



Regional oceans governance mechanisms: A review



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ABSTRACT

The development of regional governance for the protection of the environment, sustainable use of natural resources and conservation of its biodiversity is unquestionably a cornerstone of international environmental law and policy. With regard to marine and coastal issues, it has mainly been taking place through Regional Seas programmes, Regional Fishery Bodies and Large Marine Ecosystems mechanisms. Based on a similar geographical approach, however, these regional mechanisms raise concerns relating to their coordination and efficiency, and possibly overlap in what they aim to achieve. This paper provides a review of existing regional oceans governance mechanisms, assessing their individual and collective capacities to move towards ecosystem-based management, and highlighting options to make the regional landscape more coherent and effective.

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1. Introduction

The marine environment, its resources and its biodiversity are under increasing human pressure, including climate change and ocean acidification, sea-based and land-based pollution, habitat destruction, accidental or intentional introductions of alien species, over-exploitation of renewable resources and destructive fishing practises [1,2]. Each of these threats requires separate attention and action at all governance levels, from local to global. While dedicated policies and regulations have progressively been developed by coastal States, the last decades have shown a proliferation of multilateral environmental agreements (MEAs) which greatly help tackle oceans governance issues that require international coordination and cooperation [3].

In particular, because “not every international environmental problem needs to be dealt with on a global level” [4], the regionalisation of international environmental law and policy has emerged as one of the most important legal trends in recent years [5–7]. Compared with the global approach to oceans governance, the added value of regional oceans governance mechanisms can be summarised by the watchwords: “closer, further, faster” [8]. This regional approach has mainly been taking place within three types of regional oceans governance mechanisms: (i) Regional Seas programmes, most of which are supported or coordinated by the United Nations Environment Programme

(UNEP); (ii) Regional Fishery Bodies (RFBs), some of which have been established under the framework of the United Nations Food and Agriculture Organization (FAO); and (iii) Large Marine Ecosystem (LME) mechanisms, including projects supported by the Global Environment Facility (GEF).

Scientists have abundantly demonstrated the limits of the traditional, sectoral and essentially “issue-by-issue” approach to the threats facing the oceans [9]. There has been increasingly wide support for more holistic and integrated governance approaches that take due account of the spatial dimension and functioning of ecosystems – usually grouped under the banner of “ecosystem-based management” (EBM) e.g. [10]. In conjunction, the international community has been placing ever greater emphasis on the need to rationalise and simplify the international environmental governance system, which critics deem insufficiently effective, too complex and expensive. This challenges existing oceans governance mechanisms in two key ways. First, it places their individual capacity to deliver change at the ecosystem level under closer scrutiny. The time of innocence and early enthusiasm about the simple fact that such mechanisms exist has passed. They are now required to effectively bring change in a problem-solving approach while integrating and adjusting to new and emerging concepts such as EBM. Second, complexity and costs concerns demand much higher levels of cooperation and coordination between mechanisms so as to avoid duplications and overlaps, and make the best of complementarities – in other words ensure that the whole is greater than the sum of its parts.

This paper provides a review of existing regional oceans governance mechanisms, assessing their individual and collective

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capacities to move towards EBM. It also highlights options to make the regional oceans governance landscape more coherent and effective. To that end, Section 2 first presents the key features of the three above-mentioned regional oceans governance mechanisms, while Section 3 identifies their successes and challenges. Section 4 assesses the level of cooperation and coordination among and between these mechanisms. Last, Section 5 identifies avenues for progress.

2. Key features of regional oceans governance mechanisms

2.1. Regional Seas programmes

Held in Stockholm in June 1972, the United Nations Conference on the Human Environment led to the creation of UNEP “to serve as a focal point for environmental action and coordination within the United Nations system”.¹ At its first session, UNEP made the oceans a priority action area², and its Regional Seas Programme (RSP) was then initiated in 1974³ [11]. As of today, almost 150 States across 18 regions participate in the RSP (Table 1).

