

PREPCOM 4 HIGHLIGHTS: TUESDAY, 11 JULY 2017

On Tuesday, 11 July, the informal working group on marine genetic resources (MGRs) continued its deliberations, followed by the informal working group on measures such as area-based management tools (ABMTs), including marine protected areas (MPAs), facilitated by Alice Revell (New Zealand).

WORKING GROUP ON MGRS

BENEFIT-SHARING: Type of benefits: The G-77/CHINA urged including monetary benefits, expressing readiness to review modalities in a manner similar, but not limited, to the Nagoya Protocol Annex. PSIDS highlighted the link between a benefit-sharing regime and capacity building and technology transfer, recognizing SIDS' and LDCs' special circumstances, as well as traditional knowledge and its holders. The PHILIPPINES requested a reference to the rights of adjacent states and states with extended continental shelves in relation to benefit-sharing. The FSM emphasized that: access and benefit-sharing are two essential elements that should be reflected in benefit-sharing modalities; benefit-sharing must be fair and equitable, not nominal; and a future review mechanism under the ILBI could also assess fairness and equity in benefit-sharing.

JAPAN and the US opposed reference to monetary benefits due to lack of consensus, with JAPAN noting: effective functioning of existing centers and databases for documenting and sharing biological and genetic data; and, supported by the RUSSIAN FEDERATION, disincentives for MSR arising from a new obligation or mechanism for immediate provision of all resources and data. IUCN underscored that access to materials and data is critical for fostering science for all countries' benefit; and a CHM could coordinate existing initiatives to ensure synergies. The EU favored focusing on non-monetary benefits, but suggested, supported by CANADA and INDONESIA, that the ILBI set out the "types of benefits that could be shared." PAKISTAN suggested considering transboundary issues.

CARICOM supported specifying different stages of research and development, referencing collection, analysis and utilization. CANADA, with the REPUBLIC OF KOREA, highlighted that the phased approach had not been agreed, proposing reference to "the types of benefits that could be shared, such as at different stages."

The EU, supported by the REPUBLIC OF KOREA and IUCN, suggested "taking into account," rather than "drawing on," relevant instruments. JAPAN preferred reference to "taking into consideration, as appropriate." The RUSSIAN FEDERATION called for deleting the reference to relevant instruments, with the US stating that it is unclear what other relevant instrument are.

Mechanism: INDONESIA supported the development of a multilateral benefit-sharing mechanism. PSIDS noted the relevance of a proposed trust fund to support the equitable access and benefit-

sharing mechanism, also for questions of traceability and milestone payments. The EU proposed drawing on UNCLOS Articles 242 (international cooperation in relation to MSR) and 244 (publication and dissemination of information and knowledge), as well as UNCLOS general provisions on marine technology transfer as a basis to develop a framework to promote and monitor benefit-sharing. CANADA proposed mandating an ILBI COP to develop benefit-sharing modalities.

Intellectual Property Rights (IPRs): The AFRICAN GROUP, CARICOM, PSIDS, URUGUAY, the PHILIPPINES, GUATEMALA and MEXICO supported, whereas CHINA, the US, the EU, JAPAN, SWITZERLAND and the REPUBLIC OF KOREA opposed, reference to the relationship between IPRs and the ILBI. IRAN, BRAZIL and INDONESIA recommended also incorporating mandatory disclosure of origin. ARGENTINA emphasized the need for traceability and transparency in relation to IPRs. ERITREA proposed adding "IPRs should not impede technological transfer." CANADA, with AUSTRALIA, suggested addressing the relationship with IPRs in a general clause on the ILBI's relationships with others instruments.

