

FOURTH MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION:

31 MAY – 3 JUNE 2011

The fourth meeting of the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (hereafter, the Working Group) opens today and will continue until 3 June 2011, at UN Headquarters in New York. In accordance with General Assembly resolution 65/37 of 7 December 2010, the Assembly decided to reconvene the Working Group for the fourth time. The meeting will examine: the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, including activities of the United Nations and other relevant international organizations; possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction; and key issues and questions for more detailed background studies.

The meeting is mandated in particular to continue discussions of the legal regime on marine genetic resources, as well as marine protected areas and environmental impact assessment processes in areas beyond national jurisdiction. The Working Group's recommendations will be submitted to the General Assembly at its sixty-sixth session.

A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

The conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (ABNJ) is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such biodiversity, particularly in seamounts, hydrothermal vents and cold-water coral reefs, whilst concerns grow about the increasing anthropogenic pressure posed by existing and emerging activities, such as fishing and bioprospecting, in the deep sea.

The UN Convention on the Law of the Sea (UNCLOS), which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. Although UNCLOS does not refer expressly to marine biodiversity, it is commonly regarded as establishing the legal framework for all activities in the oceans.

The Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity and aims to promote its conservation, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. In ABNJ, the Convention applies only to processes and activities carried out under the jurisdiction or control of its parties.

CBD COP-2: At its second meeting (November 1995, Jakarta, Indonesia), the Conference of the Parties (COP) to the CBD agreed on a programme of action called the "Jakarta Mandate on Marine and Coastal Biological Diversity," which led to the creation of a work programme in this area. COP-2 also adopted a decision requiring the Executive Secretary, in consultation with the UN Division for Ocean Affairs and the Law of the Sea, to undertake a study of the relationship between the CBD and UNCLOS with regard to the conservation and sustainable use of genetic resources on the deep seabed.

WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT: In the Johannesburg Plan of Implementation, the UN World Summit on Sustainable Development (September 2002, Johannesburg, South Africa) underlined the need to: maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in ABNJ; facilitate the elimination of destructive fishing practices and the establishment of marine protected areas (MPAs), including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods; and develop international programmes for halting the loss of marine biodiversity.

UNGA-57: In resolution 57/141, the General Assembly in 2002 encouraged relevant international organizations to consider urgently ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts and certain other underwater features within the framework of UNCLOS.

UNGA-58: In resolution 58/240, the General Assembly in 2003 invited the relevant global and regional bodies to investigate urgently how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in ABNJ.

CBD COP-7: At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the CBD COP: included in the programme of work on marine and coastal biodiversity new items on MPAs and high seas biodiversity; highlighted an urgent need for international cooperation and action to improve conservation

and sustainable use of biodiversity in marine ABNJ, including through the establishment of further MPAs; and recommended that parties, the General Assembly and other relevant organizations urgently take the necessary short-, medium- and long-term measures to eliminate and avoid destructive practices.

UNGA-59: In resolution 59/24, the General Assembly in 2004 called upon states and international organizations to take action urgently to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems, and established an *ad hoc* open-ended informal working group to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

UNGA-60: In resolution 60/30, the General Assembly in 2005 recommended that states should support work in various forums to prevent further destruction of marine ecosystems and associated losses of biodiversity, and be prepared to engage in discussions on the conservation and sustainable use of marine biodiversity in the Working Group.

CBD COP-8: At its eighth meeting (20-31 March 2006, Curitiba, Brazil), the CBD COP recognized the CBD role in supporting the General Assembly's work on MPAs in ABNJ, by focusing on the provision of scientific and technical information and advice. The COP also took decisions on marine genetic resources (MGRs), noting a preliminary range of options for the protection of deep seabed genetic resources beyond national jurisdiction and the need for further work in developing these and other options, in particular within the UN framework; and on integrated marine and coastal area management (IMCAM).

