



WORLD OCEAN COUNCIL

The International Business Alliance
for Corporate Ocean Responsibility

Biodiversity in Areas Beyond National Jurisdiction (BBNJ): A New, Legally Binding Law of the Sea

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The International Business Alliance
for Corporate Ocean Responsibility

WOC – the Global “Blue Economy” Business Organization

The Multiple Use Ocean



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Growing Ocean Use



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- Cruise and coastal tourism
- Shipping
- Mariculture/Aquaculture
- Offshore oil and gas
- Mining / Seabed mining
- Fisheries
- Dredging
- Submarine cables/pipelines
- Offshore wind energy
- Wave/tidal energy
- Ports/marinas
- Recreational boating/use
- Desalination
- Navy/military use
- Carbon sequestration

• Diverse 'ecosystem'
of support sectors

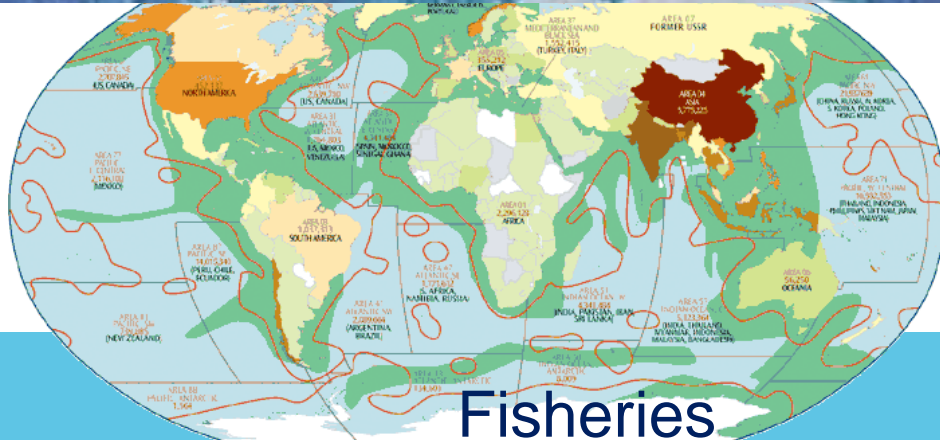
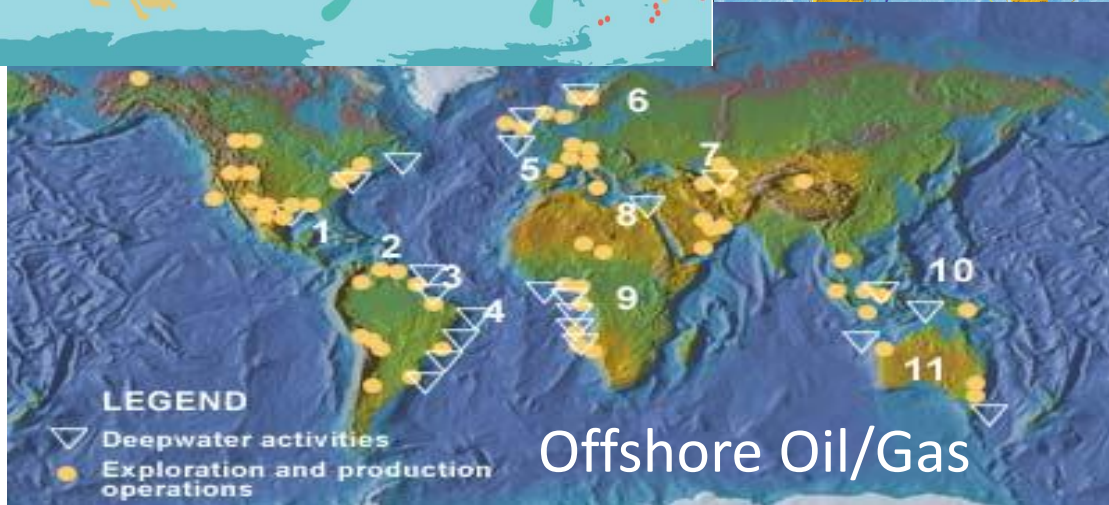
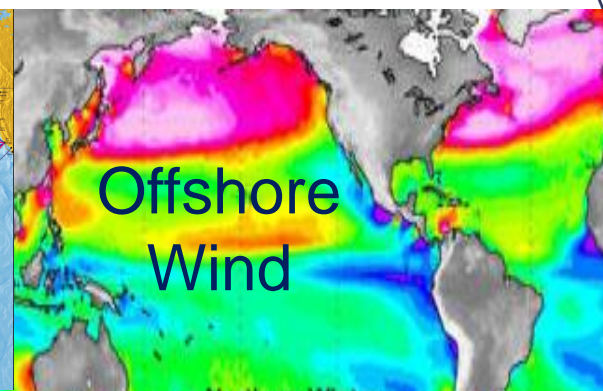
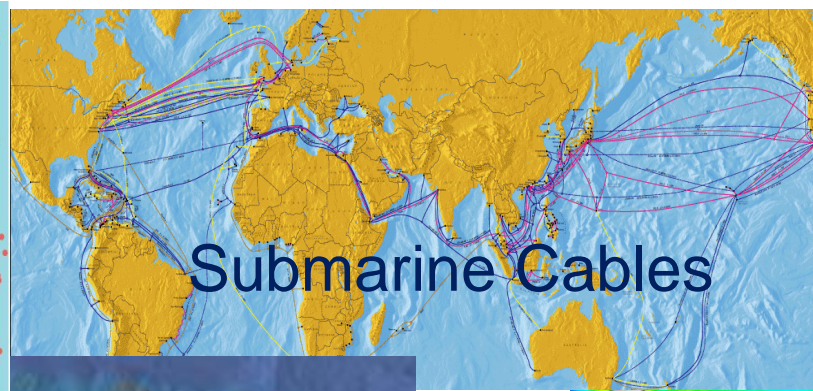
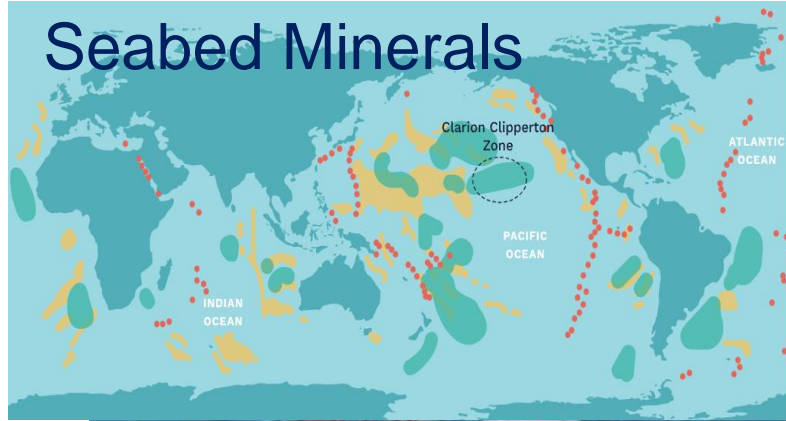
Expanding

