

**Ad Hoc Open-ended Informal Working Group
of the General Assembly to study issues related to the
conservation and sustainable use of marine biological
diversity beyond areas of national jurisdiction**

31 May – 3 June 2010, IUCN, Gland, Switzerland
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**Agenda Item 4: Aspects of the conservation and sustainable use
of marine biological diversity beyond areas of national jurisdiction,
including activities in the United Nations and other relevant
international organizations**

Mme/Mr. Co-Chair,

IUCN the International Union for Conservation of Nature helps the world to find pragmatic solutions to our most pressing environment and development challenges. Recognizing the need to conserve, manage and ensure the sustainable and equitable use of the world's natural resources, we bring governments, non-government organizations, United Nations agencies, companies and local communities together to develop and implement policy, laws and best practice.

IUCN's members, who use IUCN's means of multiple tools including the establishment of MPAs, and to facilitate the development of representative networks of MPAs. Conservation of marine biodiversity in October 2008 that called for:

- promote arrangements, processes and agreements that ensure the consistent, coordinated and coherent application of the best conservation and governance principles and approaches, including integrated ecosystem-based management and the precautionary approach;

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- examine the need for further agreements to implement UNCLOS with respect to the conservation and protection of the marine environment and marine biodiversity in areas beyond national jurisdiction;...
- develop assessment processes, including the assessment of cumulative impacts, of human activities with a potential for significant adverse impacts on the marine environment, living marine resources and biodiversity in areas beyond national jurisdiction; and
- ensure that assessed activities with the potential for such significant adverse impacts are subject to prior authorization by states responsible for nationals and vessels engaged in those activities, consistent with international law, and that such activities are managed to prevent such significant adverse impacts, or not authorized to proceed;

Agenda Item 5: Indication where appropriate, of possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

IUCN believes we must move forward rapidly to conserve, manage and sustainably and equitably use the marine biodiversity of areas beyond national jurisdiction. The United Nations Conference on Environment and Development (UNCED) adopted the Convention on Biological Diversity (CBD) in 1992. The Convention on Biological Diversity (CBD) is a global treaty that provides a framework for the conservation and sustainable use of biological diversity. The Convention on Biological Diversity (CBD) is a global treaty that provides a framework for the conservation and sustainable use of biological diversity. The Convention on Biological Diversity (CBD) is a global treaty that provides a framework for the conservation and sustainable use of biological diversity.

Agenda Item 5(b): Capacity- building and technology transfer

We recognize the need for capacity building. As noted last year, IUCN publishes the IUCN Red List of Threatened Species™, the world’s most comprehensive, authoritative and objective resource on the global conservation status of plant and animal species, including their global risk for extinction. It is available online at www.iucnredlist.org. With reference specifically to marine biodiversity, IUCN published in 2008 a “Red List Status of the World’s Marine Species” in which it was noted that the number of marine species that had been assessed lagged far behind those of the terrestrial world. To fill this knowledge gap, IUCN with partners including Conservation International and Old Dominion University undertook a Global Marine Species Assessment to assess over 20,000 marine species by 2012. Results to date confirm that marine biodiversity is under threat. IUCN is now also undertaking consideration of the development of a parallel IUCN Red List of Ecosystems, to be modeled after the IUCN Red List of Threatened Species.

With respect to environmental impact assessments, many countries now have experience within national jurisdiction. Principle 17 of the Rio Declaration on Environment and Development adopted at Rio de Janeiro in 1992 proclaimed that “Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.” Agenda 21 contains many references to environmental impact assessments.

UNEP published goals and principles in 1991 and in 2004 published the report “Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach” by Hussein Abaza of UNEP, with Ron Bisset and Barry Sadler, which can be found online. The 2004 report includes case studies that may be helpful to us.²

For the application of environmental impact assessment beyond national jurisdiction, the Antarctic Treaty System provides a good example. Assessments have been conducted with respect of activities in Antarctica since at least the 1980s. Parties to the Protocol on Environmental Protection to the Antarctic Treaty have had an obligation since the Protocol came into force in 1998 to conduct assessments, thus they have considerable experience with this. The Secretariat of the Antarctic Treaty maintains on its website a database that lists 814 assessments from as far back as 1988. Many of the assessments listed include links to actual assessment documents from the following countries: Argentina, Australia, Belgium, Brazil, Canada, Chile, China, the Czech Republic, Ecuador, Finland, France, Germany, India, Italy, Japan, the Republic of Korea, Netherlands, New Zealand, Norway, Peru, Romania, the Russian Federation, South Africa, Spain, Sweden, Ukraine, United Kingdom, United States, Uruguay, and Venezuela. Assessment documents are available in the four Treaty languages, English, French, Spanish, Russian, though the plurality are in English. These assessment documents can serve as examples or templates for assessments to be done in areas beyond national jurisdiction. For this reason, this database could be considered as a potential capacity-building source. As assessments are from a number of countries from around the world, this offers opportunities to pursue capacity building and cooperation on a South-South, South-North, North-South and North-North basis.³

