

## PREPCOM 3 HIGHLIGHTS: WEDNESDAY, 29 MARCH 2017

On Wednesday, 29 March, the informal working group on area-based management tools (ABMTs), including marine protected areas (MPAs) continued its deliberations, followed by a short plenary and the informal working group on environmental impact assessments (EIAs) in the afternoon.

### INFORMAL WORKING GROUP ON ABMTS

**DEFINITIONS:** CHINA suggested including in an ABMT definition an objective, geographical scope and a function element. The FSM noted that each ABMT should take a holistic management approach, stressing that ABMTs in areas beyond national jurisdiction (ABNJ) should: not cause disproportionate burdens on coastal states; respect national and regional ABMTs; and, with SAUDI ARABIA, not affect coastal states' sovereign rights. SAUDI ARABIA called for utilizing existing regional organizations, respecting UNCLOS criteria. CARICOM noted that the objectives of ABMTs must be linked to conservation and sustainable use, which are complementary. NORWAY stressed that the purpose of an MPA definition should be clear.

The CBD noted that 71 out of 279 ecologically or biologically significant areas (EBSAs) are located in ABNJ, covering 21% of total surface area of ABNJ. FAO stressed that: ABMTs need to be combined with other management measures to avoid negative impacts, such as overfishing in adjacent areas; and, with FIJI, the definition needs to be broad and flexible to cover different objectives, encompassing both ecological and socioeconomic elements.

**GOVERNANCE:** CARICOM emphasized the need for: scientific criteria for designating ABMTs; modalities for consultation; with TONGA, interlinkages with capacity building and technology transfer; and recognition of other bodies deploying ABMTs in ABNJ, to address fragmentation. The EU proposed inviting regional and sectoral organizations to submit proposals in the consultation procedure, and establishing a procedure for complementary measures or recognition of existing ABMTs, provided they comply with ILBI criteria. SINGAPORE queried recognition modalities and possible effects of non-recognition, cautioning against substituting other organizations' decision-making with decision-making under the ILBI.

TONGA emphasized that climate change considerations should be incorporated in ABMT designation. SINGAPORE and FIJI called for a flexible process to allow coverage of future activities and incorporation of marine spatial planning. INDONESIA recommended involving states bordering relevant ABNJ to prevent impacts on the extended continental shelf; and developing "due regard" obligations.

CANADA cautioned against a global approach and duplication of efforts, preferring implementation at the regional or sectoral levels following the UNFSA model.

The RUSSIAN FEDERATION cautioned again undermining the UNFSA regional approach, arguing that a centralized body is unlikely to have more expertise than regional ones. JAPAN cautioned against overriding the mandates of existing bodies like the IMO and RFMOs, calling for consultation, cooperation and collaboration, with ICELAND proposing to strengthen cross-sectoral cooperation and build RFMOs' capacity. CHINA underscored that the ILBI should fill gaps and strengthen existing mechanisms. ARGENTINA underscored that RFMOs have a limited mandate and, with COSTA RICA, did not support strengthening this mandate.

GREENPEACE noted that while regional and sectoral organizations must be respected and consulted, they often have limited mandates, geographical limitations, and constrained resources and enforcement mechanisms. AUSTRALIA emphasized that the ILBI should support and not undermine existing mandates. Highlighting the role of the ILBI in contributing to coherence and coordination, NORWAY called for activating, utilizing and challenging existing mechanisms, including RFMOs. FAO stressed that only a few ABNJ are not under RFMOs' management, urging for extensive consultations when establishing ABMTs under RFMOs' jurisdiction.

**Submission of ABMT proposals:** AOSIS, with PERU and MEXICO, suggested that joint or individual proposals be made by states and relevant organizations. ARGENTINA supported state parties submitting proposals. The EU recommended that MPA designation be triggered either collectively or individually by states, who should launch an initial time-bound consultation process. JAPAN favored states submitting proposals and sharing them with other states. CHINA supported states' submissions of proposals, in consultation with stakeholders. MONACO called for the widest possible consultative process prior to states' submissions. SWITZERLAND suggested that state parties triggering the designation process take into account existing processes, including the CBD EBSAs. FIJI cautioned against a cumbersome process for developing states, particularly SIDS.

**Assessment of proposals:** PSIDS recommended involving adjacent coastal states in decision-making. INDONESIA suggested assessing proposals on technical, scientific and legal grounds, through an inclusive and transparent process. SWITZERLAND and FIJI called for state parties making decisions, preferably by consensus or qualified majority. JAPAN supported an ILBI conference of parties (COP), consensus-based decision-making, and a scientific committee composed of experts. ARGENTINA supported a technical body reporting to a consensus-based COP. NEW ZEALAND proposed: a COP providing process guidance for MPA designation; regional bodies, in consultation with others, involved in MPA implementation; and states reporting on implementation. MOROCCO emphasized that scientific assessments should precede any consensus decision by state parties on designation.

CARICOM emphasized the need for a scientific or technical advisory committee, suggesting that it include representation from sectoral bodies and, supported by TONGA and ARGENTINA, draw from the ISA Legal and Technical Committee. AOSIS supported a scientific process informing policy-making, ensuring full inclusivity of SIDS and recognizing traditional knowledge. PSIDS said the scientific committee must include traditional knowledge holders, pointing to relevant practice in the description of CBD EBSAs. The FSM added that a scientific body could be global or regional, and build upon the knowledge and expertise of the EBSA process. The EU called for creating a scientific subsidiary body to technically assess proposals. MEXICO favored a technical and scientific subsidiary body, recommending, supported by NEPAL, that it approve proposals following consultations and studies on existing MPAs, and make legally binding decisions for state parties.

