



Over 60% of oceans lie beyond national jurisdiction

marine biodiversity beyond national jurisdiction

› Australia's continuing role

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Australia should support the establishment
of a robust, comprehensive, adequate
and representative system of
high seas marine protected areas

Introduction

Our ocean ecosystems

The world's oceans cover more than 70 per cent of the Earth's surface. They contain spectacular, unique biodiversity and rich ecosystems—from microscopic plankton at the base of the food chain, to reef-building corals, highly migratory tuna, whales and seabirds, to the rich ecosystems of our deep seas.

The oceans provide important functions that sustain life on Earth—they generate oxygen, absorb carbon dioxide from the atmosphere, regulate climate and provide food security for many people around the world. We use the oceans for commercial fishing, shipping and transport, amongst many other activities.

Threats to our oceans continue to increase and impact the health of our marine ecosystems. Unsustainable levels of fishing, as well as illegal, unreported and unregulated (IUU) fishing, is pushing fisheries into decline; marine plastics are polluting our oceans and harming wildlife through ingestion and entanglement; and climate change related rising greenhouse gas levels are causing the acidification, warming and deoxygenation of our oceans.

There is a compelling and urgent need to protect the biodiversity of our oceans, both within national boundaries and beyond national jurisdiction (Laffoley 2017).

Areas beyond national jurisdiction—the high seas and seabed

Over 60 per cent of the world's oceans lie in areas beyond national jurisdiction (ABNJ)—in the high seas water column and on the deep seabed—beyond the 200 nautical-mile limit of our national exclusive economic zones (EEZ) and extended continental shelves. These marine areas hold some of the most diverse and least studied biodiversity on Earth, especially in deep sea benthic ecosystems.

However, biodiversity in areas beyond national jurisdictions (BBNJ) remains largely unprotected and many human activities remain poorly regulated. Improved arrangements are needed if effective control over activities to deliver biodiversity conservation and sustainable use is to be achieved.

The international journey to protect BBNJ—a new legally binding UN agreement

The United Nations Convention on the Law of the Sea (UNCLOS) establishes the governance framework for the world's oceans—including the regulation of maritime activities such as shipping, fisheries, pollution and the establishment of marine protected areas (MPA) to conserve biodiversity. However, there is currently no legally binding instrument under UNCLOS to protect marine biodiversity in areas beyond national jurisdiction (BBNJ).

In 2015, after several decades of negotiations, the UN General Assembly (UNGA) agreed to develop a new legally binding implementing agreement under UNCLOS for the conservation and sustainable use of BBNJ (United Nations 2015). This new agreement provides a mechanism and opportunity for the global community to establish a holistic overarching framework and unifying global vision, objectives, principles and approaches to drive progress in pursuit of long-term ocean conservation and sustainable use (IUCN 2016).

International commitments to high seas conservation are also being made at high level fora including the 2014 International Union for Conservation of Nature (IUCN) World Parks Congress (IUCN 2014), 2016 IUCN World Conservation Congress (IUCN 2016a), 2017 UN Oceans Conference (United Nations 2017) and 2017 International Marine Protected Areas Congress (IUCN 2017). In the 2030 Agenda for Sustainable Development, the ocean-specific Sustainable Development Goal (SDG) addresses 'Life below water' (SDG14, United Nations 2017). IUCN and UNESCO have also identified high seas areas with outstanding universal value for potential consideration as World Heritage properties (Freestone et al. 2016).

In 2017, progress continues as the UNGA's Preparatory Committee (PrepCom) has recommended that the UNGA establish an intergovernmental conference (IGC) to develop the new legally binding agreement under UNCLOS for the conservation and sustainable use of BBNJ (United Nations 2017a). As we go to print we await the UNGA agreement to start this formal negotiating process. However, there is currently no legally binding instrument under UNCLOS to protect BBNJ.

> the world's oceans cover more than 70% of Earth's surface
biodiversity in areas beyond national jurisdiction remains largely unprotected

> common concern of humankind

our global responsibility to protect the world's oceans

Australia's role in the high seas

Australia has championed and led best practice ocean management both in national waters and for the oceans beyond our national jurisdiction. Australia played a leading role in ensuring the 2002 World Summit on Sustainable Development made strong commitments on establishing sustainable fisheries and networks of representative MPAs; in developing and elaborating the concept of ecosystem-based management; in putting integrated ocean management on the Asia-Pacific Economic Cooperation (APEC) agenda; and in launching the UNGA process working towards a new BBNJ agreement. There is now an excellent opportunity for Australia to continue such leadership by facilitating a strong and effective new implementing agreement for BBNJ, as part of a holistic national ocean governance system.

