

What is the role for regional fisheries management organisations in the future organisation of marine biodiversity management discussed at the United Nations?

Introduction: what is BBNJ

Since 2018, the United Nations General Assembly has been conducting negotiations for the development of a binding legal instrument to conserve and sustainably manage marine biodiversity in marine areas beyond national jurisdiction (ABNJ), which cover almost half the planet. This process is referred to as BBNJ (Biodiversity Beyond National Jurisdiction).

What does the BBNJ wording say about RFMOs?

The BBNJ wording does refer to respecting the mandate of existing organisations in several places:

- Intro, 1: 'The work and outcome of the Intergovernmental Conference shall be in full conformity with the provisions of the Convention, and the process and its outcome shall not prejudice existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.'
- Article 4.3: 'This Agreement shall be construed and applied in a manner that [respects the competences of and] does not infringe the relevant legal instruments and frameworks and relevant global, regional, sub-regional and sectoral bodies.'
- Article 6.1, international cooperation: 'States Parties shall cooperate within the framework of this Agreement for the conservation and sustainable use of the marine biological diversity of areas beyond national jurisdiction, including by strengthening and improving cooperation with and among the relevant legal instruments and frameworks and the relevant global, regional, subregional and sectoral bodies and their members in achieving the objective of this Agreement.'

RFMOs are also mentioned several times in the section on ABMTs/MPAs, although their role is not entirely clear at this stage.

The main problem is the existence of another network, which doesn't function as well as the RFMOs: the regional conventions on the sea. Focused on protection and conservation, they have the disadvantage of only bringing together coastal States and not being systematically binding, unlike RFMOs, which include all stakeholders in the area (including distant water fleets) and take binding decisions (unless a State decides not to implement them). This is why some people want BBNJ to be independent and to be imposed on RFMOs, often out of lack of awareness on the latter; others no doubt dream of protecting the high seas with different options (prohibition or access subject to a fee).

Why do RFMOs have a rightful role in the United Nations?

The first RFMOs were set up over fifty years ago on the basis of UN documents. During the second half of the 20th century, some forty RFMOs were created, reflecting the desire of States to regulate fishing activities.

For example, the mandate of the tuna RFMOs derives directly from the 1995 agreement on straddling stocks.

Article 8 of Part III obliges States fishing on the high seas to cooperate, directly or through regional or sub-regional organisations or arrangements. It calls for the special characteristics of regions or sub-regions to be taken into account (8.1): RFMOs are in the best position to do this. The binding nature of these organisations and of the conservation (and therefore stock protection and, by extension, environmental protection) and management measures is clearly expressed (8.3) and States wishing to fish are obliged either to join the organisation or to apply its measures.

Furthermore, it is made clear that in the absence of an organisation, coastal States and fishing States must work together to create one (8.5).

More interestingly, 'any State intending to propose that measures be taken by an intergovernmental organisation with competence over biological resources (e.g. BBNJ for an MPA) shall [...] consult with the members of such organisation or participants in such arrangement through the organisation or arrangement. To the extent possible, such consultations should take place before the proposal is submitted to the intergovernmental organisation'.

RFMOs must therefore be involved in the debates on biodiversity, which some people oppose, refusing, for example, to define an SDG on fisheries...

Are RFMOs effective?

The effectiveness of RFMOs is regularly questioned by some. However, while questioning is always useful for improvement, it does not necessarily mean tearing down everything and rebuilding from scratch.

RFMOs have a lot of potential. Their competences have grown over time and they have implementation committees to which the contracting parties must respond.

They can take binding decisions, they include all the stakeholders in the area. They have scientific committees already in place.

RFMOs are not rigid. Following the UN Fish Stocks Agreement Review Conference in May 2006, most have undergone independent assessments which have resulted in concrete recommendations. The existence of the Regional Fishery Body Secretariats Network at the FAO and the Kobe Process for tuna RFMOs also allows for the transfer of experience and addressing transoceanic issues (it is regrettable that the WCPFC has stayed away on the grounds that 'they do not wish to be influenced by other RFMOs').

The RFMOs have also been able to harmonise certain measures and cooperate, for example in the fight against IUU fishing by sharing IUU vessel lists, VMS data, catch documentation...

In addition, the RFMOs have made it possible to set up databases that are extremely useful for research and management, which are widely shared and facilitate cooperation, capacity building in coastal countries in terms of monitoring, surveillance and control, and the development of their fisheries sectors.

Finally, it should also be noted that RFMOs play an extremely important role in capacity building, particularly of nationals from developing countries.

Although a number of legal instruments to address international fisheries governance issues have been implemented over the past two decades, it is often suggested that, in general, RFMOs have failed to prevent the depletion of high seas fish stocks and the degradation of their marine ecosystems.

In response to this situation, the international community has made considerable efforts in recent years to strengthen the conservation and management regimes of RFMOs and to improve their performance in accordance with the requirements of international fisheries instruments.

