



Area-based management tools

Erik J. Molenaar

Netherlands Institute for the Law of the Sea (NILOS),
Utrecht University &
Faculty of Law, University of Tromsø

6 May 2013



Overview of presentation

- Tailored to areas beyond national jurisdiction (ABNJ) & to mandate BBNJ Working Group
- Terminology
- Types
- Objectives
- Threats
- Examples of existing tools
- Relevant international instruments & bodies
- Challenges re ABNJ



Terminology

- Area-based management tools
 - Include:
 - At any rate: marine protected areas (MPAs)
 - Possibly: marine spatial planning (MSP)
 - No universally accepted definition exists
 - Here: «higher protection than the surrounding area due to more stringent regulation of one or more or all human activities»
 - Does not necessarily imply a complete prohibition of one or more or all human activities *per se*
 - Can be indefinite or temporary
 - Not tailored to MSP
 - Description/identification ≠ designation/identification ≠ management/regulation



Types

- Single-sectoral (sector specific)
 - Examples of human activities in ABNJ
 - Navigation (including military activities)
 - Dumping
 - Fishing & hunting
 - Exploration and exploitation of non-living resources
 - Laying of cables and pipelines
 - Marine scientific research (including bioprospecting)
 - New and emerging activities
- Multi-sectoral
 - Several human activities
- Cross-sectoral (non-sector specific or holistic)
 - All human activities



Objectives

- Area-based management tools can be pursued for one or more of the following main objectives
 1. Protection and preservation of the marine environment
 2. Conservation of marine biodiversity
 3. Protecting or safeguarding key ecosystem processes
 4. Sustainable use of components of marine biodiversity
 5. Creating scientific reference areas (base-line research)
 6. Safeguarding aesthetic or naturalness/wilderness values
 7. As 'buffer area' or 'insurance' (precautionary approach)
 8. Avoiding or resolving conflicting human activities



Threats

- Intentional or unintentional removals of target and non-target species
- Damage to benthic ecosystems
- Pollution
- Introduction of alien species?