- Kinds of use
- Levels of activity
 - Duration
 - Intensity
 - Frequency
- Location of activity
 - Geographical Extent
 - Frequency
- Finance/Investment
- Insurance
- Maritime Legal

Global Ocean Industry Activity

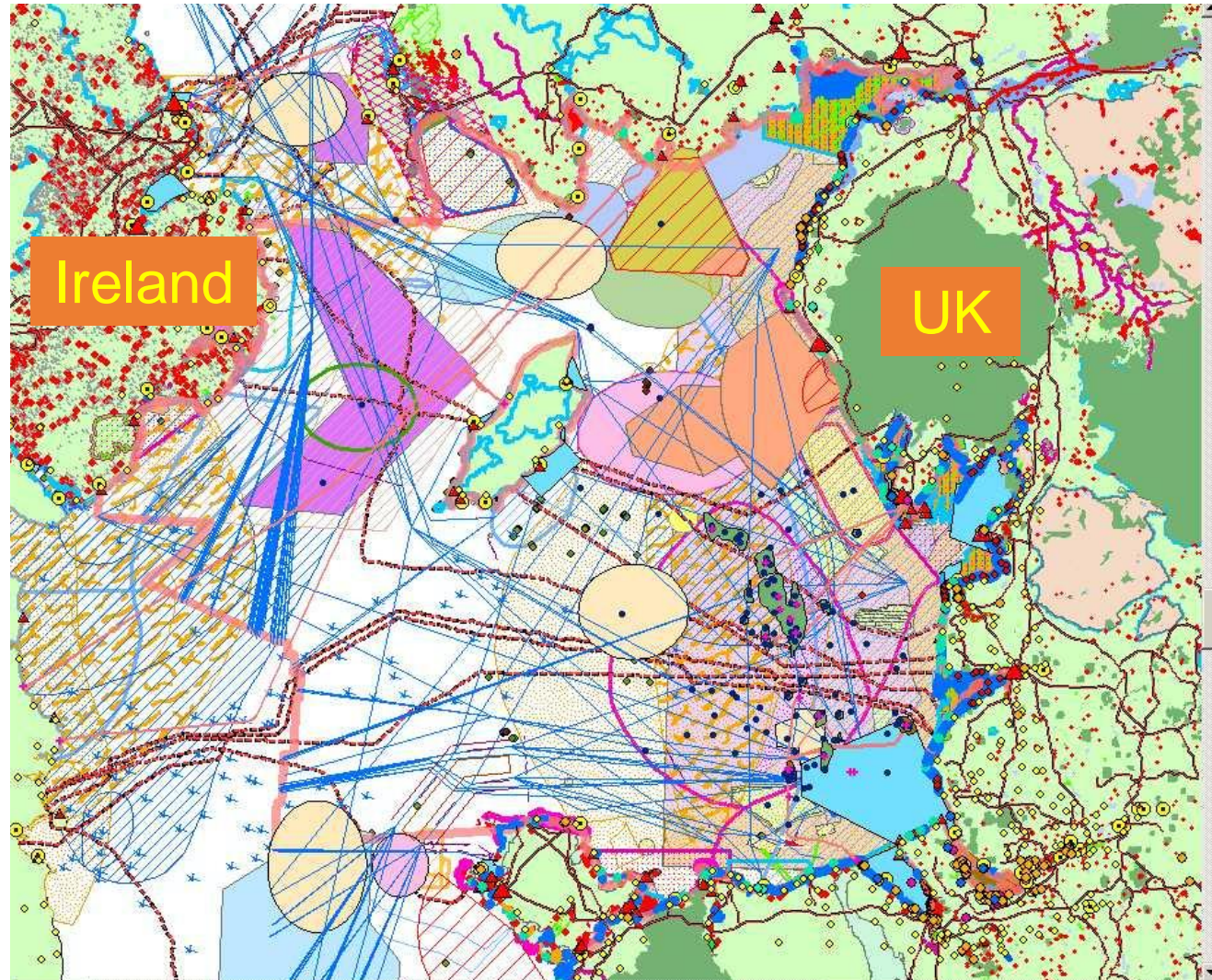


