

Marine and coastal biodiversity (Agenda Item 4.9)

Ninth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP9), Bonn, Germany, 19-30 May 2008

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Recommendations

IUCN urges that COP9:

- √ **Adopts** the scientific criteria for identifying ecologically or biologically significant marine areas in need of protection as set forth in annex I of SBSTTA Recommendation XIII/3 and the scientific guidance for designing representative networks of Marine Protected Areas in Annex II.
- √ **Endorses** the four initial steps for the development of such networks in Annex III.
- √ **Rejects** bracketed paragraph 13, which calls for further comment and review of the scientific criteria and guidelines.
- √ **Adopts** paragraph 14, which includes provisions for regular scientific review of the criteria in Annex I and scientific guidance in annex II based on new scientific information and/or experience drawn from the on-going implementation of the criteria and guidance.
- √ With respect to the currently bracketed text in paragraph 15, to **“Urge”** to apply **“as a matter of priority”** (rather than “invite” Parties) other Governments and relevant international and regional organizations to apply, as appropriate, the scientific criteria, the scientific guidance, etc.
- √ **Adopts** the currently bracketed text in paragraph 16 (given that is appropriate to recognize the work accomplished at the regional level such as that of the OSPAR Commission, the Antarctic Treaty system and in the Mediterranean through its various programs). For the second part of the paragraph, IUCN prefers the wording **“Urges** Parties and other Governments to accelerate their efforts and increase collaboration and capacity-building among existing bodies...”
- √ **Removes** the brackets around text related to regional organizations in all relevant paragraphs, in light of the importance of work at the regional level.

IUCN further recommends that COP9:

- √ **Encourages** Parties, other States and relevant organizations to develop a running list of potential sites already recognized for their ecological values that are in need of additional protection, and to **encourage** Parties, other States and relevant bodies and stakeholders to take urgent measures to protect them.

Options for preventing and mitigating the impacts of some activities to selected seabed habitats - Ecological criteria and biogeographic classification systems for marine areas in need of protection

The ninth meeting of the Conference of the Parties (COP9) to the Convention on Biological Diversity (CBD) provides an important opportunity for Parties to review progress made since 2006 towards meeting the 2010 target for reducing biodiversity loss and the 2012 target for establishing networks of Marine Protected Areas (MPAs) in areas beyond national jurisdiction, and to take action to honor their previous commitments.

At the previous meeting of the COP, Parties to the Convention recognized that the CBD has a key role in supporting the work of the General Assembly with regard to MPAs beyond national jurisdiction. CBD's support to the United Nations General Assembly (UNGA) process would focus on providing scientific and technical information and advice relating to three areas: a) marine biological diversity, b) the application of the ecosystem and precautionary approaches, and c) the process in delivering the 2010 target. Parties also agreed to consider progress in the implementation of decisions relating to conservation and sustainable use of marine biodiversity beyond national jurisdiction at COP9.¹

IUCN is deeply concerned by the slow progress made to date towards meeting these commitments, despite the repeated calls for urgent action and the increasing and overwhelming scientific evidence of its need.

Many vulnerable seamount communities remain unprotected. Overfishing and illegal, unregulated and unreported (IUU) fishing persists and sharks plundering continues. Environmental quality continues to deteriorate from pollution, marine invasives and marine debris. These threats are aggravated by the ongoing and predicted impacts of climate change on the oceans.

IUCN estimates that unless progress is accelerated, the CBD and WSSD goals of

¹ CBD Decision VIII.24, paragraphs 42-43

establishing representative networks of Marine Protected Areas by 2012 will not be met until 2060.

In addition to providing scientific information and technical guidance, IUCN hopes that CBD COP9 adopts decisions to urge Parties to establish, among other, systems to control the activities of their nationals that may have impacts on the biodiversity beyond their jurisdiction. These decisions would fall within the scope and competence of the Convention² and the UNGA resolutions. It is important to note that the UNGA calls on relevant organizations to take urgent action on this issue in accordance to their mandates.

A failure to act at this juncture would signal a step backward from the commitments made in previous COPs and a weakening of the role of the Convention in safeguarding marine biodiversity.

Options for preventing and mitigating the impacts of some activities to selected seabed habitats

Under international law, States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or to areas beyond national jurisdiction.³ This obligation includes the protection of deep seabed as well as water column habitats in areas beyond national jurisdiction. In order to comply with this obligation, two essential tools must be utilized: prior impact assessment and strategic environmental assessment.⁴

² CBD article 4b on the jurisdictional scope states that the provisions of the Convention apply: "In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction".

³ CBD Article 3 states the fundamental principle that States have, in accordance with the Charter of the United Nations and principle 2 of the Rio Declaration on Environment and Development, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

⁴ As noted in CBD COP decision VI/7, environmental impact assessment is "a process of evaluating the likely environmental impacts of a proposed project or development", while strategic environmental assessment "occurs at the earliest possible stage of decision-making to identify and address the environmental consequences of proposed policies, plans or programmes".

