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UNDERSTANDING DEEP ATLANTIC ECOSYSTEMS

New International Legal Instrument on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction: Convergence and Divergence at the Prep Com

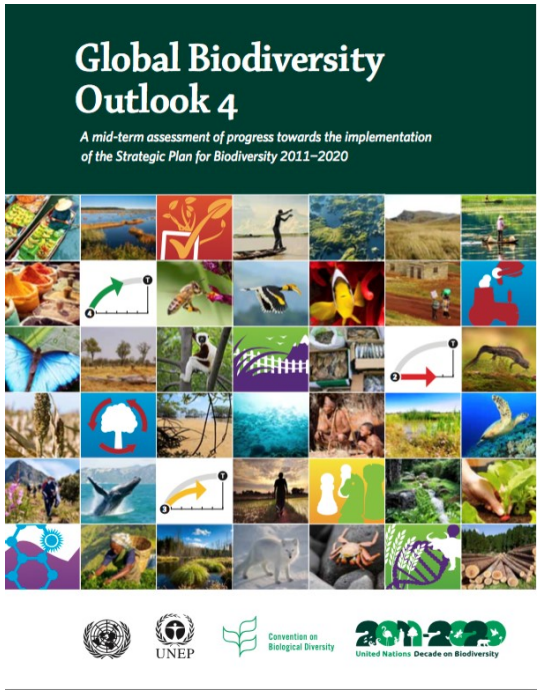
ATLAS General Assembly 2: 27 April 2017

David Johnson, Seascape Consultants Ltd and Ronan Long, NUIG and World Maritime University

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 678760 (ATLAS). This output reflects only the author's view and the European Union cannot be held responsible for any use that may be made of the information contained therein.

Overview

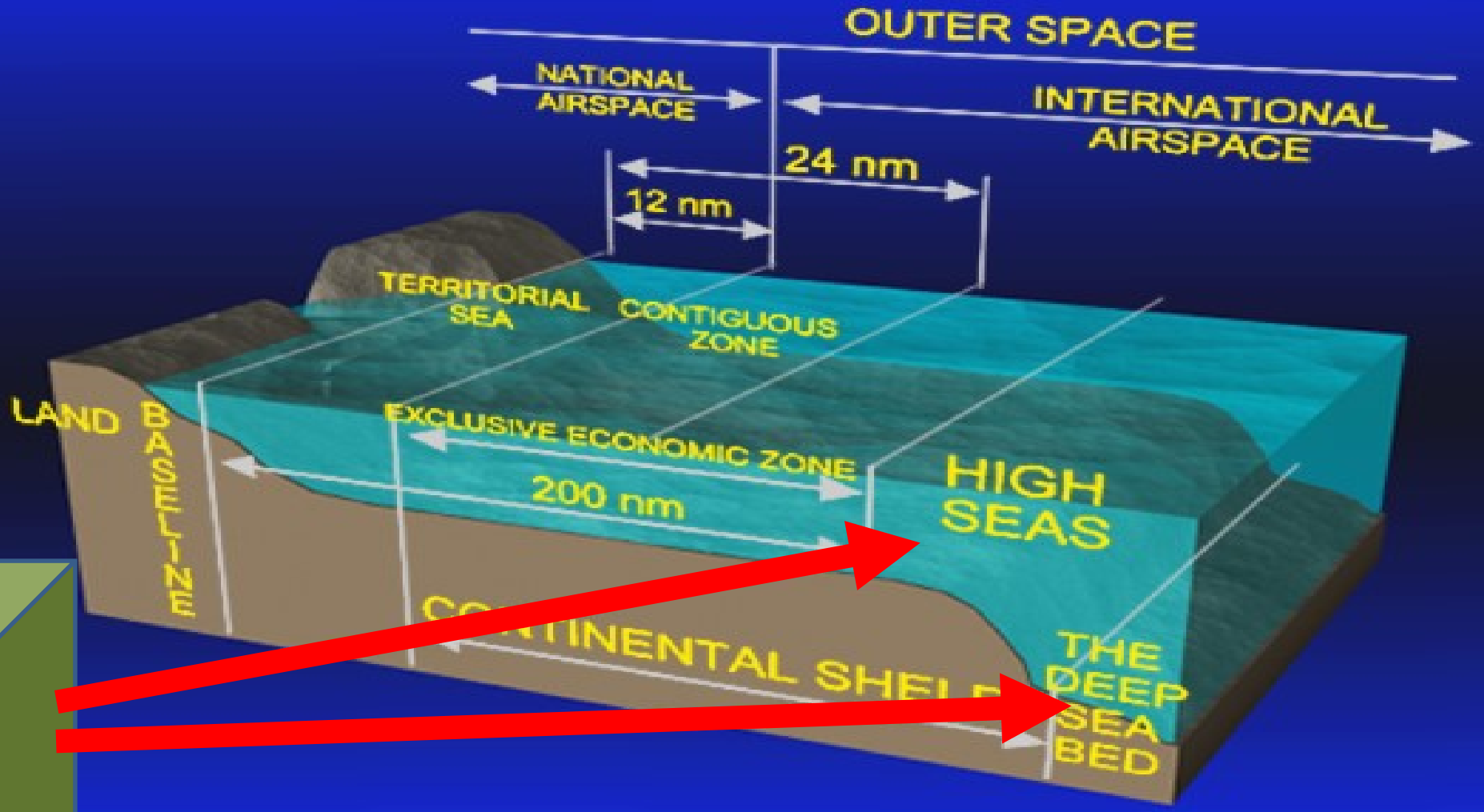
1. Negotiation Process
2. Convergence & Issues Requiring Further Discussion
3. Conclusions



