

2nd Session of the Preparatory
Committee on Marine Biological
Diversity Beyond National Jurisdiction
(BBNJ PrepCom2)

SIDE EVENT REPORT

***Strengthening capacity building and technology
transfer to empower developing states: case
study on environmental impact assessments***

Date : September 1, 2016

Venue :United Nations Headquarters, NY

Time : 1:15 p.m. to 2:45 p.m.



 THE SASAKAWA PEACE FOUNDATION

 THE OCEAN POLICY RESEARCH INSTITUTE



Strengthening capacity building and technology transfer to empower developing states: case study on environmental impact assessments

1st September, 2016

Conference Room 7

(Lunch will be provided in the Vienna Café area starting at 1:00 p.m.)

1:15 p.m. to 2:45 p.m.

Description: This side event will focus on how capacity building and technology transfer on environmental impact assessments (EIA) can empower developing states to achieve conservation and sustainable development in marine areas beyond national jurisdiction.

The panel will describe some of the best practices of EIAs based on their experiences and research, both scientific and legal, and highlight some of the needs from a small-island developing State perspective. This will be followed by discussion of some of the relevant topics raised in the Chair's summary of the first Prep Com.

PROGRAM

1:15 – 1:20 **Welcome** by Hiroshi Terashima (The Ocean Policy Research Institute, Sasakawa Peace Foundation)

1:20 – 1:25 **Introduction** by Kristina Gjerde (IUCN)

1:25 – 1:35 **Needs of new technology for sustainable use of resources in the ABNJ** by Prof. Yoshihisa Shirayama, Executive Director of the Japan Agency for Marine-Earth Science and Technology (JAMSTEC)

1:35 – 1:45 **A brief survey of international requirements for EIAs (eg CBD, London Protocol, bottom fishing, mining, etc.) and best practices for EIAs** by Prof. Robin Warner, University of Wollongong, Australian National Centre for Ocean Resources and Security (ANCORS)

1:45 – 1:55 **Experience and lessons learned on EIA in the Areas Beyond National Jurisdiction (ABNJ)** by Prof. Sandor Mulsow, International Seabed Authority (ISA)

1:55 – 2:05 **Capacity building/technology transfer needs in terms of EIAs in developing countries** by Ms. Alison Swaddling, former Environment Advisor, Geo-Survey & Geo-Resources Unit, The Pacific Community (SPC)

2:05 – 2:30 **Panel discussion on how an agreement can facilitate meaningful capacity-building and technology transfer to achieve the conservation and sustainable use of the ocean/marine biodiversity via EIAs?**

Facilitator: Kristina Gjerde

Panelists: Yoshihisa Shirayama, Robin Warner, Sandor Mulsow, Alison Swaddling, Thembile Joyini (South Africa Mission to the UN)

The panel will address the following questions:

- What are the special needs of, and challenges for, developing countries in conducting EIAs as well as Transboundary EIAs (TEIAs) and strategic environmental assessments (SEAs) in ABNJ?
- What are the best practices for EIAs as well as TEIAs and SEAs in ABNJ?
- How can an agreement complement existing bilateral capacity building and technology transfer agreements/ arrangements in terms of EIAs in ABNJ?
- What are the best options for a global and/or regional clearing-house mechanism that can be implemented to facilitate capacity building in terms of EIAs in ABNJ?

2:30 - 2:40 **Q&A**

2:40 - 2:45 **Wrap up** by Hiroko Muraki Gottlieb (IUCN)

Needs of new technology for sustainable use of resources in the ABNJ

Yoshihisa Shirayama

Japan Agency for Marine-Earth Science and Technology
(JAMSTEC)

Resources in the ABNJ

- Mineral Resources
 - Metal
 - Carbohydrate
- Biological Resources
 - Pelagic
 - Nekton
 - Plankton
 - Benthic
 - Microbes
 - animals

Development of Mineral Resources

- Large Scale, Industrial Mining
- Minimize impact on deep-sea environment
- Good Environmental Impact Assessment
- International Seabed Authority

Biological Resources

- Pelagic Nekton
 - Highly interested as food source
 - Fishes, squids,,, (FAO)
 - Whales (IWC)
- Pelagic Plankton
 - Little attention as food source
 - Potential for Genetic Resource but
 - Probably common to EEZ species

