

Imposing an international environmental jurisdiction: How developments on marine protected areas (MPAs) are fostering a new legal order for the conservation of ABNJ.

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Outline

- Reasons for designating/ Meaning of an MPA
- Legal basis for an MPA
- International promotion of MPAs and network of MPAs
- Network of MPAs in ABNJ
- State's practice in ABNJ: OSPAR & CCAML
- Conclusion

Reasons for designating MPAs

- sustaining biodiversity
- rebuilding fish stocks
- supporting ecosystem processes
- monitoring ecosystem
- conservation, sustainable use & equitable sharing
- maintenance of traditional livelihood



What is an MPA?

i

- Not one standardised definition
- Hyperspecific definition
- All-encompassing definition
- Family resemblance

Wittgenstein (Philosophical investigations)



What is an MPA?

iii

Sectoral MPAs?



What is an MPA?

iii

Important elements:

- geographically defined marine area
- protection from threats of certain activities, by legislation/traditional means
- benefits for biodiversity



The legal basis for MPAs in ABNJ - UNCLOS

Art.192: obligation to protect and preserve the marine environment

Art. 194 (5): necessary measures to protect & preserve:
rare or fragile ecosystems, habitat of depleted, threatened or
endangered species & other forms of marine life

Art. 197: Cooperation on a global or regional basis:
protection & preservation of the marine environment

Art.117: All states: duty to adopt measures for the conservation of the living
resources of the high seas

Art. 145: (b) protection and conservation of the natural resources &
the prevention of damage to the flora & fauna

The legal basis for MPAs in ABNJ – CBD

CBD, Art. 2: biological diversity concept

ecosystem: [organisms communities, interaction, functional unit](#)

South China Sea Arbitration – (i) rare & fragile ecosystem

(ii) UNCLOS, 192- includes biodiversity protection

2015 ITLOS AO – Art.192

Art. 8: [a system of protected areas](#) to conserve biological diversity

Chagos MPA Arbitration – *necessary measures*, UNCLOS Art. 194(5)

COP 2 ([Jakarta Mandate](#) – International Action plan)

COP 9 ([EBSAs](#))

COP10 ([Aichi Target 11](#): ecologically representative & well-connected systems of protected areas)

The legal basis for MPAs in ABNJ – UNFSA

Calls for conservation and management measures (Part II)

Art. 5: (a) measures to ensure long-term sustainability

(b) best scientific evidence available + to maintain or restore stocks

(g) obligation to protect biodiversity

(e): ecosystem approach: conservation for species belonging to the same ecosystem or associated with or dependent upon the stocks

Art.10 (a) agree on conservation and management measures

(c) adopt recommended international minimum standards for the responsible conduct of fishing operations

UNGA Resolutions on VMEs (61/105 & 64/72): fisheries closures

State's Practice in ABNJ

Network of MPAs:

ecological, social, decision-making benefits

(i) OSPAR

(ii) CCAMLR

OSPAR Network of MPAs in ABNJ

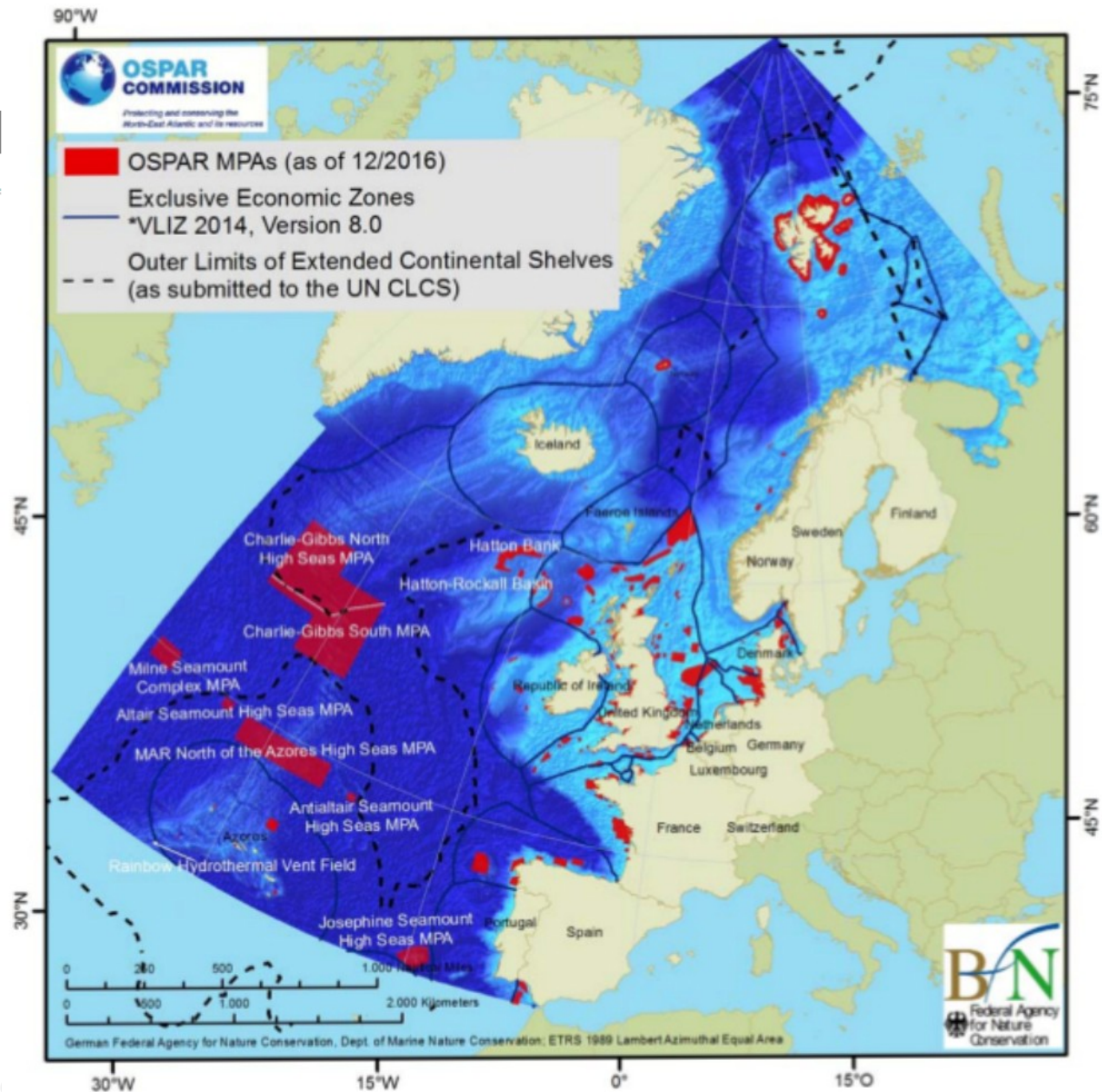
Annex V, OSPAR Convention:

Parties are to take necessary measures to protect and conserve the ecosystems and biological diversity + co-operate in adopting programmes & measures.

MPA definition: purpose of protecting and conserving species, habitats, ecosystems or ecological processes...

OSPAR Commission: identification/assess of areas in need of protection
protection of ABNJ areas - ecosystem-approach

OSPAR Commission, Recommendation 2003/3:
ecologically coherent network of MPAs including in ABNJ



OSPAR Network of MPAs in ABNJ

10 sites - Hybrid designation/protection

Activities which may be subject to OSPAR regulation

Restriction limitation: activities & States non-parties

OSPAR 2016 Status Report

Cooperational Arrangements: OSPAR-NEAFC- VMEs & bottom trawling
OSPAR- ISA. UNCLOS, Art. 169.

CCAMLR Network of MPAs

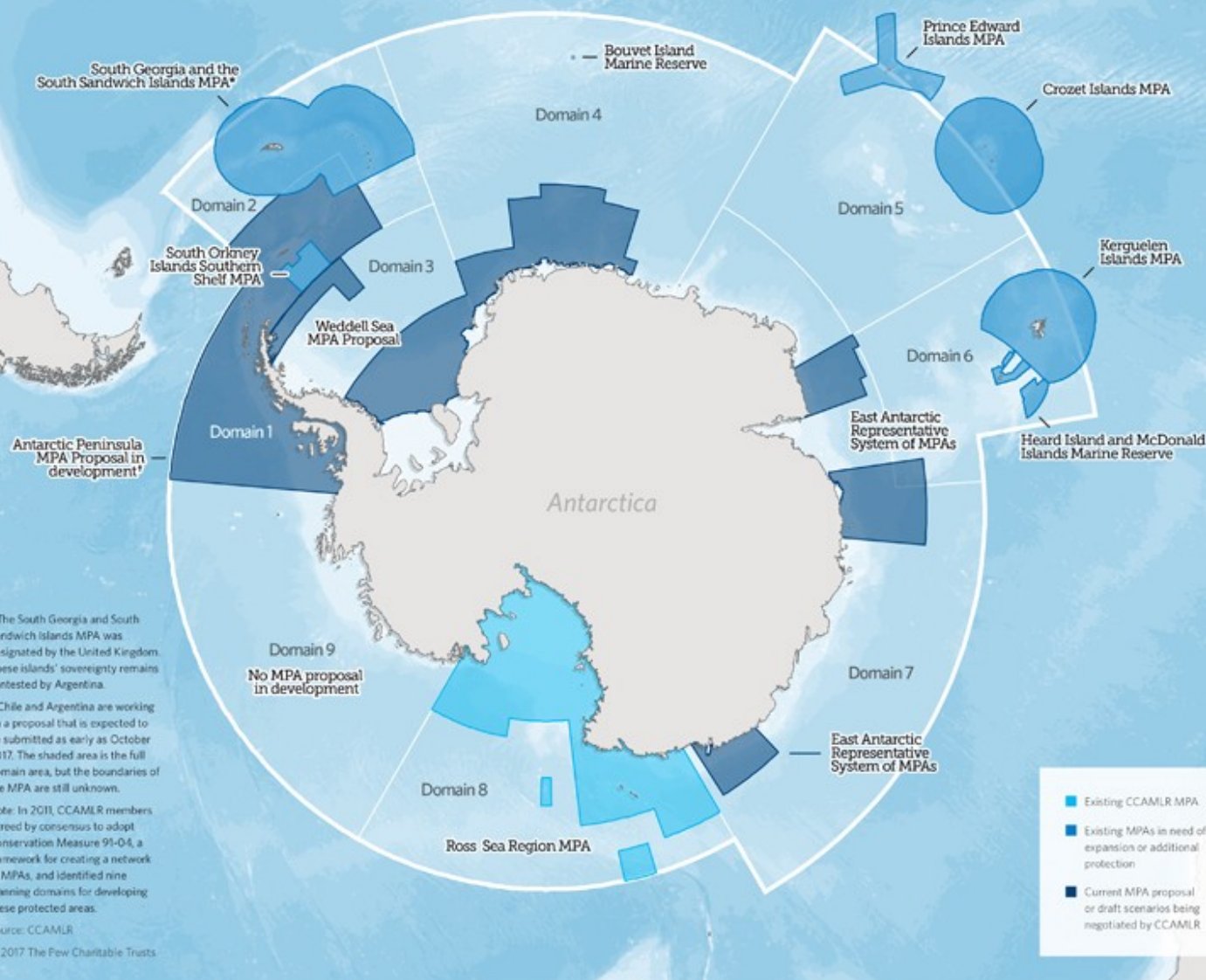
CAMLR Convention boundary: the Antarctic marine ecosystem

