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Update on MPAs beyond National Jurisdiction

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GLOBAL

UN General Assembly *Ad Hoc* Open-ended Informal Working Group on conservation and sustainable use of marine biological diversity in ABNJ: The 2nd Meeting of the Ad Hoc Working Group was held in April-May 2008. Delegates acknowledged the urgent need for enhanced implementation of existing agreements. As reported in the Co-Chair's Report, many delegations considered that the UNGA should have an ongoing role in consideration of conservation and sustainable use of marine biodiversity in ABNJ. It was suggested that the UNGA refer several additional issues back to the Working Group, including more effective implementation and enforcement of existing instruments; development and use of area-based management tools, including designation, management and enforcement; and continuing and enhanced marine scientific research related to marine biological diversity in ABNJ.

UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea: The 7th meeting of the Informal Consultative Process (A/61/156) in June 2006 proposed that the UNGA invite states to implement the ecosystem approach through, in part, advancing the Johannesburg Plan of Implementation, including the elimination of destructive fishing practices and the establishment of MPAs based on scientific information. At the 8th meeting of the Informal Consultative Process (A/62/169), a lively discussion about marine genetic resources in areas beyond national jurisdiction was held. Several delegations supported the development of measures to ensure the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction based on the precautionary and ecosystem approaches and suggested management options such as the adoption of guidelines, codes of conduct and voluntary tools. A

number of delegations also affirmed their willingness to consider more formal regulations of marine genetic resources in ABNJ for both the water column and the deep seabed area.

UNGA resolution 61/105 on Sustainable Fisheries: Paragraphs 80-91 of this resolution adopted in 2006 required States and regional fisheries management organizations (RFMO) to adopt measures to protect vulnerable marine ecosystems from adverse impacts from bottom fishing activities. The paragraphs refer to areas beyond national jurisdiction and call on States and RFMOs to “not authorize” high seas bottom fisheries which cannot be managed to prevent “significant adverse impacts” to vulnerable ecosystems within 1-2 years. This requirement applies to States through RFMOs where they exist, States collectively involved in negotiating RFMOs, and States individually whose vessels bottom fish in high seas areas where there are no RFMOs or none under negotiation. This resolution was re-affirmed in the following years through the resolutions A/RES/62/177 in 2007 and A/RES/63/112 in 2008. A review of progress was held in 2009, at the 64th session, based on information submitted by the UN Division for Ocean Affairs and the Law of the Sea, States, RFMOs, IUCN and the Deep Sea Conservation Coalition. As pointed out in the IUCN report, as of May 2009, some but not all high seas bottom fishing States have produced impacts assessments, closed areas to bottom fishing or put constraints on fishing in vulnerable marine ecosystems.

UN Fish Stock Agreement (UNFSA) Meetings: A Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks was held in New York (22-26 May 2006). The Report of the Review Conference prepared by the President of the Conference noted that many delegates considered the protection of sensitive marine ecosystems, including key habitats as being of paramount concern. Some delegates observed that closed areas, marine protected areas and marine reserves could be effective tools for the conservation and management of some fish stocks and habitats of special concern. At the Review Conference there was discussion of implementation of the Agreement, control, monitoring and surveillance of Illegal, Unreported and Unregulated (IUU) fishing, and ecosystem-based and precautionary management approaches. The Informal Consultations in 2009 focused on capacity building and ways to overcome obstacles to accession to the Agreement that have been identified by some States. The Review Conference will reconvene in 2010.

FAO Committee on Fisheries (COFI): In June 2006, FAO hosted an expert workshop on Marine Protected Areas and Fisheries Management pursuant to a recommendation from COFI in 2005, to develop technical guidelines on the design, implementation and testing of MPAs and to collaborate with other bodies working on the topic, in particular CBD and UNGA. With respect to deep sea fisheries on the high seas, COFI in 2007 requested that a variety of activities be undertaken through FAO to support implementation of the UNGA resolution regarding high sea bottom fishing. International Guidelines for the Management of Deep-Sea Fisheries in the High Seas were agreed in August 2008 through expert and technical consultations organized by FAO. FAO issued a review of bottom fisheries in the high seas (FAO fisheries and Aquaculture Technical Paper No.522). As agreed at COFI in 2009, the FAO was asked to undertake an ambitious program to support the further implementation of the FAO Guidelines and UNGA resolution. The program is composed of four major components, (1) support tools for the

implementation of the FAO International Guidelines; (2) a vulnerable marine ecosystem mapping system; (3) demonstration and pilot implementation activities for enhanced management of deep-sea fisheries in the high seas of the Indian Ocean; and (4) global coordination, monitoring and evaluation, and dissemination of best practices.

