

PREPCOM 4 HIGHLIGHTS: WEDNESDAY, 12 JULY 2017

On Wednesday, 12 July, delegates met in the informal working groups on: ABMTs; EIAs, facilitated by René Lefeber (the Netherlands); and capacity building and technology transfer (CB&TT), facilitated by Rena Lee (Singapore).

WORKING GROUP ON ABMTS

The COOK ISLANDS recommended including ocean ecosystem restoration and resilience among ABMT objectives. GREENPEACE, NRDC, PEW CHARITABLE TRUSTS and OCEANCARE proposed including the polluter pays principle and stewardship, noting that the balance between conservation and sustainable use is not an agreed principle. FAO called for also considering vulnerable marine ecosystems (VME) criteria, in addition to PSSA and EBSA criteria.

DESIGNATION PROCESS: CANADA suggested including reference to: relevant “instruments, bodies and mechanisms,” in addition to measures, as well as potential gaps in ABMT proposals; coordination, in addition to consultation, with relevant actors, with NORWAY; and, with JAPAN, SINGAPORE, LDCs, INDONESIA and the COOK ISLANDS, the role of adjacent coastal states in decision making. INDONESIA suggested taking into account potential transboundary impacts from ABNJ on areas under adjacent coastal states’ national jurisdiction.

Noting that ABMTs in the high seas could help restore national fisheries, bringing benefits that must be distributed equitably, LDCs suggested including ecological factors in the content of proposals. ARGENTINA proposed: including a management plan in ABMT proposals; clarifying that consultations will be fully participatory; and adding safeguards on issues of sovereignty and delimitation.

SINGAPORE favored, with AUSTRALIA and JAPAN, non-prescriptive language on potential global/regional/hybrid decision-making models. AUSTRALIA suggested that the scientific assessment be conducted “by a relevant body.” JAPAN recommended including in the proposals: the scientific basis for the standards and criteria, supported by NORWAY, LDCs and the COOK ISLANDS; as well as a contact person to allow for consultations. SAMOA, the FSM, LDCs and the COOK ISLANDS underscored the role of traditional knowledge holders and local communities as a source of information in consultations.

Duration: CHINA, with JAPAN, recommended that ABMTs, including MPAs, should be terminated when their specific targets are achieved. The US stressed that ABMTs should be designed to achieve certain objectives and modified when that objective is achieved, pointing to the process under the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The EU called for designating MPAs for an indefinite period, and establishing a regular review based on research to allow for modifying, amending or de-designating MPAs.

IMPLEMENTATION: The EU, with CARICOM and the US, underscored states’ implementation responsibility. PSIDS, with CARICOM, NEW ZEALAND, TOGO, MEXICO and AUSTRALIA, suggested including regional and sub-regional

bodies. MEXICO proposed a reference to port states’ responsibility to implement measures adopted for a particular area. The US preferred more general references to implementation. SINGAPORE queried text referencing “provisions relating to competent international organizations.” NORWAY, with AUSTRALIA cautioned against prejudging the relationship between the ILBI and “competent international organizations.”

RELATIONSHIP TO EXISTING MEASURES: PSIDS welcomed reference to compatibility. The EU called for: including in the MPA network those MPAs established under existing bodies; and further elaborating on compatibility. SINGAPORE, supported by NEW ZEALAND, the EU, NORWAY, AUSTRALIA and JAPAN, recommended ensuring that relationships with future measures are also taken into account.

MEXICO, supported by CARICOM, proposed establishing a central entity to harmonize and coordinate measures adopted under the ILBI and existing measures adopted by other instruments. SINGAPORE, with CARICOM, argued against the ILBI superseding other existing instruments in establishing MPAs and applying ABMTs. JAPAN, the US and NORWAY opposed referring to measures “adopted” under the ILBI.

MONITORING AND REVIEW: The G-77/CHINA proposed establishing monitoring and review protocols to assess effectiveness, based on best available science. MEXICO proposed that competent regional and subregional organizations assess ABMT effectiveness. The EU, supported by TOGO and CARICOM, recommended obliging states, and calling upon organizations, to report on implementation. PSIDS called for a strong follow-up component. NEW ZEALAND suggested reference to research objectives and plans, and further discussion on compliance. The US preferred referring to “recommended,” rather than “required,” follow-up action. The EU cautioned against prejudging what the ILBI will require. CANADA, with NORWAY, emphasized the need for clarifying that future assessments will not extend to ABMTs under other instruments.

