



# Earth Negotiations Bulletin

PrepCom 2

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## PREPCOM 2 HIGHLIGHTS: FRIDAY, 2 SEPTEMBER 2016

On Friday, 2 September, plenary convened throughout the day to discuss possible areas of convergence and areas for further discussion on marine genetic resources (MGRs) and on area-based management tools (ABMTs).

### MARINE GENETIC RESOURCES

**DEFINITIONS:** Chair Charles distinguished convergence on the need to develop a definition and on agreeing on a definition, noting that the latter would be done at a later stage. The G-77/CHINA agreed on the usefulness of a definition of MGRs, thanking Costa Rica for the options proposed, so the issue was “parked.”

Chair Charles suggested, and delegates agreed, referring to possible convergence on drawing on definitions contained in existing instruments, without mention of the potential need to adapt these definitions, so the issue was “parked.”

**BENEFIT-SHARING:** The AFRICAN GROUP agreed to “park” non-monetary benefit-sharing. Chair Charles suggested parking also benefit-sharing being beneficial to current and future generations, without a reference to a benefit-sharing “mechanism.” Following consultations, the EU, supported by JAPAN and by the G-77/CHINA in principle, suggested noting that “benefit-sharing should contribute to conservation and sustainable use.” The G-77/CHINA noted that BBNJ conservation and sustainable use is cross-cutting in the ILBI. PSIDS suggested that benefit-sharing “could,” rather than “should,” contribute to conservation and sustainable use. The FSM questioned whether some marine research benefits, like medicinal advances, would qualify as conservation and sustainable use. BANGLADESH stressed that any new proposal on benefit-sharing must be linked to UNCLOS Article 82 on benefit-sharing arising from exploiting the outer continental shelf, with IRAN recalling that Article 82 was the result of compromise between a broad and a restrictive definition of the continental shelf. Chair Charles underscored the distinction between agreeing that benefit-sharing should contribute to conservation and sustainable use and how to implement it. The former was “parked.”

Chair Charles invited comments on: activities related to MGRs of ABNJ that might generate benefit-sharing; related monitoring and compliance under the ILBI; and traceability of MGRs of ABNJ. ERITREA favored further discussions on the institutional set up of a body responsible for monitoring and enforcement. Chair Charles suggested discussing these issues in the context of the informal working group on cross-cutting issues.

**ACCESS:** IUCN proposed defining resources *in silico* as “data containing DNA, RNA, proteins or enzymes.” JAPAN and the US favored further discussions on whether access to resources *ex situ* and *in silico* should be included in the ABS regime, with the US also underscoring the need for further discussion on whether to include derivatives in the scope.

**RIGHTS OF COASTAL STATES:** Chair Charles noted lack of discussion of the rights of coastal states over the continental shelf, including the continental shelf beyond 200 nautical miles, pointing to the need to respect customary law on this issue. The FSM remarked that this was also enshrined under UNCLOS. The EU stated that this issue may have implications for other parts of the package, with Chair Charles highlighting that the sovereign rights of coastal states over living and non-living resources of the continental shelf are clear under international law. Delegates agreed to “park” this issue.

### AREA-BASED MANAGEMENT TOOLS

Following the circulation of a note containing the Chair’s understanding of possible areas of convergence of views and possible issues for further discussion emanating from the informal working group on ABMTs, Facilitator Adank reported as possible areas of convergence: the need for definitions of ABMTs, including MPAs, based on existing definitions to be adapted to the BBNJ context; several principles and approaches; the need for fostering “constant” cooperation and coordination; a new mechanism providing a consultative, integrated and unified approach; a process whereby states, individually or through relevant organizations, make proposals on ABMTs, with input from relevant global, regional and sectoral stakeholders; and a scientific committee to provide inputs to any policy-making body. He highlighted as possible issues requiring further discussion: the understanding, and possible combination, of vertical, horizontal, top-down and bottom-up approaches; the architecture of a new institutional mechanism, including the role of a COP or other coordinating mechanisms; and decision-making processes. In addition, Facilitator Adank indicated that some delegates had pointed to, *inter alia*, MSP as an overarching tool, and holistic approaches integrating concepts such as EBSAs and VMEs.

The US cautioned against considering identified issues as priorities for further discussion. The RUSSIAN FEDERATION underscored the need for a transcript of facilitators’ oral reports, supported by the US and NORWAY, and her need to consult with capital. IUCN suggested: including as points of convergence the concept of MPA networks and other effective area-based conservation measures (OECMs); allowing for input on ABMT proposals by NGO observers similar to IMO rules; and further discussing vertical and horizontal approaches. GREENPEACE

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and the HIGH SEAS ALLIANCE proposed as further areas of convergence MPAs' contribution to improved ocean resilience and the need to set a timeline for adopting a representative MPA network.

COSTA RICA reported on her written proposal on MPA governance jointly submitted with MONACO, which was supported by GREENPEACE and the HIGH SEAS ALLIANCE. INDIA stressed that specific proposals need to be examined intersessionally. Commending national and civil society delegations that provided submissions, and supporting submissions of the nature of that from Costa Rica and Monaco, the AFRICAN GROUP and PSIDS stressed that this is the way forward and will guide work during the intersessional period.