Biological Resources

- Biodiversity of benthic animals
 - High species diversity
 - Maybe vulnerable
 - Potentially Unique in ABNJ but
 - Maybe same species exist within EEZ
 - Under good consideration by ISA
- Benthic microbes
 - Potentially good genetic resource
 - Maybe vulnerable
 - Potentially Unique in ABNJ but
 - Maybe same species exist within EEZ

Key situation for sustainable development in BBNJ discussion

- Pelagic biodiversity is under management (FAO etc.)
- Biodiversity of **benthic organisms** are the most vulnerable
- Assessment procedure is under development by ISA in relation to deep-sea mining

- From SDG14 point of view, both conservation of benthic biodiversity as well as development of deep-sea mineral resource are necessary to be realized.

Zoning is the key

- Zoning: Define managing areas and protect them from impacts of development.
- Managing areas need to be well designed to protect biodiversity in the areas.
- Marine life is resilient even in the deep sea. Thus also possible to expect recolonization in the developed area.
- Assessments of Environmental Impact ensure resilience.
- Accuracy of assessment is essential.

Issues need to be taken into account

- Feasibility of assessment:
 - Not too difficult
 - Accurate enough
 - Not too expensive
 - Short enough for investment

- Innovation of new technologies:
 - Applying bioinformatics
 - Low cost sampling
 - Artificial Intelligence

Please consider

HOW ALL STAKEHOLDERS WILL WIN

Thank you

Envisioning EIA and SEA in ABNJ - International Law Frameworks and Existing Practices

Professor Robin Warner
Australian National Centre for Ocean Resources and Security



Presentation Outline

- International Law framework for EIA and SEA
- Existing EIA practices in ABNJ
- SEA/EIA distinctions and relationship
- Aspects of SEA practice.



EIA and SEA Definitions

EIA – Systematic examination of likely impacts of development proposals on the environment prior to the beginning of any activity (EU Council Directive 85/337 EEC)

SEA – Proactive and comprehensive process which identifies and evaluates the significant environmental and sustainability implications of particular plans, programmes and policies to ensure that they are fully considered and addressed at the earliest stages of decision making (Noble, 205, Verheem and Tonk, 177).



International and Regional Instruments Relevant to EIA and SEA

- LOSC- Articles 204-206
- CBD Article 14
- UN Fish Stocks Agreement
- Environmental Protocol to Antarctic Treaty
- Espoo Convention and Kiev Protocol
- CBD Voluntary Guidelines on Biodiversity Inclusive EIA in Marine and Coastal Areas
- EU Directives on EIA and SEA



LOSC Provisions on EIA

- The LOSC provides in Article 206 that where States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall... assess the potential effects of such activities on the marine environment.
- Articles 206 and 205 provide that States should publish reports of the results obtained to the competent international organizations, which should then make them available to all States.

Convention on Biological Diversity (CBD) Provisions on EIA

- The CBD links Contracting Parties obligations to conduct EIAs more directly to the conservation of biodiversity
- Contracting Parties must introduce appropriate procedures requiring EIA of proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects (Article 14 (1) (a)).
- Having identified processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, Contracting Parties must then monitor their effects through sampling and other techniques. (Article 7(c))



UN Fish Stocks Agreement

- The UN Fish Stocks Agreement requires States to:
 - assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;
 - develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and;
 - adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern
- 2009 Deep Sea Fisheries Guidelines, call for States to conduct assessments of individual bottom fishing activities, and, to adopt measures to prevent significant adverse impacts on vulnerable marine ecosystems (VMEs).



Environmental Protocol to the Antarctic Treaty

- The test applied for screening activities for EIA under the Madrid Protocol to the Antarctic Treaty has three levels – the preliminary assessment level, the initial environmental evaluation level and the comprehensive environmental evaluation level.
- All activities, both governmental and non-governmental, in the Antarctic treaty area (south of 60 degrees south latitude) are subject to these provisions, except for fishing, sealing, whaling and emergency operations, as these are covered by other international instruments.

Environmental Protocol to the Antarctic Treaty

- A preliminary assessment is carried out at the national level for all activities subject to the Protocol with less than a minor or transitory impact.
- If an activity has no more than a minor or transitory impact, an initial environmental evaluation must be carried out at the national level.
- If it has more than a minor or transitory impact, a comprehensive environmental evaluation must be carried out.



