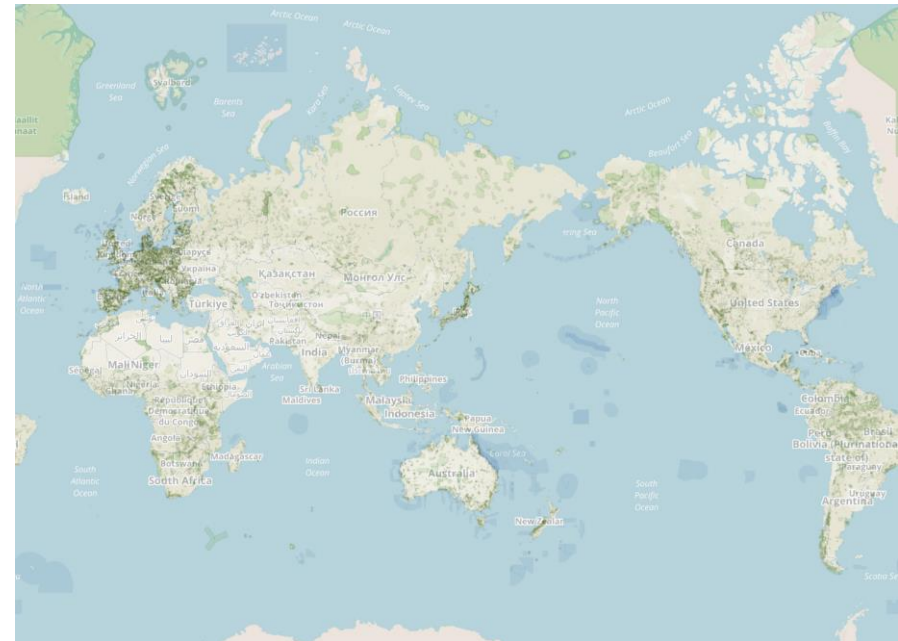


Identifying Sensitive Marine Areas: A tour of the legal and scientific criteria



CIL High Seas Governance: Gaps and Challenges

Panel 1 on Sensitive Marine Areas

24-25 April 2017, Singapore

Youna Lyons, *Centre for International Law, NUS*

Areas Beyond National Jurisdiction (ABNJ)



Outline

Part 1- Criteria developed in different international instruments

- **Category 1: Conservation-driven mechanism**
- **Category 2: Sectoral instruments regulating uses of the sea**
- **EBSAs on leading edge**

Part 2- Consistency of the existing ocean governance framework

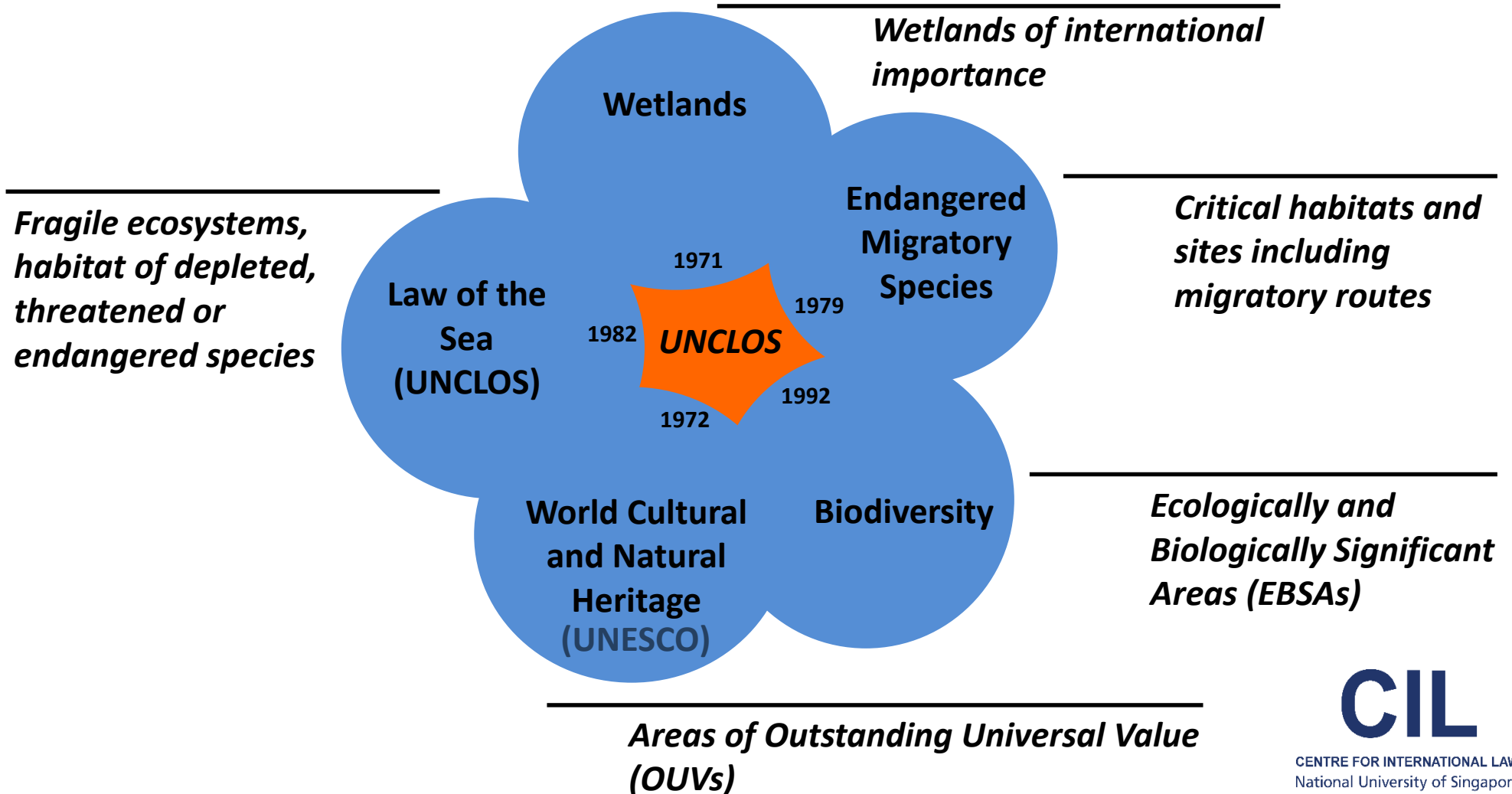
- **UNCLOS, cornerstone of the protection of the marine environment**
- **Identification of sensitive areas vs. regulation of uses**
- **Comparing maps of sensitive areas in the Atlantic Ocean**