High seas events in Australia

In 2013 and 2017, two high level events brought together Australian and international ocean experts and local stakeholders to discuss progress on global ocean governance and the role for Australia.

This report is the output of the 2017 forum *Marine Biodiversity Beyond National Jurisdiction—Australia's Continuing Role* held by the Australian Committee for IUCN (ACIUCN), the Humane Society International (HSI), the University of Queensland Global Change Institute (UQCGI) and the Environmental Defenders Office of NSW (EDO NSW). The event built on the 2013 forum hosted by ACIUCN, HSI and the University of Sydney United States Study Centre.

The 2017 forum presented expert speakers from international and Australian marine conservation organisations including IUCN, HSI, WWF International, Ocean Unite, Pew Charitable Trusts and the Global Ocean Commission. The forum was attended by over 50 Australian stakeholders including representatives from the Australian Government Department of the Environment and Energy, Department of Foreign Affairs and Trade, Department of Agriculture and Water Resources, marine non-government organisations (NGO) and academic institutions. A list of speakers is provided at the back of this report.

The forum addressed recent developments in the international BBNJ negotiations and the critical need for a coherent global regime. It examined the threats to our oceans, conservation challenges, Australia's continued leadership in developing a legally binding global BBNJ agreement, and opportunities for high seas commitments to be integrated into a holistic national oceans policy framework for Australia.



Acknowledgements We wish to thank the organising committee and their respective organisations: the Honourable Professor Robert Hill AC (UQCGI and formerly the Global Ocean Commission and Howard Government Minister); Alistair Graham, Michael Kennedy and Nicola Beynon (HSI); Katherine Zischka (ACIUCN); and Rachel Walmsley (EDO NSW), with special thanks to IUCN Regional Councillor, Peter Cochrane.

A warm thank you to all international expert speakers, forum participants and supporters who made this publication and progress towards high seas conservation possible.

A special thank you to The Thomas Foundation which provided generous financial support for both the forum and this report.

excellent opportunity for Australia
to continue to show leadership
by facilitating a strong and effective
implementing agreement for BBNJ

The recommendations of this report are drawn from the discussions at the 2017 BBNJ forum in Sydney and are intended for Australian Government and NGO stakeholders engaged in this important policy area.

The report and videos are available on the ACIUCN website at aciucn.org.au

Key recommendations

1 The urgent global priority—conserving our valuable ocean ecosystems in a changing climate

The oceans provide important functions that sustain life on Earth. However, threats to the health of our marine ecosystems and human populations continue to grow. Unsustainable and IUU fishing pressures are pushing fisheries into decline (Christensen et al. 2014); marine plastics are polluting our oceans and harming wildlife through ingestion and entanglement (Reisser et al. 2013), and climate change related rising greenhouse gas levels are causing the acidification, warming and deoxygenation of our oceans (Laffoley and Baxter 2016). There is an urgent need to prioritise the conservation of our ocean ecosystems at global, regional and national levels.

Recommendation: Australia should recognise the urgency of threats to the world's marine ecosystems and prioritise strong ocean conservation at national, regional and international levels.

2 The Common Concern of Humankind—our global responsibility to protect the world's oceans

Over 60 per cent of the world's oceans lie beyond national jurisdiction and therefore outside the protection of national governance frameworks. It is critical that all nations recognise the protection of BBNJ as a common concern of humankind and a shared responsibility, and actively engage in international collaboration to achieve this.

Recommendation: Australia should continue to champion the shared global responsibility to protect BBNJ and work in international collaboration with other nations to achieve and implement a legally binding ocean governance framework under UNCLOS.

3 Australia as a high seas conservation leader

The establishment, development and implementation of an effective global ocean governance system will take active leadership, collaboration and partnerships. There is an excellent opportunity for Australia to show world class leadership for ocean conservation and BBNJ. The Australian Government should urge the prompt commencement of an intergovernmental conference (IGC) to develop a new legally binding agreement under UNCLOS for the conservation and sustainable use of BBNJ, as per the final PrepCom recommendation in 2017 (United Nations 2017a).

