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PrepCom 1

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PREPCOM 1 HIGHLIGHTS:

MONDAY, 4 APRIL 2016

On Monday, 4 April, the informal working group on area-based management tools (ABMTs) continued in the morning. In the afternoon, the PrepCom plenary reconvened briefly, followed by an informal working group on environmental impact assessments (EIAs), facilitated by René Lefeber (the Netherlands).

INFORMAL WORKING GROUP ON AREA-BASED MANAGEMENT TOOLS

OBJECTIVES AND PRINCIPLES: Stressing that all the tools under ABMTs, not just MPAs, need to be explored, the G-77/CHINA underscored the precautionary and science-based approaches, transparency and accountability. FIJI, supported by NEW ZEALAND, recommended that the ILBI specify universal objectives and obligations regarding ABMTs. JAMAICA emphasized conservation and sustainable use objectives, drawing on relevant CBD provisions, as well as the Convention on the Conservation of Antarctic Marine Living Resources' (CCAMLR) MPA objectives. P-SIDS suggested that objectives include financing and capacity building for developing countries, particularly SIDS.

The PHILIPPINES stressed ecological connectivity, calling for coordination with academic institutions for better access to scientific data, and highlighting the goal for well-managed MPAs to restore ecosystem services, including food security and climate resilience. INDIA recommended finding an effective balance between high seas freedoms and the ILBI. The US, supported by NEW ZEALAND, recommended including fishing. MISSION BLUE underscored the need for MPAs to support resilience.

CRITERIA: The US, with PAPUA NEW GUINEA, recommended drawing from RFMOs' experience, and on EBSAs and VMEs. FIJI recommended that the ILBI take into account internationally recognized criteria and outline steps in establishing MPAs. P-SIDS noted that criteria would vary depending on the regional circumstances and should include, *inter alia*, biological productivity and/or diversity. NEW ZEALAND proposed setting criteria on ABMTs to be used by states via RFMOs. OCEAN CARE called for ABMTs' criteria to include underwater noise considerations.

GOVERNANCE: The G-77/CHINA stressed the need for an international mechanism for cooperation, coordination and review of compliance, with CHILE emphasizing: monitoring and control requirements, technology transfer, and flag state responsibility. BARBADOS suggested a system of notification, review, and reporting by various ocean users, noting lessons to be learned from FAO and sectoral bodies. MAURITIUS called for extensive consultation on MPA proposals with coastal states, local communities and regional organizations, ensuring consensus.

Reiterating that an integrated approach to MPA establishment cannot be achieved through RFMOs, the AFRICAN GROUP suggested promoting coordination between existing and ILBI mechanisms. FIJI recommended that the ILBI provide for a decisionmaking body to establish guidelines on area-based management. COSTA RICA suggested creating: standards binding upon states, as well as upon global and regional organizations; a global body to monitor, review and ensure compliance; and, supported by BARBADOS, a geographically balanced scientific committee.

On decision-making on MPA establishment, the EU called for: a consultation mechanism, including a wide range of stakeholders; incorporation of spatial boundaries, conservation objectives, identification of threats and elements of a management plan in the proposals; consideration of a voting mechanism; and respecting rights and obligations under UNCLOS. On implementation, compliance and review, the EU highlighted: accountability; flag states' responsibility; science-based decisions; cooperation and coordination with relevant bodies; relationship with non-parties; and regular reporting.

The US recommended: adjusting management structures over time as scientific information evolves; including compliance and monitoring; and taking into account all relevant stakeholders' views. The RUSSIAN FEDERATION argued that: MPA establishment proposals must be assessed individually, considering geographical particularities and the status of the ecosystems, only on the basis of sufficient scientific data; and MPAs should not restrict all activities, or be permanent, recalling coastal state rights to the continental shelf. NORWAY called for discussions on how to link existing management tools to the challenges identified within ABMTs, suggesting that the ILBI will not have management tools of its own, as these are already enshrined in other bodies' and states' competences; and suggesting that regional and sectoral bodies be allowed to develop measures to address the pressures and conservation goals identified by the ILBI.