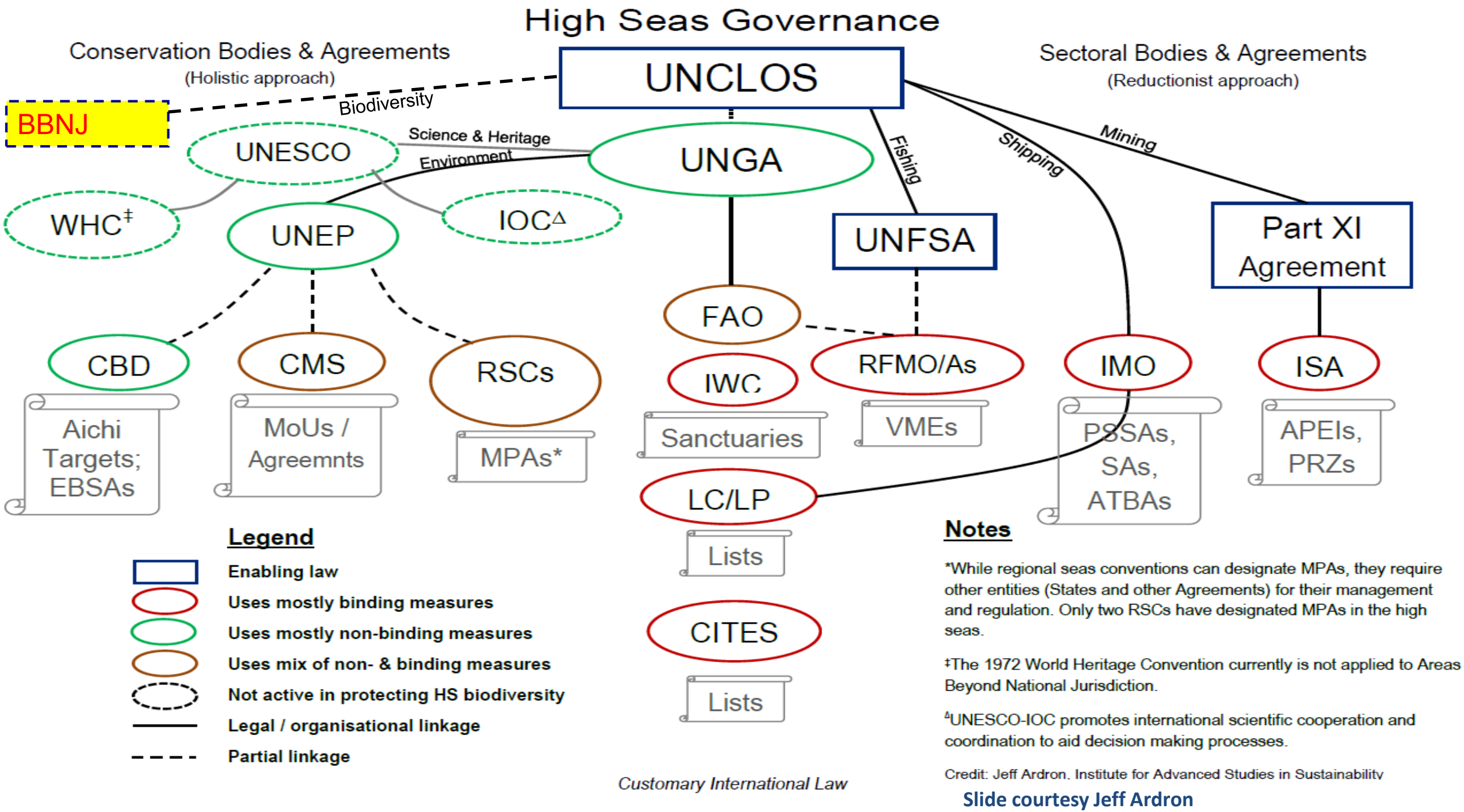
- Not meeting "most" of the Aichi Biodiversity Targets (p.143)