Conference of the Parties to the Convention on Biological Diversity (COP): COP-8, held from 20-31 March 2006 in Curitiba, Brazil, called for action on the protection of seamounts and cold water coral reef ecosystems, including through an interim prohibition of high seas bottom trawling adopted by the UN General Assembly; encouraged the establishment of MPAs beyond national jurisdiction; called on Parties to devise new mechanisms and instruments to achieve effective and enforceable MPAs and networks within the framework of UNCLOS; acknowledged CBD as the central forum for addressing scientific and technical aspects of high seas conservation, including MPAs. The COP-9, held in Bonn during 19-30 May 2008 adopted the scientific criteria recommended by the CBD Expert Workshop on Ecological Criteria and Biogeographic Classification Systems for Marine Areas in Need of Protection (in annex I of decision IX/20). These were aimed at assisting the countries to identify areas of ecological or biological significance in the open ocean and deep sea that are in need of protection. Also, COP-9 adopted scientific guidance (annex II), for designing representative networks of marine protected areas (annex III). The required network properties and components to select a representative network of MPAs are: ecologic and biologic significance, representativeness, connectivity, and replicable ecological features.

CBD Ottawa Expert Workshop, September-October 2009 was convened to review and synthesize progress on identifying significant areas beyond national jurisdiction that met CBD criteria. The workshop developed scientific guidance with respect to 1) the identification of marine areas beyond national jurisdiction in need of protection, and 2) the use and further development of bio-geographic classification systems. The results of the CBD expert workshop will be sent to the UN Working Group in early 2010, the CBD's subsidiary body on scientific, technical and technological advice in May 2010, and the CBD COP-10 in October 2010 for review and potential adoption.

International Seabed Authority (ISA): Through a joint project of the International Seabed Authority and the J. M. Kaplan Fund on biodiversity, species range and gene flow in the abyssal Pacific nodule province, researchers suggested the establishment of protected areas in the Clarion-Clipperton Zone. The proposal was developed at a scientific workshop on the design of marine protected areas for seamounts and the abyssal nodule province in the Pacific Ocean, held at the University of Hawaii from 23-26 October 2007. In 2008 the Legal and Technical Commission of the ISA considered a preliminary proposal for the establishment of preservation reference areas for nodule mining (ISBA/14/LTC/2). The Commission in 2009 recommended that the Authority convene an international workshop to review further the proposal for the establishment of a network of areas of particular environmental interest and to advise on an environmental management plan at the regional scale for the Clarion Clipperton Fracture Zone. The Commission encouraged further scientific research to better assess how representative the proposed areas of particular environmental interest were, whether all were necessary and whether the size or locations of the areas should be adjusted. The report of the Secretary General of the 15th session acknowledged the achievements of the Authority, especially the preparation of

a report on the morphology of nodules and a study of the growth history of nodules in the Clarion-Clipperton zone. A Spatial Decision Support System program was prepared to identify promising areas for explorations within the Clarion-Clipperton area. During 2009, as reported by the Secretary General, the work of the Authority on geological modeling of polymetallic nodules should be expanded to the Central Indian Ocean basin in cooperation with consultants and scientists from India.

World Ocean Conference, May 2009, Manado Ocean Declaration: At the World Ocean Conference, held in Manado, Indonesia, the Ministers and Heads of Delegations of 76 countries issued the Manado Ocean Declaration. The non-binding Declaration resolved to further establish and effectively manage MPAs, including representative resilient networks, the importance of which it recognized in regard to their contribution to ecosystem goods and services and as a climate change and biodiversity conservation strategy. The need for national strategies for sustainable management of marine and coastal ecosystems was also stressed, and the signatories declared that they will implement integrated coastal and ocean management, will strive to reduce marine pollution and promote sustainable management of fisheries to enhance the health and resilience of coastal and marine ecosystems, and aim to implement sustainable development strategies including applying a precautionary approach to coast and ocean management in regards to the impacts of climate change on oceans.

REGIONAL

Atlantic Ocean

- 1) **The OSPAR Commission for the Protection of the North-East Atlantic Marine Environment (OSPAR):** OSPAR has a network of 130 MPAs, mostly in territorial waters, which it plans to make into an “ecologically coherent network” by 2010. OSPAR’s selection process considers seven ecological criteria, which are similar to the criteria used by the CBD, and five practical criteria. OSPAR has developed the OSPAR List of Threatened and/or Declining Species and Habitats that must be especially considered for reasons of uniqueness or rarity when selecting MPA sites. Seven sites in ABNJ have been considered since 2007, one of which has already been unanimously endorsed in principle by OSPAR as an MPA. Most of the other six proposed ABNJ MPA sites overlap with areas considered by Iceland and by Portugal to be part of their continental shelves. About 40% of OSPAR’s maritime area is in the high seas.
- 2) **Northeast Atlantic Fisheries Management Commission** to high seas bottom fishing: in 2007 the NEAFC prohibited bottom fishing in five areas in the Rockall – Hatton Bank area to protect deep-water corals. The NEAFC Permanent Committee on Management and Science, PECCMAS, considers further closures through a scientific evaluation process under the guidance of the International Council for the Exploration of the Sea, ICES. In April 2009 NEAFC closed five areas on the Mid-Atlantic Ridge in the high seas in the North East Atlantic to bottom fisheries under its policy for area management.
- 3) **Northwest Atlantic Fisheries Organization (NAFO):** The report of the NAFO General Council following the Annual Meeting on 18-22 September 2006, noted that delegates had undertaken important efforts to protect seamounts and corals through the decision to impose a ban on bottom trawling on seamounts in the Northwest Atlantic and the precautionary closure of four seamounts in international waters. At the Annual Meeting in 2007 and 2008,

NAFO delegates agreed to close further vulnerable Marine Ecosystem to bottom fisheries for the following 5 years (Grand Banks) as well as several areas near the Flemish Cap. These decisions were supported through the mapping of areas likely to contain VME's and advice from the NAFO Scientific Council. An extraordinary meeting of the Fisheries Commission convened in Montreal in 2008 to develop strategies to address vulnerable marine ecosystems in the deep seas.