**DEFINITIONS:** NORWAY, supported by CHILE, suggested further discussing definitions, following consideration of specific conservation needs, with CHINA arguing that a definition of ABMTs should be very broad. NRDC and the HIGH SEAS ALLIANCE indicated that a legal definition of marine reserves does not currently exist, with IUCN pointing to relevant IUCN categories as a possible basis.

**PRINCIPLES AND APPROACHES:** CHINA considered this a cross-cutting issue. CARICOM: suggested including transparency and inclusiveness; supported by PSIDS, further discussing the importance of cultural values, as well as rehabilitation and restoration; and, supported by the AFRICAN GROUP, considered the need for capacity building cutting across all elements of the package. MONACO proposed as an area of convergence that ABMTs, including MPAs, should contribute to the objectives of conservation and sustainable use, which was "parked."

The FSM called attention to ABMTs' effects and benefits for adjacent coastal states. PSIDS highlighted adaptive management, achievable and cost-effective measures, the role of coastal states regarding adjacent waters, and adverse impacts of climate change.

**GOVERNANCE:** CHINA, supported by ICELAND, proposed further discussing any mechanism providing for a consultative, integrated and unified approach to ABMTs, noting links with the architecture of an institutional mechanism. The EU emphasized: supported by FSM, lack of clarity on the term "constant" cooperation and coordination; and, supported by the US, a possible interpretation of "unified" approach as a "one size fits all," with CANADA querying the meaning of the term "unified." The FSM called for further discussing traditional knowledge, adjacency and SIDS' special circumstances.

CARICOM suggested: a scientific process feeding into a political one; notification to state parties, those eligible to become parties, and other relevant bodies of ABMT adoption; and a two-tiered, global and regional, approach to implementation. The EU highlighted the use of scientific criteria adopted by existing processes, including EBSAs and VMEs.

**Submission of ABMT proposals:** PSIDS emphasized stakeholders' role in making proposals on ABMTs. The EU suggested that a group of states could also submit MPA proposals, favoring multistakeholder input. The US underscored lack of clarity regarding who can submit proposals. ARGENTINA recommended further discussing stakeholders' inputs into ABMT proposals.

**Content of ABMT proposals:** The G-77/CHINA suggested as information to be included in ABMT proposals: objective, delimitation of the area, specified conservation and management measures. The EU recommended: description of biodiversity values of the area, impacts and threats, and management measures; spatial boundaries; and priority elements for a management plan. MONACO noted that his joint submission with Costa Rica aligns with the EU suggestion and includes: MPA boundaries; evaluation of the current state of marine

ecosystems; description of human activities or impacts; statement of long-term conservation objectives; elements of management measures; and a plan for monitoring and reviewing the MPA once established. CARICOM recommended, *inter alia*: uniqueness or rarity, importance for life-history stages of species, fragility, slow recovery, biological productivity, biodiversity, disturbance, and management interventions proposed. CHINA emphasized: ABMTs' necessity; scientific and legal basis; targets and objectives for protection; geographical scope; and specific protection measures.

**Scientific committee:** The EU emphasized lack of convergence on a scientific committee. CANADA, supported by the US, AUSTRALIA and MONACO, favored referring to a "scientific process," rather than a "scientific committee," providing input to "policy making," instead of a policy-making "body." ICELAND noted that reinforcing RFMOs' work is the only way forward. JAPAN considered reference to a scientific committee premature. NORWAY remarked that while there is consensus on the need for science-based decisions, there is no convergence on the need for a scientific committee, with ARGENTINA proposing further discussion. COSTA RICA underscored the need for a technical body advising on the compatibility of MPA proposals with best available science, and assisting in the creation of a network of representative MPAs, drawing from existing regional and sectoral organizations, while allowing for a review of measures.

**Monitoring and review:** NORWAY suggested indicating a timeframe in MPA proposals, indicating that this may not always be relevant. The EU responded that ABMTs should be updated based on best available science, opposing an *a priori* timeframe. The US supported a strong science basis of any review, noted that the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) had engaged in extensive discussions on this, and, with NEW ZEALAND, stressed that the duration of an MPA be based on science. MONACO underlined that the objectives of an MPA are not of a temporary nature. ARGENTINA proposed that the review be carried out by a technical body, taking into account science-based information. JAPAN recommended further deliberations on efficient review and monitoring mechanisms.

**Non-parties:** Chair Charles invited views on the legal effect on third states of ABMT designation. COSTA RICA noted that the duty to cooperate is international customary law. The EU stated that the only obligations applicable to non-parties are those under UNCLOS Article 197 (cooperation on global or regional basis), with AUSTRALIA also supporting reference to UNFSA Article 8(3) on cooperation with RFMOs.

### IN THE CORRIDORS

MPAs were in the spotlight on Friday, with a side event broadcasting a video statement by actress Emma Thompson calling on delegates to set strong rules to establish marine reserves in the deep seas. While delegates continued to grapple with questions surrounding new institutional arrangements for MPAs, Costa Rica and Monaco joined forces and formally circulated a written submission that was presented at the side-event, and which included stakeholder consultation and a global scientific body. Reacting positively to the proposal, a seasoned delegate remarked: "Now we need to work together to ensure that ideas like these are transformed into elements of a new agreement." Another participant, however, pointed to the need to further explore regional or bioregional approaches, to effectively achieve ecological representative MPA networks. With contentious institutional issues being left to the final informal working group on cross-cutting issues, each and every delegate looked forward to recharging their batteries during the long Labor Day weekend ahead.