Recommendation: The Australian Government should show active leadership and invest strongly in good global ocean governance, including to urge prompt commencement of an IGC to develop the new BBNJ implementing agreement.

4 Securing a strong economy and healthy communities

The world's oceans hold tremendous economic importance. A recent report estimated the total annual value of goods and services provided by coastal and oceanic environments at US\$24 trillion. For example, if the ocean were a country it would have the world's 7th largest economy (Hoegh-Guldberg et al 2015) (Figure 1). It is essential that the economic benefit and value we derive from our oceans and coastlines—our Blue Economy—is managed sustainably (WWF 2017).

In a country where 85% of us live no more than 50 kilometres from the coast, Australians have a strong dependency on the oceans surrounding us. The extreme weather and oceanic changes that will come with a warmer climate will impact on our health and wellbeing. Ocean acidification, harmful algal blooms, microbes and antibiotic resistance, anthropogenic chemicals, marine plastics, nanomaterials and the introduction of exotic species all pose threats to human health and food security.

Recommendation: Recognise the critical role of healthy marine ecosystems, including in ABNJ, to ensuring a strong economy and healthy communities in Australia and globally.

5 The Sustainable Development Goals: SDG 14 'Life Below Water'

In 2015, UN Member States agreed to prioritise the protection of the world's oceans under the new Sustainable Development Goals (SDG), specifically SDG14 'Life Below Water'. In 2017, world leaders and experts met at The Ocean Conference to address commitments under SDG14. The *Our Ocean, Our Future: Call for Action* calls on member nations to commit to actively engage in international negotiations for a high seas implementing agreement in 2017 and beyond (United Nations 2017b). It is important for progress on SDG 14, and indeed other international environmental agreements, to complement and support broad ocean conservation priorities including to protect BBNJ.

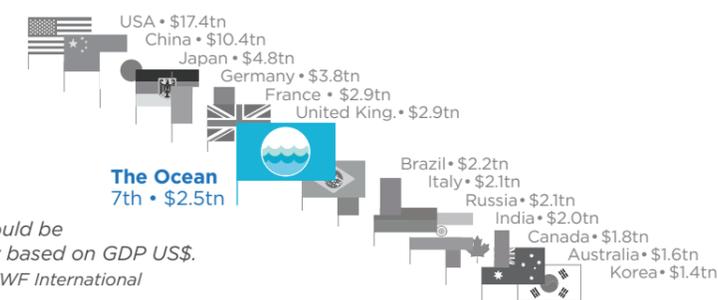


Figure 1

The ocean's economic value would be the 7th-largest global economy based on GDP US\$. (Hoegh-Guldberg O et al 2015) ©WWF International

> currently no legally binding instrument

under UNCLOS to protect marine biodiversity in areas beyond national jurisdiction

Recommendation: Ensure international environmental instruments and negotiations, including those associated with the SDGs, are complementary and mutually supportive of ocean conservation and the protection of BBNJ.