² <http://www.unep.ch/etb/publications/EnvImpAss/textONUBr.pdf>

³ http://www.ats.aq/devAS/ep_eia_list.aspx?lang=e

Through the International Seabed Authority's Mining Code, prior assessment is also required. The Mining Code refers to the comprehensive set of rules, regulations and procedures issued by the International Seabed Authority to regulate prospecting, exploration and exploitation of marine minerals in the Area. Though not as yet complete, the Code already includes requirement

and consultation on potential environmental effects of activities under their control or jurisdiction which are likely to significantly affect other States or areas beyond national jurisdiction. When information provided as part of an EIA indicates that the environment within another State likely to be significantly affected, the State should notify potentially affected States of proposed activity; transmit relevant information from EIA, and when agreed, enter into timely consultations. Before a decision is made on an activity, government agencies, members of the public, experts in relevant disciplines and interested groups should be allowed appropriate opportunity to comment on the EIA. The decision on any proposed activity subject to an EIA should be in writing, state the reasons therefore, and include the provisions, if any, to prevent, reduce or mitigate damage to the environment. This decision should be made available to interested persons or groups.²

As noted above, UNEP has also published in 2004 “Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach” by Hussein Abaza, Ron Bisset and Barry Sadler. The report, while noting that EIA and SEA are developing quickly also notes the fundamentals of EIA and SEA remain good practice; thus the report can be expected to remain relevant. The report cites a number of examples of how countries around the world have developed their practice, thus serving as a useful source of information³.

Under the United Nations Economic Commission for Europe, States have developed the Espoo Convention on Environmental Impact Assessment in a Transboundary Context. This Convention provides that Parties are to prepare and share environmental impact assessments for certain proposed activities, several of which have a marine dimension including offshore hydrocarbon production, large-diameter oil and gas pipelines and certain port facilities, likely to cause a significant adverse transboundary impact. The assessment is to include at a minimum the following:

- (a) A description of the proposed activity and its purpose;
- (b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;
- (c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;
- (d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;
- (e) A description of mitigation measures to keep adverse environmental impact to a minimum;
- (f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;
- (g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;
- (h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and
- (i) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

Currently, assessment obligations with respect of the sea are fractured; they do not always include assessment of other legitimate activities in the same area. As described above, some focus on the potential effects of fishing activities, others on pollution, some on the potential effects of mining. They do not capture the effects of cumulative impacts that will harm the marine environment. ~~http://www~~

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² [http://www -penelope.drec.unilim.fr/penelope/library/Libs/Int_nal/unep/unep.htm](http://www-penelope.drec.unilim.fr/penelope/library/Libs/Int_nal/unep/unep.htm)

See also http://www.unep.ch/etu/publications/EIA_2ed/EIA_E_top2_hd.PDF

³ <http://www.unep.ch/etb/publications/EnvImpAss/textONUBr.pdf>

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Agenda Item 5(f): Area -based management tools, in particular marine protected areas

Looking again at concerns about unjustifiable interference with other legitimate uses of the sea and noting the growing and potentially conflicting uses and activities in the sea, ecosystem-based management or an ecosystem approach to oceans management points to the need for the management of ocean space across sectoral lines. Marine spatial planning is a concept that has been explored more broadly within areas subject to national jurisdiction and is also relevant to areas beyond national jurisdiction. The UNESCO Intergovernmental Oceanographic

As we noted last year, area-based management tools already exist in areas beyond national jurisdiction. These have been established by Regional Fisheries Management Organizations (RFMOs) and through the International Maritime Organization (IMO). There is under consideration at the International Seabed Authority the establishment of a network of “Areas of Particular Environmental Interest”. Such action would assist the Authority with implementation of Articles 145, 162, 165 and 192 of the Convention on the Law of the Sea and 1994 Agreement to take measures to protect and preserve the marine environment.⁵ Article 165(e) for example, requires the Legal and Technical Commission to “make recommendations to the Council on the

In the southern Indian Ocean, IUCN in collaboration with the FAO and other partners and within the framework of a GEF Seamounts project has engaged in a project to study marine biodiversity found in association with seamounts. Project goals include strengthening the knowledge base for and implementing an ecosystem-approach to marine fisheries in developing countries and addressing barriers to sustainable fisheries management and marine biodiversity conservation in the high seas, including a la

activity, bioprospecting is only the first step towards possible future exploitation and stops once the desired compound or specific property has been isolated and characterized....”²⁰

The issue of bioprospecting in Antarctica has come before Parties to the Antarctic Treaty and two Resolutions have been adopted. The resolutions reaffirm for Antarctica the role of the Antarctic Treaty System, noting that the Protocol on Environmental Protection and CCAMLR address environmental aspects of scientific research and the collection of biological material and include reference to Article III(1)(c) of the Antarctic Treaty.

latter, that is fair and equitable sharing of benefits, then let us look subsection by subsection at the indicative list included in the Annex on monetary and non-monetary benefits:

Annex: Monetary and Non-Monetary Benefits

1. Monetary benefits may include, but not be limited to:

- (a) Access fees/fee per sample collected or otherwise acquired;
- (b) Up-front payments;
- (c) Milestone payments;
- (d) Payment of royalties;
- (e) Licence fees in case of commercialization;
- (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
- (g) Salaries and preferential terms where mutually agreed;
- (h) Research funding;
- (i) Joint ventures;
- (j) Joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:

- (a) Sharing of research and development results;
- (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resource Td (2J 0 Tc 0 Tw 2

Part XIII of UNCLOS also provides that States should promote the flow of scientific data and information and the transfer of knowledge. This could be accomplished through the publication of research results, especially electronically. Benefits from development and innovation could be addressed in part by the Part XIII and the transfer of knowledge and the strengthening of marine scientific research capabilities of developing States through education and training of their technical and scientific personnel.²

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Conclusion

We need to move forward to conserve, manage and sustainably and equitably use the marine biodiversity of areas beyond national jurisdiction. We need to make progress on identifying and agreeing on the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with the Convention that will protect the rights of all States, including