Espoo Convention

- The Espoo Convention employs a combination of mechanisms to determine whether a proposed activity is likely to have a significant adverse transboundary impact and should therefore be subject to an EIA.
- Parties are required to establish an EIA procedure for activities listed in Appendix I that are likely to cause significant adverse transboundary impact.
- They are also required to enter into discussions, at the initiative of any Party, on whether activities not listed in Appendix I are likely to cause adverse transboundary impacts and, where they agree, to subject those activities to the prescribed EIA process.

Kiev Protocol

- "Strategic environmental assessment" means the evaluation of the likely environmental... effects; which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.
- Each Party shall ensure that a SEA is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects.
- Also provisions for SEA of policies.

Typical Components of EIAs

- Screening/threshold requirements for conducting an EIA
- Scoping and Content of EIA Report.
- Notification and Public Participation in EIA Processes
- Post Assessment Obligations/ Final Decisions
- During and Post Activity Monitoring of Environmental Impacts and Compliance with Mitigation Measures

Existing EIA Processes in ABNJ

- The obligation to employ EIA to assist in preventing and reducing the adverse impacts of human activities on marine biodiversity is recognized in global and regional instruments as well as national legislation.
- EIA processes are already being applied to some activities beyond national jurisdiction such as exploration for deep seabed minerals, marine geo-engineering activities and some deep sea fishing.

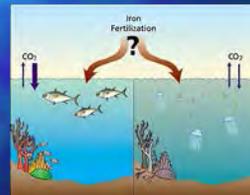
Deep Seabed Mining

- ISA Exploration Regulations – EIA provisions
- In July 2016, the Legal and Technical Commission issued a first working draft of exploitation regulations to Members of the Authority and all stakeholders for comment by 2 November 2016



Marine Geo-Engineering

- London Convention and Protocol Scientific Groups have developed a risk assessment framework (with EIA embedded) for ocean fertilisation experiments or other marine geo-engineering activities when listed. Permits required
- Became binding on States Parties to the Convention and Protocol in 2013



Deep Sea Bottom Fishing

Implementation of UNGA resolutions and Deep Sea Fisheries Guideline by RFMOs is ongoing but far from comprehensive



SEA/EIA Differences

- SEA proactively examines a wide range of alternatives for policies, plans and programmes and selects the preferred course of action with a broader environmental and planning vision in mind
 - EIA is more confined and concrete in focus determining the likely environmental impacts of a particular project or development
- While EIA is often location specific and limited in time, SEA processes broaden the spatial and temporal range of environmental assessment often being applied to whole sectors of activity or geographic areas as an institutionalised part of decision making on a long term basis.

SEA/EIA Relationship

- Ideally, SEA and EIA should be vertically integrated or tiered with environmental considerations being taken into account at the policy, plan and programme level and then flowing down to the project level (Craik, 1996; Marsden, 2008)
- EIAs are often described as being nested within a particular SEA.

SEA Practice

- The elements in an SEA process tend to be less prescribed and more iterative than in EIA processes
- An SEA process includes an array of “analytical and participatory approaches” designed to “integrate environmental considerations into policies, plans and programmes and evaluate the interlinkages with economic and social considerations.

SEA Practice

- Different tools can be employed at different stages as part of an SEA according to the context of the policy, plan or programme being assessed
- These include tools to predict environmental and socio-economic effects, tools to ensure full participation of stakeholders and tools for analysing and comparing options.

SEA Practice

Tools for predicting environmental and socio-economic effects

- Modelling or forecasting of direct environmental effects
- Matrices and network analysis
- Participatory or consultative techniques
- Geographical information systems as a tool to analyse, organise and present information

SEA Practice

Tools for ensuring full stakeholder engagement

- Stakeholder analysis to identify those affected and involved in the policy, plan or programme decision
- Consultation surveys
- Consensus building processes

SEA Practice

Tools for analysing and comparing options

- Scenario analysis and multi-criteria analysis
- Risk analysis or assessment
- Cost benefit analysis
- Opinion surveys to identify priorities

Environmental Impact Assessment in the Area: experiences and challenges

Sandor Mulsow and Kioshi Mishiro
International Seabed Authority
Kingston-Jamaica

International Seabed Authority 

1

Lately new research and peer review publications on EIA in deep sea mining

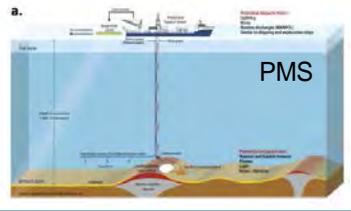


...most of them with little scientific environmental basis..

