

Canadian Environmental Network - Consultation Report

Convention on Biological Diversity - First Meeting of the Ad Hoc Open-Ended Working Group on Protected Areas

13-17 June 2005, Montecatini, Italy

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Background

At the seventh meeting of the Conference of the Parties (COP-7) in February 2004 it was decided to establish an Ad Hoc Open-Ended Working Group on Protected Areas to support and review the implementation of the programme of work and report to the COP. The objective of the programme of work is to support the establishment and maintenance, by 2010 for terrestrial and by 2012 for marine areas, of comprehensive, effectively managed, and ecologically representative national and regional systems of protected areas that collectively through a global network, contribute to achieving the three objectives of the Convention and the 2010 target to significantly reduce the current rate of biodiversity loss.

It was agreed that at least one meeting of the working group would be held before the COP-8. The governments of 106 countries and parties to the convention attended the working group meeting as well as observers from 8 United Nations bodies and 84 other organizations, including NGOs, universities and other research organizations.

At the opening of the meeting, the chair of the working group, speaking on behalf of the president of the COP highlighted the invaluable role of protected areas in implementing the CBD, in particular that a well-managed, representative system of protected areas was one of the best tools available for reaching the target of achieving by 2010 a significant reduction in the current rate of biodiversity loss.

Purpose of the Consultation

The agenda of the working group meeting was focused on four main topics: options for establishing protected areas in marine areas beyond the limits of national jurisdiction; the mobilization of financial resources for protected area systems; the further development of tool kits for protected areas; and the review of the implementation of the programme of work on protected areas, with a focus on the process for undertaking this review.

Note: This report is be focused on the first topic – options for establishing protected areas in marine areas beyond the limits of national jurisdiction, as that was the main focus for the Canadian delegation and the ENGO representative mainly attended those

meetings, and this topic dominated the week's deliberations. For a full summary of the meeting please refer to

<http://www.biodiv.org/doc/meetings/pa/pawg-01/official/pawg-01-06-en.doc> and www.iisd.ca/biodiv/wgpa

Sub-Working Group 1 – Marine Protected Areas Beyond National Jurisdiction

This working group was charged with “exploring options for cooperation for establishing marine protected areas in marine areas beyond national jurisdiction, consistent with international law and based on scientific information”. With less than 0.5 per cent of the marine environment protected, and the rapid declines in global marine biodiversity as document in the Millenium Assessment and in other scientific studies, the importance of halting this decline through appropriate protection in the 64 per cent of the oceans located in areas beyond national jurisdiction was emphasized to delegates by the Executive Secretary of the Convention.

In preparation for the meeting, two reports were commissioned. The first by the University of British Columbia's Fisheries Centre Sea Around Us Project, reviewed biodiversity in marine areas beyond national jurisdiction and concluded that the key biodiversity-rich areas and priorities for high seas MPAs were: tropical Indo-Pacific, the Southern Ocean, seamounts and shelf areas in the Atlantic Ocean and seamounts associated with cold water coral areas. The second report by IUCN reviewed the legal regime of marine areas beyond national jurisdiction and identified options for international cooperation and new instruments and mechanisms for establishing MPAs. While the UN Convention on the Law of the Sea provides the over-arching framework for the legal regime, further global legal instrument(s) would be needed to provide comprehensive protection of marine areas beyond national jurisdiction, as none of the existing global instruments provided protection from more than one threat.

The discussion following the presentation of these reports highlighted the difficulties ahead in establishing MPAs on the high seas and obtaining any agreement on the role of the CBD on this issue. While Canada took the position that UNGA was the primary forum to discuss the international governance aspects, Canada did support a role for the CBD on high seas MPAs, particularly with regard to the development of criteria for identifying MPAs. As the IISD summarized the first day:

“Convening in the wake of last week's sixth meeting of the Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) held in New York, CBD delegates have brought their negotiating positions on MPAs to Montecatini. With highly polarized views on how to proceed with the issue of MPAs in areas beyond national jurisdiction, including which forum should take the lead in addressing it, some delegates expressed concern that the Working Group meeting may experience the UNICPOLOS syndrome of late-night-carefully-negotiated-compromise-texts. While some have been garnering support for an implementing agreement under UNCLOS, others remained optimistic that CBD will find its niche in addressing high seas MPAs, albeit not as a leading agency.” (Earth Negotiations Bulletin Vol 9 No. 322 p2)

These words were indeed prophetic, as the working group had many late night meetings and many areas were left without full consensus.