JAMAICA called for a duty to refrain from activities while proposals are being reviewed, as well as a notification and reporting process, and stricter standards for EIAs in MPAs; and noted, on significant adverse impacts' thresholds, CBD Article 7(c) (identification and monitoring) and the FAO Guidelines on Deep-Sea Fisheries. AUSTRALIA suggested that ABMT establishment: be based on strong science and the identification of areas requiring attention, under regional leadership as guided by UNFSA; work with existing organizations, including RFMOs; and include port and flag states as "levers." P-SIDS called for consulting coastal states in designating and designing MPAs.

VENEZUELA, despite reservations on SDG target 14.c referring to UNCLOS, supported using the SDGs as a starting point for the ILBI, including on benefit-sharing, cooperation, and accountability; referred to relevant CBD provisions; and called for actively incorporating non-parties, without undermining safeguards for and reservations by non-parties. IUCN stressed

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the need for: a global ABMT framework to ensure equal progress at the regional level; mechanisms to enhance ABMTs at regional and sectoral levels; a scientific and technical advisory body; and a decisionmaking body to designate new MPAs, adopt MPA objectives and measures applicable to states in ABMT management, and consult with states and stakeholders. WWF called attention to its written proposal on enhanced cooperation and dispute resolution.

LINKS WITH REGIONAL APPROACHES: ICELAND, with the RUSSIAN FEDERATION, supported Japan's proposal to include RFMOs' presentations at PrepCom 2. ARGENTINA recalled RFMOs' geographical and participation limits, as well as limited mandates regarding activities and species they regulate. The EU also proposed "a ping pong approach" between global and regional approaches, arguing that further steps to achieve the ecosystem approach are necessary, in addition to RFMOs and other competent organizations.

CANADA emphasized: effective and timely implementation of ABMTs, including MPAs; collaboration, cooperation and enhanced communication; and clarification of the content of the precautionary principle and ecosystem-based approach in the context of ABMTs. MEXICO highlighted existing efforts under the CBD, FAO and MARPOL, calling for an organic, pragmatic and low-cost approach to MPAs based on the development of regional schemes. FSM noted that the ILBI should respect VMEs, PSSAs, RFMOs' work and national efforts to establish reserves.

The EU stressed that MPAs established in the water column must respect coastal states' rights over the continental shelf; underscored the need to distinguish between "undermining" and "interfering with" existing organizations; suggested a simplified procedure to acknowledge MPAs established by existing organizations; and indicated that MPAs should not be temporary. SRI LANKA recommended identifying the types of scientific information necessary to establish MPAs. FAO announced a forthcoming report on RFMOs' approaches to VMEs in the high seas.

INFORMAL WORKING GROUP ON ENVIRONMENTAL IMPACT ASSESSMENTS

CONCEPTS: CHINA stressed that EIAs are a precautionary measure that should take into account conservation and sustainable use. The US underscored the procedural, rather than decisionmaking, nature of assessments. JAMAICA stated that an EIA must be undertaken if there is risk, even repairable, of human or environmental harm. INDONESIA recommended referencing UNCLOS, and the ecosystem and precautionary approaches. NEW ZEALAND suggested further exploring how SEAs can contribute to a comprehensive regime.

DEFINITIONS: JAMAICA suggested drawing definitions from: the CBD on EIAs, supported by COSTA RICA, who also drew attention to UNEP guidance; and on SEAs from the Kiev Protocol to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context. The EU suggested drawing definitions for EIAs and SEAs from relevant CBD guidelines. TRINIDAD AND TOBAGO, supported by CHILE, pointed to MARPOL and UNCLOS. ALGERIA recommended taking into account regional conventions. The HIGH SEAS ALLIANCE pointed to definitions in the Espoo Convention on impact and its Kiev Protocol on SEAs, as well as to the EU SEA Directive. BANGLADESH pointed to ISA and CBD definitions.

