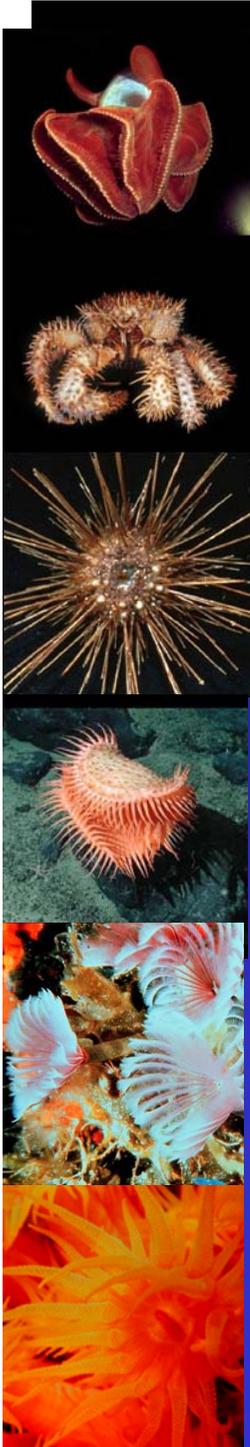


# Protecting Marine Biodiversity in Areas Beyond National Jurisdiction

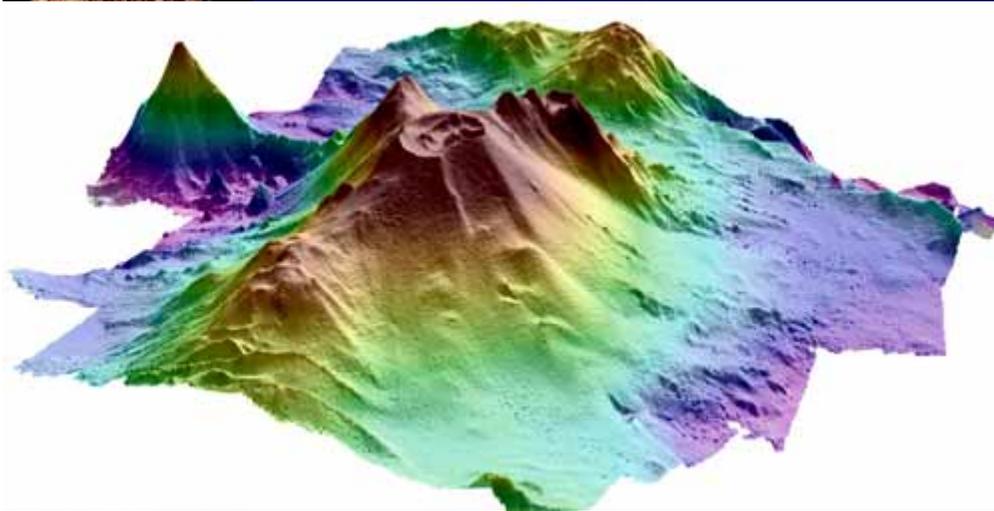
Joanna Mossop  
Victoria University of Wellington  
ANZSIL, Canberra, 2007

# Outline

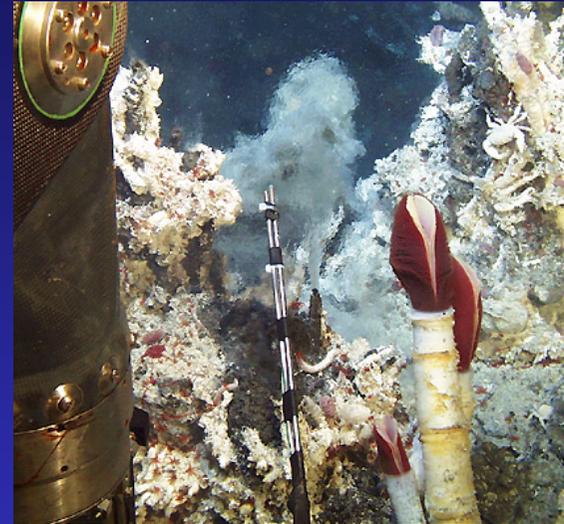
- What is marine biodiversity?
- Threats to marine biodiversity in areas beyond national jurisdiction
- Legal framework for biodiversity beyond national jurisdiction
- Options for regulating activities that threaten biodiversity