- 4) South East Atlantic Fisheries Organization (SEAFO):** At the 3rd Annual Meeting on 4 October 2006 in Windhoek, Namibia, SEAFO adopted measures to prohibit fishing activities to its members in 10 marine areas in the Southeast Atlantic with prominent seamounts until 2010 with the exception of small scale exploratory fishing, which may resume in 2008 in 20 percent of the defined areas. Vessels in these areas are to carry scientific observers.

Mediterranean

In January 2006 The General Fisheries Commission for the Mediterranean (GFCM) agreed to protect three ecologically-important deep sea areas in international waters off Italy, Cyprus and Egypt hosting a deep sea coral reef, an area with rare white corals, and a seamount. In 2008, the European Community implemented the Council Regulation (EC) No. 734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears. The Regulation is applicable to European Community fishing vessels carrying out fishing activities in the Mediterranean (and elsewhere) with bottom gears and aims to protect vulnerable marine ecosystems (animals, plants and microorganisms) in the high seas. In order to conduct the fishing activities above-mentioned, a special fishing permit is required. Work is also underway in the Mediterranean to create an ecological network of representative MPAs under the Barcelona Convention, focusing especially on areas in the high seas (although the seabed is legally within the jurisdiction of the coastal states, many of them have not defined their exclusive economic zones, so the waters are high seas). This network is being supported through a joint "Management Action" between the European Community and the UNEP/Mediterranean Action Plan, and preliminary work towards the identification of potential areas based on ecological criteria has begun.

Pacific Ocean

- 1) The Western and Central Pacific Fisheries Commission** has closed to its members two of four "donut holes" (areas in the high seas surrounded by national exclusive economic zones) to high seas fisheries, and is considering closing the other two. Some NGOs recommend that the donut holes be converted to MPAs through the South Pacific Regional Environmental Program, a regional organization established by the governments and administrations of the Pacific region to serve as the conduit for concerted regional environmental action.
- 2) Pacific Island Nation Pacific Ocean Arc sponsored by the Republic of Kiribati:** Kiribati has announced the Pacific Ocean Arc initiative to focus attention and investment in their portion of the Pacific region. Kiribati believes that declaration of a Pacific Oceanscape is urgent and timely to foster needed attention on climate change impacts on the oceans. The Pacific Oceanscape would encompass millions of square kilometers of life sustaining ocean. This initiative, while respecting national sovereignty, aims to solve common problems through common partners. Recently ocean conservation and management initiatives have emerged throughout the Pacific. The Micronesia Challenge, the Phoenix Islands Protected Area, the United States Pacific Islands Marine Monuments, the Nauru Agreement, and the

Coral Triangle Initiative are the most prominent. The Pacific Oceanscape provides a larger framework facilitating policy solutions and seeks to include areas beyond national jurisdiction as part of its scope. The process to initiate creation of **The South Pacific Regional Fisheries Management Organization (SPRFMO)** was begun in 2006-07 by Australia, Chile and New Zealand. SPRFMO will conserve and manage non-highly migratory fisheries and to protect biodiversity on the high seas in the South Pacific.

Southern Ocean - Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

In November 2009, CCAMLR established a protected area near the South Orkney Islands. The MPA covers roughly 94,000 square kilometers, in which all forms of fishing and waste disposal are prohibited. The South Orkney MPA is the world's first completely high seas MPA, and also the first in the Southern Ocean. A joint workshop on bio-regionalization of the Southern Ocean (13 to 17 August 2007 in Brussels, Belgium) in conjunction with the Antarctic Treaty Committee for Environmental Protection developed a bio-geographic classification system for the region. The Scientific Committee developed practical guidelines for providing scientific advice for managing bottom fisheries in high-seas areas of the Convention Area. Recent progress has been made at a workshop in April 2009 (XXVIII/BG xx) during which the development and implementation of marine spatial protection and management in the Southern Ocean was promoted. Also, development of a fine-scale bio-regionalization for the Ross Sea and a proposal to designate a significant MPA around the Prince Edward Islands (PEIs MPA) was made. To meet the WSSD 2012 target the workshop identified the need to establish truly comprehensive and representative marine protection of the Southern Ocean through complementing nationally designated MPAs with marine protection in areas beyond national jurisdiction. CCAMLR intends to implement marine protection and management with consideration to the size and extent of biodiversity feature, to ensure that the ecosystems, habitats, populations, species and ecological processes contained within remain viable.