R. Long , 2016

LEGAL REGIMES OF OCEANS AND AIRSPACE AREA

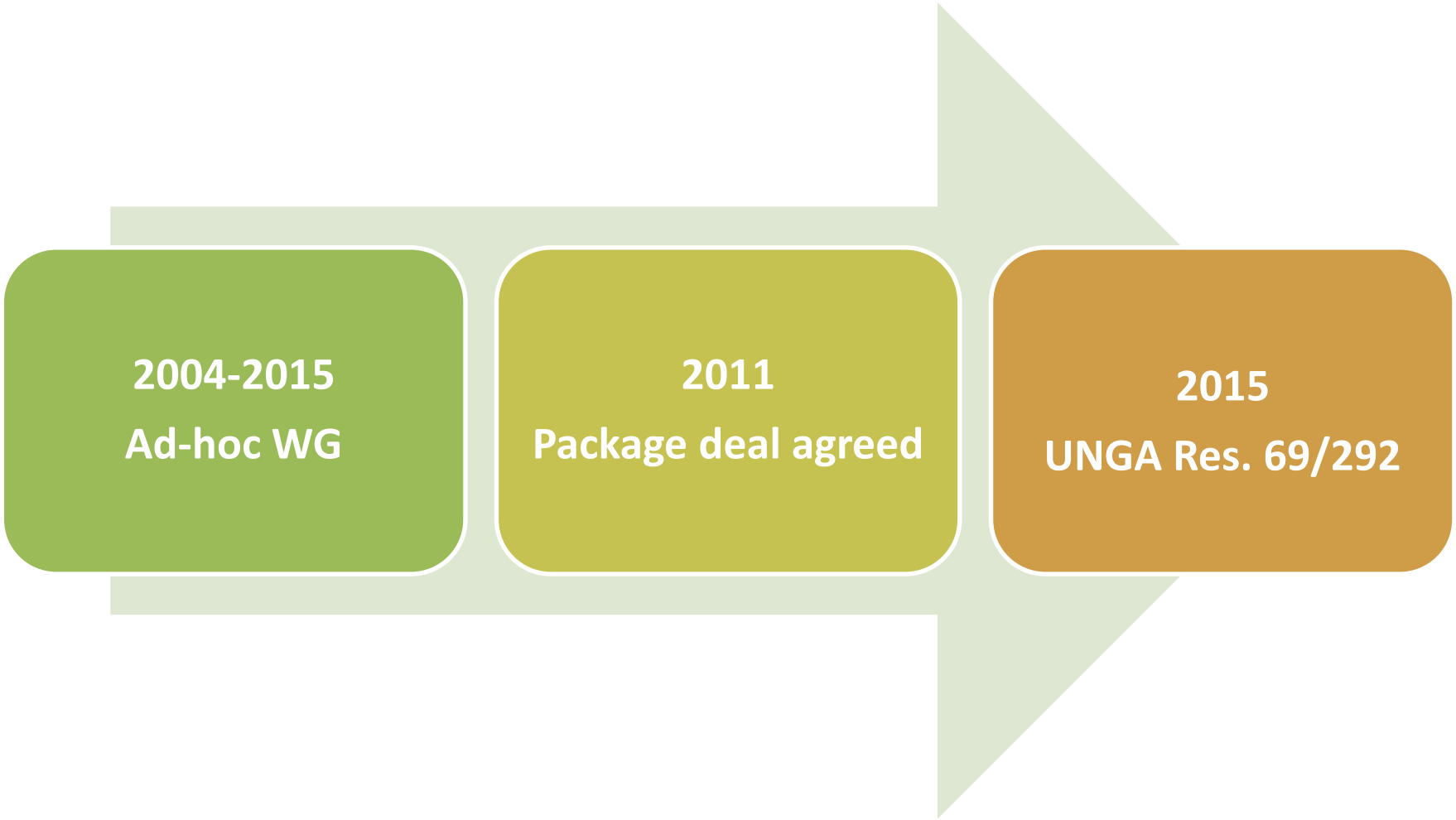


ABNJ:
High Seas +
The Area



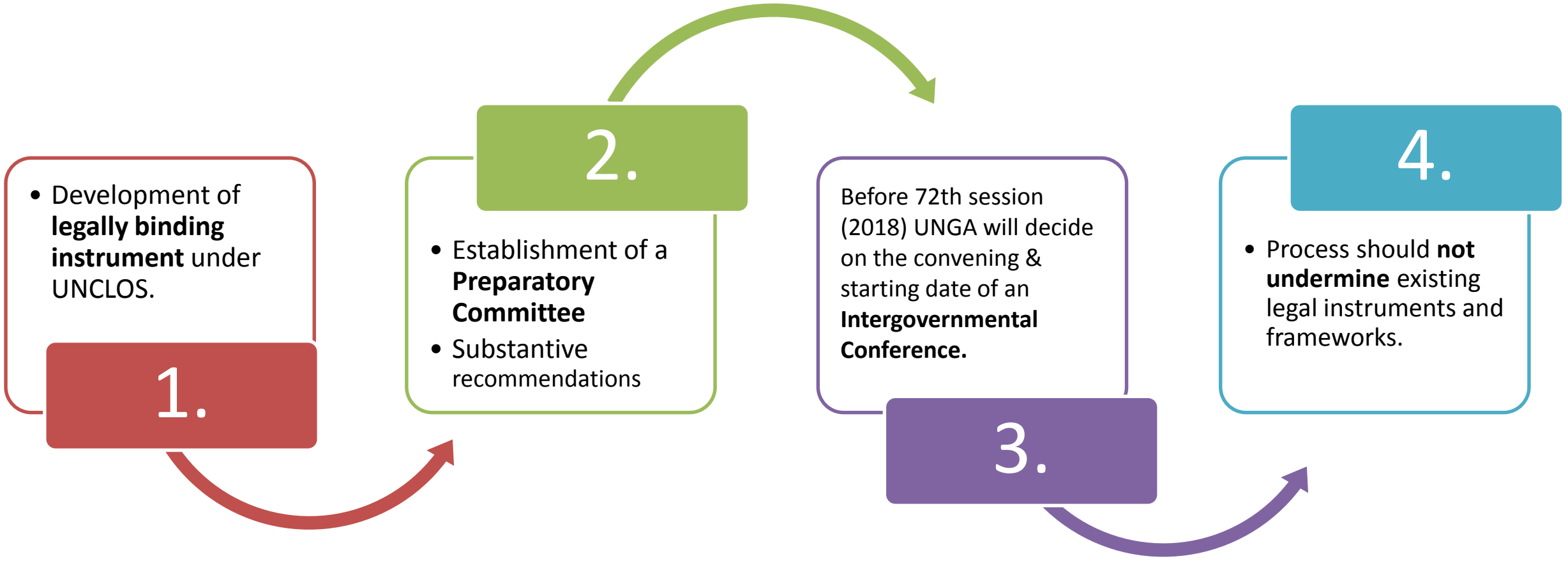
Slide courtesy Jeff Ardron

Negotiation History



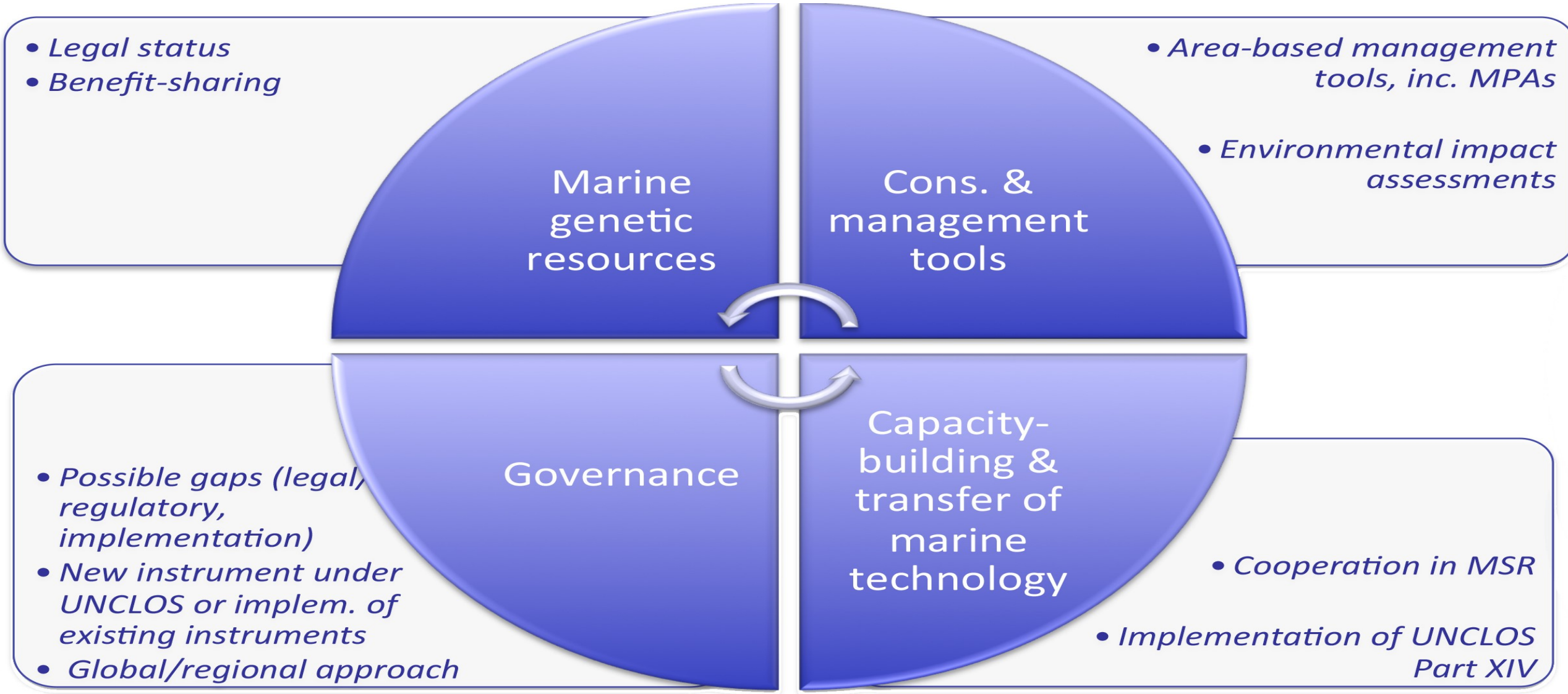
R. Long / M. Rodriguez Chaves, 2016

Breakthrough!
UNGA Resolution 69/292



R. Long / M. Rodriguez Chaves,
, 2016

The ‘package’ of Issues to be considered for protecting BBNJ (UNDOALOS, 2015)



Preparatory Committee 2016 -2017

- 91 State Parties, 10 non-parties, 7 intergovernmental organizations and 17 non-governmental organizations (civil society), (2 RFMOs – NEAFC & ICCAT)

- Informal Working Groups :
  1. Access to marine genetic resources & benefit sharing
  2. Area-based management tools, including MPAs
  3. Environmental impact assessments
  4. Capacity building & transfer of marine technology
  5. Cross-cutting Issues

- Chair Summary Report (non paper) & Road Map

Source: IISD, 2016

PrepCom
Some highlights!

- Chairman’s list of questions and compilation of views
- Issues where there was convergence (parking issues)(re-opened)
- No agreement on final outcome will look like
- No agreement on MPAs (Long-term or short-term conservation)
- Fisheries / Biodiversity
- No agreement on governance

Marine Genetic Resources: PrepCom2

- **<u>Freedom of the High Seas</u> v <u>Common Heritage of Mankind</u>**

- **"Possible" Convergence**:
  - Usefulness of working definition of MGRs; benefit-sharing for non-monetary benefits; respect for coastal State rights over continental shelf.

- **Requiring further discussion:**
  - Fish used for genetic properties and fish used as a commodity;
  - CHM or HS freedoms: mutually exclusive or apply concurrently;
  - Access to resources ex situ and in silico;
  - Derivatives;
  - Monetary benefits;
  - MGRs of the water column;
  - IPRs and role of traditional knowledge.

