

PREPCOM 3 HIGHLIGHTS: TUESDAY, 28 MARCH 2017

On Tuesday, 28 March, the informal working group on marine genetic resources (MGRs) continued deliberations in the morning, followed, in the afternoon, by a short plenary and by the informal working group on area-based management tools (ABMTs).

INFORMAL WORKING GROUP ON MGRS

DEFINITIONS: MAURITIUS noted that MGRs in the water column above the extended continental shelf are not sufficiently covered by existing instruments, so the ILBI should clarify their legal regime. The FSM recommended including derivatives in the ILBI.

Fisheries: CHINA proposed excluding fish used as a commodity from the ILBI, with ERITREA recommending establishing a scientifically defined threshold for MGRs as a commodity. WWF recommended including fish as a key component of biodiversity and all research, including fisheries research. IUCN noted that fish are sometimes harvested as commodity but subsequently used for research purposes. FAO pointed to distinctions on commodities and genetic resources under the ITPGRFA and the CGRFA.

Data: IUCN stressed the need to include digital sequence data in the ILBI. SWITZERLAND cautioned against discussing digital sequence information before concluding discussions in other fora, particularly the CBD.

ACCESS: PSIDS pointed to emerging consensus that MSR should be promoted and not impeded, and underscored the need for reporting obligations for scientists. The RUSSIAN FEDERATION cautioned against establishing artificial barriers to accessing MGRs. CHINA favored free-access arrangements. The FSM referred to different access requirements for different actors, noting that access should be facilitated for collecting and using samples.

BENEFIT-SHARING: Urging addressing both monetary and non-monetary benefit-sharing, the G-77/CHINA expressed willingness to discuss different monetary benefit-sharing modalities, pointing to the Nagoya Protocol annex and to different triggers. CARICOM proposed sharing non-monetary benefits through a repository for samples from ABNJ, which should be open access, and for results of derivatives' analysis, which would be made open access at a later stage, without prejudice to certain notification measures; and supported, with NORWAY, exploring different stages triggering monetary benefit-sharing. PSIDS suggested that monetary benefits could be disbursed through a trust fund, paying attention to SIDS' special situation, and noted that the private sector may need incentives to engage.

The EU pointed to a false dichotomy of monetary/non-monetary benefit-sharing, and referred to readily available options for non-monetary benefit-sharing in UNCLOS provisions on MSR and

marine technology. Expressing willingness to address a monetary benefit-sharing mechanism, CHINA called for a pragmatic approach, prioritizing non-monetary benefit-sharing. CANADA clarified that focusing on the significance of non-monetary benefits does not mean excluding monetary ones from the discussion. WWF recommended seeing benefit-sharing as a continuum, where non-monetary benefit-sharing is applicable early in the process and monetary benefit-sharing at commercialization stage. SWITZERLAND emphasized the link between the ILBI objectives and an effective benefit-sharing system.

EL SALVADOR and JAPAN called for the inclusion of private-sector actors in BBNJ discussions. The AFRICAN GROUP suggested that the private sector should be governed by relevant national legislation in ABNJ. NORWAY called for a pragmatic approach to ensure equitable access, pointing to the Nansen Programme as a platform for developing and developed country scientists to engage in MSR along the African coast. IUCN pointed to the need to include developing states, and safeguard the interests of the research and private sectors. FAO highlighted that elements from the ITPGRFA Multilateral System could guide the development of a benefit-sharing mechanism under the ILBI.

AOSIS recommended relying on royalties and mandatory payments to replenish an ILBI trust fund, with PSIDS adding also voluntary contributions. The HOLY SEE proposed: sharing monetary and non-monetary benefits if ABNJ resources have inherent value, significant harm to the environment is caused, and the resource is a non-living and cannot be sustainability used; triggering a commercial entitlement or use obligation, if one of the four conditions is not met, based on utilization of resources jointly owned by all states; and relying on contractual "earnout" provisions for MGRs, to provide additional compensation in the future if certain non-financial and financial milestones are reached, when it is difficult to estimate the value of MGRs at the time of access.

CLEARINGHOUSE: CARICOM noted that the ISA may have a role to play, supported by TONGA, who also recommended that the CHM: be accessible online, simple and user-friendly; include timely information; and address SIDS' needs. ARGENTINA suggested sharing through the CHM information and genetic resources' samples, research results, training and study programmes, data analysis and publications.

JAPAN requested further discussion of the kind of data to be provided through a CHM and of recipients, as well as of the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology (IOC Guidelines), to prevent duplication. The EU drew attention to interlinkages between the different elements of the package, noting the CHM's potential role in promoting international collaboration and coordination on capacity building.

The FSM underscored the need for standardizing data collection and facilitating access to samples. CANADA pointed to taking optimal advantage of existing tools. VENEZUELA reflected on the CHM's role in managing information, and sharing best practices and lessons learned, based on the Nagoya Protocol experience.

INFORMAL WORKING GROUP ON ABMTs

OBJECTIVES: The AFRICAN GROUP suggested that ABMTs aim at enabling cooperation and coordination among regional and sectoral bodies. AOSIS and others highlighted that ABMTs should contribute to the oceans' resilience, including to climate change. PSIDS proposed that ABMTs contribute to healthy, productive and resilient oceanic ecosystems, including through restoration. The EU stressed that: specific features of ecosystems may require different levels of protection; and a process to establish and manage a coherent MPA network in ABNJ will also contribute to the Aichi targets and SDG 14 (life below water).