6 Building a holistic, integrated ocean governance framework

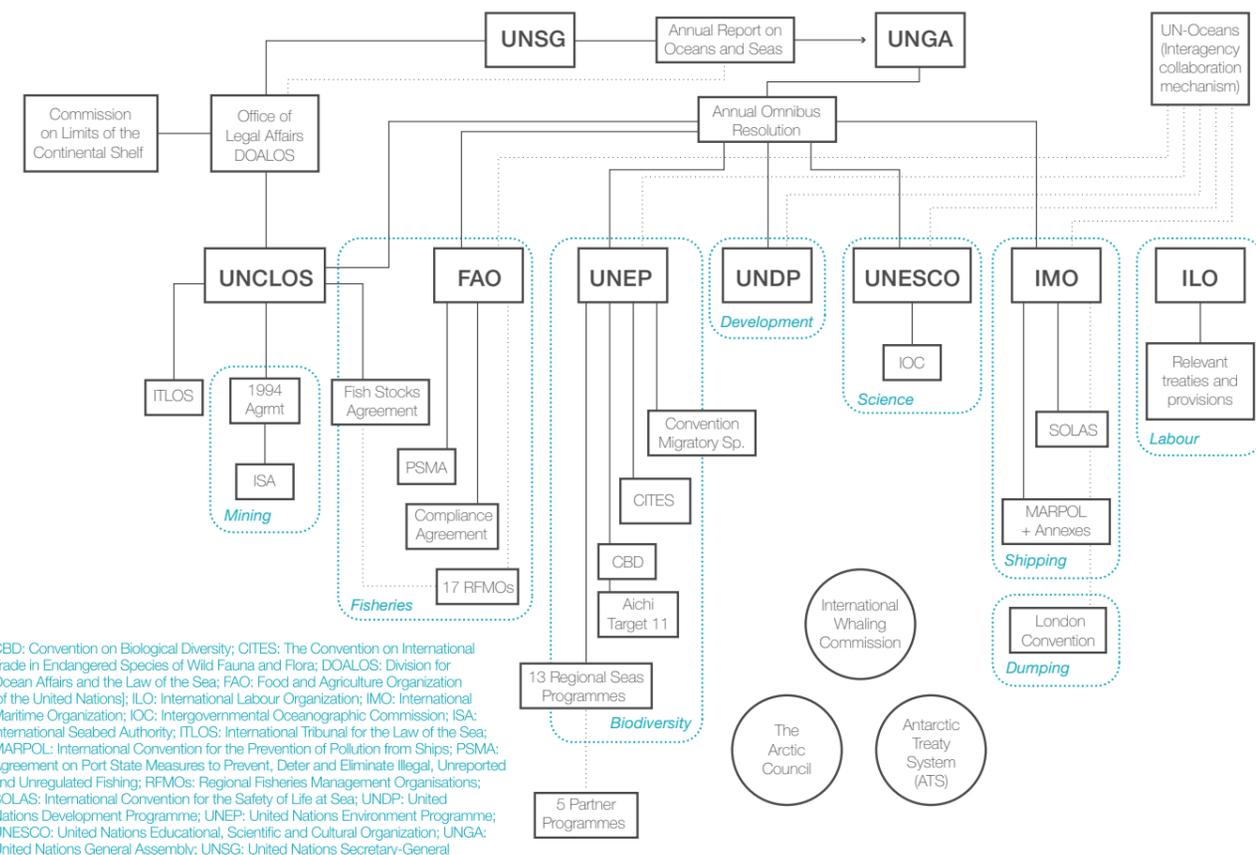
The current international ocean governance framework remains fragmented and sectoral, with various bodies responsible for different ocean issues such as biodiversity, fisheries, science, mining, pollution and labour (Figure 2, Global Ocean Commission 2014; 2016).

A robust and comprehensive ocean governance system must be established at the international level to: set clear global norms and create global institutions that ensure accountability and oversight; be based on scientific best-practice principles through scientific advisory bodies (including precautionary limit setting for extractive activities); ensure effective compliance and enforcement mechanisms; provide for the establishment of a comprehensive system of MPAs; vastly scaled marine research; and provide options for implementation at the regional level (Gjerde et al. 2016, Gjerde 2017).

Recommendation: Australia should actively progress the establishment of a globally recognised, holistic and integrated ocean governance framework based on scientific best-practice governance principles, including:

- **International and cross-sectoral collaboration** (integrating existing sectoral silos);
- **Scientific advisory bodies** to ensure accountability and oversight;
- **Effective compliance and enforcement mechanisms** to address mismanagement;
- **Precautionary limits on commercial operations and sustainable use** (e.g. fishing, mining, etc.);
- **Ensure lessons learnt from less successful mechanisms are considered and avoided;**
- **Allow options for implementation of the global framework at a regional level.**

Figure 2 Summarised schematic diagram of international ocean governance. © Global Ocean Commission (2014)



CBD: Convention on Biological Diversity; CITES: The Convention on International Trade in Endangered Species of Wild Fauna and Flora; DOALOS: Division for Ocean Affairs and the Law of the Sea; FAO: Food and Agriculture Organization of the United Nations; ILO: International Labour Organization; IMO: International Maritime Organization; IOC: Intergovernmental Oceanographic Commission; ISA: International Seabed Authority; ITLOS: International Tribunal for the Law of the Sea; MARPOL: International Convention for the Prevention of Pollution from Ships; PSMA: Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; RFMOs: Regional Fisheries Management Organisations; SOLAS: International Convention for the Safety of Life at Sea; UNDP: United Nations Development Programme; UNEP: United Nations Environment Programme; UNESCO: United Nations Educational, Scientific and Cultural Organization; UNGA: United Nations General Assembly; UNSG: United Nations Secretary-General

7 High seas MPAs — a comprehensive framework for marine protected areas

The high seas cover almost two thirds of the Earth's surface, however less than 1 per cent is currently protected (Pew Charitable Trusts 2015).

