



HIGHLIGHTS FROM THE FOURTH MEETING OF THE CONSULTATIVE PROCESS: THURSDAY, 5 JUNE 2003

Delegates to the Fourth Meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process) concluded the Discussion Panel on the protection of vulnerable marine ecosystems. Participants heard presentations and engaged in discussions on coral reefs, near-shore habitats in the Pacific, and seamounts.

DISCUSSION PANEL B

PRESENTATIONS: Coral reefs: Diana Ponce Nava, Federal Environment Secretariat of Mexico, outlined Mexico's administrative and legal framework for the protection of the marine environment and its resources, focusing on coral reefs. She said protective measures include the establishment of marine protected areas (MPAs), surveying and monitoring, and restrictions on fishing, navigation and tourism. She noted that sanctions for damage include fines, imprisonment, cancellation of licenses, and seizures. Ponce Nava underscored the problem of grounding of vessels on coral reefs and, highlighting the Rubin vessel case, explained the weaknesses of the Mexican liability and compensation legal regime. She called for, *inter alia*: ecological evaluation of coral reef systems and their non-use values; developing an international directory of experts for valuating ecosystems and damage; technical assistance for producing and maintaining nautical charts; diplomatic and legal cooperation for resolving compensation cases; and strengthening enforcement procedures for damage restoration.

Near-shore habitats in the Pacific: Tim Adams, Secretariat of the Pacific Community, described the Pacific's fisheries governance system, noting that it recognizes community systems and traditional knowledge. He highlighted areas of concern, including the impact of climate change, vulnerability of seagrass and mangrove habitats to human activities, preservation of tuna stocks, and cultivation of pearls. He explained that the vulnerability of Pacific marine ecosystems is due to: proximity to dense human population; lack of management of remote areas; and economic dependency on marine resources. To address these challenges, he advocated zoning, effluent control, and seasonal closures, stressed the importance of regional and international cooperation, and supported application of the precautionary principle.

Seamounts and the biodiversity of the deep sea: Matthew Gianni, IUCN-The World Conservation Union, presented on seamounts, highlighting their high biodiversity and vulnerability to fishing, mainly illegal, unreported and unregulated (IUU) fishing. He noted an increase in IUU fishing with fishing vessels

moving into deeper waters in areas beyond national jurisdiction. He described the existing international legal framework for action to address this problem, and stressed the need for a precautionary approach. He recommended that the General Assembly consider adopting a moratorium on fishing around seamounts. He noted that unlike other high biodiversity ecosystems such as rainforests or coral reefs, seamounts do not face a wide range of threats or support local communities, rendering their protection easier.

DISCUSSIONS: Following each presentation, participants discussed issues relating to: the protection of vulnerable marine ecosystems; coastal areas; coral reefs; seamounts and ecosystems in areas beyond national jurisdiction; fishing; cooperation and coordination; and the global marine assessment.

Protection of vulnerable marine ecosystems: Many countries outlined domestic measures to protect vulnerable marine ecosystems. Several countries supported an ecosystem approach to the conservation and management of the marine environment and its resources, with CANADA highlighting its objectives-based ecosystem approach. INDIA stressed the importance of stakeholder participation when developing conservation and management plans. VENEZUELA called for technology transfer and information exchange to further domestic efforts. JAMAICA stressed the need to address transport of hazardous substances and compensation for damage, and urged assistance to undertake carrying capacity studies. ARGENTINA called for strengthening monitoring capacities. The US outlined criteria for MPAs and MPA networks, noting that they should be science-based, enforceable and effective, and consistent with the ecosystem approach and international law. The WORLD BANK stressed the need for a robust scientific framework, and to address information gaps and capacity building.

Coastal areas: Several countries outlined domestic measures for the protection of coastal areas. Noting that 90% of fish catch comes from these areas, JAPAN supported the establishment of near-shore MPAs. CHINA and JAPAN called for raising stakeholder awareness on marine ecosystems. Peru, on behalf of the PERMANENT COMMISSION OF THE SOUTH PACIFIC (PCSP), called for modernizing regional contingency plans, and stressed the need to strengthen coastal management activities.

Underlining the impacts of land-based activities on the marine environment, CANADA, PORTUGAL and UNEP stressed the need to integrate coastal and freshwater management, with UNEP urging a holistic definition of sanitation.

Coral reefs: Ponce Nava stressed the need for a practical coordination mechanism to support activities under different mandates, provide legal assistance, and facilitate information exchange, in the context of coral reef conservation and management. JAPAN

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and the US highlighted their contributions to coral reef conservation and monitoring. NORWAY, supported by many, called for greater attention to cold water coral reefs, highlighting their vulnerability and high biodiversity.

Seamounts and ecosystems beyond national jurisdiction:

NORWAY urged further research on seamounts and hydrothermal vents, and FIJI and JAPAN supported the International Seabed Authority's (ISA) work on these areas. Outlining current work and legal regimes related to the seabed, including work within the Commission on the Limits of the Continental Shelf (CLCS) and ISA, NORWAY said the Consultative Process should not take decisions that would preclude or predetermine the outcomes under those processes, and opposed addressing deep sea resources under the Convention on Biological Diversity (CBD) or fisheries management regimes. PORTUGAL highlighted that ISA is not competent to deal with matters other than mineral resources, and questioned whether areas that are claimed by a State but are not yet part of its jurisdiction would be considered under the CBD as areas falling within national jurisdiction, or whether there would be provisional arrangements until the final delimitation of continental shelves.