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The Sea is Becoming Crowded with Many Uses

- Tourism
- Oil & gas
- Coastal defence
- Ports & navigation
- Military activities
- Culture
- Conservation
- Dredging & disposal

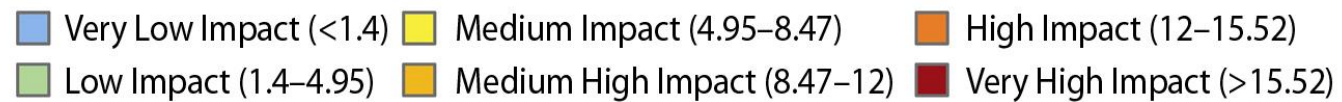
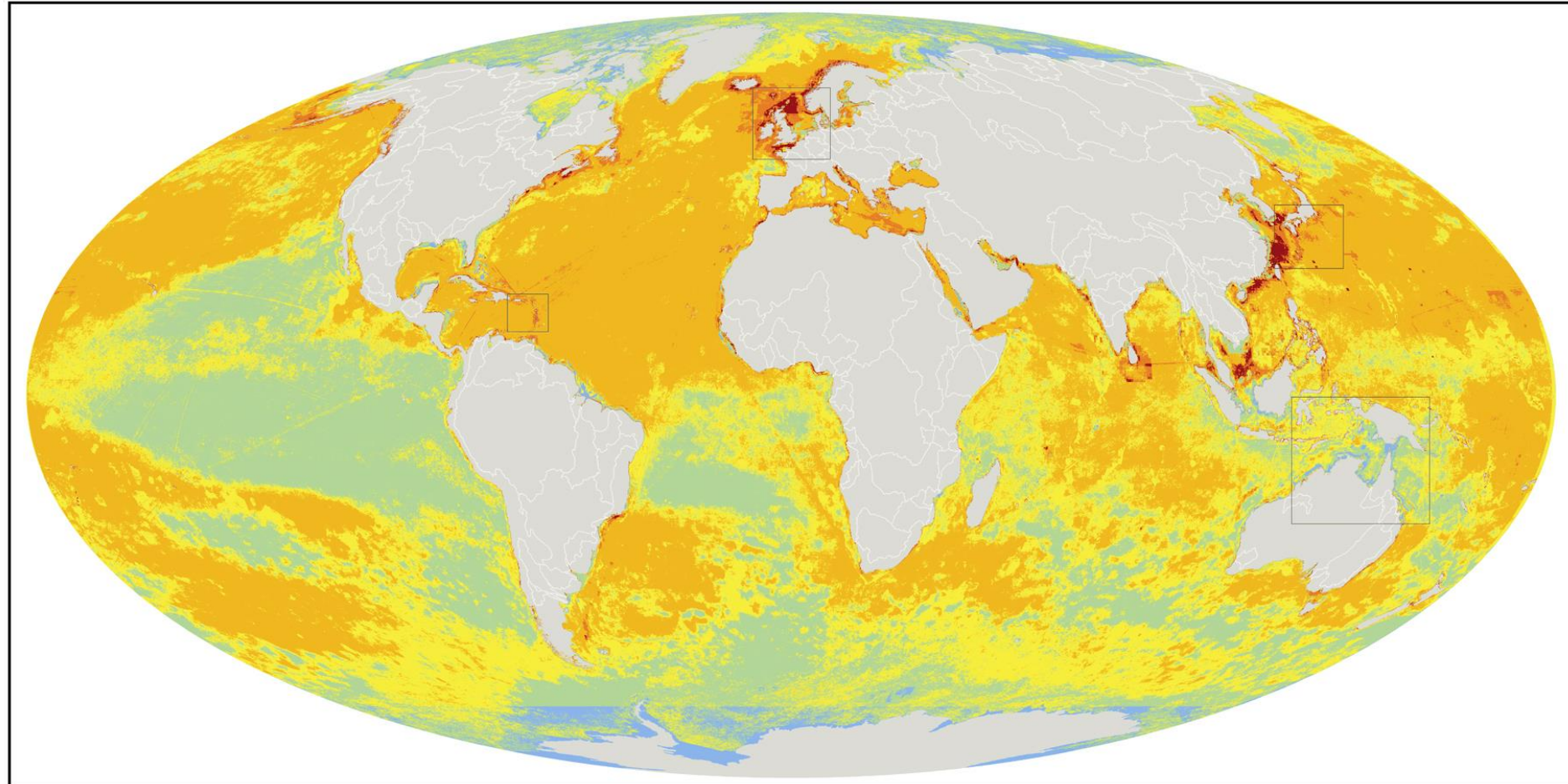