FIRST MEETING OF THE WORKING GROUP: The first meeting of the Working Group (13-17 February 2006, New York) exchanged views on institutional coordination, the need for short-term measures to address illegal, unregulated and unreported (IUU) fishing and destructive fishing practices, MGRs, avoiding the adverse impacts of marine scientific research (MSR) on marine biodiversity, and facilitating the establishment of high seas MPAs. A Co-Chairs' summary of trends and a report of the discussions on issues, questions and ideas related to the conservation and sustainable use of marine biodiversity in ABNJ was transmitted to the General Assembly as an addendum to the report of the Secretary-General on oceans and the law of the sea.

SECOND MEETING OF THE WORKING GROUP: The second meeting of the Working Group (28 April - 2 May 2008, New York) produced a Co-Chairs' Draft Joint Statement identifying issues for the General Assembly to consider referring back to the Working Group, including: more effective implementation and enforcement of existing agreements; strengthening of cooperation and coordination; development of an effective environmental impact assessment (EIA) tool for oceans management; development of area-based management tools; practical measures to address the conservation and sustainable use of MGRs; and continued and enhanced MSR.

CBD COP 9: At its ninth meeting (19-30 May 2008, Bonn, Germany), the CBD COP convened an expert workshop on the scientific and technical aspects of EIAs in ABNJ to contribute to the development of such scientific and technical guidance. It adopted scientific criteria for identifying ecologically or biologically significant marine areas in need of protection, and scientific guidance for selecting areas to establish a representative network of MPAs, urging parties to apply them to identify areas in need of protection, in accordance with international law, including UNCLOS, and recognizing that the criteria may require adaptation by parties if they choose to apply them within their national jurisdiction. The COP also took note

of proposed steps to be considered in the development of MPA networks; and requested the Executive Secretary to transmit them to the relevant General Assembly processes.

THIRD MEETING OF THE WORKING GROUP: The third meeting of the Working Group (1-5 February 2010, New York) agreed by consensus to a package of recommendations to the General Assembly, *inter alia*: including in the Secretary-General's report on oceans and the law of the sea information on EIAs undertaken for planned activities in ABNJ; recognizing the importance of further developing scientific and technical guidance on the implementation of EIAs on planned activities in ABNJ, including consideration of assessments of cumulative impacts; calling upon states to work through competent international organizations towards the development of a common methodology for the identification and selection of marine areas that may benefit from protection based on existing criteria; calling upon states, in the context of the Working Group's mandate, to make progress in the discussions on MGRs in ABNJ; and reconvening the Working Group in 2011, to provide further recommendations to the General Assembly.

INTERSESSIONAL HIGHLIGHTS

CBD COP 10: At its tenth meeting (18-29 October 2010, Nagoya, Japan), the CBD COP adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and the CBD Strategic Plan for the period 2011-2020, which includes among its 2020 targets that at least 10% of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected protected-area systems and other effective area-based conservation measures, and integrated into the wider landscape and seascapes. In its decision on marine biodiversity, the COP noted that: the application of the CBD scientific criteria for identifying ecologically or biologically sensitive areas (EBSAs) is a tool that parties and competent intergovernmental organizations may choose to use to progress towards the implementation of ecosystem approaches in relation to ABNJ; their application is a scientific and technical exercise; and the identification of EBSAs and selection of conservation and management measures is a matter for states and competent intergovernmental organizations. The COP requested the CBD Secretariat, in collaboration with relevant international organizations and governments, to establish a repository for scientific and technical information and experience related to the application of the scientific criteria on EBSAs identification and other relevant nationally and internationally agreed scientific criteria. It also invited the Working Group on marine biodiversity in ABNJ to expedite its work on approaches to promote international cooperation and coordination for the conservation and sustainable use of biodiversity in ABNJ, and consideration of issues of MPAs, and urged parties to take action to advance the work of the Working Group.

UNGA-65: In its resolution 65/37, the General Assembly encouraged states to consider the further development of EIA processes covering planned activities under their jurisdiction or control that may cause substantial pollution or significant and harmful changes to the marine environment, as well as develop and promote contingency plans for responding to pollution incidents; and urged improvement of risk management related to marine biodiversity and address destructive practices impacting on marine biodiversity. It called for reconvening the Working Group in 2011, emphasizing the need for continued discussions on MGRs, MPAs and EIA processes.