Within national boundaries, MPAs are an important tool to protect marine biodiversity. A robust and comprehensive system of high seas MPAs would provide a framework to protect significant areas of BBNJ including key species critical to maintaining healthy ecosystems and building resilience to climate change.

There is currently no mechanism to establish multi-sector MPAs on the high seas. The new implementing agreement should provide the framework to establish a comprehensive, adequate and representative protected area system based on best practice scientific principles (Gjerde et al 2016; Pew 2015).

New high seas MPAs can contribute to meeting internationally agreed commitments including the 2002 WSSD commitment (to networks of representative MPAs) and UN Convention on Biological Diversity (CBD) Aichi Biodiversity Targets (10% coverage), as well as the more recent 30% targets of the 2014 IUCN World Parks Congress Promise of Sydney and 2016 IUCN World Conservation Congress.

Australia has a strong history of MPA governance and management. This is an excellent opportunity to facilitate the establishment of a new best-practice global system of high seas MPAs, as part of a holistic national oceans policy for Australia (see Recommendation 15).

Recommendation: Australia should support the establishment of a robust, comprehensive, adequate and representative system of high seas MPAs under the new implementing agreement, as part of a holistic national oceans agenda.

8 World Heritage — Outstanding Universal Value in the high seas

More than 1000 natural and cultural heritage areas around the world are recognised for their Outstanding Universal Value (OUV) under the UN World Heritage Convention. Forty-nine of these are marine areas— with the spectacular Great Barrier Reef, Ningaloo Coast, Shark Bay, and offshore islands of Lord Howe, Macquarie, and Heard and McDonald located in Australian waters (UNESCO 2017).

The World Heritage Convention is unique among international conservation tools in that it looks beyond biodiversity, and considers criteria like outstanding beauty and unusual geological and natural processes. The Convention is well suited to identifying and safeguarding exceptional places in the high seas.

The Convention currently recognises areas that lie within national boundaries. However, with almost two thirds of our oceans beyond national jurisdiction, there is growing support to expand this recognition to include the high seas. In 2016, the UNESCO World Heritage Centre and IUCN highlighted World Heritage listing in the high seas as 'an idea whose time has come'. The report considers the required law and policy considerations and presents five exceptional high seas sites that could warrant future inclusion on the World Heritage List (Figures 4 & 5) (Freestone et al. 2016; UNESCO 2016).

Recommendation: Recognise areas of biodiversity beyond national jurisdiction that have outstanding universal value for potential future inscription on the World Heritage List.



Figure 3 The 49 marine sites inscribed on UNESCO's World Heritage List (as of October 2017). © UNESCO (2016)

> unsustainable and destructive fishing practices

are causing extensive declines in fish stocks as well as non-target species

9 Ensuring truly ecologically sustainable international fisheries management

The oceans provide food security for many of the world's communities. However, unsustainable fishing and the use of destructive fishing methods (damaging sensitive ecosystems and resulting in bycatch of non-target fish) are causing extensive declines in fish stocks as well as non-target species and associated habitats worldwide.

It is important for the new BBNJ implementing agreement to ensure truly sustainable fisheries management containing ecologically sustainable catch limits, non-destructive harvesting methods, and effective management bodies. The agreement should consider lessons learnt and avoid mistakes from previous less successful single-sector mechanisms (for example, experiences from regional fisheries management organisations).

Recommendation: Ensure the implementation of a truly sustainable international fisheries management system for ABNJ, including ecologically sustainable catch limits, non-destructive fishing methods, and effective fisheries management bodies and regulatory coordination.

10 Marine plastic pollution

Each year, 9.5 million tonnes (Mts) of new plastic waste flows into the ocean (Boucher and Friot 2017). Plastic pollution is a global environmental concern, with studies showing high concentrations of up to 580,000 pieces of plastic per km² occurring on a global range (Wilcox et al. 2015). For example, between 2010 and 2011, 1,433,046 tonnes of plastic were used in Australia of which only 20% was recycled (Reisser et al. 2013).