By the end of the last negotiating session, bracketed text remained on:

- a clause regarding an implementing convention to UNCLOS, with the EU supporting the reference, Canada and Australia wishing to keep it as an option, GRULAC insisting on including it as a recommendation, and Norway, Iceland and Japan opposing any reference to it;
- an option regarding cooperation to make progress in establishing MPAs beyond national jurisdiction, with the EU calling for early progress and Norway opposing reference to MPAs beyond national jurisdiction;
- options requiring implementation of the UN Fish Stocks Agreement (FSA); and
- an option addressing designation of Particularly Sensitive Sea Areas (PSSA) under the IMO.

During the closing plenary, Norway and Iceland reiterated their requests to delete bracketed paragraphs on review and assessment of RFMO performance in implementing the FSA and on consideration to extend PSSA designations to marine areas beyond the limits of national jurisdiction, and formally recorded their reservations. GRULAC suggested forwarding the text with the bracketed paragraphs to COP-8. The EU, supported by Cameroon, Liberia and others, requested forwarding the text to the next Working Group meeting. A compromise was reached to refer the text to the next Working Group meeting, and the final document was adopted without amendment and with the remaining brackets, with the understanding that half a day at the second meeting of the Working Group would be spent on resolving bracketed text.

Outcomes of the Consultation

The Sub-Working Group which addressed the establishment of MPAs in marine areas beyond national jurisdiction met nine times during the course of the five days of meetings. Given the fundamental disagreements about the need for MPAs on the high seas and the role of the CBD in the high seas, the final text of the meeting submitted for consideration in the final plenary of the meeting, contained large portions of text in square brackets, indicating a lack of consensus on these elements.

The EU pushed for a new legal implementing agreement under UNCLOS; others preferred to leave the matter to fisheries organizations (or questioned the CBD's competence to discuss this issue). A heavily bracketed document will be taken up by the second working group in early December 2005. It will also be transmitted to a UN General Assembly working group that will meet in February 2006 to discuss all aspects of biodiversity in marine areas beyond national jurisdiction, and then considered by COP8 (March 2006).

Parties generally recognized the CBD's expertise in scientific (as opposed to governance) aspects of MPAs. Their acceptance of Canada's offer to host an expert workshop to

develop a set of scientifically rigorous ecological criteria to identify potential sites for MPAs beyond the limits of national jurisdiction - and agreement to consider its outputs at the next working group meeting - were the among most positive outcomes of the meeting.

In the final document (UNEP/CBD/WG-PA/1/L.6), the Working Group: requests the Executive Secretary to transmit the outcomes of its work to the UNGA Informal Working Group; invites the Executive Secretary to compile and synthesize a list of existing ecological criteria for identification of potential sites for protection and biogeographical classification systems, based on submissions received; expresses appreciation to Canada for its initiative to host a scientific expert workshop to review and assess existing ecological criteria and biogeographical classification systems and to initiate work on the development of a set of scientifically rigorous ecological criteria for site identification; and invites the Executive Secretary to transmit the results of the workshop to the Parties, in advance of the second Working Group meeting.

Some of the key Working Group recommendations were that the COP:

- notes that MPAs beyond national jurisdiction should be established in the context of international law, including UNCLOS, and in the context of the best available scientific information, the precautionary approach and the ecosystem approach;
- recognizes that UNCLOS sets out the legal framework within which all activities in oceans and seas must be carried out;
- recognizes that MPAs help achieve biodiversity conservation and sustainable use beyond national jurisdiction, and that their utility would have to be evaluated in relation to other available tools;
- requests the Executive Secretary to work with relevant institutions to synthesize, with peer review, the best available scientific studies on priority areas;
- recognizes that the best available scientific information indicates that seamounts and cold-water coral reefs are under severe threat, and urges Parties to cooperate to take urgent action to protect those under most immediate threat, and ensure that activities within their jurisdiction or control do not damage them;
- requests relevant organizations to collaborate in filling data gaps identified in the scientific study, and other gaps, including, *inter alia*, the distribution of Red-Listed marine species, seamounts and cold-water coral reefs. Regarding socioeconomic information, a reference to information from indigenous and local communities is bracketed;
- requests the Executive Secretary to explore options for a spatial biodiversity database, to include information on marine areas and data on existing national and regional PA systems;
- agrees that PA identification and management would benefit from stakeholder and community participation, where necessary and appropriate;
- recognizes the importance of national and regional MPAs as one of the essential tools for protecting biodiversity and, in a bracketed reference, urges Parties, as appropriate, to undertake actions towards establishing such MPAs as a matter of

priority;