Prior impact assessment and strategic environmental assessment are vital to:

- 1) Promote wise planning that contributes to sustainable development and sustainable use of marine biodiversity;
- 2) Apply and operationalize the ecosystem approach and the precautionary approach;
- 3) Implement Articles 192, 197, and 204-206 of UNCLOS;⁵
- 4) Implement Articles 5 -7 and 14.1(a) and (c) of CBD, including:
 - a. To minimize adverse effects on biological diversity and, where appropriate, allow for public participation in such procedures; and
 - b. To promote the conclusion of bilateral, regional or multilateral arrangements, as appropriate, on the basis of reciprocity, notification, exchange of information and consultation
- 5) Enhance regional and international cooperation and coordination; and
- 6) Increase transparency, public participation and accountability.

Prior assessments are particularly important for emerging activities as well as for ongoing activities. The UNGA resolution 61/105 paragraphs 83 and 85 calls for assessments to be made in the context of high seas bottom fishing. The obligation to carry out assessments should be extended to other contexts, such as ocean fertilization.

Parties have made progress on environment assessments. Many States already undertake environmental impacts assessments. Also, several regions have agreements for EIAs in a transboundary context which generally apply to potential impacts on neighboring states, shared river basins, or regional seas. Areas beyond national jurisdiction, however, remain outside the scope of these activities.⁶

Some targeted high seas activities, such as dumping, deep seabed mining and deep sea bottom fishing, are under the scope of regulation which requires prior assessment. Many other activities remain unregulated.

⁵ The implementation of obligations under UNCLOS must be carried out taking into account all sources of pollution, including the "introduction of noise in the marine environment."

⁶ For a comprehensive survey of state, regional and development bank practice regarding environmental impact assessments, see Kees Bastmeijer, Timo Koivurova (eds.), 2008. *Theory and Practice of Transboundary Environmental Impact Assessment*, Martinus Nijhoff Publishers, Leiden, Boston.

Among these are new technologies and large scale experiments such as ocean fertilization.⁷ Existing national practice and procedures are a valuable source to fill the legal gaps on environmental assessments.

IUCN urges that COP9:

- √ **Calls on** Parties and other States to take immediate steps to control and regulate actions of their nationals as well as their flag vessels and aircraft that may have impacts on areas beyond national jurisdiction, including, in the regulations, requirements for environmental assessments;
- √ **Adopts** the currently bracketed text in paragraph 7 of Recommendation XIII/3 in the Annex to the report of SBBSTA's thirteenth meeting (UNEP/CBD/COP/9/3), inviting Parties, other Governments and international organizations to cooperate in further developing guidelines for the implementation of environmental impact assessments and strategic environmental assessments.

Ecological criteria and biogeographic classification systems for marine areas in need of protection

IUCN welcomes the progress made with respect to the development of scientific criteria for identifying areas of ecological and biological significance and for designing representative networks of marine protected areas.

IUCN believes that the Azores Expert Workshop report and its annexes provide a sound scientific basis for concrete action. Indeed, the scientific criteria for identifying ecologically or biologically significant marine areas in need of protection as set forth in annex I of SBSTTA Recommendation XIII/3 reflect the state of the art with respect to best practice for marine protected areas. At the same time, they also account for the particularities of the open ocean and deep seabed environments. For example, the five columns of the Scientific Criteria in Annex I provide, not only criteria and definitions, but also the rationale, examples of open ocean and deep sea habitats to which the criteria would apply, and "considerations in

⁷ This applies when ocean fertilization is carried out as an experiment and, therefore, as outside the scope of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 and its 1996 Protocol London.

application". These examples and considerations are specifically intended to assist States in applying the criteria to remote and often information-poor areas. The considerations indicate the many tools already in hand to increase knowledge and information.

The scientific guidance in Annex II reflects best practice applied for over 15 years with respect to designing networks of marine protected areas at the national and regional level. Many of these networks include remote and information-poor waters within national jurisdiction. Some (such as in the Northeast Atlantic under OSPAR, in the Mediterranean under the Protocol concerning specially protected areas and biological diversity of the Barcelona Convention and in the Antarctic Treaty System) include areas beyond national jurisdiction. In order to ensure that protected area networks beyond national jurisdiction are coherent and complementary to national and regional networks, it is essential that a compatible approach be followed throughout the marine environment. These guidelines are a tool to ensure this compatibility.

Additional information on criteria and guidance for designing representative MPA networks is available in the IUCN information document: *Towards achieving the 2012 MPA target: A guide to the Azores Workshop criteria for areas in need of protection in areas beyond national jurisdiction and the guidance for development of representative networks of marine protected areas.*

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