Network goals: sustaining ecosystem , scientific reference areas for
monitoring, adapt to climate change, reduce alien species
Implement Art. 2, CCAMLR Convention

CCAMLR Conservation Measure 91-04 (2011): Framework for CCAMLR MPAs
MPA planning domains

Figure 2
Southern Ocean Regions in Need of Protection

A network of MPAs would allow for conservation of distinct areas, each representing unique ecosystems



- Domain 1**
Western Antarctic Peninsula-South Scotia Arc
- Domain 2**
North Scotia Arc
- Domain 3**
Weddell Sea
- Domain 4**
Bouvet-Maud
- Domain 5**
Del Cano-Crozet
- Domain 6**
Kerguelen Plateau
- Domain 7**
East Antarctica
- Domain 8**
Ross Sea Region
- Domain 9**
Amundsen-Bellinghousen

* The South Georgia and South Sandwich Islands MPA was designated by the United Kingdom. These islands' sovereignty remains contested by Argentina.

† Chile and Argentina are working on a proposal that is expected to be submitted as early as October 2017. The shaded area is the full domain area, but the boundaries of the MPA are still unknown.

Note: In 2011, CCAMLR members agreed by consensus to adopt Conservation Measure 91-04, a framework for creating a network of MPAs, and identified nine planning domains for developing these protected areas.

Source: CCAMLR

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CCAMLR Network of MPAs

LSMPA Network: South Orkney Islands southern shelf MPA, 94 000 km²
Ross Sea Region MPA, 1.55 million km²

Competence: restriction on fishing vessels or vessels conducting scientific research under the jurisdiction of Parties to the CAMLR Convention

Exception: warship, naval auxiliary or non-commercial ship

Arrangements: CCAMLR & IWC: scientific inputs + identification of VMEs

Ross Sea Region MPA

Area: 1.55 million km²

Designation period: 35 years

Zones: General Protection Zone, Special Research Zone, Krill Research Zone

Objectives: protect large-scale ecosystem processes, promote research

Restrictions: fishing, except scientific fishing research

No discharges, dumping

Cooperations: Antarctic Treaty Consultative Meeting (ASPA, ASMA)

Members to engage with international organisations

Conclusions

- There is an international obligation for states to protect biodiversity in ABNJ
- MPAs are an important tool to implement international law obligations (particularly UNCLOS-CBD-UNFSA) to conserve marine biodiversity
- Regional organisations can only bind their own Contracting Parties and cannot regulate all human activities in ABNJ ...
- However, their designation of networks of MPAs is showing that different organisations can contribute to achieving an ecosystem-approach, managing human activities in a way that supports ecosystems.
- These cooperations are gradually reorienting the balance between the international community's conservation obligations and its high seas freedoms

A school of approximately 20-25 fish, likely Surge wrasses (Thalassoma lineare), are swimming in a tight group. They have silver bodies with a prominent black vertical stripe through the eye and a smaller one on the cheek. The background is a dark, textured rock reef on the left and a deep blue water column on the right.

Thank you!