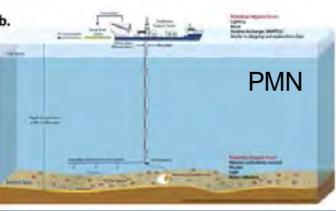
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Environmental Impact Assessment: A process

"a process of evaluating the likely environmental impacts of a proposed project or development taking into account inter-related socio-economic, cultural and human health impacts, both beneficial and adverse"

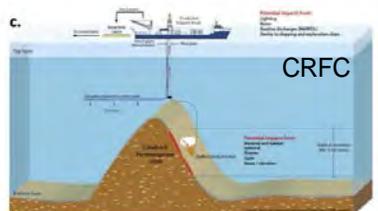


PMS



PMN

These impacts include the inadvertent introduction of invasive species, noise and air pollution generated by ships, fluid leaks and discharges from vessels and equipment, and vibrations.



CRFC

(Clark and Smith, 2013a;)

3

| | | | | | |
|----|--|------------------------|--|---|--------|
| 7 | Government of India | 25 March 2002 | India | Indian Ocean | 75,000 |
| 8 | Federal Institute for Geosciences and Natural Resources of Germany | 19 July 2006 | Germany | CCFZ (North) Pacific Ocean | 75,000 |
| 9 | Nauru Ocean Resources Inc. (NORI) | 22 July 2011 | Nauru | CCFZ (North) Pacific Ocean - | 75,000 |
| 10 | Tonga Offshore Mining Limited | 11 January 2012 | Tonga | CCFZ (North) Pacific Ocean - | 75,000 |
| 11 | G TEC Sea Mineral Resources NV | 14 January 2013 | Belgium | CCFZ (North) Pacific Ocean | 76,728 |
| 12 | UK Seabed Resources Ltd (I) | 8 February 2013 | United Kingdom of Great Britain and Northern Ireland | CCFZ (North) Pacific Ocean | 58,620 |
| 13 | Marawa Research and Exploration Ltd. | 19 January 2015 | Kiribati | CCFZ (North) Pacific Ocean - | 75,000 |
| 14 | Ocean Mineral Singapore Pte Ltd (OMS) | 21 January 2015 | Singapore | CCFZ (North) Pacific Ocean - | 58,200 |
| 15 | UK Seabed Resources Ltd (II) | 29 March 2016 | United Kingdom of Great Britain and Northern Ireland | CCFZ (North) Pacific Ocean | 74,919 |
| 17 | China Minmetals Corporation | approved, to be signed | Government of the People's Republic of China | Reserved Area CCFZ (Central) Pacific Ocean - Reserved Area | 72,740 |
| | | | | Reserved Area | |
| | | | | Reserved Area | |
| | | | | Reserved Area | |
| 16 | Cook Islands Investment Corporation | 15 July 2016 | Cook Islands | CCFZ (North) Pacific Ocean - | 75,000 |

4

Table 2. Licenses Applied to/Granted for PMS to by the International Seabed Authority in the "AREA"

| Contractor | Contract signed | Sponsoring State | General geographical location | Area (km²) |
|--|------------------------|--------------------|--------------------------------------|------------|
| 1 China Ocean Mineral Resources Research and Development Association (COMRA) | 18 November 2011 | China | Southwest Indian Ridge, Indian Ocean | 10,000 |
| 2 Government of the Russian Federation | 29 October 2012 | Russian Federation | Mid-Atlantic Ridge, Atlantic Ocean | 10,000 |
| 3 Government of the Republic of Korea | 24 June 2014 | Korea | Central Indian Ridge, Indian Ocean | 10,000 |
| 4 Institut français de recherche pour l'exploitation de la mer (IFREMER) | 18 November 2014 | France | Mid-Atlantic Ridge, Atlantic Ocean | 10,000 |
| 6 Federal Institute for Geosciences and Natural Resources of Germany | 6 May 2015 | Germany | Central Indian Ocean | 217,500 |
| 5 Government of India | approved, to be signed | India | Central Indian Ocean | |