MONITORING UTILIZATION OF MGRS: Emphasizing transparency in MGR use, the G-77/CHINA suggested: developing a protocol, a code of conduct or guidelines to ensure environmental protection. PSIDS, CARICOM, the AFRICAN GROUP, the PHILIPPINES, BRAZIL and IRAN supported, whereas JAPAN, the US, the EU, CHINA, the RUSSIAN FEDERATION and the REPUBLIC OF KOREA opposed, setting out modalities for monitoring MGR utilization. PSIDS recommended establishing a bridge between the Nagoya Protocol and a potential BBNJ multilateral fund. BRAZIL and IRAN, opposed by CANADA, proposed including disclosure of origin. CHINA argued for free *in situ* access to MGRs as part of MSR, protecting trade secrets and confidentiality. The RUSSIAN FEDERATION and JAPAN suggested using existing mechanisms.

CLEARINGHOUSE: CARICOM and the EU supported creating a clearinghouse mechanism (CHM), with VANUATU noting its role to support cooperation for all stakeholders' benefit, and COSTA RICA its value to coordinate existing efforts. The G-77/CHINA suggested establishing a trust fund within the CHM, taking into account existing mechanisms, to ensure fair distribution of benefits. LDCs noted that LDCs and SIDS should be the primary beneficiaries of a trust fund, and LDCs should be exempted from monetary obligations.

JAPAN supported a clearinghouse "function," rather than a new mechanism. CANADA cautioned against precluding the opportunity to identify an existing body to play a clearinghouse function. The RUSSIAN FEDERATION questioned the value added of a CHM, cautioning against over-bureaucratization.

The EU expressed readiness to consider a CHM to ensure access to and exchange of scientific data, and match capacity-building needs with offers. PSIDS highlighted traditional knowledge

associated with MGRs and regional clearinghouses. SINGAPORE recommended referring to a single CHM with different functions, rather than a multiplicity of clearinghouses.

CAPACITY BUILDING AND TECHNOLOGY TRANSFER: CARICOM suggested a funding mechanism for capacity building and technology transfer (CB&TT) to facilitate MSR in developing countries. LDCs called for a benefit-sharing trust fund, with NEPAL proposing a special CB&TT fund for LLDCs. NORWAY, with JAPAN, preferred more general reference than “specific forms of cooperation.” The RUSSIAN FEDERATION said marine technology transfer could only take place on a voluntary basis. WWF called for specific reference to best available and sustainable technologies, and assessment prior to use.

WORKING GROUP ON ABMTS

OBJECTIVES: PSIDS proposed including “ecological restoration of ocean ecosystems and health.” CARICOM, with NEW ZEALAND, said objectives should be indicative. AOSIS suggested language on the role of ABMTs in building resilience to climate change impacts. LDCs highlighted that large, long-lasting and well-managed ABMTs, can bolster climate resilience. JAPAN supported climate change as a consideration for designating ABMTs, rather than as an objective.

MONACO, supported by TONGA, JAPAN and AUSTRALIA, proposed reference to “long-term” conservation. The RUSSIAN FEDERATION supported ABMT establishment and implementation on an case-by-case basis, taking into account the needs of specific ecosystems and species, and protecting them against particular activities based on the best available data. SWITZERLAND highlighted the need for a network of MPAs, based on best available scientific knowledge.

COSTA RICA and SENEGAL requested reference to marine reserves. PAKISTAN emphasized fully protected marine areas. Pointing to strategic environmental assessments (SEAs), AUSTRALIA recommended considering a broader range of ABMTs, in a cohesive, comprehensive and coordinated way. IUCN stressed the importance of distinguishing between sectoral ABMTs and MPAs, noting that MPAs focus on the long-term conservation of nature and ecosystem services, offering comprehensive protection.

PRINCIPLES: The G-77/CHINA proposed reference to the protection and preservation of the marine environment. JAPAN considered this too general. The AFRICAN GROUP preferred a reference to the “precautionary principle/approach.” The US, supported by CANADA, stated strong preference for the precautionary approach. PSIDS suggested including traditional knowledge and best available information, and avoiding disproportionate burdens on SIDS.