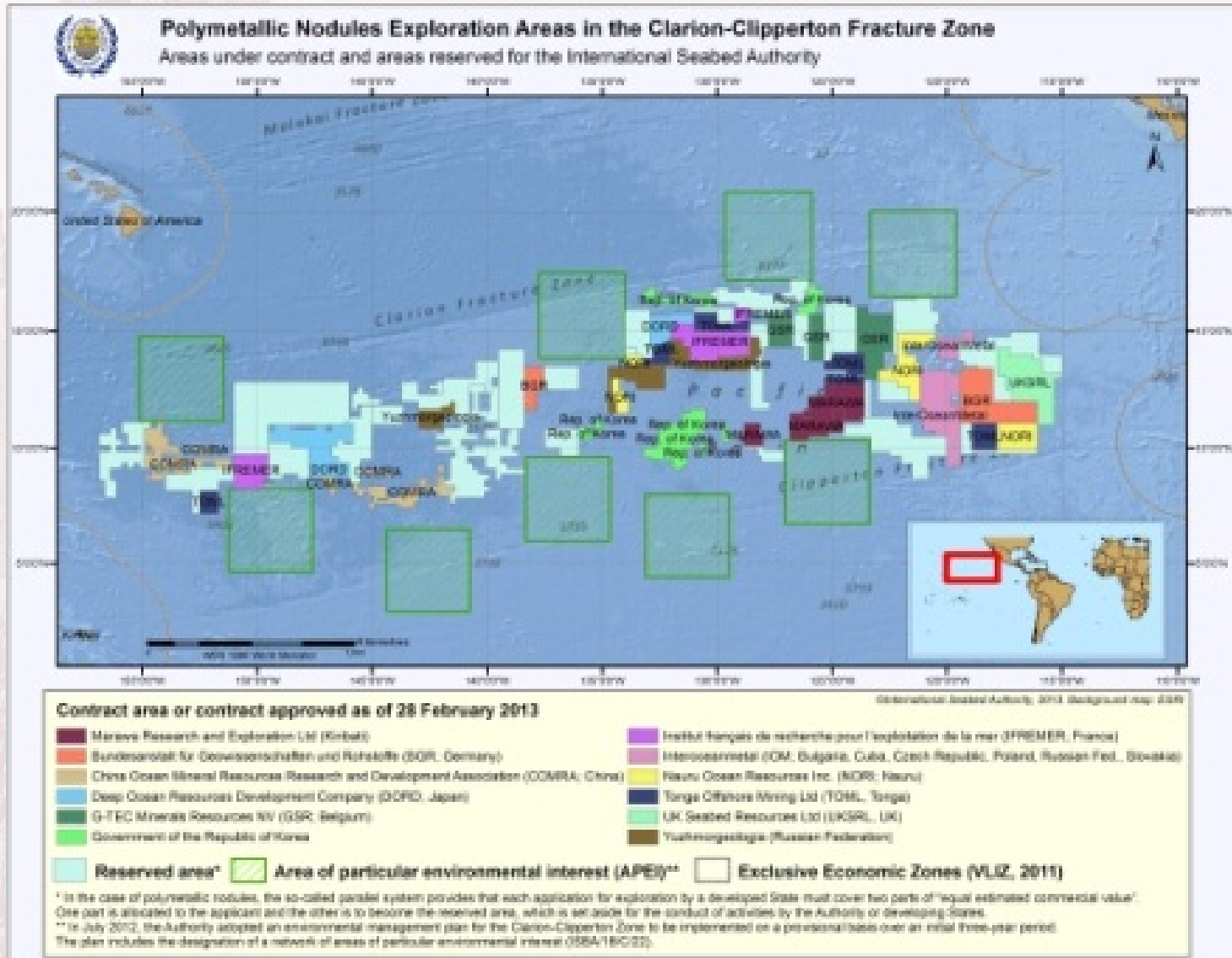


Examples of existing tools (1)

- Shipping, e.g.
 - More stringent discharge standards (in special areas pursuant to MARPOL)
 - Future?: emission standards, ships' routing measures
- Fishing, e.g.
 - Year-round area closures for specified fishing gear (e.g. bottom-fishing gear)
 - Seasonal area closures (e.g. spawning grounds of target species or important feeding areas for non-target species)
- Deep seabed mining, e.g.
 - Areas closed to mining



