

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

7-11 MAY 2012

The fifth 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 11 May 2012, at the UN Headquarters in New York. The Working Group will focus on: marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity building, and the transfer of marine technology; the organization of intersessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the Working Group; and the identification of gaps and ways forward, with a view to ensuring an effective legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. The Working Group's recommendations will be submitted to the General Assembly at its sixty-seventh 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 (BBNJ) 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, while 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 areas beyond national jurisdiction (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 the "Jakarta Mandate on Marine and Coastal Biological Diversity," which led to the creation of a work programme in this area.

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 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 BBNJ, 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 BBNJ.

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 BBNJ 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 (EBSAs), and scientific guidance for selecting areas to establish a representative network of MPAs. The COP also took note of proposed steps to be considered in the development of MPA networks; and requested the Secretariat 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*, on: 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.

FOURTH MEETING OF THE WORKING GROUP: The fourth meeting of the Working Group (1-5 February 2010, New York) adopted, by consensus, a set of recommendations to initiate a process on the legal framework for the conservation and sustainable use of BBNJ, by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS. The recommendations also include a "package" of issues to be addressed as a whole in this process, namely: MGRs, including questions on benefits-sharing; measures such as EIAs and area-based management tools, including MPAs; capacity building and the transfer of marine technology.

INTERSESSIONAL HIGHLIGHTS

UNGA 66: In resolution 66/231 on oceans and the law of the sea, the General Assembly decided to initiate within the Working Group the process recommended by the Working Group at its fourth meeting, and convened its fifth meeting. It also: reiterated the central role of the General Assembly relating to BBNJ; noted the work done by the CBD COP; and called upon states to urgently take further action to address destructive practices that have adverse impacts on marine biodiversity and ecosystems, including seamounts, hydrothermal vents and cold water corals, and to strengthen, in a manner consistent with international law, the conservation and management of marine biodiversity and ecosystems and national policies in relation to MPAs. In resolution 66/68 on sustainable fisheries, the Assembly called upon states, through regional fisheries management organizations, to take urgent actions in relation to bottom fishing in ABNJ, including on EIAs.

UNCSD SECOND INFORMAL INFORMAL CONSULTATIONS: The second round of "informal informal" consultations on the draft outcome document for the UN Conference on Sustainable Development (UNCSD or Rio+20) took place from 23 April - 4 May 2012, at UN Headquarters in New York. Negotiations on oceans and seas proved contentious on: a possible implementing agreements on BBNJ under UNCLOS; references to blue economy; calls for ratification of UNCLOS; commitments regarding MPAs; and calls for ratifying or acceding to and implementing the 1995 Agreement on the Conservation of Straddling and Highly Migratory Fish Stocks.

CBD SBSTTA 16: The 16th session of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) to the CBD convened from 30 April - 4 May 2012, in Montreal, Canada. On marine biodiversity, SBSTTA recommended, *inter alia*, requesting the Secretariat to include the summary reports on the description of areas meeting the scientific criteria for EBSAs in the CBD repository and submit them to the General Assembly and its Working Group. SBSTTA could not agree on whether the reports should be 'endorsed' by the CBD COP as a reference for states and competent intergovernmental organizations.