Part 3 - BBNJ discussions

Part 1- Criteria developed in different international instruments

1/12

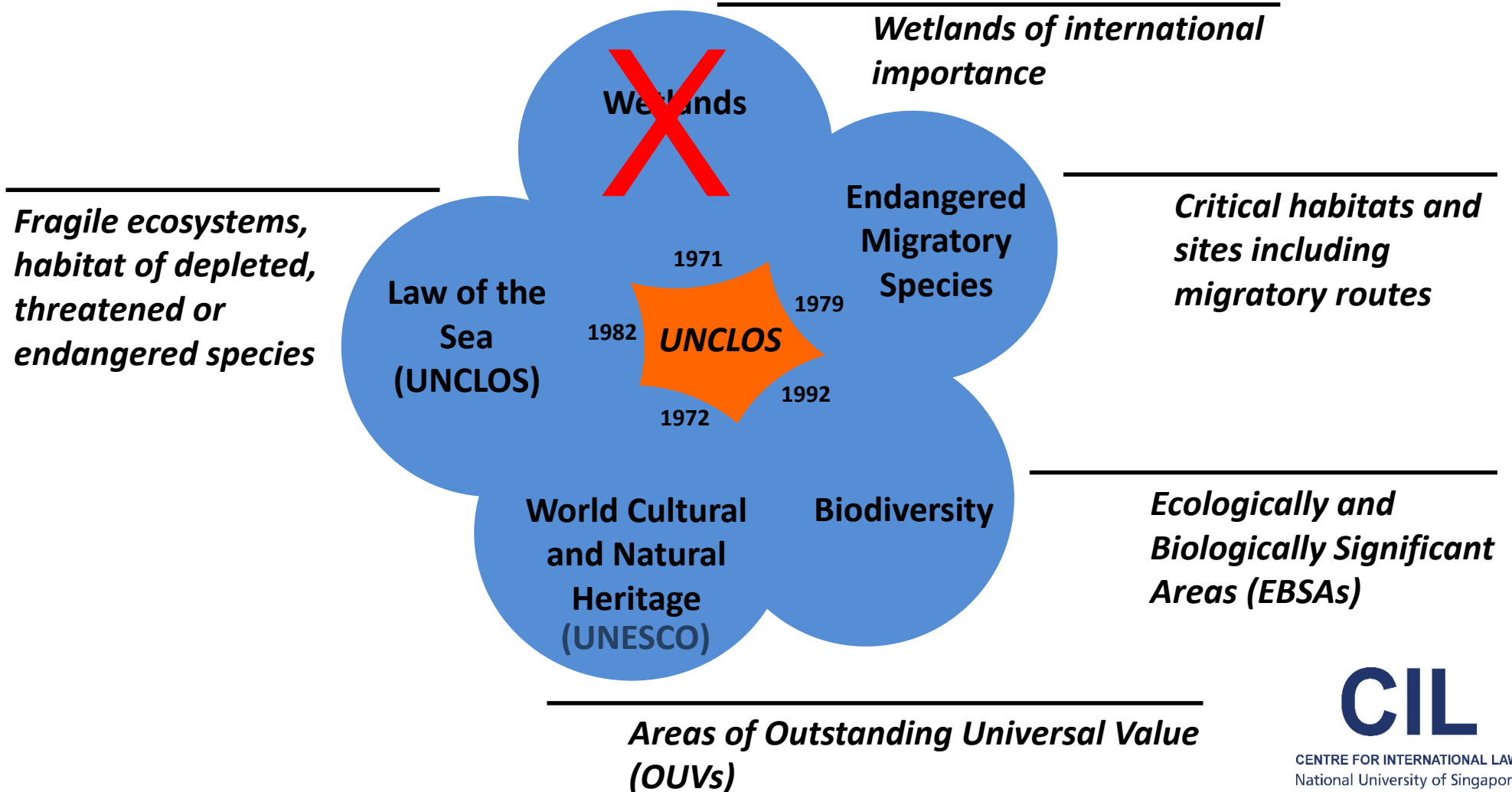
Category 1: Conservation-driven mechanism



Part 1- Criteria developed in different international instruments

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Category 1: Conservation-driven instruments

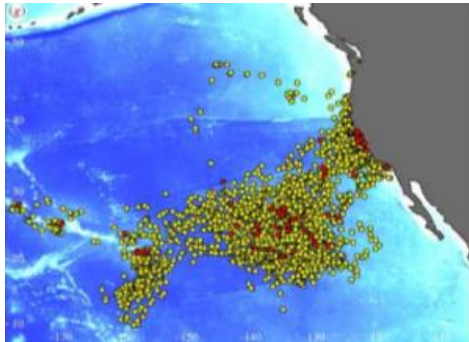
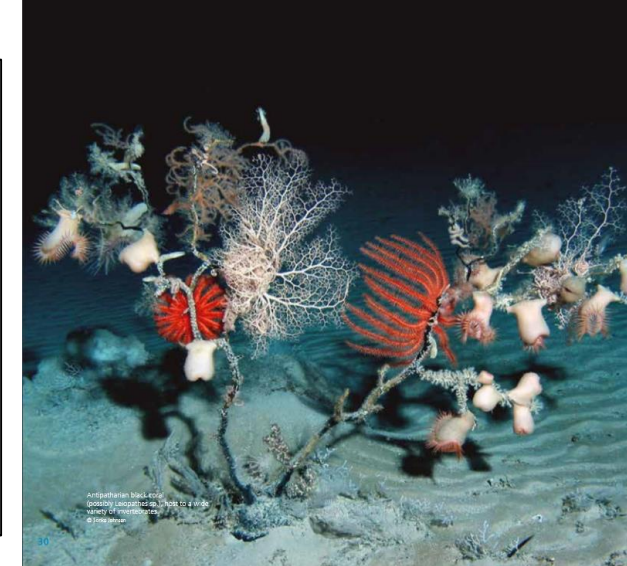


Part 1- Criteria developed in different international instruments

2/12

Category 1: Conservation-driven instruments

















UNESCO: Potential areas of Outstanding Universal Value in ABNJ



Rock outcrops, particularly along the edges of the summit host large stylasterid colonies, with the echinoid *Dermechinus horridus*, at the Atlantis Bank, South West Indian Ocean.
© The Natural Environment Research Council and IUCN/GEF Seamounts Project C/O Alex D Rogers.
