AUSTRALIA preferred a regional action-oriented process, including regional decision-making. NORWAY supported RFMOs and the ISA designating and implementing MPAs, through public hearings and consultations with adjacent coastal states, with the ILBI COP providing feedback to RFMOs. The PHILIPPINES called for aligning decision-making with SDG 14 targets. INDIA underscored the need for an institutional mechanism to coordinate ABMTs, based on best scientific evidence, ecological uniqueness, the precautionary principle, accountability and involvement of coastal states, through a consultation process that includes regional cooperation.

**Monitoring and review:** The EU proposed requiring state parties to report regularly, in a standardized format, on activities pursuant to a management plan. SWITZERLAND called for a review process allowing for adapting management plans. CARICOM emphasized the need for guidelines on monitoring of implementation, which could be delegated to regional bodies. PERU favored monitoring through sectoral and regional organizations, and creating a compliance system. The PHILIPPINES requested concrete enforcement measures.

Proposing that MPAs could be terminated when their objectives have been achieved, JAPAN supported MPAs review, with monitoring not imposing additional financial requirements on parties. MONACO noted that amendments could be made based on scientific evidence, including terminating ABMTs if objectives are met. MEXICO emphasized, supported by FIJI, that relevant international organizations should be tasked with implementing and respecting ABMTs; and an ILBI subsidiary body for ABMT review on a case-by-case basis within a timeframe, with options to maintain, modify or terminate an MPA. CHINA noted that MPAs should be timebound, with the review process proposing renewing or extending MPA timelines. The EU indicated that MPAs should be designated for an indefinite time period, with NEPAL pointing to the opportunity to make amendments after the original designation.

**Non-parties:** The EU suggested inviting non-party states to consider adopting measures in line with an ABMT management plan. The RUSSIAN FEDERATION cautioned against addressing non-parties.

**PRINCIPLES AND APPROACHES:** CARICOM, with the AFRICAN GROUP, the RUSSIAN FEDERATION, and PSIDS, underscored the adjacency principle. The AFRICAN GROUP and the EU supported the precautionary principle and, with the RUSSIAN FEDERATION and others, using best available science. CHILE pointed to the need for compatibility between measures in the exclusive economic zone (EEZ) and the high seas. GREENPEACE and the HIGH SEAS ALLIANCE pointed to principles of stewardship, good governance, sustainability, equity and science.

The AFRICAN GROUP, with PSIDS, supported inclusiveness, participatory approaches and transparency. PSIDS, JAMAICA and SINGAPORE highlighted flexibility and an adaptive management approach.

CHINA highlighted proportionality in matching conservation measures with objectives and taking socioeconomic factors into consideration. The RUSSIAN FEDERATION emphasized cooperation, coordination and harmonization of competent international organizations, as well as high seas freedoms.

The COOK ISLANDS prioritized the need to balance long-term conservation and sustainable use, precautionary and ecosystem-based approaches, calling for an inclusive and flexible system, incorporating traditional knowledge and respecting coastal states' rights, including the participation of adjacent states.

### **INFORMAL WORKING GROUP ON EIAs**

The G-77/CHINA stressed that EIAs should take into account developing countries' needs, the ecosystem, science-based and precautionary approaches, transparency, inter- and intragenerational equity, and the responsibility to protect the marine environment, as guiding principles. PSIDS noted that the ILBI should set guidelines, criteria, thresholds and a process for EIAs, harmonizing standards, supporting capacity building and respecting national jurisdictions. The RUSSIAN FEDERATION underscored: the need to respect all sovereign rights to exploit the continental shelf, including the extended one; and interlinkages between EIAs and ABMTs.

**Geographic scope:** The EU, with INDONESIA, said that EIAs should focus on activities taking place in ABNJ. The AFRICAN GROUP, supported by CHINA, clarified that the ILBI should only cover activities in ABNJ. The AFRICAN GROUP also proposed including activities with impacts on areas within national jurisdiction, with ARGENTINA noting that activities within national jurisdiction that have an impact on ABNJ should be regulated by states. AOSIS recommended strengthening the implementation of UNCLOS obligations on EIAs, taking into account SIDS special circumstances, capacity building and financial assistance. The FSM, with CANADA, argued that affected states should be consulted and involved in EIAs for activities in ABNJ that have an impact on areas within national jurisdiction. CARICOM suggested that the ILBI address all activities with an impact on ABNJ, including transboundary impacts, and coastal states have the right to approve activities in ABNJ affecting them. PSIDS recommended also covering adjacent areas, including areas under national jurisdiction.

INDONESIA, with the PHILIPPINES, suggested explicitly addressing impacts beyond and within national jurisdiction, including the outer continental shelf. MEXICO called for considering activities within national jurisdiction, which have impacts on ABNJ. GREENPEACE emphasized that all human activities should be assessed for potential adverse effects regardless of where they take place.

### **IN THE CORRIDORS**

Plunging into the nitty-gritty of a global process to propose, assess, implement, monitor and/or review marine protected areas, many recognized growing convergence on this item. Old sensitivities, however, re-emerged around the relationship between a new legally binding instrument and RFMOs. In balancing conservation and sustainable use, some BBNJ participants wondered whether the latter should be discussed more extensively in the PrepCom, in anticipation of increasing attention to the blue economy at the SDG 14 Conference in June. Others looked to new initiatives as a pragmatic and collaborative way forward, such as the Global Dialogue with RFMOs and regional seas bodies, which – as announced at a well-attended side-event – has become a regular forum under the auspices of the CBD, UN Environment and FAO. A seasoned observer added, “Perhaps anchoring ABMTs, or the whole ILBI, to marine spatial planning could rope everyone in,” as an approach to address competing uses and strengthen the implementation of the ecosystem approach in the oceans.