities: The UNEP program that provides national and regional authorities with guidance on establishing regulations that protect the marine environment from land-based activities.

High Seas: The water column beyond the EEZ.

Informal Consultative Process on Oceans and the Law of the Sea (ICP): The annual meeting that suggests to the UNGA the new ocean issues that need to be considered and highlights areas where international action on current issues needs to be improved.

International Maritime Organization (IMO): The intergovernmental body of the UN system that is primarily responsible for governing international shipping. The IMO is composed of a number of different bodies: the Assembly (the highest governing body), the Council (the executive organ of the IMO), the Maritime Safety Committee (MSC), the Marine Environmental Protection Committee (MEPC), the Legal Committee, the Technical Cooperation Committee, and the Facilitation Committee. The IMO has 170 Member States.

Glossary of Terms, continued

International Seabed Authority (ISA): The UN body established under UNCLOS that is responsible for managing mineral resources in the deep seabed in areas beyond national jurisdiction. Only countries that have acceded to UNCLOS may participate in these mining activities.

International Tribunal on the Law of the Sea (ITLOS): The independent judicial body established under UNCLOS that settles disputes regarding the interpretation and application of UNCLOS.

International Whaling Commission (IWC): The intergovernmental organization governing the global conservation and management of whales and dolphins.

London Dumping Convention/Protocol (LC/LP): The IMO treaties that regulate marine pollution, specifically by prohibiting the dumping of waste. The London Protocol identifies exceptions to this. The LC/LP adopted the Ocean Fertilization Assessment Framework in 2010, which noted the potential for ocean fertilization to cause serious damage to the marine environment and urged parties to control and regulate ocean fertilization activities.

1973 International Convention for the Prevention of Pollution from Ships, as Modified by the Protocol of 1978 Related Thereto (MARPOL): The IMO treaty that is the primary source of international standards for controlling pollution and waste disposal from vessels.

Regional Fisheries Management Organizations (RFMOs): Intergovernmental bodies established to manage high seas fisheries as well as highly migratory and straddling fish stocks in the United Nations Fish Stocks Agreement (UNFSA), an implementing agreement of UNCLOS. The Food and Agriculture Organization (FAO) coordinates the activities of the 51 different RFMOs.

Regional Seas Conventions (RSC): Intergovernmental treaties established to manage common marine areas at a regional scale. For example, the RSC relevant to the North Atlantic is the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), which covers the Arctic Waters, the Greater North Sea, the Celtic Sea, the Bay of Biscay and the Iberian coast, and Wider Atlantic.

States Parties to the Law of the Sea (SPLOS): The countries that participate in UNCLOS and meet to elect Members of the ITLOS as well as members of the CLCS.

Territorial Sea: The water column and seabed extending 12 nautical miles from the coast.

The United Nations Conference on Environment and Development (UNCED, 1992): More commonly referred to the Rio Summit, UNCED was the first of the “Earth Summit” meetings and unprecedented with regards to number of attendees and scope. The **CBD** was a product of this meeting.

United National Environment Programme (UNEP): The intergovernmental body responsible for representing environmental issues within the greater UN system. Relevant UNEP subsidiary arrangements and bodies/meetings include the **RSC** and the **GPA**.