

PREPCOM 3 HIGHLIGHTS: WEDNESDAY, 5 APRIL 2017

On Wednesday, 5 April, plenary met throughout the day to discuss area-based management tools (ABMTs), including marine protected areas (MPAs), and environmental impact assessments (EIAs).

PLENARY

AREA-BASED MANAGEMENT: Following a report by Facilitator Revell on informal working group discussions, Chair Duarte proposed focusing on three options: a global model, establishing a global institution to consider and decide on ABMT proposals; a hybrid model, reinforcing regional and sectoral organizations' mandates through regional coordination mechanisms, and providing global guidance and oversight; and a regional and sectoral model, recognizing regional and sectoral bodies' authority for decision making, monitoring and review of ABMTs, with the ILBI providing general policy guidance to promote cooperation, without global-level oversight.

CARICOM stressed that the ILBI should accommodate a range of objectives and measures for different levels of protection, including: recognizing ABMTs established by regional and sectoral bodies, conditionally upon satisfaction of ILBI criteria ensuring coherence, which was supported by the HIGH SEAS ALLIANCE; developing modalities and guidelines for the submission and evaluation of proposals, as well as for reporting and monitoring, taking into account all relevant competent bodies; and addressing adjacency, also considering potential buffers. The AFRICAN GROUP called for global-level, consensus-based decision-making on ABMTs and, supported by the EU, identifying and consulting regional and sectoral bodies with mandates on ABMTs or MPAs to assess criteria, modalities and best practices. The AFRICAN GROUP added that the ILBI should fill gaps resulting from these bodies' limited mandates and enforcement mechanisms, without undermining their mandates. SOUTH AFRICA supported a comprehensive global regime in line with the PrepCom's mandate under General Assembly Resolution 69/292.

The EU, supported by the HIGH SEAS ALLIANCE, emphasized the need for a global MPA network and a global mechanism establishing MPAs, arguing that: stricter protection measures do not undermine existing agreements; coherence, consistency, and inclusiveness are missing in the current patchwork system, with ABMTs being adopted under different criteria; and capacity building to ensure implementation of ILBI measures on ABMTs is needed. MEXICO emphasized the added value of a global system facilitating greater coordination, using existing tools.

Favoring a global approach, with SENEGAL, IRAN called for measures similar to UNFSA Article 17 (non-members of organizations and non-participants in arrangements). ARGENTINA stressed that: UNFSA is limited to management of fish resources and thus cannot always provide a point of reference; decision-making under the ILBI should be based on consensus; and the role of regional and sectoral bodies should be decided on a case-by-case basis at each stage of the process. Stressing the need for coordination, COSTA RICA called for a global structure and a network of ABMTs according to standardized criteria.

PAKISTAN supported a global approach, with a role for regional bodies on a case-by-case basis. PERU favored a global decision-making body, and a scientific body modelled on CBD or UN Framework Convention on Climate Change (UNFCCC) subsidiary bodies. EL SALVADOR called for a global management approach ensuring cooperation with regional bodies. IUCN supported a global model enhancing regional effectiveness; and called for an examination of the regional and sectoral instruments in ABMT management. INDONESIA called for the ILBI to enhance regional-level coordination and coherence, respecting states' rights over outer continental shelves. UN ENVIRONMENT recommended linking future ABMTs in ABNJ to coastal states' management measures under regional seas programmes, promoting connectivity and representativity.

NORWAY favored a hybrid approach. Noting that a hybrid model could help achieve compromise, JAPAN reiterated that the ILBI should identify concrete measures in consultation with relevant bodies and consider establishing MPAs from a holistic viewpoint, and refer guidance to regional bodies for their final decision, which would be binding on ILBI members, including those that are not members of regional organizations. NEW ZEALAND supported regional coordination, questioning whether an ILBI COP would have better understanding of measures required than regional and sectoral bodies. CANADA highlighted that a global approach could promote the overall objective and provide an overarching perspective, while a regional approach would take advantage of existing mechanisms.

Expressing interest in a hybrid approach, AUSTRALIA favored a COP advising on and reviewing state obligations, and enhancing cooperation, pointing out that the ILBI could bring together regional-level ABMTs in ABNJ. PSIDS advocated designating and managing ABMTs at the regional level under globally harmonized standards and oversight, avoiding a disproportionate burden on SIDS in terms of BBNJ conservation and implementation of management measures. The FSM cautioned that global decision-making could be slow, and regional approaches could create implementation gaps, calling for more information on decision-making under the hybrid approach.

Calling for the ILBI to enhance cooperation in MPA establishment, CHINA stressed that the ILBI should address gaps and shortfalls in BBNJ conservation, without prejudicing existing mandates. Reemphasizing the integrated ocean management approach, FIJI called for science-based decision-making that takes into account special regional circumstances, consent by adjacent states, compatibility, and flexibility to anticipate future stresses, and includes traditional knowledge. MAURITIUS requested reference to different ABMT types, and to consent of adjacent coastal states on ABMT establishment. The EU considered defining adjacency unnecessary.

ICELAND supported a regional approach, recommending capacity building for RFMOs and regional seas conventions. The RUSSIAN FEDERATION preferred global guidelines on ABMT management under the ILBI, noting that rapid action to designate, review or terminate MPAs should be taken at the regional level to ensure responsiveness to regional needs. ICCAT underscored the need for coordination and cooperation before establishing MPAs, respecting RFMOs' mandates.

