

# Marine genetic resources and the law of the sea

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## Why?

- Legal framework for the oceans: the law of the sea
- United Nations discussions



## What?

- How are current discussions relevant to the marine biotech sector?



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## How?

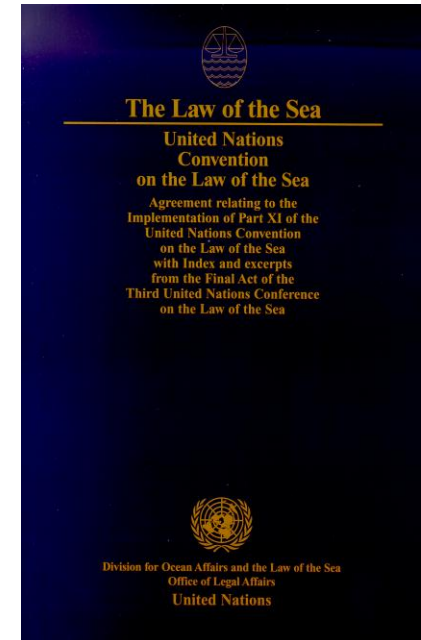
- Overview of the law of the sea framework and relevant provisions
- Discussions at the General Assembly
- Conclusions and food for thought

# The law of the sea

- Customary international law
- 1982 United Nations Convention on the Law of the Sea (UNCLOS)
- Implementing Agreements
  - ✓ Agreement relating to the implementation of Part XI
  - ✓ Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

# UNCLOS

- 165 Parties, including the EU
- Comprehensive regime dealing with all aspects of human activities in the oceans
- Provide a legal order for the seas and oceans which will promote, inter alia, the equitable and efficient utilization of their resources
- Sovereignty over natural resources