Table 3. Licenses Applied to/Granted for CC to by the International Seabed Authority in the "AREA"

| Contractor | Contracts signed | Sponsoring State | General geographical location | Area (km²) |
|--|------------------|--------------------|---|------------|
| 1 Japan Oil, Gas and Metals National Corporation (JOGMEC) | 27 January 2014 | Japan | Western Pacific Ocean | 3,000 |
| 2 China Ocean Mineral Resources Research and Development Association (COMRA) | 29 April 2014 | China | Western Pacific Ocean | 3,000 |
| 3 Ministry of Natural Resources and Environment of the Russian Federation | 10 March 2015 | Russian Federation | Western Pacific Ocean | 6,000 |
| 4 Companhia de Pesquisa de Recursos Minerais S.A. | 9 November 2015 | Brazil | Rio Grande Rise (about 1,100 km from the coast of the Rio Grande do S.A.) | 3,000 |

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Environmental Impact Assessment: ISA

Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area. ISBA/19/LTC/8

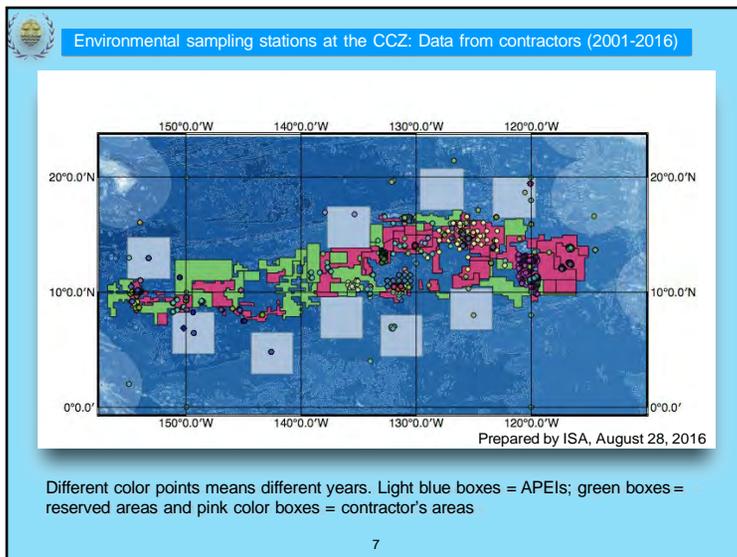
e.i. For PMN, any technique that leaves a fingerprint that exceeds 10,000 m².

Activities requiring environmental impact assessment have not been received / evaluate - LTC, yet. *NORI inception Document July 2016

"seabed activities other than mining, (e.g. cable and pipelines, seabed installations, marine scientific research, bio- prospecting, sea-based tourism). Gjerde K.M. et al. (2008)

Environmental baseline information, only way to understand functioning of environment that would be intervene.

6



7

Capacity Building

The ISA/Contractors Training programme

Contractors with the Authority have a legal obligation to provide and fund training opportunities for trainees from developing States and the personnel of the Authority. The legal basis for the requirement stems from the provisions of the Convention and the 1994 Agreement and is set out in the standard terms of contracts. The purpose of the obligation is to ensure that personnel from developing States are provided with appropriate operational expertise to enable them to participate in deep seabed mining. The training programme is generally formulated following negotiations between the Authority and the contractor, in accordance with the recommendations for guidance issued by the Legal and Technical Commission, and included as schedule 3 of the contract for exploration.

The Endowment Fund

The Endowment Fund for Marine Scientific Research in the Area aims to promote and encourage the conduct of marine scientific research in the Area for the benefit of humankind as a whole, in particular by supporting the participation of qualified scientists and technical personnel from developing countries in marine scientific research programmes and offering them opportunities to participate in training, technical assistance and scientific cooperation programmes.

The ISA internship programme

This programme is twofold: (a) to provide a framework through which students and young government officials from diverse academic backgrounds gain exposure to the work and functions of the ISA to enhance their educational experience and/or gain experience in the work of the ISA; and (b) to enable ISA to benefit from the assistance of qualified students and young government officials specialized in various skills within the scope of activities of the ISA.