- notes: the benefits of ecological criteria in establishing MPAs beyond national jurisdiction; opportunities to promote establishment of MPAs beyond national jurisdiction in the existing legal framework; the need for improved multi-sectoral coordination and integration for biodiversity conservation and sustainable use in marine areas beyond the limits of national jurisdiction; and the current lack of implementation, compliance and enforcement of the international legal framework; and
- urges Parties to work towards cooperation and coordination among various forums for the establishment of MPAs consistent with international law, and to work to develop measures to combat IUU fishing.

A paragraph that identifies options for cooperation for the establishment of MPAs versus MPAs beyond national jurisdiction contains many bracketed sections. Despite the fact that these were listed as options for the COP to consider, many countries could not agree to them being left in the document.

Among the options that were agreed to (and thus were unbracketed) are:

- cooperation among Parties to ensure that relevant organizations enhance their capacity to effectively implement existing legal instruments; and
- measures to implement paragraph 66 of UNGA resolution 59/25 to take action urgently and consider, on a case-by-case and scientific basis and applying the precautionary approach, the interim prohibition of destructive fishing practices, including deep sea bottom trawling.

Those options that remain in the document as bracketed text include:

- cooperation on the basis of the existing legal framework to make progress, or early progress, in the establishment of MPAs or MPAs beyond national jurisdiction;
- establishment of Regional Fisheries Management Organizations (RFMOs) and strengthening their conservation powers;
- RFMO action in accordance with the UN Fish Stocks Agreement and the Food and Agriculture Organization of the UN (FAO) Code of Conduct for Responsible Fisheries;
- a review and assessment of RFMO performance in implementing the FSA;
- consideration by International Maritime Organization (IMO) members to extend Particularly Sensitive Sea Area (PSSA) designations to marine areas beyond national jurisdiction;
- application of the FSA to high seas discrete fish stocks; and
- the development and adoption of an implementing agreement to UNCLOS.

Finally, two bracketed recommendations request the Executive Secretary to work with other organizations to facilitate the development of a framework for integrated ocean

management and invites Parties to propose the development and adoption of an implementing agreement to UNCLOS.

Implications of the outcomes of the consultations

In reviewing the outcomes of the meeting, together with outcomes from the recent UNICPOLOS meeting also in June of this year, it is clear that despite the urgent need to protect marine biodiversity and the widely acknowledged role of MPAs on this front, making progress on MPAs on the high seas is going to continue to be a difficult and controversial process that some countries, including Norway and Iceland, seem determined to stop.

As Greenpeace and WWF International noted in their final statement to the meeting:

When this working group was convened, we had high hopes that countries were recognising the urgency to act in order to meet the 2010/2012 goal for the establishment of a global network of protected areas. This meeting offered a forum for CBD parties to agree to take some key steps to ensure the effective conservation of marine biodiversity in all areas of the oceans, including beyond national jurisdiction...

Despite the urgency to address high seas oceans management, the final document to emerge from days and nights of discussion does not reflect this level of urgency. In fact, it appeared that for some countries the idea to set targets to establish a handful of marine protected areas beyond national jurisdiction by 2008 was totally unacceptable, despite having only one year ago signed an agreement to establish a global network by 2012. Furthermore, there was even questioning of the CBD's role in any issues relating to the marine biodiversity on the high seas.

It is interesting to note the MPA discussions at UNICPOLOS in New York in June 2005, as summarized by IISD in their Earth Negotiations Bulletin:

Delegates debated whether MPAs would benefit both the conservation of fisheries and biodiversity, particularly in the high seas. While some delegations called for the negotiation of a global treaty on integrated MPAs in the high seas, others stressed that enhanced enforcement of existing international instruments would effectively deal with major threats to the marine environment.