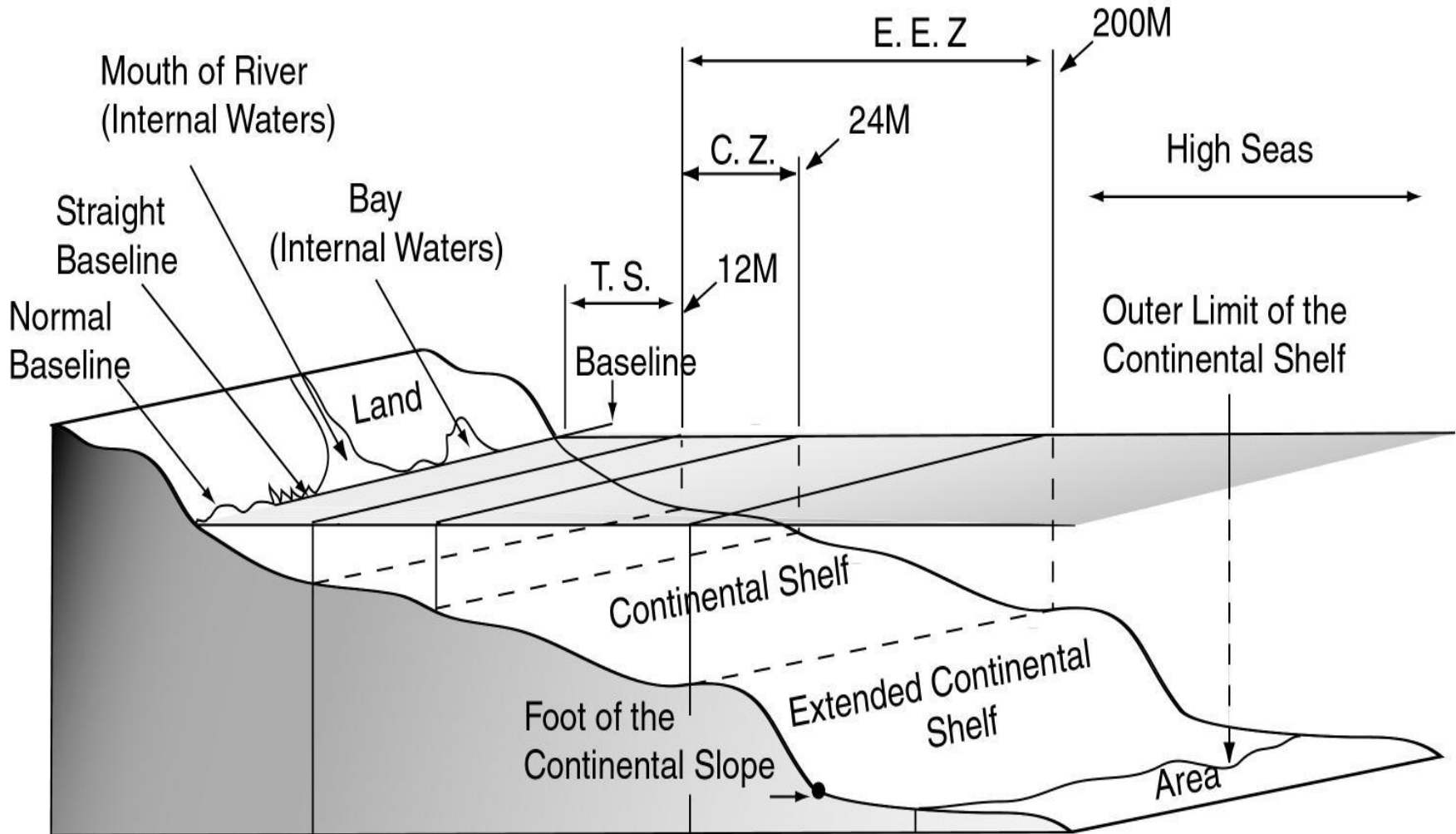


# UNCLOS

- Facilitate marine scientific research
- Balance of interests
  - ✓ between rights of coastal States and other States
  - ✓ jurisdiction over resources beyond maritime zones under national jurisdiction vs. free access to such resources



# Maritime zones under UNCLOS





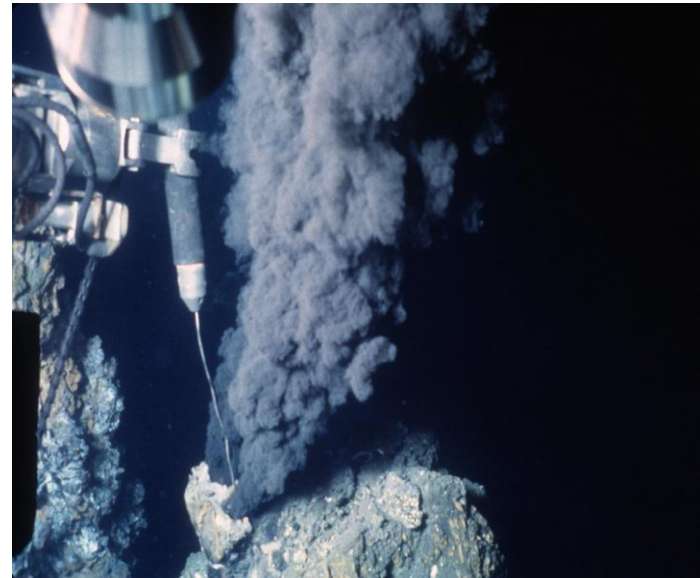
## Marine scientific research under UNCLOS (Part XIII)

- Exclusive right to regulate, authorize and conduct MSR in their internal waters and territorial sea (express consent and under conditions it sets out)
  
- Right to regulate, authorize and conduct MSR in the EEZ and on the continental shelf
  - ✓ Consent expected for projects to increase scientific knowledge of the marine environment
  - ✓ Consent may be withheld
  - ✓ Obligations related to cooperation and sharing of data, samples and research results



# Marine scientific research under UNCLOS

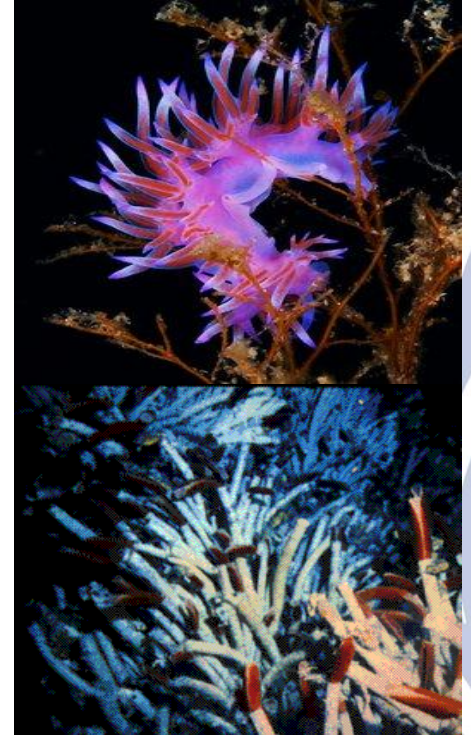
- Right to conduct MSR in the high seas and in the Area