Part 1- Criteria developed in different international instruments

Category 1: Conservation-driven instruments

CBD - Biodiversity	UNCLOS Art 194(5)	Migratory Species	Wetlands	Natural and Cultural Heritage
Uniqueness or rarity				
Special importance for life history of species				
Importance for threatened, endangered, declining species/habitats				
Vulnerability, fragility, sensitivity, slow recovery				
Biological productivity				
Biological diversity				
Naturalness				

Part 1- Criteria developed in different international instruments

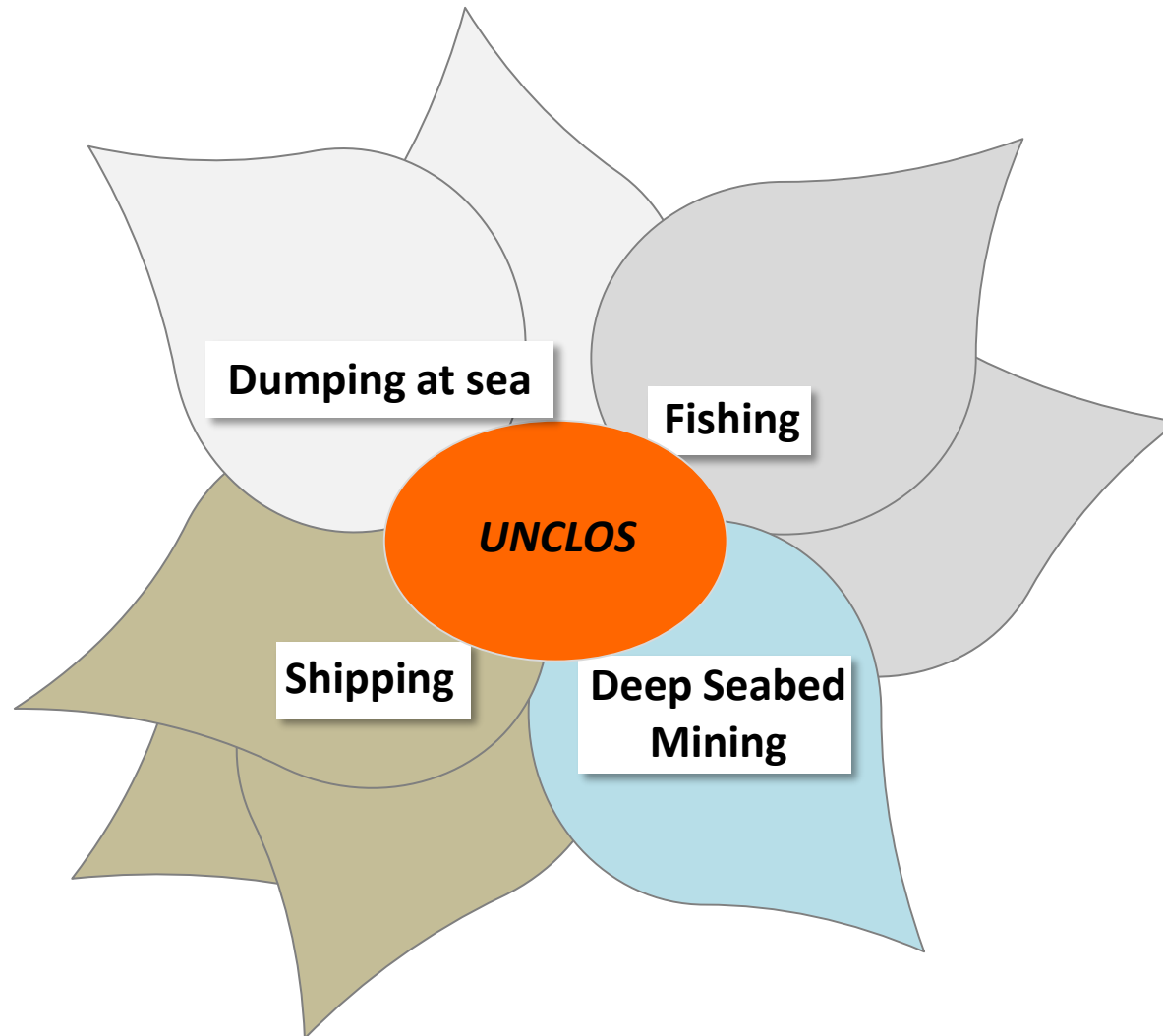
Category 1: Conservation-driven instruments

CBD - Biodiversity	UNCLOS Art 194(5)	Migratory Species	Wetlands	Natural and Cultural Heritage
Uniqueness or rarity				
Special importance for life history of species				
Importance for threatened, endangered, declining species/habitats				Socio-cultural criteria
Vulnerability, fragility, sensitivity, slow recovery				- Exceptional beauty
Biological productivity				- Associated w. events of living traditions, beliefs or traditional sea use
Biological diversity				
Naturalness				