The HIGH SEAS ALLIANCE called for a binding global approach to provide accountability, with the PEW CHARITABLE TRUSTS arguing that global and regional decision-making are not mutually exclusive, and GREENPEACE warning about "vastly underestimated" costs of administering and participating in regional coordination mechanisms.

ENVIRONMENTAL IMPACT ASSESSMENTS: Chair Duarte presented Facilitator Lefeber's summary of the informal working group deliberations.

Governance: Noting that national laws alone may be inefficient and ineffective, the FSM called for conducting EIAs in a fair, consultative, inclusive and standardized manner. AUSTRALIA proposed binding minimum standards for conducting EIAs, with decision-making and financial burdens resting with the flag or sponsor state. The EU called for EIAs and strategic environmental assessments (SEAs) to contribute relevant information for MPA designation and management, reiterating the need not to undermine existing mandates and not to duplicate EIA arrangements under existing instruments. NEW ZEALAND and NORWAY opposed having an ILBI body to review existing EIA regulations in other bodies. CHINA opposed developing new EIA standards under the ILBI for activities regulated by other instruments. JAPAN emphasized the need to avoid duplication, arguing that the ILBI should be on an equal footing with other processes, without assessing their effectiveness.

CARICOM proposed a scientific committee to conduct, review and make recommendations to the COP, as well as an appeals process. TONGA suggested designating an international body responsible for ensuring fairness and transparency in the EIA process through uniform guidelines, as well as a monitoring and review mechanism.

Transboundary EIAs: The AFRICAN GROUP supported including transboundary EIAs (TEIAs) in the ILBI. NORWAY supported the ILBI including activities in ABNJ with impacts on areas within national jurisdiction, with AUSTRALIA, INDONESIA and NEW ZEALAND noting they are already covered by domestic processes. CHINA emphasized that only activities in ABNJ should be covered by the ILBI. NEW ZEALAND considered it unnecessary to establish a separate procedure for TEIAs under the ILBI.

The FSM proposed developing universally accepted standards to ensure compliance, and, with AUSTRALIA and INDONESIA, notifying adjacent coastal states on potential impacts arising from activities in ABNJ, allowing input and comments during the EIA

process. FIJI underscored the need for extensive consultations with potentially affected states before finalizing TEIAs. VIET NAM called for obtaining concerned states' consent where necessary.

Thresholds: PSIDS, CARICOM and VIET NAM supported a threshold, which considers sociocultural and economic factors, with a regularly updated and reviewed list of activities requiring EIAs. NORWAY noted that a threshold could be complemented by a list. The EU and the PHILIPPINES supported a threshold. The AFRICAN GROUP and CHINA opposed listing activities requiring EIAs, with JAPAN proposing case-by-case assessments of the need and modalities of EIAs. NEW ZEALAND supported a tiered threshold approach and an indicative list, stressing the need for a case-by-case assessment. COSTA RICA and AUSTRALIA opposed a list of activities not requiring EIAs.

EBSAs: The AFRICAN GROUP, CARICOM and PSIDS supported a special provision on EIAs in EBSAs. NEW ZEALAND, the EU and JAPAN argued that guidelines and screening criteria are sufficient.

Consultation: The EU prioritized EIAs based on the best available science and public consultation, including with potentially affected states and civil society. The PHILIPPINES called for public consultations to include: adjacent coastal states, supported by the AFRICAN GROUP; regional and sectoral bodies; and experts and affected industries. PSIDS said: transboundary impacts should be subject to consultation; type and frequency of public consultation should reflect the level of risk and anticipated impacts; and a diverse range of tools to ensure inclusive consultation are required.

SEAs: The EU, CARICOM, PSIDS, NEW ZEALAND, AUSTRALIA and NORWAY supported including SEAs in the ILBI, with NORWAY noting links to MPA establishment and JAPAN underscoring lack of common understanding of relevant obligations. CHINA reiterated that SEAs do not fall under the scope of UNCLOS.

Capacity building: The AFRICAN GROUP recommended voluntary and mandatory financing for capacity building through a benefit-sharing fund. Noting limited experience of EIAs in ABNJ and the need for EIA practice in national jurisdictions to inform practice in ABNJ, the EU supported capacity building to carry out EIAs and SEAs. COSTA RICA favored an online compilation of good practices, noting that financing for capacity-building activities could be provided by a fund with voluntary contributions or through fines under the polluter pays principle. TONGA pointed to knowledge-exchange, training and funding to establish EIA and SEA processes.

Central repository: AUSTRALIA supported a central repository such as a web-based platform, including baseline data, with TONGA adding that cumulative impacts, as well as information on negative effects of climate change and ocean acidification should be included. NORWAY called for UNDOALOS to make information available through a central repository. PSIDS suggested providing for centralized access to EIA information, as well as new scientific knowledge and data, and tracking cumulative impacts.

IN THE CORRIDORS

With the end of the session in sight, perceptions of progress varied. Some welcomed an increased level of detail in submissions, movement towards middle-ground positions and a preliminary identification of "models" for at least one of the elements of the package. Others, however, were disheartened by what they considered a lowering of ambition. "Given the current status of the oceans, what's the value added of regional or so-called hybrid approaches?" probed one. The NGOs also raised the alarm over the pitfalls of relying on "existing structures," notably difficulties in ensuring broad and effective participation at the regional level. "Colleagues – appealed a long-standing participant – the fate of the oceans affects us all."