- Submarine cables
- Fishing
- Renewable energy
- Marine recreation
- Mineral extraction
- Mariculture

Global Ocean Ecosystem Impacts



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New Ocean Risks / Opportunities for Industry



Precautionary Approach

- + Marine Protected Areas (MPAs)

- + High Seas/Deep Seabed Concerns - Areas Beyond National Jurisdiction (ABNJ)

- + Ecosystem Based Management

- + Marine Biodiversity/ Marine Mammal Concerns

- + Marine Spatial Planning/Ocean Zoning

- + Ocean Governance Issues

- + Climate Change/Sea Level Rise/Ocean Acidification

- + Sustainable Development Goals (SDGs)

- + Plastics/Marine Debris

= an increasingly complex and challenging business environment for ocean industries

Smart companies realize the policy, planning and operational risks and opportunities that these trends create

The Ocean Business Community Challenge



- **Ocean industries require access and social license** to use ocean space and resources
- Many of the **critical issues** creating impacts and affecting access and social license are **cross-cutting or cumulative**
- Sustaining ocean health and productivity requires **responsible use** and stewardship **by all users**
- Best **efforts by a single company**, or an entire industry sector, **are not enough** to secure ocean health
- Ocean **industries will benefit from collaboration** with other sectors to **create synergies** and **economies of scale** to address impacts and ensure access and social license
- **Need structure/process** for ocean industry leadership, collaboration and action

International, Cross-Sectoral Business Leadership Alliance

- **Bringing ocean industries together**, e.g. shipping, cruise tourism, fisheries, aquaculture, offshore renewables, oil/gas, technology, investment, etc.
- **Catalyzing private sector leadership, collaboration and action in:**
 - Advancing “Corporate Ocean Responsibility”
 - Communicating responsible ocean industry/economy
- **75+ members globally; 100’s of companies actively engaged; 34,000+ in global network**
- Research, scientific and academic institution members as well

Goal: Healthy, productive global ocean and its sustainable use and stewardship by responsible ocean business community

Creating business value for responsible companies

- Access and social license for responsible ocean use
- Synergies and economies of scale in addressing issues
- Stability and predictability in ocean operations

WOC Partnerships and Formal Recognition



UNESCO Intergovernmental Oceanographic Commission (IOC) – Partnership Agreement

UN World Meteorological Organization (WMO) – MOU

Group on Earth Observations (GEO) – Accredited Partner

International Hydrographic Organization (IHO) – Official Observer

UN International Seabed Authority (ISA) – Accredited Observer

UN Convention on Biological Diversity (CBD) – Accredited to SBSTTAs and COPs

International Whaling Commission (IWC) – Accredited Observer

UN Framework Convention on Climate Change (UNFCCC) – Accredited to COPs

Ocean Climate Platform – Accredited Partner

China Belt and Road Network – Partner

International Standards Organization (ISO) – Underwater Acoustics Sub-Committee

Global Business Alliance for Sustainable Dev't of Int'l Chamber of Commerce (ICC) – Member



WOC: First ocean industry organization invited to address UN General Assembly

WOC: Industry Leadership, Collaboration, Action



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Cross-Cutting Framework for Leadership, Collaboration and Action:

Sustainable Development Goals (SDGs)

- Coordinated, proactive business community efforts to develop ocean industry SDG targets and indicators

Global Blue Economy Innovation Network

- A network of accelerators, incubators and challenge competitions to foster coordination and collaboration

Ocean Investment Platform

- A forum for industries, innovators, investors to facilitate investment in ocean sustainable development

Young Ocean Professionals Network

- Bringing together future leaders in Corporate Ocean Responsibility from across the sectors worldwide

Regional Ocean Industry Leadership and Collaboration

- W. Indian Ocean, Arctic, Mediterranean, etc.