Part 1- Criteria developed in different international instruments

4/12

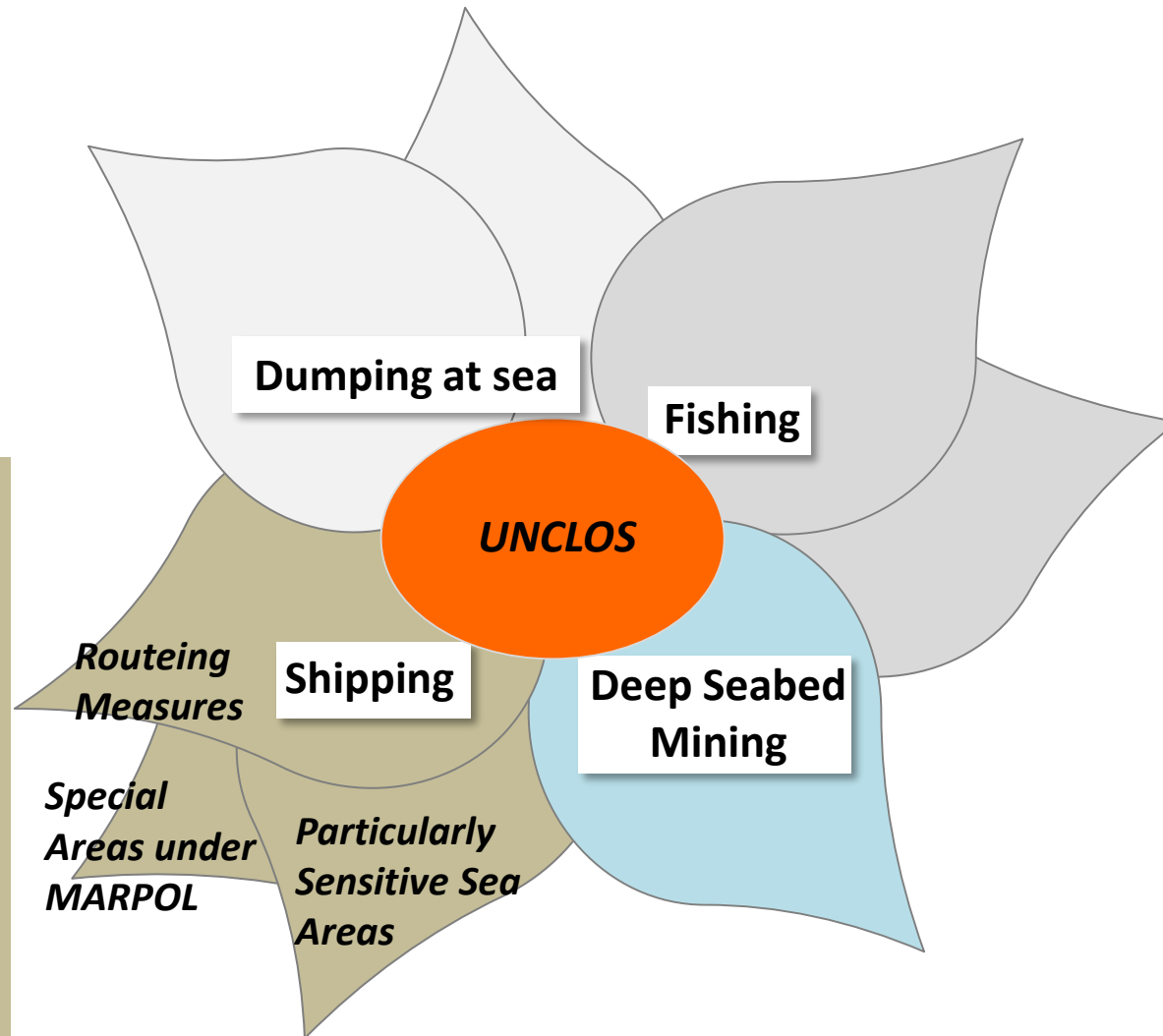
Category 2: Sectoral instruments regulating uses of the sea



Part 1- Criteria developed in different international instruments

5/12

Category 2: Sectoral instruments regulating uses of the sea

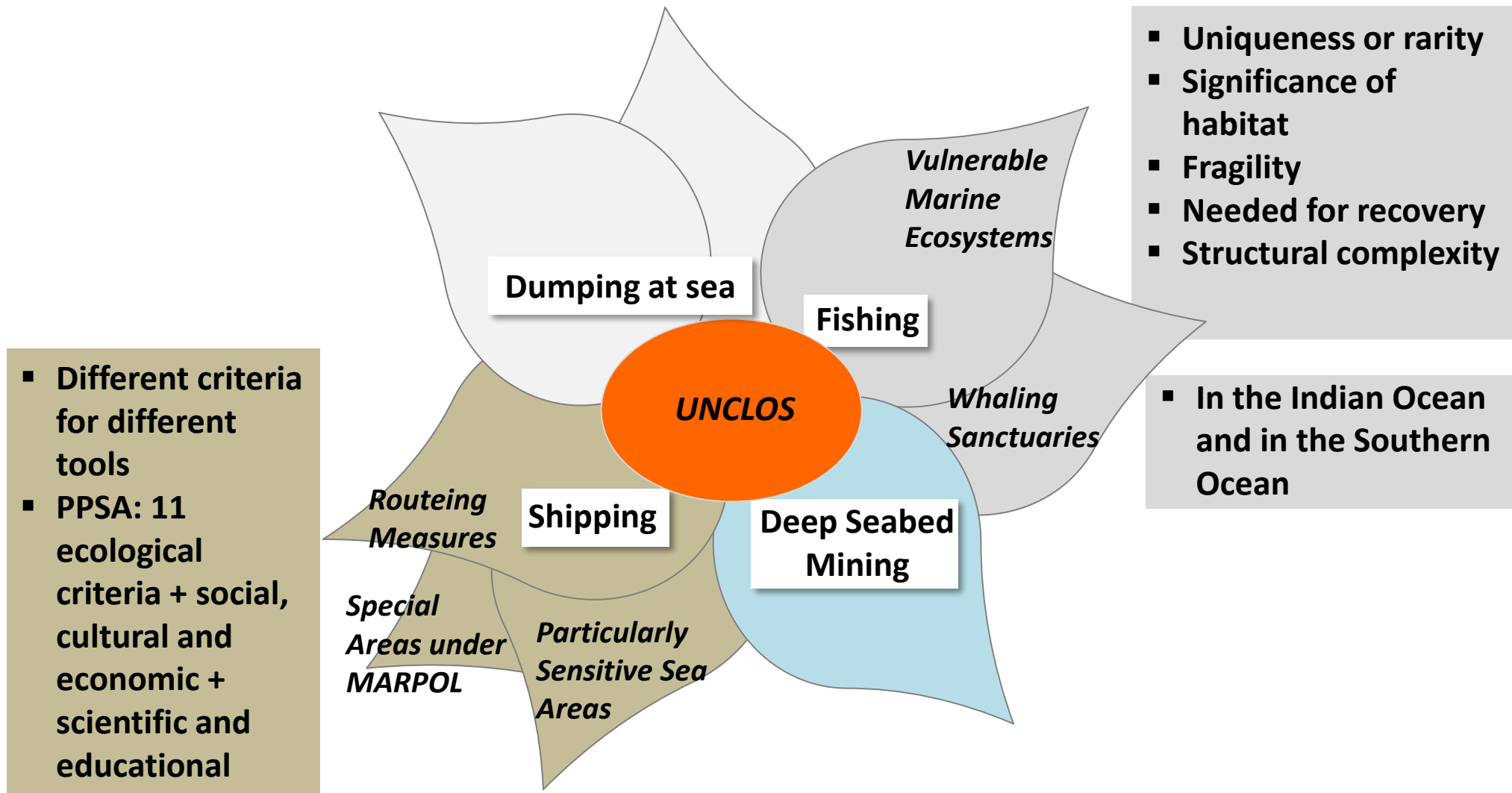


- Different criteria for different tools
- PPSA: 11 ecological criteria + social, cultural and economic + scientific and educational