Discussions on possible actions at the global level during UNICPOLOS-6 were complicated by concurrent negotiations on oceans-related issues in other fora, such as the Convention on Biological Diversity (CBD), the World Trade Organization, the Convention on International Trade in Endangered Species, the Food and Agriculture Organization, the International Maritime Organization, and the United Nations Environment Programme. On the establishment of MPAs in the high seas, positions diverged, due to the diverse understanding of the role and mandate of two ongoing international processes, namely: the CBD Working Group on Protected Areas, whose first meeting is scheduled to begin on 13 June 2005, and the *Ad Hoc* Open-ended Informal Working Group, established by the General Assembly, to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, expected to meet in February 2006. For some countries, given the limited mandate of the CBD to areas under national jurisdiction, UNICPOLOS is the

right forum to provide some guidance on MPAs. For others, language on MPAs in the negotiated outcome of the Consultative Process would prejudice the future work of the CBD Working Group. Because of these diverging views, for a moment on Friday night, MPAs risked being dropped from the negotiated text altogether, but eventually delegates agreed on encouraging progress to establish criteria on the objectives and management of MPAs for fisheries, and urging close coordination and cooperation with relevant international organizations, including the CBD (Earth Negotiations Bulletin 25 (18)).

For further information about recent discussions of MPAs at UNICPOLOS in New York in June 2005, please go to:

<http://daccessdds.un.org/doc/UNDOC/GEN/N05/414/01/PDF/N0541401.pdf?OpenElement>
<http://www.iisd.ca/vol25/enb2518e.html>

There does seem to be some agreement (although not consensus), that there is a need for both short term and long term work to advance MPAs on the high seas if signatories to the Convention are to achieve the goal of a comprehensive and representative network of MPAs by 2012. In the short term, the Canadian experts' workshop provides an opportunity to develop a list of criteria and guidelines for the identification of MPAs on the high seas. This workshop also fits within what seems to be emerging from the meeting as the appropriate role for the CBD in the high seas which is to bring its scientific expertise to the identification of areas that need to be protected.

However, given the many critiques of the scientific work undertaken by the UBC Fisheries Centre that identified high priority areas on the high seas that should receive immediate protection, and the resistance by some countries to the Canadian workshop proposal, there is a reason to be concerned that these same countries will not accept the findings of the workshop or will continue to block further progress on high seas MPAs.

In the meantime, however, there is a need to actually establish MPAs in the water that will make an effective contribution to the protection of marine biodiversity. This requires in the short term, the application and possible improvements to existing legal agreements and arrangements, including strengthening of RFMOs and establishing new ones. In the long term there is a need to develop a global implementing agreement under UNCLOS that promotes coordination among the many relevant institutions to ensure that there is an integrated and ecosystem-based and precautionary approach to the protection of marine biodiversity on the high seas, including the use of marine protected areas.

The work on these short and long term priorities must be on a parallel two-track process, especially in light of how long a new global implementing agreement may take to negotiate. In addition, application of a variety of approaches in the short term using existing instruments may help to inform the development of a global implementing agreement.

Action needed by the ENGO Community as Follow up

The next meeting of the Working Group on Protected Areas will be held in Montreal from 5-9 December 2005. It is a good opportunity for Canadian NGOs with an interest in the high seas MPA agenda, as well as the other issues on the WG agenda, to attend and attempt to influence the outcomes. On the high seas marine protected areas front, it is very important that the ENGO community support a strong role for the CBD, and push for immediate action to establish MPAs in the high priority areas identified in the scientific study, as well as following discussions in other fora, such as UNICPOLOS on governance arrangements for high seas MPAs, and push for an implementing agreement under UNCLOS.

In the meantime, the Canadian government is following up on its offer to host a workshop of international experts before the December meeting that will focus on ecological criteria for identifying high seas marine protected areas. It will be important for the NGO community with an interest in or expertise on MPAs to submit ideas to the federal organizers of this workshop.

It was interesting to read a previous report prepared for the CEN by Jerry DeMarco on the SBSTTA-10 meeting in which he notes the need for other federal departments, especially Environment Canada to play more of a leadership role in the development of Canada's positions at these international meetings. I would agree with Jerry's recommendation that ENGOs need to raise this issue with federal decision-makers if we as a community want to see Canada provide greater support for implementation of the CBD, gain Canada a better international environmental reputation, and actually see progress on MPAs on the high seas.

Finally, the NGO community should be using the target and timetables set under the CBD to help drive MPAs on the high seas forward, and push the Canadian government to do the same.