Sustainable Ocean Summit (SOS)

- The only annual global, multi-industry gathering developed by and for the business community, focused on sustainable development (7th SOS, Paris, 20-22 Nov, 2019)

WOC Programs: Priority Areas for Action (1)

- **Improving Ocean Governance, Policy and Planning**

- UNCLOS/BBNJ, Convention on Biological Diversity, UNFCCC, SDGs, ...
- Marine Spatial Planning
 - Inter-industry Conflicts/Synergies

- **Reducing Anthropogenic Impacts**

- Biofouling/Invasive species
- Marine sound
- Plastics/Port Reception Facilities

- **Conserving Marine Biodiversity**

- Marine protected areas
- Marine mammal 'Ship strikes'

- **Ensuring Food Security**

- Sustainable fisheries/reduced IUU fishing
- Sustainable aquaculture



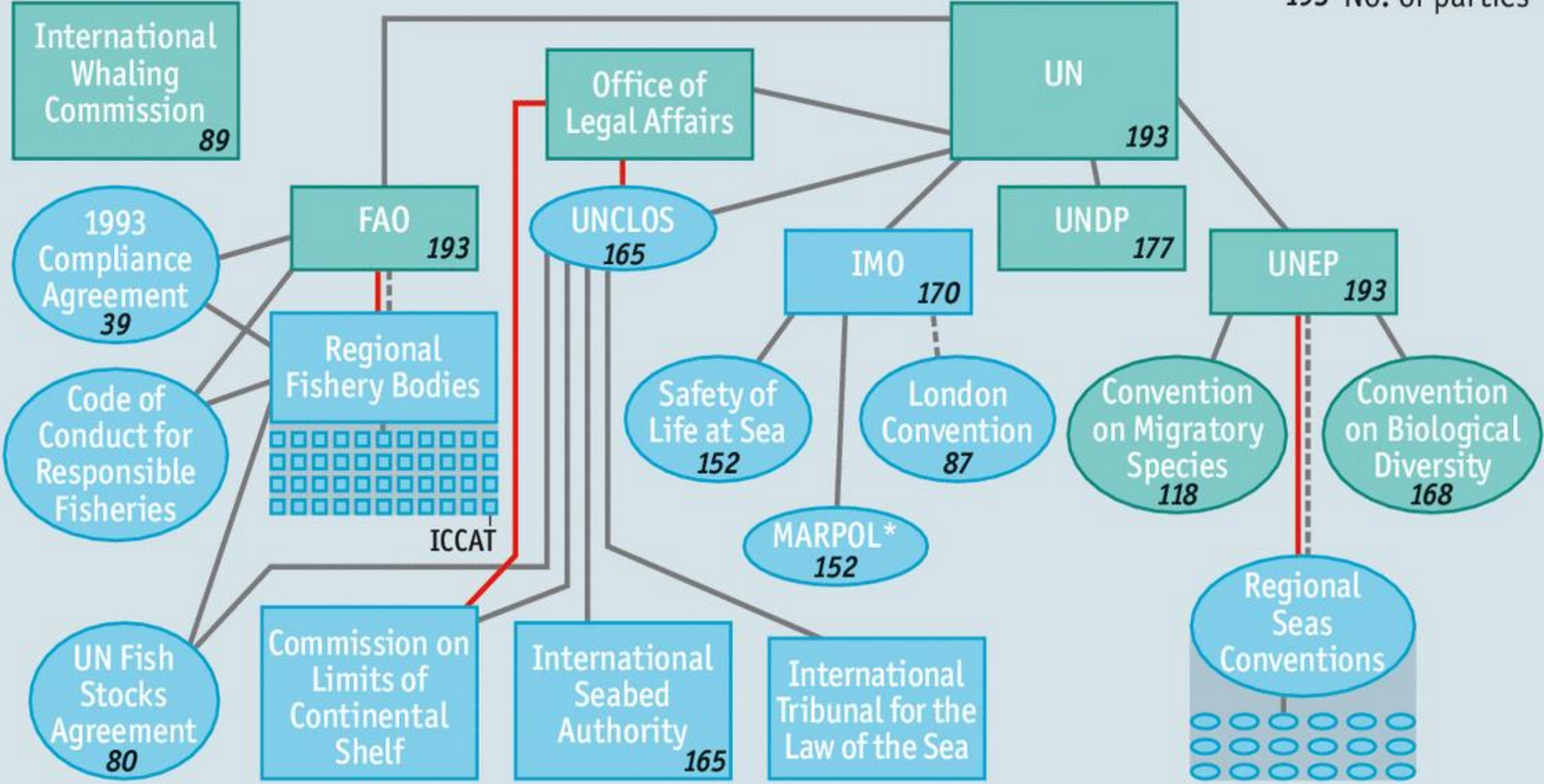
WOC Programs: Priority Areas for Action (2)

- **Improving Ocean Knowledge** (SDG14a)
 - SMART Ocean - SMART Industries:
 - Data collection from Industry “Ships/Platforms of Opportunity”
- **Reducing Disaster Risk**
 - Port/coastal infrastructure adaptation and resilience
- **Addressing Climate Change**
 - Ocean NETs: Negative Emissions Technologies in the ocean
 - Ocean acidification
- **Advancing Low Carbon Energy from the Sea**
 - Ocean-based renewable energy



Ocean Governance and International Waters

International institution
 International agreement
 — Regulatory connection
 — Administrative connection
 Ocean-only institution
 Ocean-only agreement
 - - - Partial reg. connection
 — Administrative connection
193 No. of parties