WORKING GROUP ON EIAs

The RUSSIAN FEDERATION proposed eliminating the whole section on EIA, due to lack of consensus on, *inter alia*, EIA definitions and thresholds.

OBLIGATION: The G-77/CHINA and the US proposed clarifying that when states have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of, or significant and harmful changes to, the marine environment, they should assess impacts. The EU, with MEXICO and CARICOM, recommended reference to customary international law as clarified by the International Tribunal for the Law of the Sea.

CARICOM suggested: addressing activities in ABNJ having an impact in areas under national jurisdiction in accordance to CBD Article 14 (impact assessment and minimizing adverse impacts) and UNCLOS Articles 206 (assessment of activities’ potential effects) and 207 (pollution from land-based sources); and governing activities in areas within national jurisdiction that have an impact in ABNJ through national legislation, with a reporting requirement under the ILBI.

The PHILIPPINES called for specific EIA mechanisms. NEW ZEALAND underscored developing best-practice guidance on EIAs. CANADA noted that not every activity needs to be assessed, and that actors other than states may undertake EIAs.

PRINCIPLES: The G-77/CHINA underscored due diligence, cautioning against implying that coastal states' rights will be prioritized over those of other states in conducting EIAs in ABNJ. MEXICO suggested reference to: supported by CARICOM, PSIDS, the AFRICAN GROUP and others, the polluter pays principle; and, supported by the PHILIPPINES, INDONESIA and IRAN, the prohibition to cause transboundary harm. The US and JAPAN queried how these principles would be applied in ABNJ. CARICOM underscored: compliance; liability; as well as stewardship, and inter- and intra-generational equity, supported by PSIDS and the HIGH SEAS ALLIANCE.

CARICOM, the HIGH SEAS ALLIANCE, the EU, PSIDS and SENEGAL called for strategic environmental assessments (SEAs) of cumulative effects. SENEGAL also emphasized transboundary EIAs (TEIAs). The EU suggested, as EIA-specific approaches, mitigation hierarchy and no-net biodiversity loss, which was supported by CANADA and IUCN, and questioned by the US and JAPAN. COSTA RICA called for distinguishing between prevention of known impacts, and precautionary measures for unknown impacts. The HIGH SEAS ALLIANCE suggested as one principle "transparency, public availability of EIA reports and public participation." JAPAN supported using recognized scientific methods as a guiding approach.

PSIDS emphasized incorporating traditional knowledge in best available scientific information, drawing on the CBD Akwé: Kon Guidelines on socio-cultural and environmental assessments as a model; and providing financial assistance and capacity building for conducting EIAs.

The AFRICAN GROUP, with the US and PAKISTAN, proposed adding respect for coastal states' sovereign rights and jurisdiction over their exclusive economic zone (EEZ). IRAN suggested that respect for territorial integrity and sovereignty include "all states concerned, including coastal and flag states." Noting that adjacency is not enshrined in UNCLOS, CHINA, supported by the US, proposed "due regard" for coastal states' rights.

ACTIVITIES: The G-77/CHINA favored a flexible and regularly updated list of activities requiring EIAs or exemptions. AUSTRALIA suggested "developing" criteria. The COOK ISLANDS underscored that all activities in EBSAs or VMEs should trigger an EIA. FIJI stressed that any activity that potentially impacts ABNJ should undergo an EIA. JAPAN suggested that ILBI parties develop EIA guidelines. CHINA considered uniform EIA standards impractical.

PROCESS: The G-77/CHINA favored establishing a decision-making body under the ILBI. The EU, with AUSTRALIA, NEW ZEALAND, NORWAY, CANADA, JAPAN, the REPUBLIC OF KOREA and the US, stressed that ILBI state parties will be responsible for deciding to conduct an EIA and to authorize an activity. The FSM considered the state as the decision-maker as only one of the models proposed, with the HIGH SEAS ALLIANCE arguing that decisions on geoenvironmental proposals may be subject to an international process.

