

## Session 2 A: Differing Regulatory Frameworks

Sound Sources		Regulatory Activities/Strategies According To					
Priority			High Seas	Regional Conventions (e.g. OSPAR, Barcelona, ASCOBANS, ACCOBAMS, ...)	Territorial waters (& EEZ)	critical habitats / protected areas	endangered species / populations
			Antarctic Treaty (Environmental Protocol)				
	Shipping						
	Recreational Boating						
	Seismic Surveys	industrial (oil & gas)					
		charting (UNCLOS)					
		scientific (geophysics, geology)					
	Naval Acoustic Operations	operational					
		experimental					
	Scientific Sonar						
	Moored Oceanographic Sound Sources	(e.g. NPAL, RAFOS)					
	Construction Works	pile driving					
		decommissioning					
		drilling					
		dredging					
	Windfarm	(operation phase)					

## Session 2 A: Differences in Regulatory Regimes

- International and regional treaties may result in multiple requirements at domestic level (e.g. Antarctic Treaty System/German research)
- Lack of clarity which rules apply –US, UK, AUS navies apply domestic laws unless operating in a country with stricter law, then they use that stricter standard.
  - (oils & gas) companies comply with laws of country they are operating in;
    - for US companies MMPA applies;
    - their own standards (e.g. IUGC) are applied;
    - US-NSF – abides by laws of country they are in (US + High Seas)
  - country of funder may be source of regulation
- Source may be in in one legal regime, receiver in another (e.g. LFAS outside EEZ critical habitat within);

## Consequences of Differences in Regulatory Regimes

- multiple permits are costly and sometimes prohibitive (time) for research;
- absence of domestic and regional laws/treaties results in some countries with no protection
  - e.g. critical habitat not protected
- terms may mean different things under different legal regimes
  - e.g. endangered species, critical habitats, protected areas
  - international treaty terms interpreted by domestic authorities, reducing standard definition
  - authority does not exist everywhere to enforce protections
- not clear what standards apply to shipping industry
- international consortia may need to comply with multiple conflicting standards
- some activities can not be permitted by national regimes even though allowed by national law / international treaty

## Consequences of Differences in Regulatory Regimes

### Shipping Industry

- where is evidence of impact? –
  - increase in ambient noise
  - masking
  - TTS

### Regulation versus voluntary action

- “industry responds when there is a problem“
- shipping is regulated internationally, policed nationally
- Ship construction governed by SOLAS Convention
- internal noise covered by International Labor Organization
- Policing
  - 1) construction
  - 2) port state control – inspection for risk matrix – those that fail are targeted for more inspection

## Consequences of Differences in Regulatory Regimes

### Shipping

- USNRC report of 2003 recommends monitoring ocean noise to determine causes of increase in anthropogenic ambient noise (dB) in oceans
- how to persuade of need for action before having definitive evidence
- look for quieting in areas of concern to owners, e.g. maintenance and fuel efficiency

## Strategies to Address Differences in Regional/International/Domestic Regulatory Frameworks

- Vessel controls
- Voluntary standards, e.g. JNCC, IAGC/OGP
- Re. shipping:
  - develop persuasive info re risk – produce compelling case
  - challenge ship industry to address design and construction issues
  - advocate for consideration of noise in SOLAS
- Guidelines or agreements under UNCLOS
  - Code for Responsible Fishing could be model for flag-state control of vessel activities—need to look at mechanisms for both flag and port-state controls
  - straddling and migratory stocks
  - code of conduct for resp. fishing – IUU (illegal, unregulated, unreported)
  - problem: national states not all in treaty
  - Regional seas agreements, national regulations implementing international mechanisms – MARPOL, CMS regional agreements

## **Strategies to Address Differences in Regional/International/Domestic Regulatory Frameworks**

- ISO-environmental management system
  - certification & audit
  - could address all sources
  - concern re: enforcement/implementation
  - Australian Navy implementing ISO 14,001 standard
- Address research permitting requirements
  - Eliminate barriers
  - Research extent of barrier/problem
  - Develop one set of guidelines for all researchers, internationally
  - Streamline permitting system for researchers, e.g. programmatic or general EIS
  - develop database of global requirements – raise in SCOR

## Differentiating among sources in form of Regulatory Mechanisms

- Tailor permitting to source
- Performance based regulatory vs. prescription re: how conduct noise producing activity
- EIA's cover all sources, when required
- Make decisions after consideration of characteristics of noise
- Concerns about differential regulation by source: some sources may not be regulated when some interests think regulation is necessary
- When noise is by-product, may need different regulatory approach