The threat of plastics to marine species is pervasive and geographically widespread. Marine plastic pollution has become prevalent in areas of the Indian, Pacific and Atlantic Oceans originally believed to be relatively pristine (Wilcox et al. 2015). A wide range of marine species including zooplankton, cetaceans, seabirds, fish and marine turtles are susceptible to plastic pollution through ingestion and entanglement (Eriksen et al. 2014). Studies have predicted that by 2050, 99% of all seabird species will be impacted by marine plastic ingestion (Wilcox et al. 2015).

The full extent of marine plastic impacts is only just becoming apparent with growing concerns over microplastics—small plastic particles (<5mm). In 2017, the global release of primary microplastics into the ocean was estimated at 1.5 Mts/year (ranging from 0.8 to 2.5 Mts/year), with 98% generated from land-based activities (Boucher and Friot 2017). Microplastics incorporate themselves into marine ecosystems and food webs as hazardous toxins and are biomagnified up the food chain when ingested by marine animals, with further implications for human health (Reisser et al. 2013).

The management of marine plastics will require effective public private partnerships to address systemic lifecycle management rather than a purely waste management approach—from product design to urban infrastructure planning (Boucher and Friot 2017).

Recommendation: Engage in public private sector partnerships to ensure the effective elimination of marine plastic pollution from Australia and internationally.

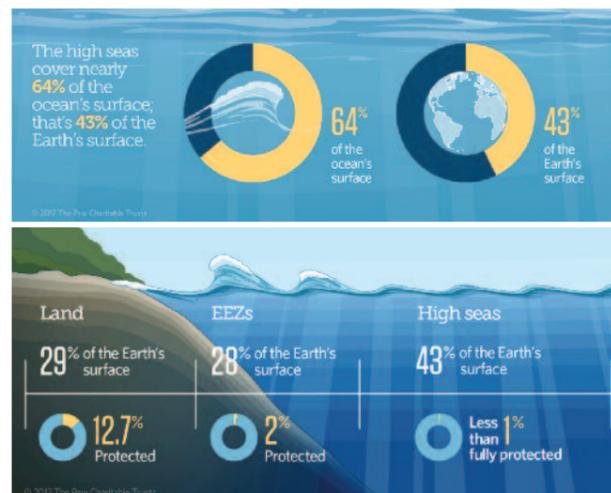


Figure 4
Global protection of High Seas areas.
© Pew Charitable Trusts (2015)



Figure 5
Illustrations of potential Outstanding Universal Value in the High Seas.
© UNESCO

11 Scaling up international marine research programmes to ensure governance based on best-practice science

The high seas and seabed remain a frontier of largely unexplored and under-studied biodiversity. It is critical that a new governance framework enhances marine scientific exploration and knowledge, and ensures that best available scientific evidence is incorporated into ABNJ decision making processes. Marine research programmes should be better resourced to provide management information on vulnerable species, populations, habitats and ecosystems that need to be protected. Scientific data should be standardised, centralised and openly accessible.

The new governance framework should set a mandate to use best available scientific evidence for conserving BBNJ and be adequately resourced (Gjerde et al. 2016, Gjerde 2017).

Recommendation: Increase the capacity of marine scientific research programmes including in ABNJ and ensure that ABNJ governance and decision-making processes are based on best-practice science-based principles and evidence.

12 EIA, SEA and compliance—ensuring effective management tools and global scrutiny for high seas activities

A fundamental characteristic of ABNJ is their remoteness. Since governance remains fragmented, it is important that in a new governance system, management tools and mechanisms such as implementation, compliance, surveillance, enforcement, capacity building, technology transfer, robust accountability and regular reporting are appropriate and effective, and applied consistently.

Management mechanisms that are widely used in national MPA management such as environmental impact assessments (EIA), strategic environmental assessments (SEAs) and dispute resolution mechanisms should be standardised in ABNJ (Gjerde et al. 2016).

Recommendation: Ensure that ABNJ management tools and mechanisms are robust, appropriate, effective and based on best-practice principles to ensure global scrutiny for high seas activities.