CARICOM suggested a tiered approach like that of the Antarctic Treaty, as well as provisions for an appeal process. PSIDS suggested mandatory consultations with adjacent coastal states, taking into account traditional knowledge, and including a review by an independent expert panel.

The EU noted that the ILBI should provide for a public statement on the reasoning behind a decision. JAPAN suggested: eliminating reference to public notification and consultation "at the global level"; referencing "objective," rather than "independent," scientific review; establishing a system facilitating comments from states on draft EIA reports; and further discussing the need for mandatory consultation. PSIDS, with CARICOM, recommended clarifying that costs, including those for mandatory consultations, should be borne by the activity proponent.

CONTENT OF EIA REPORTS: PSIDS, with MEXICO and SENEGAL, called for including transboundary impacts when relevant. CARICOM recommended including social impacts, such as on vulnerable populations and indigenous groups. MEXICO favored including information on methodology, such as alternatives. CANADA proposed adding descriptions of potential

environmental impacts, including cumulative impacts "and reasonable alternatives." TONGA, with NEW ZEALAND, proposed drawing from best available science. The US suggested including a description of scoping results and, with SENEGAL, a description of reasonably foreseeable direct and indirect environmental impacts in the EIA report. PAPUA NEW GUINEA recommended that a proposed activity can be rejected.

CLEARINGHOUSE MECHANISM: The G-77/CHINA, with the REPUBLIC OF KOREA, noted that a CHM could serve as a central repository of baseline data. PSIDS pointed to the CHM as a repository of traditional knowledge related to EIAs. The EU considered the CHM as a global repository of best practices, EIA-related information, and international and national instruments. The PHILIPPINES, opposed by the US, supported an EIA-specific CHM.

MONITORING AND REVIEW: MEXICO proposed including monetary and auditing measures to ensure that activities comply with the EIA results. CANADA suggested referring to "impact prediction and evaluation," and to the independent scientific "input," rather than "review." The US preferred: with IUCN, "preparation of EIA documentation"; and "new publication of decision-making documentation," rather than independent scientific review.

The G-77/CHINA, with the US, stressed that monitoring and review should be based on UNCLOS Article 204 (monitoring of the risks or effects of pollution). The US proposed setting out "states' obligations to undertake monitoring of pollution risks of activities they permit or engage in ABNJ." The EU emphasized that states decide monitoring and review modalities.

CARICOM stressed that: with PSIDS, monitoring should be funded by an activity proponent; and the EIA process should include an environmental management plan, establishing monitoring timelines, and provisions for identifying breaches, decision-making on action to be taken, and potential compensation. PSIDS underscored the need for provisions on non-compliance, including a liability fund and a dispute-settlement mechanism. The FSM highlighted the need for monitoring guidelines.

WORKING GROUP ON CB&TT

OBJECTIVES: PSIDS underscored the need to operationalize UNCLOS Part XIV on technology transfer. The EU, with JAPAN, prioritized the objective to assist states, in particular developing ones, in fulfilling their ILBI obligations. JAPAN, with CANADA, supported strengthening human and institutional capacities and developing marine scientific and technological capacities in BBNJ conservation and sustainable use.

PRINCIPLES: The AFRICAN GROUP requested eliminating references to CB&TT being "country-driven" and "resulting in co-benefits for providers and recipients," with the EU preferring a "needs-based approach." The AFRICAN GROUP, the FSM and the PHILIPPINES noted that country-driven implies needs-driven.

AOSIS called for preferential treatment and "access procedures" for SIDS and LDCs. The EU recommended that preferential treatment be in line with UNCLOS. PSIDS outlined "preferential treatment of SIDS" clauses in other multilateral agreements. JAPAN expressed difficulty with according preferential treatment to developing countries. The EU emphasized, with JAPAN and the RUSSIAN FEDERATION, voluntary technology transfer. The US, the RUSSIAN FEDERATION and JAPAN added "under mutually agreed conditions."

IN THE CORRIDORS

New York's heavy summer air appeared to weigh down BBNJ delegates after a marathon round of informal discussions that propelled them well ahead of schedule. While this may have satisfied some, others remain skeptical. "Does this mean that we are agreeing on substantive elements or are we simply agreeing to disagree?" a weary delegate questioned. A more energetic participant wondered whether the fast pace may allow for informal consultations on the revised Chair's indicative suggestions before the weekend.