Part 1- Criteria developed in different international instruments

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Category 2: Sectoral instruments regulating uses of the sea



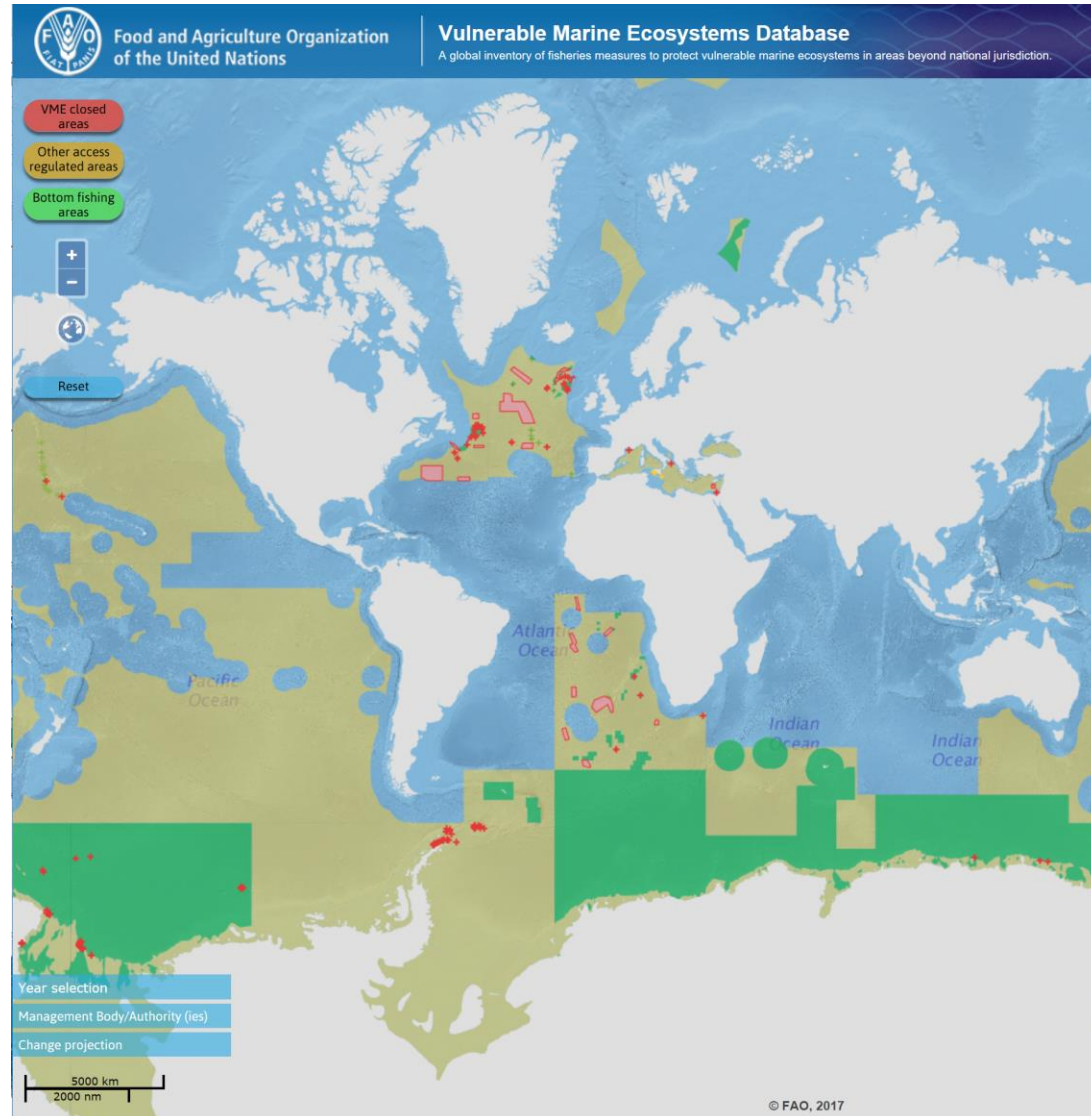
Part 1- Criteria developed in different international instruments

