

'One Ocean' Symposium

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Information paper

Clarifying Adjacency: What might it mean and how can it be reflected in the BBNJ treaty?

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Background

In the negotiations for the new treaty on biodiversity beyond national jurisdiction (BBNJ), a key question will be the relationship between the regime for areas beyond national jurisdiction and areas under coastal state jurisdiction. Adjacency is one idea that has been mooted as a concept that might assist in bridging these two areas, but it has been characterised by confusion. It has been suggested that adjacency could give coastal states additional rights or responsibility in relation to biodiversity in areas beyond national jurisdiction (ABNJ). However, although adjacency was partly a motivator for the development of maritime zones under national jurisdiction, there has never been an acceptance that it gives coastal states priority in ABNJ. There is an opportunity for delegates to build a set of legal principles and processes that protect coastal state interests while respecting the existing balance of rights.

Key recommendations for delegates/negotiations

1. The high level of interdependence between biodiversity within and beyond national jurisdiction means that potentially more than just the most proximate coastal state may be affected by, for example, area-based management tools (ABMTs) or environmental impact assessments (EIAs). 'Adjacency' therefore, should not be defined only as the coastal state nearest to an activity, but to any state significantly affected by an activity. In the alternative, 'potentially affected states' could be used in place of 'adjacent states'.
2. The existing language and balance of rights in UNCLOS should be respected. Therefore, 'due regard' may be useful language to employ.
3. Procedural rights should allow 'adjacent' or 'potentially affected states' to be consulted when activities may impact on areas within national jurisdiction. There should also be a clear process that allows them to raise concerns about activities on the high seas if they will impact on areas under their jurisdiction.
4. One option is to include an obligation on states to manage activities in ABNJ with the goal of not undermining conservation and sustainability measures implemented within national jurisdiction. This would not involve a right of veto for the coastal state but would require other states to consider their position.
5. Negotiators should also consider the fact that the exact spatial extent of ABNJ is not settled. In particular, the outer limits to continental shelves seaward of EEZ limits are unlikely to be settled for many years and there are a number of excessive and overlapping maritime claims that make the extent of ABNJ uncertain.
6. The definition of sedentary species in art 77 UNCLOS is not ideal in the context of coastal state rights to marine genetic resources on their continental shelf beyond 200 nautical miles. Benthic ecosystems will contain sedentary and non-sedentary species. At a minimum, researchers should be required to notify a coastal state when operating in the vicinity of the shelf. There may be other options which are more protective of coastal state interests.

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