Sources: Global Oceans Commission; *The Economist*

*International Convention for the Prevention of Pollution from Ships

Key Ocean Governance Arenas / Developments



WOC is working to provide consistent, comprehensive industry presence in inter-governmental negotiations affecting future of the Blue Economy

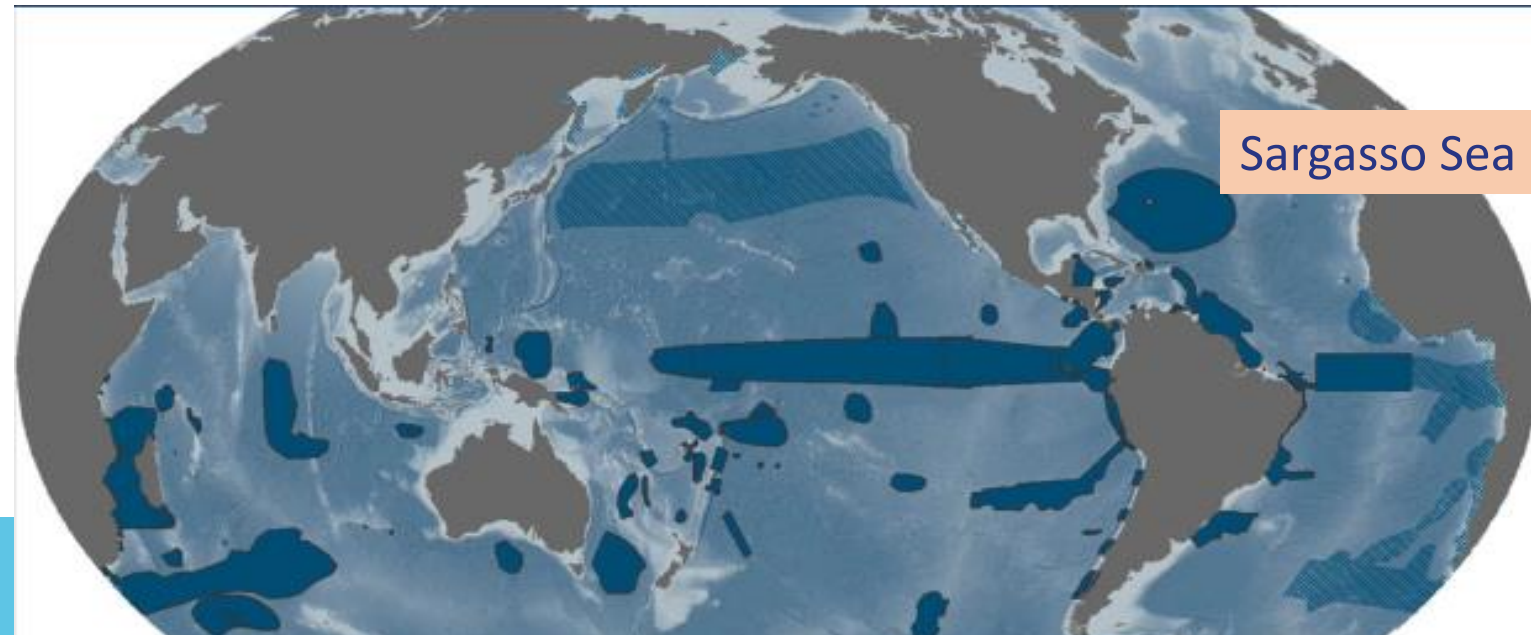
UN Law of the Sea

- Negotiating new “Legally Binding Agreement” on **Biodiversity in Areas Beyond National Jurisdiction (BBNJ)**



Convention on Biological Diversity (CBD)

- Identifying Ecologically / Biologically Significant Areas (EBSAs) for management, especially for international waters



BBNJ: What is it and what does it cover?

The BBNJ is to be an international “legally binding agreement”

- Developed as part of the UN Convention on Law of the Sea (UNCLOS)
- Strengthens the regulation of activities and conservation of marine biological resources in the international ocean, i.e. 41% of the earth
- Geographic scope: surface waters, water column and seabed of “Areas Beyond National Jurisdiction” (ABNJ)

The BBNJ “Package” will cover:

1. ***Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEAs)***
2. ***Area-Based Management Tools (ABMTs), including Marine Protected Areas (MPAs)***
3. ***Marine Genetic Resources (MGR) and Access and Benefit Sharing (ABS)***
4. ***Capacity Building and Transfer of Technology***

BBNJ: What Is the Process ?

Pre-2016:

- Several years of governments meeting in an informal UN Working Group, with observers (including WOC)

2016-17:

- Four Preparatory Committee (Prep Com) meetings to identify BBNJ elements (with WOC and some ICS participation)

2018-2020:

Four planned 2-week negotiating sessions

- 2018: 1 session (Sep)
- 2019: 2 sessions (Mar/Apr; Aug)
- 2020: 1 session (was to have been Mar/Apr)

[postponed – new dates not yet set]

BBNJ: Who Participates ?