SCOPE: INDIA suggested defining: the scope according to best scientific evidence; and implementation criteria and guidelines based on existing instruments. COSTA RICA called for obliging states to conduct EIAs and SEAs within their jurisdictions in case of potential impacts on ABNJ. IUCN suggested that EIAs cover activities outside sectoral regimes' scope.

THRESHOLDS: The AFRICAN GROUP recommended requiring EIAs of unregulated, new and emerging activities. JAMAICA recommended conducting cross-sectoral assessments

of climate engineering, ocean fertilization, marine debris and underwater noise. PAPUA NEW GUINEA emphasized cumulative EIAs for fishing and laying submarine cables. INDONESIA and the US noted the need to distinguish submarine cables from pipelines.

FIJI underscored that EBSAs, VMEs and PSSAs could require more careful consideration, pointing to the process for environmental management plans under ISA as a useful tool. AUSTRALIA recalled existing experiences on EIAs in ABNJ in the context of ISA and the UN General Assembly Resolutions 61/105 and 64/72 on bottom fishing; and called for harmonizing transboundary EIAs. The HIGH SEAS ALLIANCE proposed creating open-ended lists of habitats, features and areas, as well as of activities always subject to EIAs. AUSTRALIA highlighted that the same activity can have distinct impacts in different areas, depending on fragility and resilience, which can also be affected by climate change and ocean acidification.

CONDUCT OF ASSESSMENTS: The G-77/CHINA recommended conducting EIAs with stakeholder consultation in a transparent manner. The US noted: the need to support RFMOs' scientific processes; the cost of assessment processes; the need for developing countries' engagement; and transparency and inclusion. INDONESIA stressed that assessments should be public and accessible. SINGAPORE suggested elaborating practical guidance for impact evaluation. The EU suggested the ILBI include: public consultation; a process to update the list of activities subject to EIA before authorization; reporting obligations; and provisions on prevention, avoidance and mitigation of impacts. FSM stated that "the who and how" regarding EIAs in ABNJ need to be determined by a proposed permanent scientific committee.

P-SIDS highlighted: good governance; timelines for EIAs; criteria for full and partial EIAs; awareness and capacity building; interlinkages with ABMTs; responsibility to bear costs; an expert panel to provide advice in decisionmaking; and public availability of EIAs. IUCN suggested addressing climate change and ocean acidification concerns under cumulative assessments. COSTA RICA and FSM called for considering cumulative, as well as socio-economic, impacts of proposed activities. FSM suggested that assessments include alternatives.

CHILE highlighted challenges concerning coordination and financing. FAO reported on challenges in conducting EIAs related to VMEs in ABNJ, including access to information, mapping areas containing VMEs, and evaluating impacts. FSM suggested providing for joint EIAs by multiple relevant entities. The EU suggested that a state party to the ILBI be responsible for ensuring EIAs are conducted. MEXICO proposed that if an EIA is carried out by a private entity, it should be reviewed by an ILBI body.

MONITORING: BANGLADESH proposed requiring reporting, monitoring and compliance, and including a mechanism to identify new impacts. KENYA and P-SIDS underscored the need for an enforcement and compliance mechanism. VENEZUELA called for mandatory issuance of bond guarantees to ensure compliance. MONACO recommended follow-up and compliance mechanisms. FSM proposed that follow-up and monitoring encompass previously unexamined issues. IUCN proposed the ILBI provide for a global review.

IN THE CORRIDORS

Monday's discussions on MPAs were marked by rehashed criticisms of RFMOs' fragmented presence in ABNJ and their limited concern for marine biodiversity, and counterpoints referencing RFMOs' progress on VMEs. On the sidelines, NGOs considered positive appraisals of RFMOs significantly overstated, recalling disgruntled voices at the 2009 and 2011 reviews of implementation of the General Assembly resolutions on bottom fishing, and eyeing the next bottom-fishing review in early August 2016 as strategically scheduled prior to PrepCom 2.