NAFO closures

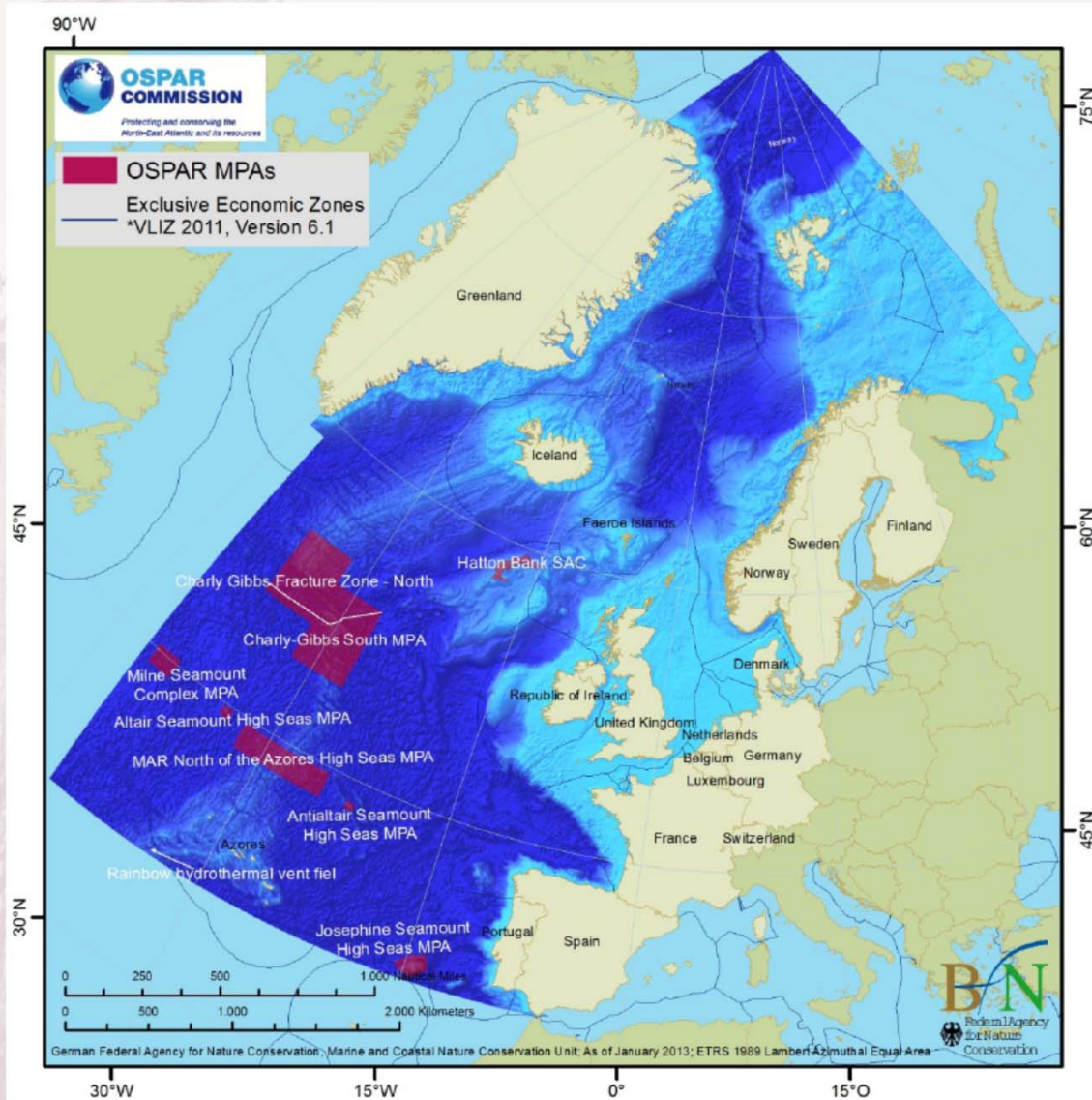


ISA closures



Examples of existing tools (2)

- Multi-sectoral
 - MPAs in ABNJ developed by the OSPAR Commission
 - Designation legally binding; but so far only non-legally binding Recommendations on management
 - Rights of third states under international law not affected
 - No intention to manage human activities covered by existing international bodies, e.g.
 - IMO, ISA, NEAFC
 - Lack of clarity on activities covered



OSPAR MPAs in ABNJ



Examples of existing tools (3)

- Cross-sectoral
 - ‘Madeira-process’ initiated by OSPAR Commission
 - Aimed at: ‘Collective arrangement between competent authorities on cooperation and coordination regarding the management of selected areas in ABNJ in the North East Atlantic’, e.g.
 - IMO, ISA, OSPAR Commission, NEAFC
 - Next meeting in 2014



Relevant international instruments & bodies (1)

- Non-legally binding instruments, e.g.
 - Rio+20 Outcome Document ‘The Future We Want’
- Legally binding instruments & bodies, e.g.
 - Global, e.g.
 - Actual area-based management tools
 - IMO (MARPOL & SOLAS)
 - ISA
 - IWC
 - Other relevant (framework) instruments & bodies
 - UNCLOS
 - Fish Stocks Agreement
 - CBD (EBSAs)
 - FAO Deep-sea Fisheries Guidelines (VMEs)



Relevant international instruments & bodies (2)

- Legally binding instruments & bodies (cont.)
 - Regional, e.g.
 - Regional fisheries management organizations (RFMOs)
 - Regional seas agreements (e.g. OSPAR Commission, UNEP RSP agreements)
 - Antarctic Treaty System (ASMAs, ASPAs & CCAMLR MPAs)



Challenges re ABNJ (1)

- The wider the international support for area-based management tools in ABNJ, the more effective they are likely to be
 - Action by regional states - or even individual states - is not inconsistent with international law *per se* → depends on whether or not rights of other states are affected in ways that are consistent with international law



Challenges re ABNJ (2)

- Challenges at regional level
 - Most existing tools in ABNJ are single-sectoral
 - ABNJ in certain regions without
 - RFMOs (not in some regions)
 - Regional seas agreements (only in some regions)
 - Effectiveness of some regional tools may be compromised by insufficient universal support



Challenges re ABNJ (3)

- Challenges at regional level (cont.)
 - ABNJ in some regions better protected than in others
 - Competitive (dis)advantages between regions (no level playing field at global level)
 - Inability to effectively protect transboundary species and ecosystems or deal with transboundary impacts from bordering regions with less stringent regulation
 - Efforts in just a few regions is not sufficient



Challenges re ABNJ (4)

- Challenges at global level
 - All existing tools are single-sectoral
 - No regulatory bodies for some human activities, e.g.
 - Laying of cables and pipelines
 - Marine scientific research
 - New and emerging human activities



Challenges re ABNJ (5)

- Challenges at global level (cont.)
 - No comprehensive legally binding framework on area-based management tools in ABNJ
 - No minimum requirements for global and regional instruments and bodies, including guidance on their respective roles and cooperation and coordination between them
 - No confirmation of the authority of relevant global and regional bodies to identify, designate and manage area-based management tools or an obligation for all states to respect these tools
 - No mechanisms to stimulate regional action or take action by default



Thank you for your attention

Erik J. Molenaar

E.J.Molenaar@uu.nl