ISA said measures for the protection of deep sea biodiversity should be consistent with UNCLOS and respect ISA's responsibility to administer the Area and its resources. He urged developing internationally agreed criteria, possibly within ISA, to identify and manage sites of critical importance. He further stressed the need to ensure effective monitoring of activities and a fair and equitable benefit sharing regarding deep seabed genetic resources and, supported by MEXICO, said it could develop a code of conduct for marine scientific research and bioprospecting in the deep seabed. ISA and MEXICO also noted difficulties in distinguishing between scientific research and bioprospecting of deep seabed genetic resources, with MEXICO calling for further studies on the issue, and recommending the establishment of a negotiating mechanism to address the commercial utilization and equitable use of deep seabed genetic resources.

GREENPEACE called for a moratorium on commercial activities around known seamounts, hydrothermal vents and cold water corals in the high seas, and urged developing a programme of high seas MPAs in relation to these ecosystems. The US opposed, noting that this may prejudice the outcomes of discussions under other fora.

Many countries stressed the need for cooperation regarding protection of areas beyond national jurisdiction. JAPAN stressed that the establishment of MPAs in the high seas must be based on the best scientific evidence and be consistent with international law. ITALY highlighted that the principle of freedom of the high seas is not absolute and should be considered in light of developments, noting that supertankers, transport of hazardous goods, and modern fishing vessels did not exist when the principle came into being. He stressed the need to balance conflicting uses and interests, and called for a treaty addressing vulnerable marine ecosystems in an integrated manner. The EU supported CBD's work on the protection of marine ecosystems beyond national jurisdiction. ISA underlined the need to avoid establishing overlapping and conflicting high seas regimes.

The NETHERLANDS said no treaty exists to identify and protect all vulnerable ecosystems beyond national jurisdiction in an integrated manner, and stressed that the absence of adequate scientific information cannot excuse inaction in light of the precautionary approach. She suggested that the meeting consider how: the protection of vulnerable ecosystems can be addressed within the UN framework; existing relevant instruments can be used to protect vulnerable areas beyond national jurisdiction; and an ecosystem approach can be made operational for such areas.

Several countries, including CANADA and AUSTRALIA, called for a practical approach to protecting vulnerable ecosystems beyond national jurisdiction, within the existing legal framework.

Fishing: The Food and Agriculture Organization (FAO) announced the recent publication of technical guidelines on the application of the ecosystem approach to fishery management, and reported on FAO's work on deep sea fisheries, and marine turtles and fisheries. CHINA said the protection of fish species should be addressed within FAO, and the PCSP stressed the need for common fisheries policies. Stressing the need to address unsustainable fishing practices within EEZs, NORWAY said it does not permit vessels flying its flag to fish outside its EEZ.

AUSTRALIA reiterated the threat posed by IUU fishing, noted the obligations of flag States under UNCLOS, and supported stopping the use of open registries. He said the Consultative Process should recommend the establishment and development of criteria for a genuine link, and creating incentives for flag States to comply with international regulations. The REPUBLIC OF KOREA stressed the need for a system preventing IUU fishing, and supported raising fishermen's legal awareness.

Cooperation and coordination: The EU said an integrated management approach requires greater cooperation and coordination at all levels. He stressed the need for partnerships, noting the work of the Global Environment Facility, and for enhancing global reporting and assessment of marine ecosystems.

Global marine assessment: FINLAND recommended that the global marine assessment, *inter alia*, account for the need of some countries to increase their monitoring capacities, increase stakeholder participation, and target assessments for a varied audience.

IN THE CORRIDORS

With the end of the meeting in sight, discussions intensified on the issue of protecting vulnerable marine ecosystems. Several delegates remarked that this topic generated significantly more interest and stronger country positions than the drier subject of safety of navigation and capacity building for nautical charts. Another participant noted that diverging perspectives on the issues relating to MPAs beyond national jurisdiction and deep seabed ecosystems, and the appropriate forum to address these matters, had an air of *déjà vu* reminiscent of the debates at CBD SBSTTA-8.

As the meeting's recommendations to the General Assembly were being drafted, one NGO delegate expressed disappointment at the lack of support received for proposals to develop a new international agreement on flag State responsibilities and to impose a moratorium on commercial activities around vulnerable deep sea ecosystems. One delegate speculated that the meeting may confine its recommendation on flag State responsibilities to a list or inventory of such obligations.

THINGS TO LOOK FOR TODAY

PLENARY: Delegates will meet from 10:00 am-1:00 pm and from 3:00-6:00 pm in Conference Room 1 to: exchange views on cooperation and coordination on ocean issues; hear updates on the global marine assessment and the consultative group on flag State implementation; consider the report on the in-depth evaluation of the programme on the law of the sea and ocean affairs; suggest further issues that could benefit from attention in the future work of the General Assembly; and agree upon a draft text on elements to be suggested to the General Assembly for its consideration under its agenda item "Oceans and the law of the sea," prior to the close of the meeting.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin's* summary of this meeting will be available online Monday, 9 June at: <http://www.iisd.ca/oceans/icp4/>