13 Building a broader ocean constituency—strengthening innovative, cross-sectoral partnerships and cooperation

Holistic approaches require effective cooperation that breaks down existing silos and sectoral approaches. There are many stakeholders and actors with interests in the high seas including conservation, commercial fishing, deep sea mining, maritime regulation, amongst others.

Whether driven by economic interests, geo-political advantage, national security or the conservation of high seas species and ecosystems, comprehensive policy development and decision making must recognise these multiple interests and actively engage all sectors to achieve a transparent, inclusive and sustainable high seas governance process. There is an important role for non-government expert bodies to advise government on best-practice policy development.

Recommendation: Engage in and strengthen innovative, cross-sectoral partnerships and cooperation to build a broader ocean constituency for effective conservation including in ABNJ.

14 Strengthen regional collaboration across the Pacific and Indian Oceans

As an island nation, Australia's marine areas border neighbouring countries in the Pacific and Indian Oceans. Pacific nations are taking strong action on ocean conservation and climate change, and Australia has the opportunity to strengthen partnerships and collaboration with government and NGOs across the Oceania region to support effective regional ocean conservation. Australia can also provide technical knowledge and help build capacity in research, compliance and governance.

Recommendation: Engage with neighbouring countries to explore coordinated regional implementation of ocean and high seas conservation across the Pacific and Indian Oceans.

15 Global high seas governance as part of a holistic Australian Oceans Policy

As a large island continent, Australia is surrounded by spectacular marine ecosystems—from our coastal beaches, mangroves and wetlands, to World Heritage listed coral reefs, Antarctic islands and deep sea seamounts. We are a nation with rich marine biodiversity and an excellent capacity to manage our ocean wealth.

> Increase marine scientific research capacity to ensure governance is based on best-practice scientific principles

> integrate Australia's leadership in BBNJ

into a holistic and comprehensive national Australian Oceans policy

The 1998 Australian Oceans Policy presented a vision for Australia's marine environments: 'Healthy Oceans: cared for, understood and used wisely for the benefit of all, now and in the future' (Commonwealth of Australia 1998).

There is substantial work being undertaken to recommend reforms to Australian environmental laws and it is an opportune time to develop a comprehensive national agenda. Australia's national marine reserve estate falls under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Options to reform Australian oceans law and policy with a strategic vision, objectives and principles that incorporate ABNJ include: revisiting the 1998 Australian Oceans Policy, reforming the EPBC Act, establishing an Oceans Authority and strengthening existing sectoral laws around mining, pollution (e.g. marine plastics), consumption (e.g. seafood labelling), fisheries (e.g. improved bycatch provisions), as well as energy and planning laws.

As the world's nations develop a global ocean governance framework, there is an excellent opportunity for Australia to revisit its national marine laws and policy, and to ensure that our commitments to conserving BBNJ are effectively integrated into a holistic national oceans strategy.

Recommendation: Harness the opportunity of global oceans governance reform to effectively integrate Australia's leadership in BBNJ governance into a holistic and comprehensive national Australian Oceans Policy through a strategic and cross-sectoral reform of national marine policy and law.

16 Accelerating long-term commitment to ocean governance

With pressures on our world's oceans continuing to increase, this is a critical time for nations to show strong leadership and take ambitious action to achieve a long-term, holistic, collaborative and progressive implementing agreement to protect our oceans and BBNJ.

This new implementing agreement will require nations to recognise the importance of collaboration—to work with a wide range of stakeholders to achieve a best-practice governance approach for our oceans and avoid the unsustainable trajectory we currently remain on.

Australia is well placed to take a strong leadership role in ensuring the development and implementation of a new best-practice global oceans governance framework, and that high seas conservation commitments are integrated into a holistic national oceans policy for Australia.

The forum organisers offer their partnership to the Australian Government to implement the recommendations of this report and progress best-practice marine conservation, both in Australia and for our shared global marine biodiversity in ABNJ via a new implementing agreement.

Recommendation: Our oceans must be protected for the long-term, pressures for short term economic gain resisted and we must work collectively, in cross-sectoral partnership across all nations to establish a strong and sustainable framework to govern our ocean ecosystems for now—and into the future.

Governments and civil society should work in multi-sector collaboration to prioritise the conservation of our ocean biodiversity at the national level and globally.



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Marine Biodiversity Beyond National Jurisdiction—Australia's Continuing Role forum, March 2017, Australian Museum, Sydney

Speakers

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