7/12

Category 2: Sectoral instruments regulating uses of the sea

RESTRICTIONS TO FISHING

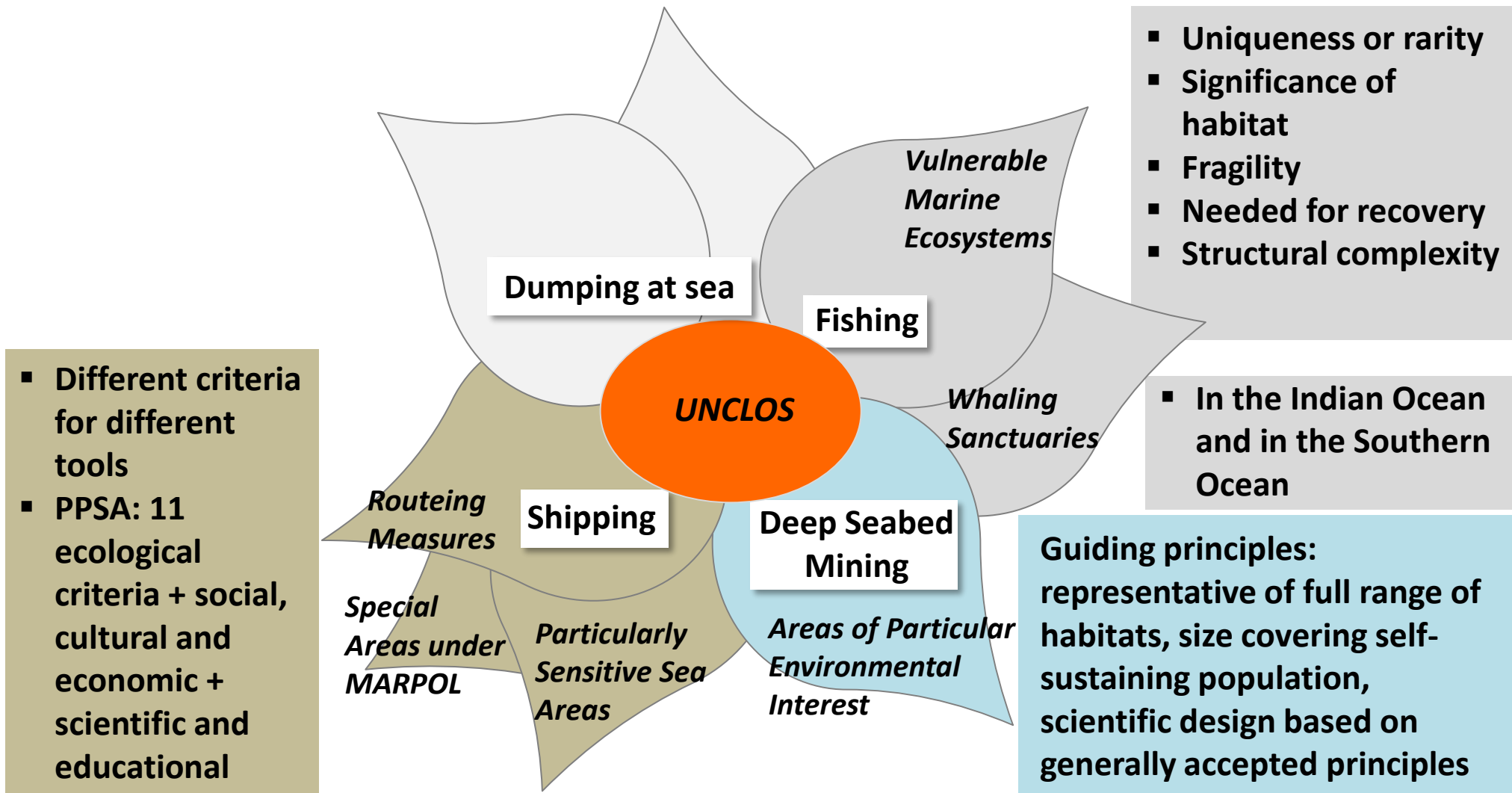
Vulnerable Marine Ecosystems



Part 1- Criteria developed in different international instruments

8/12

Category 2: Sectoral instruments regulating uses of the sea



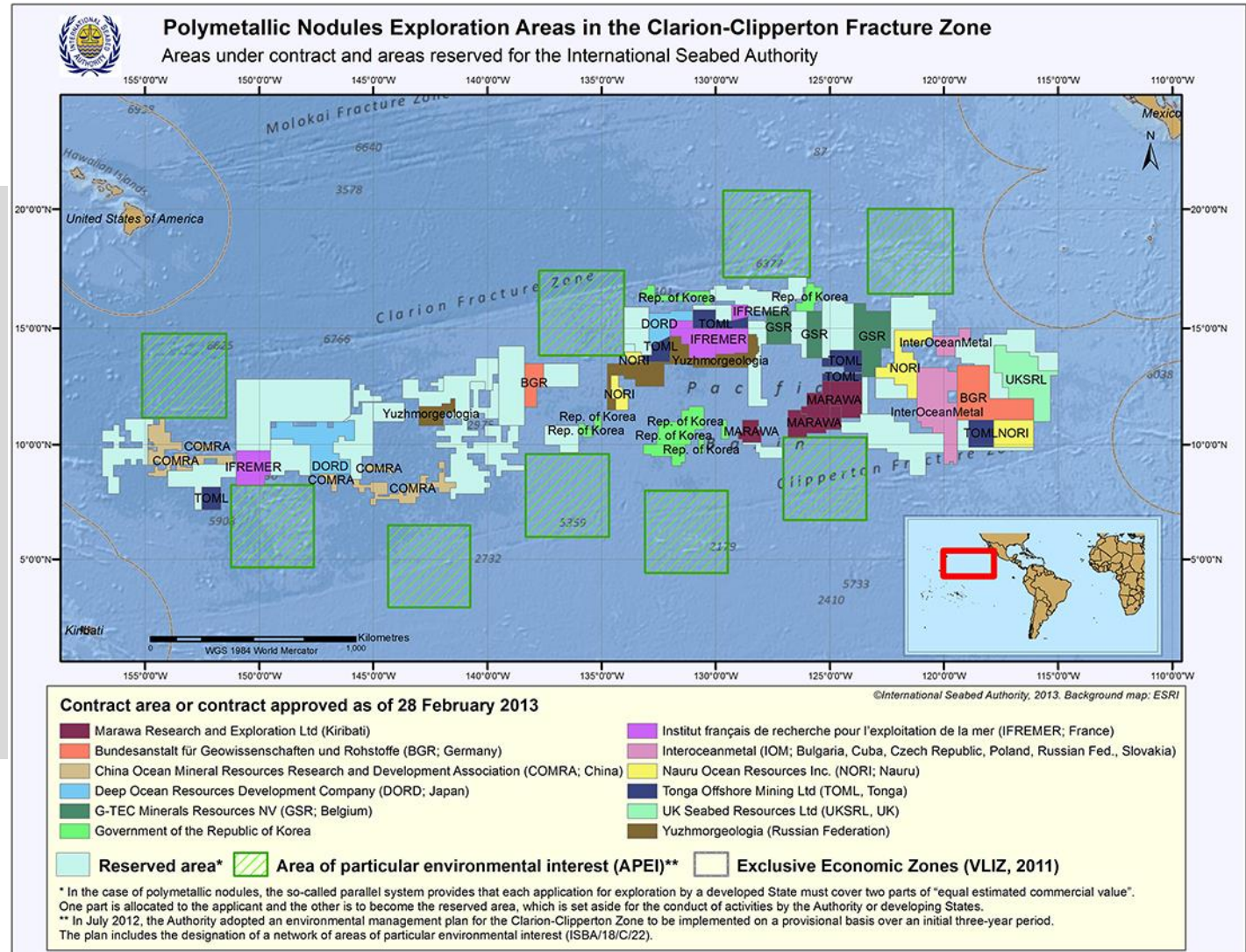
Part 1- Criteria developed in different international instruments