***Marine Genetic Resources**: marine* genetic material of actual or potential value

Source: Marjo Vierros, 2016

Kiehl's Abyssine eye cream and anti wrinkle cream

Marine Genetic Resources: PrepCom3

- **Key issues:** scope of benefit sharing, ABS modalities (common interest, restrictions?, associated costs? Access for SIDS and developing States),traceability and transparent re-utilization, mechanism, incorporating the views of industry, fish as a commodity or MGR - scientifically informed threshold, adjacency issues

- **Models**:
  - Heavy / heavy (Nagoya): national application, prior informed consent, mutually agreed terms etc. milestone payments, permits, internationally recognised certificates of compliance
  - Light / light (sharing science): no demand for prior consent or multilateral terms, notification to DOALOS, duty of care, possibly more stringent in MPAs, sharing of genetic sequence data and derivatives data, deposit of sample in Flag State collections, monetary sharing, capacity efforts
  - Light / heavy (Brazilian, similar to Plant Treaty): no access requirements only notification duty but detailed benefit sharing requirements or standard material transfer agreement, progressive milestone payments linked to commercialisation

- **Pertinent questions:**
  - What is necessary to avoid adverse environmental effects?;
  - Does it foster science and avoid unacceptable impacts?;
  - How does it fare regarding cost / benefit?;
  - What contributes best to conservation and sustainable use?

Must deliver **legal certainty – chair posed questions for further discussion including practical consequences of establishing a threshold for harvesting a resource, departing from monetary and non-monetary benefits to consider timing of when benefits become available**

Area-based management tools, including MPAs: PrepCom2

- No competent multilateral body

- **“Possible” Convergence:**
  - Number of principles and approaches for establishing ABMTs;
  - understanding that ABMTs should contribute to the objective of conservation and sustainable use

- **Requiring further discussion:**
  - Rehabilitation/Restoration;
  - Definitions (marine reserves);
  - Vertical, horizontal, top-down, and bottom-up approaches;
  - Process consultative, integrated/transparent/inclusive;
  - All stakeholders including any neighboring coastal states;
  - States acting individually or through relevant organizations / collectively;
  - Governance architecture & monitoring

Photo Source: David Garcia, 2016

Area-based management tools, including MPAs: PrepCom3

- Key issues: resilience building, contributions to restoration of ocean ecosystem health, specific objectives? How to establish added value. Criticism by some of a ‘numbers’ based approach (i.e. 10%, 20%, 30%). Need for flexibility. Ecosystem-based approach.

- **Model options (proposed by New Zealand but not universally accepted as options!):**
  - Global model – global institution;
  - Hybrid model – regional coordination mechanisms with global guidance
  - Regional and sectoral model – promoting cooperation without global oversight

- **Pertinent questions:**
  - Explicit contribution still needs to be agreed (see models above) Recognising ABMTs may not always be the most suitable measures;
  - How to build on UNCLOS obligations and existing targets. Include fisheries?;
  - How would they be identified - Role in maintaining and restoring ocean health and resilience?;
  - Role of regional and sectoral bodies? – Enhancing cooperation and coordination without undermining;
  - Stakeholder consultations - Socio-economic implications?;
  - Who would designate - Recognise different categories – reserves and areas with sustainable uses.
  - How will scientific advice be provided - **Best available science**
  - Role for adjacent States? Monitoring and review?

Environmental Impact Assessment: PrepCom2

- No globally agreed procedure for EIA or SEA.

- **“Possible” Convergence:**
  - Contribute to conservation and sustainable use;
  - Existing instruments and frameworks;
  - Transparency, involving states and relevant stakeholders;
  - Publicly available.

- **Requiring further discussion:**
- Thresholds and responsibility; / Role of coastal states / Prohibited activities; / Content of assessment reports; / Stakeholders / TEIAs / List of activities / Procedural steps: screening, scoping, access to information /public notification and consultation / Costs / Oversight or international involvement / Monitoring / Compliance / Liability; / Clearinghouse or central repository

Source: IISD, 2016

Environmental Impact Assessment: PrepCom3

- Key issues: inclusion of transboundary impacts, threshold approach, special provision in EBSAs, relationship with existing regulations, nature and form of public notification, SEAs at bioregional level, scientific review and consultation, building capacity, clearing house mechanism, efficient effective and non-burdensome – interlinkage with other elements of the package