The mandates of the Regional Seas programmes cover the protection and management of the regional marine environment in the broad sense – which includes the prevention and elimination of the pollution and the conservation of marine biodiversity – and apply mostly to the coastal State maritime zones of Contracting Parties⁴ [12]. Regional Seas programmes generally have an Action Plan which serves as the basis for regional cooperation. Moreover, 15 of them also have a framework convention complemented by issue-specific protocols.⁵ The framework documents – i.e. the action plan and/or the framework convention – were mostly amended in the 1990s to integrate new principles of international law which emerged with the adoption of the Convention on Biological Diversity (CBD) in 1992 and the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994. In the same way, the topics of regional protocols have expanded since the 1970s [8]. In the first phase, legal instruments organising regional cooperation to combat pollution by oil and other harmful substances from ships (Mediterranean, 1976; Western, Central and Southern Africa, 1981; Red Sea and Gulf of Aden, 1982; Caribbean, 1983; Western Indian Ocean, 1985), as well as reducing pollution from land-based sources and activities (Mediterranean, 1980; Black Sea, 1982; South-East Pacific, 1983) were adopted. This dynamic gradually expanded to encompass biodiversity conservation, particularly through the creation of marine protected areas (MPAs) (Western Indian Ocean, 1985; South-East Pacific, 1989; Caribbean, 1990). While Vallega noted in 2002 that the regional approach had “been marked by a lack of consistency of the legal framework with the prospect of operating sustainable management programmes” [13], Regional Seas protocols have, more recently but still in a limited way, taken on goals beyond the conservation of the marine environment and biodiversity, including socio-economic development. The first step in this new direction came with the adoption of the 2008 Mediterranean Protocol on Integrated Coastal Zone Management (ICZM) [14], and it is with a similar ambition that Western Indian

Table 1
Regional Seas programmes.

Type of Regional Seas programme	Main feature	Regional Seas concerned
UNEP administered Regional Seas programme	Secretariat, administration of the Trust Fund and financial and administrative services provided by UNEP.	Caspian Sea ^a East Asian Seas Mediterranean North-West Pacific Western, Central and Southern Africa Western Indian Ocean Wider Caribbean
Associated Regional Seas programme	Secretariat not provided by UNEP. Financial and budgetary services managed by the programme itself or hosting regional organisations.	Black Sea North-East Pacific Pacific Red Sea and Gulf of Aden ROPME Sea
Independent Regional Seas programme	UNEP support/collaboration was or is provided. Regional framework not established under the auspices of UNEP. Invited to participate in regional seas coordination activities of UNEP through the global meetings of the RSP. UNEP is also invited to participate in their respective meetings.	South Asian Seas South-East Pacific Antarctic region ^b Arctic region ^c Baltic Sea North-East Atlantic

^a On an interim basis, at the request of the Conference of Parties.

^b UNEP regards the Antarctic region as an independent Regional Sea programme above all on account of the 1980 Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention), which establishes the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). While the CAMLR Convention's objective is “the conservation of Antarctic marine living resources” (Art. II), its Preamble and many provisions indicate that CCAMLR's competence is in principle limited to fishing, associated activities, and research (e.g. Arts II(3), V, VI, IX and XXIX(1)). Moreover, FAO's RFB-list includes CCAMLR.

^c UNEP regards the Arctic region as an independent Regional Seas programme above all on account of the mandate and work of the Arctic Council's Protection of the Arctic Marine Environment (PAME) Working Group.

Ocean States are currently negotiating an ICZM Protocol [15].

In terms of institutional structure, all Regional Seas programmes have at least a Secretariat, called a Regional Coordinating Unit (RCU) for UNEP administered Regional Seas programmes. Some programmes also count on additional institutional structures, such as Regional Activity Centres (RACs), which play a major role by carrying out three main tasks: (i) providing States with relevant data, through publications, white papers and reports, so that they can adopt science-based decisions; (ii) strengthening regional cooperation in a specific field, by organising conferences and workshops; and (iii) providing legal and technical assistance for the implementation of conventions, protocols and action plans [16].

2.2. RFBs

For the purpose of this article, RFBs are defined as regional mechanisms through which States or entities (i.e. the European Union (EU) and Chinese Taipei (Taiwan)) cooperate on the sustainable use and conservation of marine living resources (fish as well as marine mammals) and/or the development of marine capture fisheries. The concept of RFBs has been used by FAO for a considerable period of time.⁶ Different types of RFBs exist due to

¹ UNGA, Resolution 2997 (XXVII), of 15 December 1972.

² UNEP, Report of the Governing Council on the work on its first session, 12–22 June 1973, United Nations, New York, 1973.

³ UNEP, Report of the Governing Council on the work on its second session, 11–22 March 1974, United Nations, New York, Decision 8(II).

⁴ As of today, only four regional systems – namely the Antarctic, Mediterranean, North-East Atlantic and South Pacific – have the mandate to undertake activities in ABNJ.

⁵ There are no framework conventions and protocols in the Arctic, East Asian Seas, North-West Pacific and South Asian Seas regions.

⁶ See the information at (www.fao.org/fishery/topic/16800/en). Note that FAO's list of RFBs as at 17 March 2015 also includes inland waters-RFBs, the International

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