8

Capacity Building

| | |
|---|-------------|
| The ISA/Contractors Training programme | 2016 |
| ACTIVE TRAINING OPPORTUNITIES | |
| <i>GSR two-year Masters Programme (one trainee)</i> COMRA At-sea Training (6 trainees) JOGMEC At-Sea Training (5 trainees) Ifremer Internships (5 internships) | 17 trainees |
| TRAINING OPPORTUNITIES UNDER IMPLEMENTATION | |
| <i>UKSRL PhD Programme (2 trainees)</i> BGR At-Sea Training (6 trainees) COMRA Fellowship Training (2 trainees) TOML At-Sea Training (2 trainees) | 12 trainees |
| COMPLETED TRAINING OPPORTUNITIES | |
| NORI Workshop training opportunities (2015, 2 trainees) COMRA Engineering Training (2015, 2 trainees) JOGMEC At-Sea Training (2015, 3 trainees) Russian Federation At-Sea Training (2015, 2 trainees) COMRA At-Sea Training (2014) TOML At-Sea Training (2013) | 11 trainees |

9

Monitoring Marine Biodiversity in Genomic Era

Project Lead: Jan Pawlowski
Université de Genève



MSR:Project

Classical monitoring tools based on morphological species identification do not satisfy the growing demand for measuring the status of the current marine biodiversity. Next-generation sequencing (NGS) technologies, such as the metabarcoding approach, could overcome these limitations. This projects aims at exploring the potential utility of the metabarcoding approach for environmental monitoring of marine ecosystems from biological, legal and economic perspectives. The research outcome will provide information to policymakers and stakeholders for future decisions on the monitoring and protection of the marine environment.

Ongoing

http://www.snis.ch/project_monitoring-marine-biodiversity-genomic-era

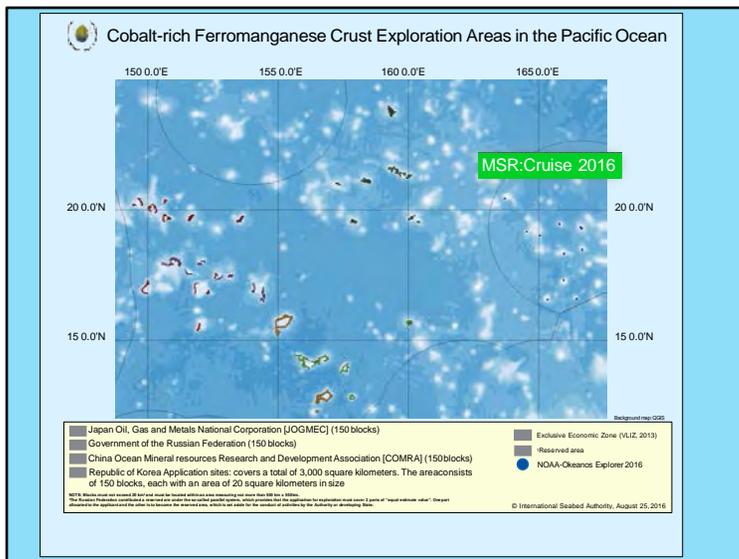
Deepwater Wonders of Wake: Exploring the Pacific Remote Islands Marine National Monument (July - August 2016)

MSR:Cruise

From July 27 through August 19, 2016, NOAA and partners (Japan, China) will conduct a telepresence-enabled ocean exploration cruise on NOAA Ship *Okeanos Explorer* to collect critical baseline information in and around the Wake Island Unit of the Pacific Remote Islands Marine National Monument.

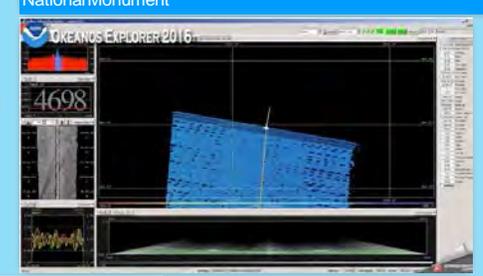
Jasper Konter, Geology Lead
Christopher Kelley, Biology Lead Brian Kennedy, Expedition Coordinator
S. Mulsow, ISA- International Coordination