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Category 2: Sectoral instruments regulating uses of the sea

DEEP SEABED MINING

Areas of Particular Environmental Interest in the Clarion Clipperton Zone



Part 1- Criteria developed in different international instruments

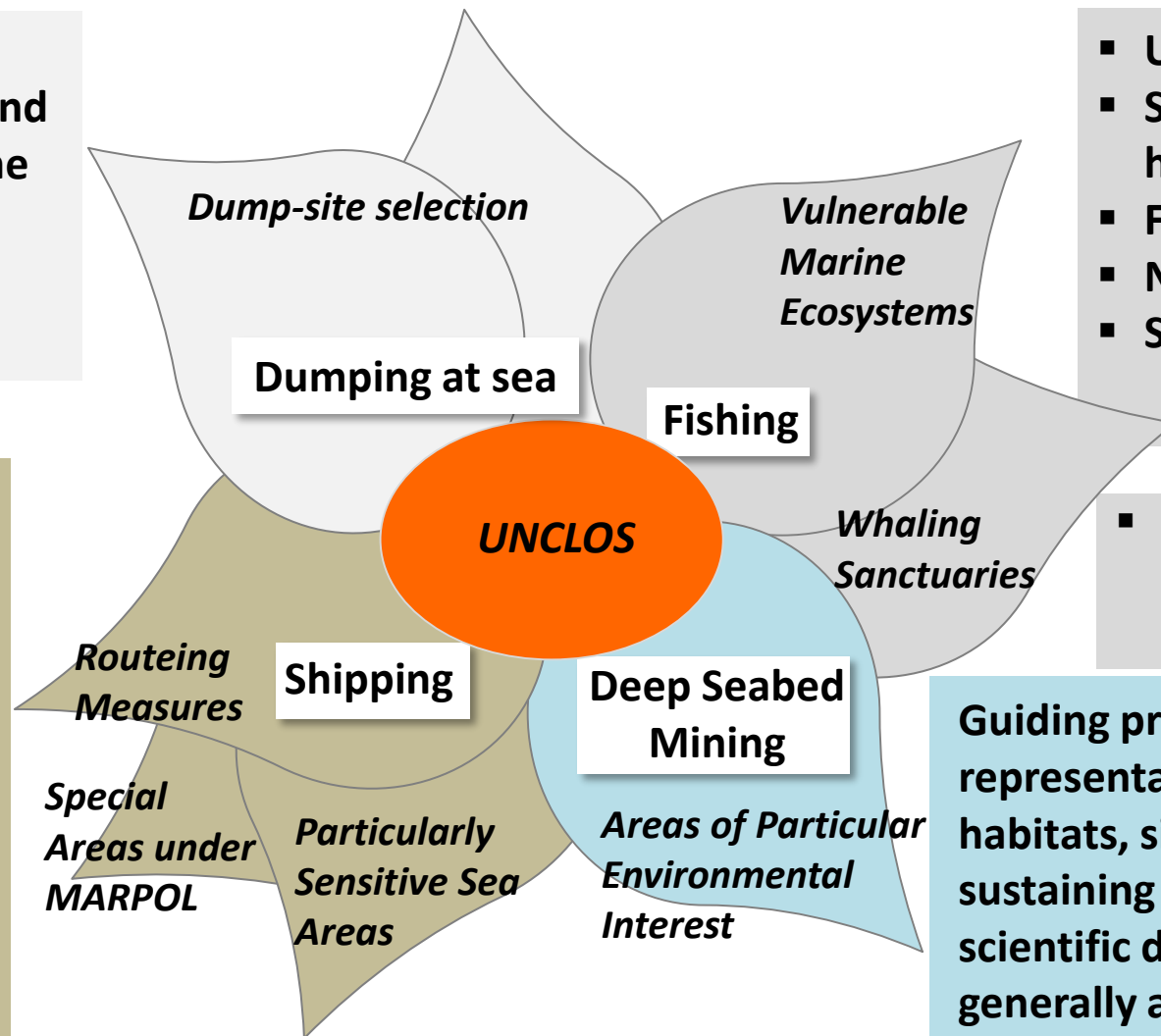
10/12

Category 2: Sectoral instruments regulating uses of the sea

- Ecological criteria
- Socio-economic and cultural uses of the sea
- Scientific and engineering uses

- Uniqueness or rarity
- Significance of habitat
- Fragility
- Needed for recovery
- Structural complexity

- Different criteria for different tools
- PPSA: 11 ecological criteria + social, cultural and economic + scientific and educational



- In the Indian Ocean and in the Southern Ocean

Guiding principles:
representative of full range of habitats, size covering self-sustaining population, scientific design based on generally accepted principles

Part 1- Criteria developed in different international instruments

11/12

Category 2: Sectoral instruments regulating uses of the sea

CBD - Biodiversity	Shipping	Fishing	Seabed Mining	Dumping at Sea
Uniqueness or rarity				
Special importance for life history of species				
Importance for threatened/endangered/declining species/habitats				
Vulnerability, fragility, sensitivity, slow recovery				
Biological productivity				
Biological diversity				
Naturalness				
Social, cultural and economic criteria (e.g. exceptional beauty, associated with traditions or beliefs or traditional sea uses)				
Scientific and educational value				

Part 1- Criteria developed in different international instruments

12/12

Ecologically or Biologically Sensitive Areas (EBSAs) on leading edge

**71/279 EBSAs
are in ABNJ,
covering 21%
of the total
surface of
ABNJ**



Part 2- Consistency of the existing ocean governance framework

1/4

UNCLOS, cornerstone of the protection of the marine environment

- **UNCLOS' preeminence: comprehensive, near universal, intertemporal language and mechanisms**
- **UNCLOS sought to encompass prior treaties that relate to the oceans, its uses and the protection of the marine environment (e.g. MARPOL, London Convention on Dumping)**
- **UNCLOS Art 237 and 311(2) establish the pre-eminence of the general principles of UNCLOS**
- **Subsequent treaties contain provisions to clarify that they should be implemented consistently with UNCLOS / are without prejudice to UNCLOS**