# Seamounts

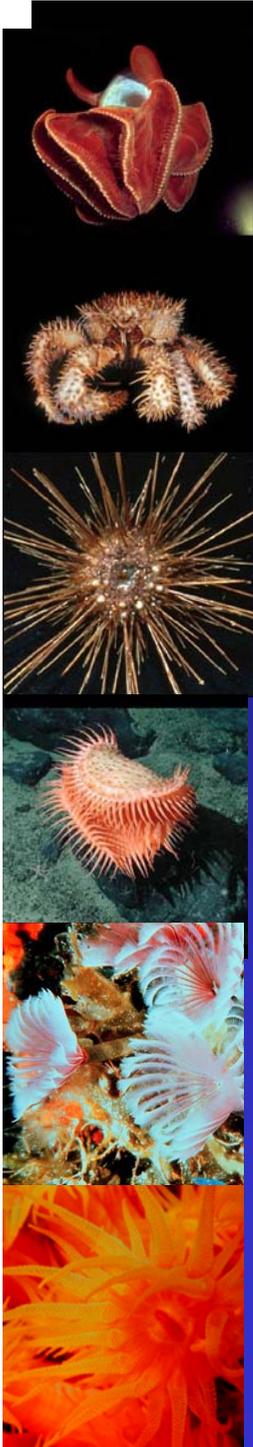


# Hydrothermal Vents



# Summary: why protect biodiversity?

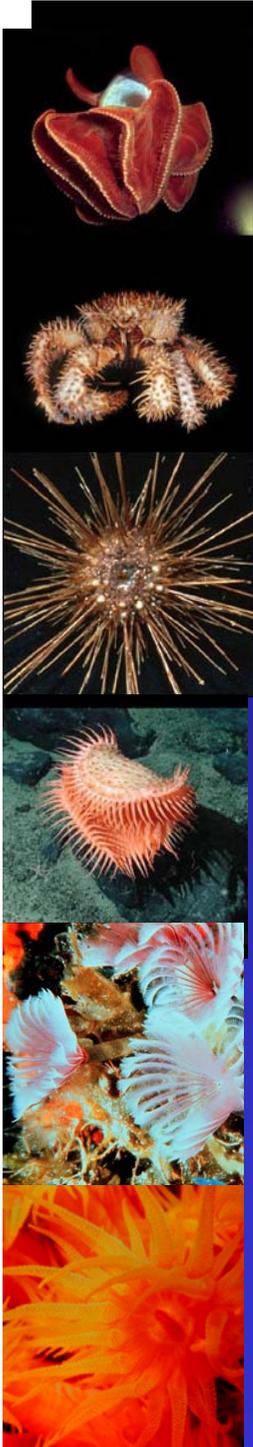
- Health of marine ecosystems linked to health of fish stocks and climate
- Representative habitats – science and conservation goals
- Source of commercial development and scientific knowledge