There is no doubt that RFMOs will continue to face some of the prevailing challenges, including overcapacity in the world's fishing fleets, allocating high seas fishing opportunities in an equitable and sustainable manner and adopting ecosystem-based management approaches in their decision-making processes.

Conversely, creating new structures to replace existing ones will not, in my view, address the urgency of environmental concerns.

RFMOs have taken decades to become effective and have capitalised on this experience. This is unlikely to happen more quickly with new organisations for which the articles on the BBNJ mechanism (located at the end of the treaty) are still very sketchy and will no doubt be discussed at length. It will indeed be difficult to create such organisations from scratch given the multiplication of issues related to biodiversity in the high seas, which is impacted by human activity both offshore and onshore. Once set up, it will take a running-in period for the new participants to acquire the basic knowledge necessary to understand fisheries and their management.

Thus, it will be complicated and time-consuming to create a body from all sides, not to mention the financial cost. 'It would be a case of the last man standing to wipe the slate clean!'

Fish, and not only highly migratory fish, do not know borders and the 200-mile limit, nor does biodiversity. How could a regional organisation covering only the high seas improve our chances of reconciling the preservation of ecosystems and biodiversity with sustainable fisheries that contribute to food security (UN SDG 2)?

Do RFMOs take environmental conservation into account?

Many RFMOs have changed their mandate to incorporate environmental concerns. I would say that this makes sense as fishers are the first observers of environmental change and are often also the first victims. The vast majority of fishers consider it essential that their activity be sustainable either because they know that they and their children depend on it for their food security, or because they have had to make investments to carry out their activity. These two reasons are not mutually exclusive.

Several RFMOs have incorporated the ecosystem approach into their mandates (e.g. for ICCAT, Res. 15-11 calls on the Commission to apply an ecosystem approach to fisheries management when issuing recommendations under Article VIII of the Convention) and the Convention has even been amended in 2019 to better integrate these aspects.

More and more RFMOs are including a precautionary or equivalent principle in their rules of operation and/or partnering with environmental protection-type organisations

Some examples :

- SIOFA/APSOI provides in its Article 2 objectives 'to ensure the long-term conservation and sustainable use of fisheries resources';
- SPRFMO even mentions the precautionary approach (as distinct from the principle) in its Article 2 objectives: 'The objective of this Convention is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.'

- There are plans in several (non-tuna) RFMOs to take into account scientific studies on the effects of fishing on the seabed.
- The NEAFC fishing footprint can be revised at any time if indicator taxa of vulnerable marine ecosystems are found to have risen to a certain level in a haul or other fishing activity (NEAFC, although cited everywhere, is not the best of the non-tuna RFMOs as it has few members, including Greenland, Faroe, Russia and Norway who put vetoes on almost everything...).
- SIOFA is carrying out an ambitious mapping exercise of vulnerable marine ecosystems throughout the SIOFA territory, based on a method developed and proposed by the National Museum of Natural History.
- For all the RFMOs, systems of scientific observers at sea have been implemented, who could be called upon for other scientific missions of interest at the request of BBNJ.

How can conservation and fisheries issues be better reconciled on the high seas?

We believe it is preferable to continue to improve the functioning of RFMOs, to strengthen cooperation and to envisage interactions between RFMOs and other bodies rather than replacing the existing ones.

Besides, this is the position the EU has taken in previous BBNJ discussions, stressing that the agreement should strengthen ecosystem-based fisheries management by RFMOs in all oceans.

There are already MoUs between RFMOs and regional seas conventions: NEAFC/OSPAR, SIOFA/CCAMLR (CCAMLR which is both an RFMO and a regional seas convention) showing one way forward.

The participation of the different organisations as observers could be more systematic. For example, RFMOs could participate in the debates of the International Seabed Authority, since the exploitation of the seabed could have an impact on the ecosystems on which certain fisheries rely.

In this respect, it might be useful to consider how RFMOs could be given mandates in relation to cross-cutting issues such as biodiversity.

It will also be necessary to ensure that all parties are present at BBNJ, at least the same as those present at the Montego Bay Convention, which incidentally has some major absentees (notably the United States).

Although RFMOs have greatly advanced the science in the second half of the 20th century, science is now tending to give way to engineering (with stock assessments or exploitation strategies). We would have everything to gain from scientific cooperation on the scale of the oceans, and even globally, on the subject of biodiversity.

Without falling into conservatism and immobility, it is also important to maintain the 'collective memory' of the stakeholders in RFMOs, as management measures often take several years to have an effect and too much turnover in the parties' delegations can lead to unproductive U-turns and even repeating mistakes.

With regard to MPAs, the Convention on Biological Diversity could develop areas of interest for the establishment of marine protected areas on the high seas, which would then be considered by existing international organisations, with RFMOs retaining competence to adopt and enforce management measures in designated MPAs.

In conclusion, BBNJ was intended to 'fill the gaps' not covered by existing instruments, not replace them. Ideally, BBNJ should be a partnership with existing RFMOs.