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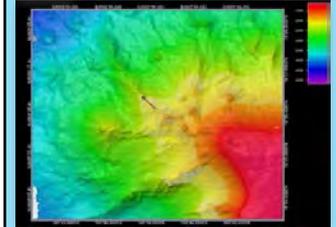


Telepresence Seafloor Mapping in the Pacific Remote Islands Marine National Monument

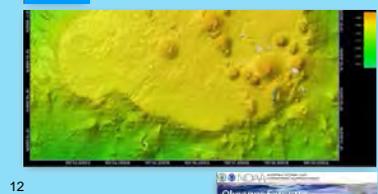
MSR:Cruise 2016



Dive 6



Dive 12



12

MSR:Cruise 2016 DIVE 10:

NOAA
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

FISH FACES
2016 Deepwater Wonders of Wake

00:02 01:23

13

MSR:Cruise 2016

14

Okeanos Explorer

Key areas for capacity-building identified:

- Funding** All EIA-related processes costs
- Man power capabilities** Transdisciplinary Expertise
- Integrated and structured environmental baseline information**
- Global, regional, public database: Data Management Plan of ISA

How to implement these areas?

- Full use of ISA current structure and programs for capacity building
- Regional and International Cooperation Programs
- New schemes for International Technical Cooperation

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Thanks

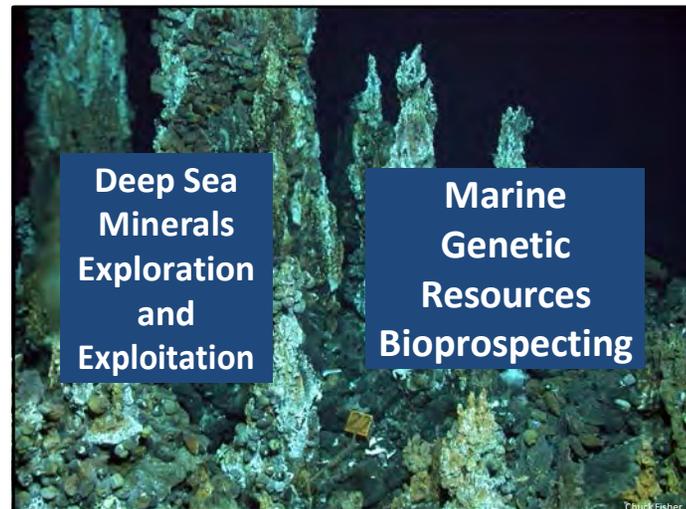
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Pacific Community
Communauté du Pacifique

ENVIRONMENTAL IMPACT ASSESSMENT CAPACITY CHALLENGES IN DEVELOPING COUNTRIES

Alison Swaddling
Deep Sea Minerals Environment Advisor

1 September 2016, New York, USA

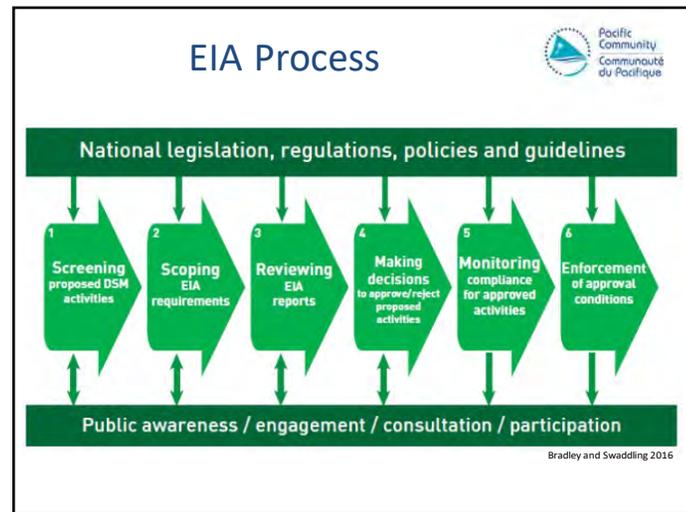


Environment Impact Assessment

1) Samples collected during EIAs for unrelated activities

2) EIA requirements for bioprospecting

NFS Ridge 2000 Programme



EIA Challenges



- human resource shortfalls
- insufficient quality control exercised over EIA reports
- weak ability to monitor compliance and enforcement
- low levels of public engagement and participation in EIA