- **Models: no models proposed but……**
  - Centralised body for EIA (some form of Scientific Committee?);
  - Common principles – establish thresholds and require States to contribute information to trigger an EIA (based on Madrid Protocol);
  - Inform State and achieve public involvement, element of self-regulation with provisions on compliance and liability, focus on sharing of information

- **Pertinent questions:**
- Speed of work, impact on commercial interests, fast track approaches, role for consultants?
- Ajacency
- **Need to avoid 'EIAs of convenience'**

Capacity building & Transfer of marine technology: PrepCom2

- Part XIII & XIV of UNCLOS

- **Possible convergence:**
  - Cross-cutting and important to developing States;
  - Responsive to national and regional needs
  - IOC Guidelines
  - Stakeholder involvement.

- **Requiring further discussion:**
  - Existing instruments and mechanisms;
  - Particular circumstances/challenges of developing countries,
  - Monitoring, reporting and evaluation
  - Terms and conditions
  - IPR

Source: NatGeo & Undersea Hunter, 2015

Capacity building & Transfer of marine technology: PrepCom3

- **Key issues**: specific objectives and underlying principles? Need to specify? New clearing house mechanism? If so what kind of information is needed? Who would manage the CHM and who would be able to access it?

- **Models:**
  - None proposed

- **Pertinent questions:**
  - Funding
  - IPR
  - Modalities
  - linkages

CROSS-CUTTING ISSUES

- Objectives
- Principles
- Scope
- Definitions
- Relationships with other instruments Institutional arrangements – COP, scientific body, secretariat….compliance committees, regional scientific committees?
- Responsibility and liability – compliance mechanism?
- Dispute settlement – who should participate?
- and final clauses

Source: IISD, 2016

Ocean-Scale Science for Effective Marine Governance: A New Approach to Managing Atlantic Ecosystems

Lunchtime side event, Friday 31 March 2017: 1.15 - 2.45pm, Conference Room 7, UNHQ

Achieving ecosystem-based management by harnessing synergies and coordination of science for the conservation and sustainable use of biodiversity under a new Agreement: The ATLAS project

Co-chairs:

Dr Biliana Cicin-Sain, Global Ocean Forum

Prof. David Johnson, Global Ocean Biodiversity Initiative

Speakers:

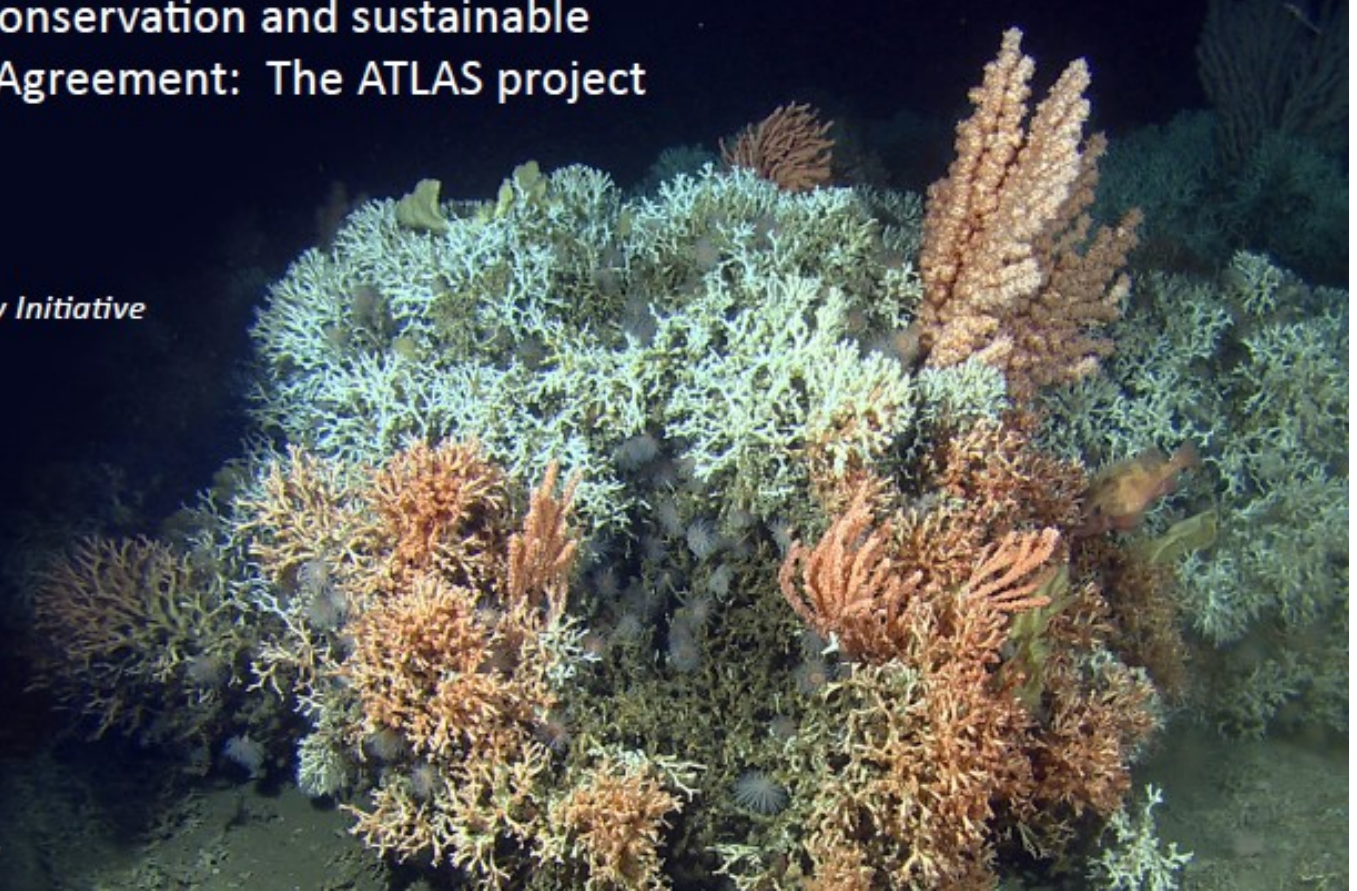
Prof. Murray Roberts, University of Edinburgh