States: Governments formally negotiate treaties and binding agreements

Other Stakeholders: UN allows accredited stakeholder participation observers

- **IGOs:** Inter-Governmental Organizations (IGOs)

- **NGOs:** Non-Government Organizations, including industry

60-80+ NGO observers participate in BBNJ sessions at the UN

ICC and ICS participate to some extent, often in coordination with WOC

WOC has often been the only the only industry participant at UN BBNJ

Industry involvement and input to the BBNJ is critical

- WOC has been involved in the BBNJ process for the past decade
- The WOC, ICC and ICS created the *BBNJ Business Coalition* during the Prep Com phase (2016-17)
- **A *BBNJ Business Coalition* for the final phase of formal negotiations would be extremely valuable for ensuring the global ocean business voice is heard**

Institutional structure for States to take decisions, coordinate, and perform reviews and assessments of implementation

Conference of the Parties (COP): Bring together all States Parties in order to:

Take decisions and review progress

Establish subsidiary bodies as it deems necessary

Take decisions by consensus (possible to set alternative rules to help move forward when consensus is not possible)

Promote cooperation and coordination with/among relevant legal instruments/bodies

Scientific and Technical Body: Provide scientific and technical advice to COP:

Especially on the four elements of the Package Deal, i.e. EIA, ABMT/MPAs, MGR, capacity building/technology transfer

Support informing and implementing BBNJ, e.g. evaluating ABMTs and EIAs reports, convening experts

Secretariat:

Provide support to States, e.g. on administrative issues, implementation challenges

A new body may be established or an existing international organisation may be mandated to provide/host the Secretariat

Clearing-House Mechanism:

Information exchange, e.g. via centralised open-access web-based platform

No clear or full determination of:

- Specific functions and associated financial and institutional arrangements
- If this will be passive (e.g. data publication) or active (e.g. data analysis)
- Who will host and support the mechanism
- Whether there will be a network of experts and practitioners
- Who will be permitted to contribute to and make use of the mechanism
- Whether it has a role in supporting monitoring, control and surveillance (MCS)

BBNJ aims to operationalize existing UNCLOS provisions by establishing EIA processes, thresholds and guidelines and include cumulative impacts and SEAs

Scope:

EIA requirement may apply to all activities that have an impact in ABNJ, rather than just to activities that actually take place in ABNJ

Treaty may include an indicative, non-exhaustive list of activities that either require or do not require an EIA, to be regularly updated by the COP

Thresholds and criteria:

EIA required when States have “reasonable grounds for believing that planned activities” either:

- a) “may cause substantial pollution of or significant and harmful changes”, or
- b) “are likely to have more than a minor or transitory effect”

Determining “reasonable grounds”: States have this responsibility

Conducting EIAs:

States are responsible for the assessment (not the proponent of the planned activity)

Not clear on the monitoring, control and surveillance (MCS) requirements

Effects of the EIA: No agreement on whether the results are:

- a) Advisory only, with States deciding whether the activity may proceed, or
- b) Whether COP provides authorization for activity to proceed

BBNJ treaty could enable other States to appeal the decision

If monitoring reveals identify adverse impacts, no agreement on whether the State (or the Scientific/Technical Body) should notify COP (or others), halt the activity, require measures to mitigate and/or prevent impacts or evaluate and decide whether the activity should continue

Determining adequacy of results:

If a State determines that EIA is not required, Scientific/Technical Body may verify or approve that information provided by the State satisfies BBNJ requirements

BBNJ objectives for ABMTs/MPAs may include:

Enhancing cooperation and coordination to establish a “comprehensive system”

Requiring States to promote consultation, coordination with relevant legal instruments, frameworks and bodies

Text for proposing ABMTs/MPAs includes:

Criteria for identifying areas requiring protection via ABMTs/MPAs

Use of best available science, precautionary approach, ecosystem approach, feasibility

That proposals are submitted to the Secretariat by States, but States may collaborate with stakeholders in developing proposals

That consultations on proposals for ABMTs/MPAs should be inclusive, transparent, time bound, open to all relevant stakeholders, and may need to include duration for the proposed area and management measures

Not clear who will determine the stakeholders and timeframe and what the requirements or plans are for monitoring and enforcement

ABMT/MPA Decision-making and Implementation:

Option for COP to recommend States to promote the adoption of management measures through relevant legal instruments, frameworks or bodies

Possible for a default mechanism for COP to adopt measures where there are no relevant legal instruments, frameworks or bodies

No provision to explicitly empower the COP to take measures in cases where competent bodies fail to act upon its recommendations

(Areas designated for ABMTs/MPAs could remain unprotected or unmanaged if members of the relevant bodies do not agree upon appropriate measures)

Option for State members of relevant existing frameworks and bodies to promote the adoption of measures that support the goals of ABMTs/MPAs designated under BBNJ

This ensures that the tools and processes already available under existing instruments are utilized

ABMT/MPA Reporting and Monitoring:

Overall it is not clear on the monitoring, control and surveillance (MCS) requirements, e.g. reporting and monitoring timelines and modalities

Requires States to report to COP on ABMT/MPA implementation, with reports to be made publicly available, but without indication of report frequency

BBNJ text has provisions to request or require relevant legal instruments, frameworks and bodies to report to the COP on the implementation of measures that they have established

Seeks to improve transparency by making States party to sectoral and regional organisations accountable for the implementation of measures via those sectoral and regional organisations

Through the above items, may enable the BBNJ COP to provide the central platform and global oversight for ABMTs/MPAs in ABNJ

BBNJ: What Will it Mean for Industry ?