The RUSSIAN FEDERATION underscored lack of consensus on references to transparency, accountability, inclusiveness, public participation, and public access to environmental information, and called for including best available and verifiable scientific data, and, with NORWAY, balancing conservation and sustainable use. MAURITIUS, with the PHILIPPINES, stressed best scientific advice and the need to ensure that ABMTs are designated in consultation with adjacent states. SAMOA supported adjacency and, with CHILE, compatibility. JAPAN argued that compatibility could undermine respect for states’ sovereign rights. The US preferred deleting reference to accountability. TONGA emphasized “meaningful” public participation.

MONACO and GUINEA supported connectivity of ABMTs. COSTA RICA, supported by ERITREA but opposed by the US and JAPAN, called for including equity. CANADA suggested language on coherence of relevant tools and mechanisms, while avoiding duplication, and, with JAPAN and NORWAY, making reference to a science-based approach for establishing ABMTs. CHINA elaborated on the integrated management approach, pointing to UNCLOS preamble as its legal basis.

CRITERIA: The G-77/CHINA restated that AMBTs, including MPAs, should be established in an inclusive and transparent manner on the basis of existing internationally recognized criteria for area-based conservation measures and on best available science, with CHINA stressing case-by-case identification of areas requiring protection. CARICOM said that existing scientific criteria and standards are good reference points. JAPAN questioned why the criteria differ from the relevant ecologically or biologically significant marine area (EBSA) criteria, focusing, with the US, on dependency. The FSM noted that representativeness and dependency coincide with the obligation to establish a network of representative MPAs. Facilitator Revell explained that representativeness and dependency are used in the IMO Particularly Sensitive Sea Areas (PSSA) guidelines.

The EU, with PSIDS, preferred that the list of identification criteria be open-ended and adaptive, calling to include scientific and technical information, also from existing processes to assess whether an area meets the agreed criteria. PSIDS emphasized the importance of cumulative impacts, including from climate change. NEW ZEALAND considered the list non-exhaustive and not cumulative; and supported reliance on commonly agreed criteria used in other instruments, such as EBSAs and PSSAs. CANADA proposed reference to the “identification of areas within which protection will be required.”

DESIGNATION PROCESS: The G-77/CHINA supported: proposals from state parties and other organizations, based on the precautionary approach/principle and best available information; assessment of proposals by an ILBI scientific and technical body; and consensus-based decision-making by an ILBI COP. CARICOM noted agreement on proposals from ILBI parties and a scientific and technical body. PSIDS supported, with the PHILIPPINES, consultation with adjacent states, and the inclusion of traditional knowledge and indigenous peoples and local communities.

The EU suggested that: proposals include socio-economic mitigation measures; and management plans, as part of final decisions, include measures identified by competent international organizations and a communication strategy towards affected stakeholders.

NEW ZEALAND recommended ensuring flexibility to allow for different models of ABMT establishment and developing guidance for a scientific assessment. The US proposed: adding reference to relevant regional and sectoral organizations, cautioning against language presupposing a global model for ABMTs; and using “designating,” rather than “establishing,” ABMTs.

Emphasizing that his earlier suggestions do not appear in the text, especially regarding MPAs, the RUSSIAN FEDERATION opposed the creation of a new global mechanism for creating ABMTs, noting that they should be established by existing specialized mechanisms without additional instructions, and that the text should address coordination and cooperation among competent instruments. NORWAY noted lack of consensus on establishing a new organization for establishing ABMTs, cautioning against pre-empting future discussions on global, regional and hybrid options.

IN THE CORRIDORS

As BBNJ participants rehashed previously stated positions on a number of hot-potato issues, a well-informed observer anticipated that it may be difficult for the PrepCom outcome to only focus on areas where some measure of consensus has emerged. “Perhaps divergent views could be presented as options, like in the Chair’s streamlined non-paper, but without an overt reference to it,” she quipped. “These are just first-week jitters,” suggested another participant, predicting that during the second week there may be more pressure on delegates to find compromise. “Let’s wait until this Friday,” offered a veteran, “when plenary will take up the PrepCom outcome’s chapeau: that might provide a lifeline, striking a graceful balance between emerging consensus and remaining divergence.”