Dr Telmo Morato, University of the Azores

Mr Joe Appiott, CBD Secretariat

Dr Terry Schaefer, NOAA

Prof. Ronan Long, World Maritime University



Right: Cold-water corals in the Atlantic. Image courtesy Institute of Marine Research, Norway

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A trans-Atlantic assessment and deep-water ecosystem based spatial management plan for Europe

ISSUE 1 | FEBRUARY 2017

project news

Other side events, publications and events at PrepCom3

- UNEP-WCMC; WWF/University of Strathclyde; ISA; Greenpeace International and NRDC; International Coalition of Fisheries Associations; CBD Secretariat; JAMSTEC; Thailand Permanent Mission; IUCN; IOC-UNESCO; Nippon Foundation; Pew Charitable trusts; Fridtjof Nansen Institute; FAO; IDDRI
- ABNJ Deep Seas Project
- Lessons from the Sargasso Sea
- Adjacency: How legal precedent, ecological connectiv and traditional knowledge inform our understanding proximity. Dunn et al., Nereus Program/Nippon Foundation

UNIVERSITY OF ABERDEEN

IUCN NYU LAW

University of Aberdeen

NYU School of Law and IUCN
are
pleased to sponsor a full-day workshop on

Marine Genetic Resources
in Areas Beyond National Jurisdiction

Exchange of views to build a consensus on benefit sharing

Conclusions

1. Focus on specific language proposals rather than treaty language

2. No agreement on what format the final outcome of PrepCom will take

3. Divergence of views on governance arrangements

What happens next?

- Consolidation of a Chair's non-paper based on delegations' views presented at PrepCom 2 and 3 and any new submissions before 24.4.17;
- Draft substantive recommendation to UNGA (end of May 2017 for circulation to all delegations);

- PrepCom 4 July 2017 (support to conclude at PrepCom4 but option for PrepCom5)

- Further opportunity for ATLAS to input through policy brief(s) and/or side event?;

Publications

R. Long, M. Rodríguez Chaves,

"ANATOMY OF A NEW INTERNATIONAL INSTRUMENT FOR THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIODIVERSITY IN AREAS BEYOND NATIONAL JURISDICTION: FIRST IMPRESSIONS OF THE PREPARATORY PROCESS"

(2016) 25 (2) *Environmental Liability: Law, Policy and Practice* 35pp.

Forthcoming:

R. Long, "Opportunity for Paradigm Change: Establishing a Normative Basis for the Duty of Marine Ecological Restoration in ABNJ"