Part 2- Consistency of the existing ocean governance framework

2/4

UNCLOS, cornerstone of the protection of the marine environment

- **Not a separate self-contained regime**
- **UNCLOS includes in-built mechanisms that allow sub-regimes to be developed and integrated into UNCLOS for different activities: IMO, FAO, RFMO, ISA, and other competent international organisations**
- **UNCLOS Part XII is implemented in parts by other treaties – E.g. Article 194(5) which calls on other instruments for the protection and preservation of rare fragile or fragile ecosystems as well as the habitat of depleted, threatened or endangered species or other forms of marine life (CBD, CITES, etc.)**
- **There is no textual conflict between different instruments that seek to protect the marine environment: they are complementary**

Part 2- Consistency of the existing ocean governance framework

3/4

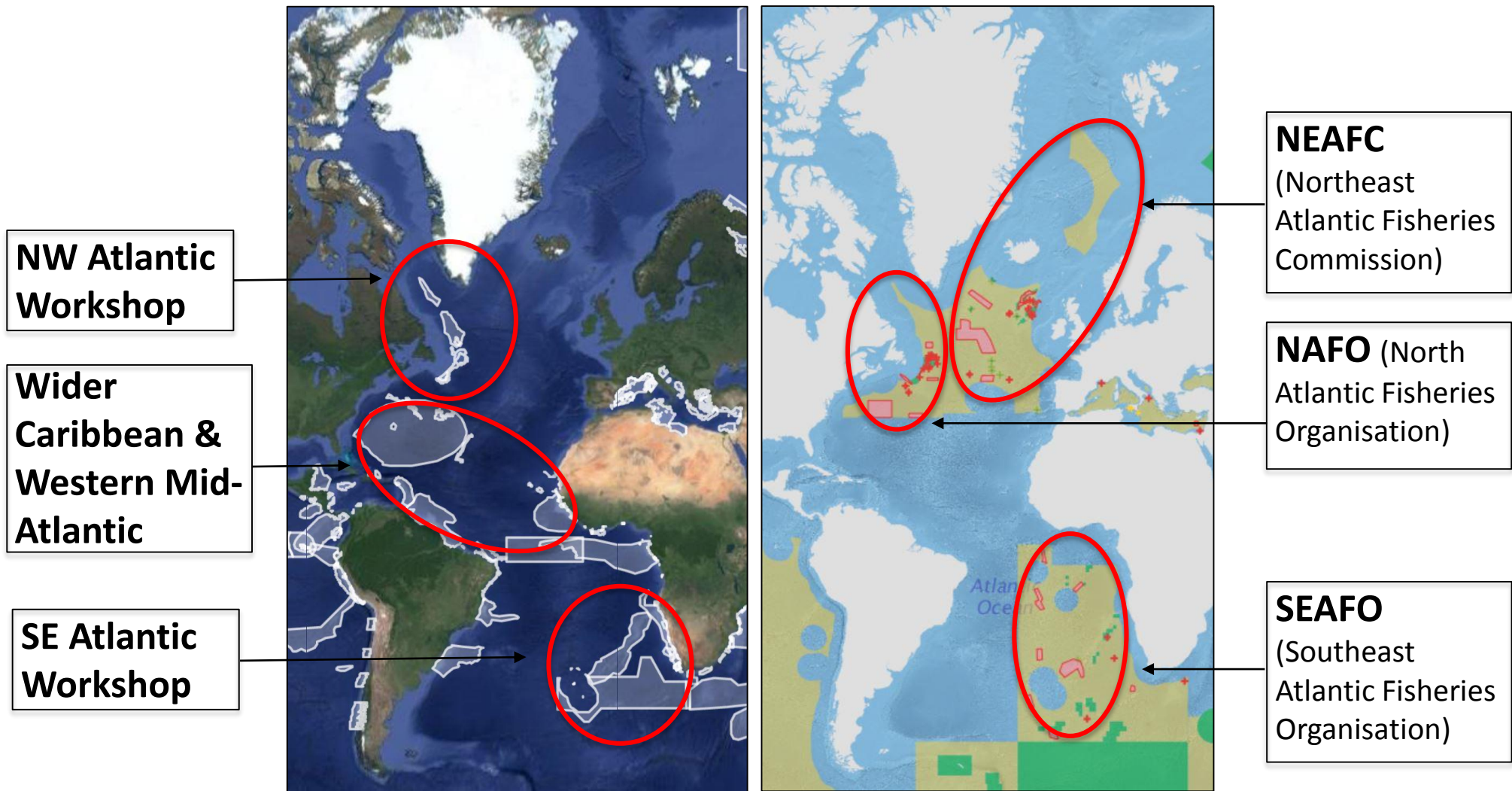
Identification of sensitive areas vs. regulation of uses

- Conservation instruments have developed detailed criteria to identify, protect, conserve and sustainably manage areas that present certain characteristics, BUT they do not provide for specific activities that may or may not be undertaken in these areas
- Determination of the activities that may be restricted will depend on the state of the resource, the potential impact from each activity, and must be decided activity by activity according to the regime that is applicable for each (second category of instruments)
- MPA on the High Seas is a multi-step process with different stakeholders and requirements for each activity if activities are to be restricted within this area

Part 2- Consistency of the existing ocean governance framework

4/4

Comparing maps of sensitive areas in the NW and SE Atlantic Ocean as EBSAs and VMEs



Area-Based Management Tools (ABMTs)

- ABMT including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology must be addressed in BBNJ discussions (2015 GA 69/292)
- Delegations have engaged in long discussions on the objectives, definitions, principles and approaches, relationship with existing mechanisms, governance, etc. in plenary and in a working group
- Existing mechanisms to identify sensitive areas have been mentioned by several delegations and many support that this work be further developed and strengthened with better cooperation mechanism
- Opinions differ on the degree of integration needed and the role of a potential global overseeing body as well as whether it is necessary

- **COP to the CBD: most comprehensive list of criteria for ecological sensitivity (in ‘conservation-driven’ instruments); they take into account designations from other bodies such as RFMOs**
- **Social, cultural, economic, scientific and educational sensitivity can also justify the identification of an area as ‘sensitive’**
- **Identification of sensitive areas under the CBD, Migratory species and UNESCO conventions do not imply any automatic restriction to activities**
- **Restriction to activities depends on the application of the relevant sectoral regime**
- **Sectoral regimes are currently developing mechanisms to better manage and protect sensitive areas**
- **UNCLOS is key to ensuring joint implementation of the criteria**

Thank you!

Questions?

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