New, stricter requirements and controls by States over the activities conducted by companies under their control or jurisdiction

Expanded or new national, regional and/or international authorities for BBNJ

New mechanisms of declaration, authorization, and reporting of activities to authorities

Requirements for EIAs prior to operations or activities, including Strategic EIAs for a broader suite of regular activities over a wider area

Requirements for the monitoring and reporting of activities and impacts (or lack thereof)

Assessment of cumulative impacts (e.g. marine sound, climate change, acidification)

Significant ocean areas identified for special consideration re industry operations

Limitation of geographical scope of activities through area-based management that establishes new area limits to activities

Requirements for private sector input throughout the BBNJ Agreement implementation, e.g. through public consultation, especially as more specific rules are developed

BBNJ: What are Industry Costs and Benefits?



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Additional Expenditure:

- Due to additional administrative and reporting, technological and operational changes, R&D, and other increased investment in business practices

Additional time and effort:

- Planning, preparation, declaration, authorization, reporting, etc.

New strategic considerations:

- The need for new partnerships and cooperation mechanisms, changes due to new ocean areas becoming off limits or requiring special consideration

New business and commercial opportunities:

- Possible new technological, investment, resources for compliance, monitoring,

Potential for leadership on sustainable development and conservation:

- Companies that embrace BBNJ may benefit from enhanced reputation, social license, etc.

BBNJ: How to Engage in the Negotiations ?

- Via input to government delegations
- Via government input to IGO representatives, e.g. IMO for maritime interests
- **Via the *WOC BBNJ Business Coalition***

BBNJ Coalition for the BBNJ PrepCom process 2016-2017, included:

- International Chamber of Commerce (ICC)
- Int'l Chamber of Shipping (ICS), Cruise Lines Int'l Association (CLIA)
- Industry groups from other sectors

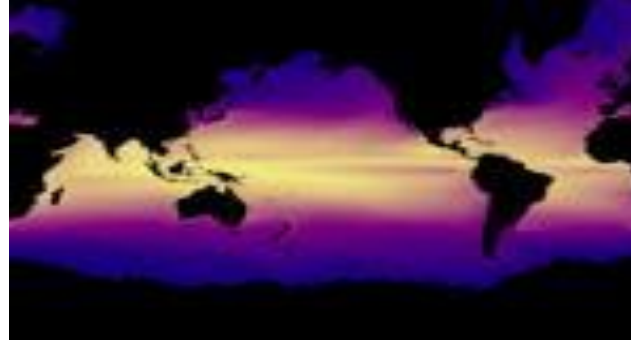
WOC BBNJ Business Coalition during the final Negotiations should well include:

- **The above and many more industry groups**
- **Industry groups and individual companies from other key sectors affected by BBNJ, i.e. shipping, fishing, geophysical survey, seabed mining, etc.**
- **Insurance and legal firms and organizations associated with these key sectors**

WOC has been working to inform and coordinate proactive business involvement in key ocean governance and policy developments:

- 2014-present: International awareness raising about ocean policy developments and BBNJ via WOC News Releases and communiques
- 2014: First-ever International Business Forum on Ocean Policy and Planning
- 2015: First-ever Ocean Policy Review and Analysis for Industry
http://www.oceancouncil.org/site/business_forum/index.php?page=report
- 2016: WOC UNCLOS-BBNJ Coalition for BBNJ PrepCom process; Several formal side events at UN HQ Prep Com convenings
- 2017: BBNJ Webinars: One for each key topic: EIA, ABM/MPAs, MGR, Capacity Building/Technology Transfer
- 2015-present: BBNJ sessions at annual WOC Sustainable Ocean Summit (SOS); BBNJ briefings/presentations at numerous key industry events

- **2019: BBNJ Briefing document for Business:**
<https://www.oceancouncil.org/resources/the-law-of-the-sea-bbnj-agreement-and-ocean-business-activities/>
- **2019: WOC Formal Side Event at UN HQ BBNJ Negotiations: “Operationalizing BBNJ: Methods for Assessing Threat and Risk to High Seas Biodiversity from Private Sector Activity”**
- **2019: High Level Conference on High Seas** (French Government, Nausicaa, WOC)
- **2020: WOC establishes international, cross-disciplinary “Ocean EIA Working Group”**
- **2020: WOC Formal Side Event at UN HQ BBNJ Negotiations: “The Role of the Private Sector in BBNJ Implementation: Moving from UN Policy and Principles to Business Performance and Practices” (postponed)**
- **2020: Analysis of current draft of BBNJ treaty (underway)**
- **2020: Analysis of Investment in High Seas Economic Activity (underway)**
- **2020: BBNJ webinar with IUMI (International Union of Marine Insurance)**



Thank you !

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