# Deep sea trawling - effects

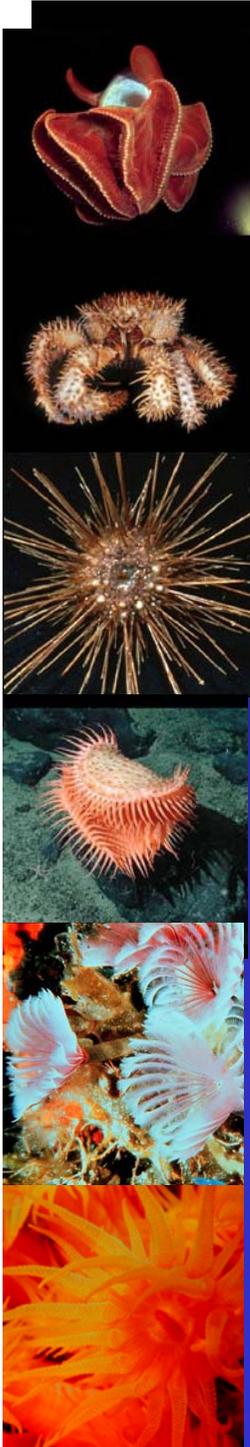


# Bioprospecting



# International response to threats to marine biodiversity

- Jakarta Mandate on Marine and Coastal Biological Diversity 1995 (CBD)
- 2002 World Summit on Sustainable Development Plan of Implementation
- UN General Assembly: GA Resolution, Informal Working Group

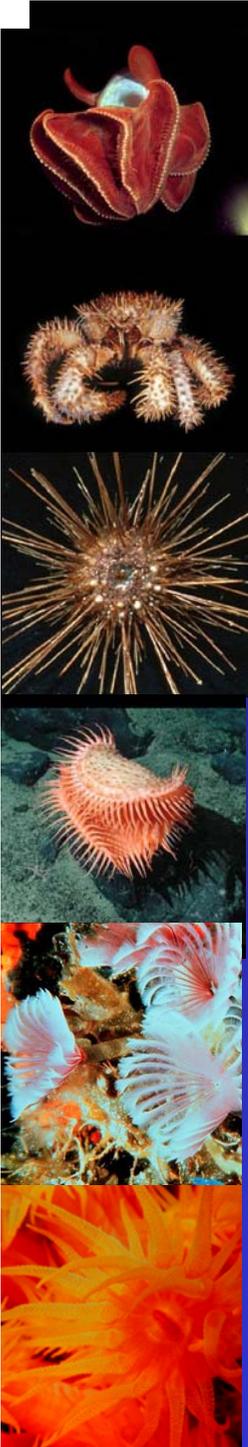


# International law - marine biodiversity beyond national jurisdiction

- Within national jurisdiction (including the outer continental shelf) coastal states have jurisdiction to regulate and conserve marine biodiversity
- Beyond, two regimes are applicable under UNCLOS: high seas and deep seabed (the Area)

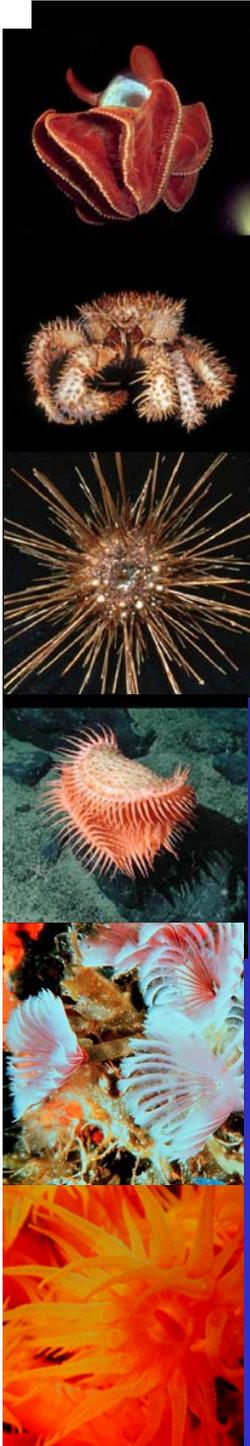
# International law framework: High Seas

- Freedom of fishing (art 87)
- Duty to cooperate for conservation (116–119)
- Duty to protect the marine environment (192)
- UN Fish Stocks Agreement general principles (art 5) include protecting biodiversity in the marine environment (5(g)), conserving species in same ecosystem (5(e)).