## Technology transfer under UNCLOS (Part XIV)

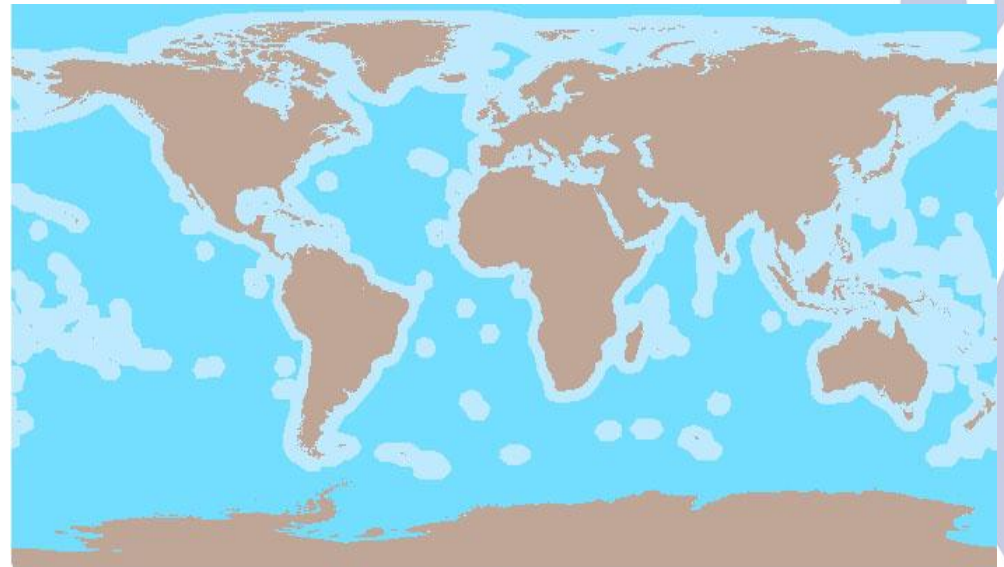
- Development and transfer of marine science and marine technology on fair and reasonable terms and conditions
- Favourable economic and legal conditions for the transfer of marine technology for the benefit of all parties concerned on an equitable basis
- IOC 2003 “Criteria and Guidelines on Transfer of Marine Technology”

# Work of the United Nations



# Why is the UN considering marine biodiversity beyond areas of national jurisdiction?

- Nearly 2/3 of the oceans are beyond any State's territorial sovereignty or jurisdiction...



■ EEZ ■ High Seas



# Why is the UN considering marine biodiversity beyond areas of national jurisdiction?

■ ... where the freedom of the high seas or common heritage of mankind apply

■ ... where several sectoral organizations have competence

■ ... where there is no overall cross-sectoral coordinating mechanism



IMO



CBD+10



## How is the UN addressing the issue?

- Through the General Assembly, assisted by:
  - ✓ Informal Consultative Process on Oceans and the Law of the Sea
  - ✓ Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

## What is being discussed?

- Governance
- Conservation and management tools, including:
  - ✓ area-based management
  - ✓ environmental impact assessments
- Marine genetic resources
- Capacity-building and transfer of marine technology

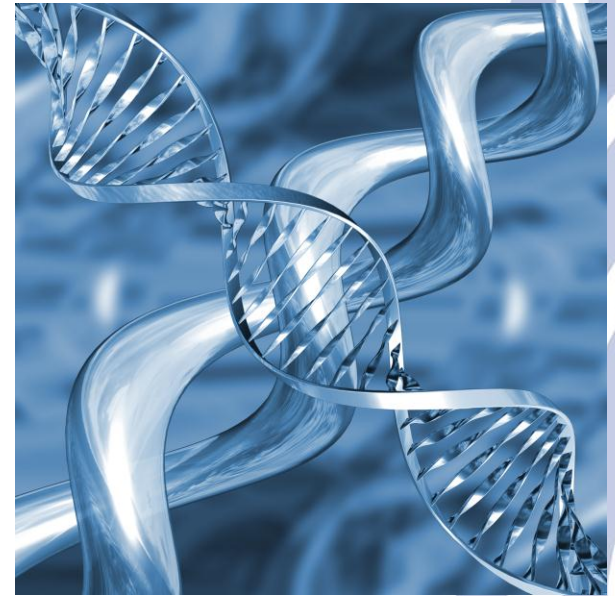


# Issues related to marine genetic resources

- Legal status of marine genetic resources
- Practical measures
  - ✓ Promotion of MSR and codes of conduct
  - ✓ Mechanisms for cooperation, sharing of information and knowledge resulting from research
  - ✓ Practical options for benefit-sharing, including options for facilitating access to samples
  - ✓ Intellectual property aspects

## Issues related to marine genetic resources

- Meaning and scope
- Extent and types of research, uses and applications
- Technological, environmental, social and economic aspects



## Issues related to marine genetic resources

- Access-related issues
- Types of benefits and benefit-sharing
- Intellectual property rights



# Patent activity related to MGRs



The screenshot shows a PDF document titled "ArnaudHaondetal2011Science.pdf" in Adobe Reader. The document text on the left discusses patenting of marine organisms and lists several research institutions. A table on the right, titled "Marine organism patent claims", lists the number of claims for various countries.

Country	Marine organism patent claims
USA	199
Germany	149
Japan	128
France	34
United Kingdom	33
Denmark	24
Belgium	17
Netherland	13
Switzerland	11
Norway	9

Arnaud-Haond et al. (2011) Science

## Issues related to marine genetic resources

- Global and regional regimes on genetic resources, experiences and best practices
- Exchange of information on research programmes



## Some conclusions and food for thought

- Decision on launching negotiations for a multilateral agreement under UNCLOS at 69<sup>th</sup> session of GA (2014-2015)
- Legal certainty of doing research and business in relation to MGRs from ABNJ

## Some conclusions and food for thought

- Need for acceptability of regime
- Avenues for input of marine biotechnology sector into the discussions
- Opportunity to strengthen the science-policy and industry-policy interface



**Thank you for your attention!**



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