MEXICO proposed creating a global MPA network aimed at contributing to conservation and sustainable use. COSTA RICA pointed to conserving the biomass of marine resources. TONGA focused on long-term conservation and sustainable use of BBNJ, and, with FIJI, called for restoration and rehabilitation as key objectives. VENEZUELA supported addressing marine biodiversity stressors. GREENPEACE noted that MPAs are effective tools for reversing current biodiversity loss trends.

JAPAN highlighted MPAs as a tool for long-term conservation, which should not be limited to marine reserves, and balancing conservation and sustainable use, which was supported by NORWAY, NIGERIA and the PHILIPPINES. CANADA prioritized identifying vulnerable marine ecosystems (VMEs) and building resilience to climate change. AUSTRALIA said ABMTs should balance conservation with a diversity of sustainable uses. IUCN said there is a role for sectorally focused ABMTs and comprehensively managed MPAs.

PRINCIPLES AND APPROACHES: Many referred to the precautionary approach, ecosystem approach and best scientific evidence. The G-77/CHINA highlighted transparency, accountability, and integrated management. ICELAND suggested: increasing coordination and cooperation by establishing common guidelines and standards; and addressing threats at source and directly regulating economic activities, because closing parts of the ocean may shift unsustainable practices elsewhere. NEPAL emphasized the interconnectedness between oceans and mountains.

MONACO prioritized a coherent and integrated network to ensure the most fragile and important areas of marine ecosystems are fully conserved, based on best scientific evidence, transparency and inclusiveness. Stressing that despite increasing threats, only 0.8% of the oceans are currently identified as MPAs, ERITREA highlighted socioeconomic concerns in addition to ecological significance, underscoring distributive implications of ABNJ replenishment effects and stressing the need to address "who will benefit, by how much and why." WWF called for deploying the full range of tools in the ABMT toolbox, including integrated ocean management and marine spatial planning (MSP).

RELATIONSHIP WITH EXISTING MECHANISMS: CANADA suggested delineating the roles of the ILBI and existing sectoral and regional bodies, and discussing measures where regional or sectoral expertise is absent. The RUSSIAN FEDERATION prioritized respecting the mandates of existing regional and sectoral bodies, like the International Maritime Organization (IMO) and regional fisheries management organizations (RFMOs).

NEW ZEALAND called for a consistent approach, developing ecological criteria for MPAs and standards for the development of proposals and the design of flexible systems. The PHILIPPINES called for strengthening existing frameworks, including under the

IMO, the CBD, the Convention on Migratory Species (CMS) and RFMOs; and bridging implementation gaps. The NORTH EAST ATLANTIC FISHERIES COMMISSION (NEAFC) pointed out that ABMTs already exist in ABNJ so the focus should be on strengthening cooperation and coordination among entities with a mandate to establish ABMTs.

DEFINITIONS: The G-77/CHINA emphasized the need to: consider definitions, including adapting existing ones to the ABNJ context; and to develop ABMTs criteria on the basis of existing international criteria, including uniqueness, sensitivity and biological productivity, noting that varying needs may require measures of different stringency. MEXICO said MPAs could be identified using criteria such as uniqueness and vulnerability.

ABMTs: The AFRICAN GROUP, PSIDS and the EU called for defining ABMTs, noting that there is no universally agreed definition, with the AFRICAN GROUP proposing that ABMTs be defined as spatial management tools to manage activities in the pursuit of conservation and sustainable use objectives. TONGA, with MONACO, urged that definitions include sectoral and cross-sectoral measures. CANADA called for recognizing the range of ABMTs. The FSM suggested that ABMTs be considered a broader concept, of which MPAs are a subset.

MPAs: PSIDS, with MONACO, suggested that the definition of MPAs include their long-term objectives and, with the EU, ARGENTINA, URUGUAY and MOROCCO, proposed using CBD Article 2 (Use of Terms) as a basis. MOROCCO also supported using the IUCN definition. MONACO called for consideration of Costa Rica's paper on working definitions in defining MPAs. GREENPEACE, NATURAL RESOURCES DEFENSE COUNCIL (NRDC) and the HIGH SEAS ALLIANCE defined an MPA as a designated geographically defined marine area where human activities are regulated, managed or prohibited, to achieve long-term nature conservation.

Reserves: PSIDS supported defining marine reserves, opposed by ARGENTINA, who opined that their characteristics will be included under the ABMT definition. GREENPEACE, NRDC and the HIGH SEAS ALLIANCE argued that a separate legal definition of marine reserves is unnecessary if the MPA definition includes the option of areas where extractive and destructive human activities are prohibited.

GOVERNANCE: The RUSSIAN FEDERATION opposed: using numerical indicators in defining MPAs, questioning their scientific basis; and the ILBI serving as an umbrella body to manage ABMTs. SRI LANKA preferred a horizontal approach to ABMT management.

The G-77/CHINA recommended review and monitoring of ABMTs, without undermining existing regional and sectoral organizations. SRI LANKA supported establishing a permanent scientific body. VENEZUELA called for a compliance committee for MPAs.

IN THE CORRIDORS

On day 2 of PrepCom 3, delegates delved into more detailed, clearer and occasionally unprecedented propositions to set up a benefit-sharing regime for marine genetic resources, building on lessons learnt in other multilateral fora and also drawing from transnational business practice. The exchange seemed to respond to lessons discussed in a lunch-time side-event, where showcasing of positive capacity-building experiences was accompanied by the recognition of the need for "real efforts" and "dedicated structures and resources" for a coordinated response to the huge demand from developing countries. "We must be wary," a veteran opined, summing up his take-home message for the BBNJ process, "of creating new international legal provisions that are just an expression of good sentiments."