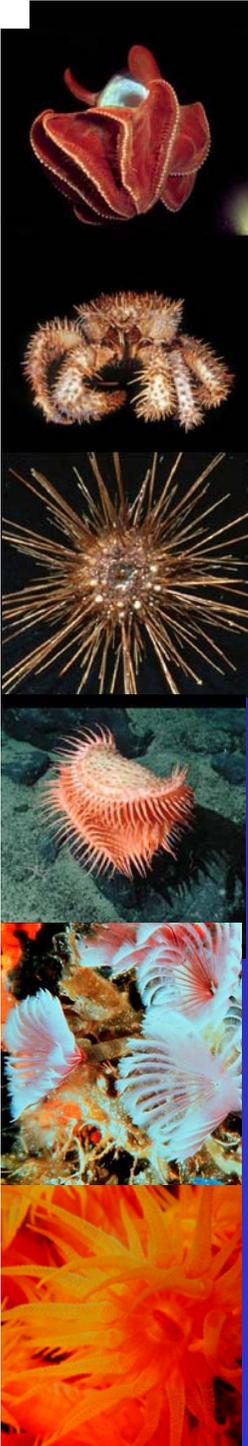
# International law framework: CBD

- Convention on Biological Diversity (CBD): art 8 requires states to take steps to protect ecosystems and habitats *in situ* where possible, including using protected areas.
- Application of CBD beyond national jurisdiction limited to the impacts of processes and activities carried out under a state's jurisdiction or control (art 4).
- Implementation must be consistent with UNCLOS (art 22).



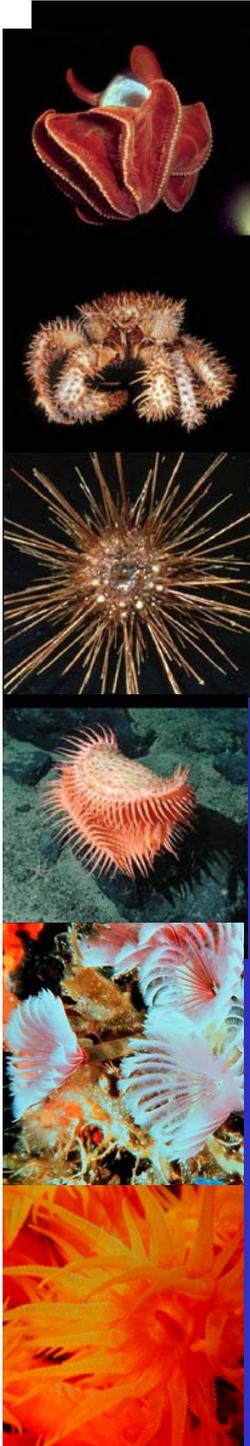
# International law framework: the Area

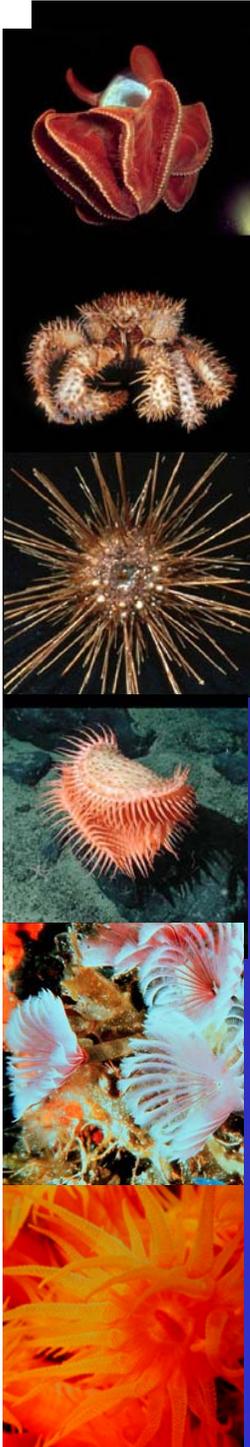
- Area and its resources are the common heritage of mankind (art 136)
- “Resources” means mineral resources (art 133)
- International Seabed Authority has responsibility:
  - To regulate mining activities and share economic benefits equitably (140)
  - Adopt rules to protect the natural resources of the Area and prevention of damage to the flora and fauna of the Area (145)



# International law framework: the Area

- Marine scientific research to be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole (art 143)
- States conducting MSR in the Area shall promote international cooperation, including involving developing countries (art 143).
- MSR in any area shall not constitute the basis for any claim to any part of the marine environment or its resources (art 241).



