

WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 13-17 FEBRUARY 2006

The *Ad Hoc* Open-ended Informal Working Group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (hereinafter, the Working Group) convenes from 13-17 February 2006, at the United Nations (UN) headquarters in New York.

The Working Group was established by General Assembly resolution 59/24 of 17 November 2004, to:

- survey the past and present activities of the UN and other international organizations on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction;
- examine the scientific, technical, economic, legal, environmental, socioeconomic and other aspects of the conservation and sustainable use of such biodiversity;
- identify key issues and questions where more detailed background studies would facilitate consideration by States of the conservation and sustainable use of such biodiversity; and
- indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of such biodiversity.

The Working Group is expected to produce a summary of trends and a Co-Chairs' report of issues, questions and ideas related to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. The report will be transmitted, as an addendum to the report of the Secretary-General on oceans and the law of the sea, to the 61st session of the General Assembly.

A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

The conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction 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, and 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 UN Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity (Article 2) 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, 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 a programme of action called the "Jakarta Mandate on Marine and Coastal Biological Diversity," which led to the creation of a work programme in this area. COP-2 also adopted a decision requiring the Executive Secretary, in consultation with the UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS), to undertake a study of the relationship between the CBD and UNCLOS with regard to the conservation and sustainable use of genetic resources on the deep seabed.

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 areas beyond national jurisdiction; 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-57: In resolution 57/141, the General Assembly encouraged relevant international organizations to consider urgently ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts and certain other underwater features within the framework of UNCLOS.

SBSTTA-8: At its eighth meeting (March 2003, Montreal, Canada), the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) noted the increasing risks to biodiversity in areas beyond national jurisdiction and

recommended that the goal of the CBD's work in this area should be the establishment and maintenance of MPAs, to maintain the structure and functioning of the full range of marine and coastal ecosystems and provide benefits to both present and future generations.

UNICPOLOS-4: At its fourth meeting (June 2003, New York), the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) recommended that the General Assembly, *inter alia*, invite relevant international bodies at all levels to urgently consider how to better address, on a scientific and precautionary basis, threats and risks to vulnerable and threatened marine ecosystems and biodiversity beyond national jurisdiction, consistent with international law and the principles of integrated ecosystem-based management.

FIFTH WORLD PARKS CONGRESS: At the fifth IUCN World Parks Congress (September 2003, Durban, South Africa), participants adopted a recommendation on the protection of marine biodiversity and ecosystem processes through MPAs beyond national jurisdiction, in which they recommended that the international community as a whole, *inter alia*, establish a global system of effectively managed representative networks of MPAs.

UNGA-58: In resolution 58/240, the General Assembly 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 areas beyond national jurisdiction.

CBD COP-7: At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the 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 biodiversity in marine areas beyond national jurisdiction, including through the establishment of further MPAs; and recommended that parties, the General Assembly and other relevant international and regional organizations urgently take the necessary short-, medium- and long-term measures to eliminate and avoid destructive practices. COP-7 also adopted a programme of work and established an *ad hoc* open-ended working group on protected areas (PAs).

UNICPOLOS-5: At its fifth meeting (June 2004, New York), UNICPOLOS held a panel discussion on new sustainable uses of the oceans, focusing on high seas bottom fisheries and biodiversity in the deep seabed, noting increasing levels of concern over the ineffective conservation and management of such biodiversity. UNICPOLOS proposed that the General Assembly encourage regional fisheries management organizations (RFMOs) with a mandate to regulate deep sea bottom fisheries to address the impact of bottom trawling, and urge States to consider on a case-by-case basis the prohibition of practices having an adverse impact on vulnerable marine ecosystems in areas beyond national jurisdiction, including hydrothermal vents, cold water corals and seamounts.

UNGA-59: In resolution 59/24, the General Assembly 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 decided to establish an *ad hoc* open-ended informal working group to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

THIRD WORLD CONSERVATION CONGRESS:

The third IUCN World Conservation Congress (November 2004, Bangkok, Thailand) called for cooperation to establish representative networks, and develop the scientific and legal basis for the establishment, of MPAs beyond national jurisdiction, and contribute to a global network by 2012. The Congress also requested States, RFMOs and the General Assembly to protect seamounts, deep sea corals and other vulnerable deep sea habitats from destructive fishing practices, including bottom trawling, on the high seas.

UNICPOLOS-6: At its sixth meeting (June 2005, New York), UNICPOLOS proposed, in relation to the conservation and management of marine living resources, that the General Assembly encourage progress to establish criteria on the objectives and management of MPAs for fisheries, welcome the proposed work of the UN Food and Agriculture Organization (FAO) to develop technical guidelines on implementation of MPAs and urge close coordination and cooperation with relevant international organizations including the CBD.

CBD WORKING GROUP on PAs: The CBD Working Group on PAs (June 2005, Montecatini, Italy) discussed options for cooperation for the establishment of MPAs in areas beyond national jurisdiction. Delegates initiated work to compile and synthesize existing ecological criteria for future identification of potential sites for protection, and recommended the COP to note that the establishment of such sites must be in accordance with international law, including UNCLOS, and based on the best available scientific information, the precautionary approach and the ecosystem approach.

RECENT RELATED MEETINGS

2005 OCEAN POLICY SUMMIT: Participants to the 2005 Ocean Policy Summit (11-13 October 2005, Lisbon, Portugal) discussed various aspects of national and regional experiences, prospects and emerging practices in integrated ocean policy, and held a special session on achieving networks of MPAs.

INTERNATIONAL MARINE PROTECTED AREAS CONGRESS: Participants to the first International Marine Protected Areas Congress (23-28 October 2005, Geelong, Australia) discussed the target to establish a global network of MPAs by 2012, and emphasized that MPAs can play a significant role in preventing the collapse of the world's fisheries.

UNGA-60: In resolution 60/30, the General Assembly 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.

SBSTTA-11: At its eleventh meeting (28 November-2 December 2005, Montreal, Canada), SBSTTA recommended that the CBD COP: recognize the urgent need to enhance scientific research and cooperation for the conservation and sustainable use of deep seabed genetic resources, and the preliminary range of options for the protection of these resources beyond national jurisdiction; and request the Executive Secretary, in collaboration with UNCLOS and other relevant organizations, to further analyze options for preventing and mitigating impacts of some activities on selected seabed habitats.

THIRD GLOBAL OCEANS CONFERENCE: Participants to the third Global Conference on Oceans, Coasts and Islands (24-27 January 2006, Paris, France) exchanged views on, among other things, improving high seas governance, fishing and bioprospecting in the high seas, high seas biodiversity and MPAs networks.