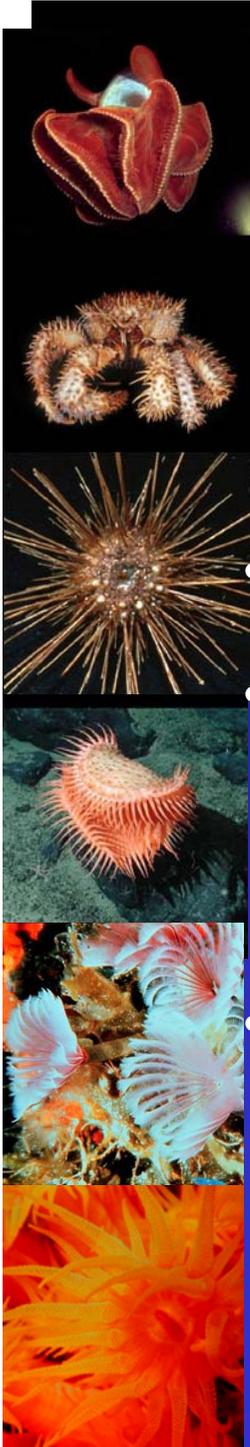


## Controversies relating to bioprospecting in the Area

- Is bioprospecting marine scientific research or an extractive activity?
- Does or should bioprospecting come within the concept of common heritage of mankind according to Part XI UNCLOS? Regulation of deep sea genetic resources a 'hot' international topic.

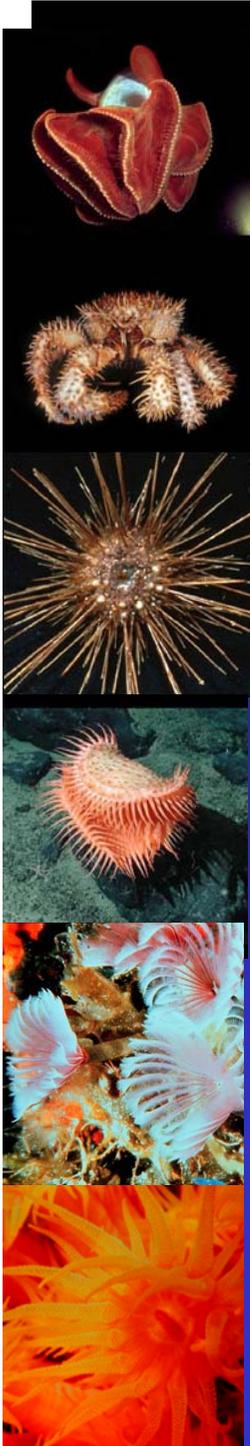
# Some options for enhancing protection and regulation of marine biodiversity

- General Assembly Resolution
- Through regional fisheries management organisations (RFMOs)
- Two elements needed:
  - Coordination of relevant institutions
  - International instrument resolving legal issues and establishing applicable principles



# Conclusion

- Existing legal framework appears inadequate to implement effective protection or regulation.
- Complicating factor: regulation of genetic resources
- RFMOs etc not well equipped to take on a regulatory role, but may be the only institutional response in the short term. Coordination is the key.
- International law – soft or hard – needed to provide principles and institutional framework.



# Acknowledgments – Images

- Greenpeace
- CSIRO Australia
- NOAA
- [www.bbc.co.uk](http://www.bbc.co.uk)
- NIWA
- [www.terrannature.org](http://www.terrannature.org)
- [www.pbs.org](http://www.pbs.org)
- NURP