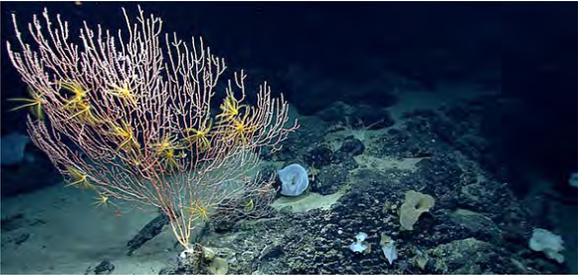
GEOMAR

Addressing Capacity Challenges



- expertise from regional organisations and external consultants will be needed initially
- development of a Regional Environmental Management Framework
- training and mentoring government officers
- training graduates
- build internal knowledge and expertise through exposure

Thank you.



GEOMAR

Bradley, M. and Swadling, A. (2016). Addressing environmental impact assessment challenges in Pacific island countries for effective management of deep sea minerals activities. *Marine Policy*, in press.

Pacific Community, (2016). *Pacific ACP-States Regional Environmental Management Framework for Deep Sea Minerals Exploration and Exploitation*. Pacific Community, Fiji.

Strengthening capacity building and technology transfer to empower developing states: case study on environmental impact assessments



Side Event, United Nations, New York
1 September 2016

Needs of new technology for sustainable use of resources in the ABNJ

- Yoshihisa Shirayama, Executive Director of the Japan Agency for Marine-Earth Science and Technology (JAMSTEC)

A brief survey of international requirements for EIAs and best practices for EIAs

- Robin Warner, University of Wollongong, Australian National Centre for Ocean Resources and Security (ANCORS)

Experience and lessons learned on EIA in ABNJ

- Sandor Mulsow, Head of the Office of Resources and Environment Monitoring, International Seabed Authority (ISA)

Capacity building/technology transfer needs in terms of EIAs in developing countries

- Alison Swaddling, Environment Advisor, Geo-Survey & Geo-Resources Unit, The Pacific Community (SPC)

Panel discussion: how an agreement can facilitate meaningful capacity-building and technology transfer to achieve the conservation and sustainable use of the marine biodiversity in ABNJ via EIAs?



Photo: Warren Keelan

Scope

- Conservation of biodiversity in a changing ocean
 - Implementing SDGs
- Implementation, compliance, participation, benefit sharing
- Forms
 - Legal (e.g. EIA)
 - Policy (e.g. open data, benefit sharing)
 - Scientific
 - Technical
- Create enabling international environment for capacity development



IUCN PrepCom2 Agenda Item 6 8/31/2016 PM
Capacity building and transfer of marine technology
Guiding principles



IUCN's statement on guiding principles on capacity building and transfer of marine technology

IUCN appreciates and supports the previous interventions made by various delegations on the need for meaningful capacity building and technology transfer which is long term and meets the needs and goals of the recipient country for the conservation and sustainable use of marine areas beyond national jurisdiction.

With respect to the applicable principles, IUCN would like to suggest that capacity building and technology transfer are both important aspects of the principle of *common concern of humankind*, which focuses on the cooperation and collaboration in pursuit of the common interests of all in the conservation and sustainable use of marine biodiversity in ABNJ. This principle is also consistent with numerous sections in UNCLOS, for example, for capacity building, Articles 239, 242 and 244, on technology transfer, Article 266. UNCLOS Articles 202 and 203 also support scientific and technical assistance to developing States.

There is great value in improving and expanding capacity building and technology transfer globally as those efforts can be leveraged to achieve conservation objectives of an implementing agreement through an effective participation of all States. As Sri Lanka has suggested, a fund could be established so that there is sustained and effective implementation of the capacity building/technology transfer mechanisms.

With respect to marine scientific research, an implementing agreement could establish a mechanism for enhancing:

- access to samples, data and knowledge, including the publication and sharing of scientific knowledge;
- collaboration and international cooperation in scientific research;
- scientific and training and access to resources, research infrastructure and technology; and
- other socio-economic benefits (e.g. research directed to priority needs such as health and security).

There are already numerous bilateral and multilateral capacity building and technology transfer initiatives with respect to MSR that have been conducted or are underway. An implementing agreement could include a provision to support coordination and collaboration of these various initiatives and associated stakeholders. IOC can be given additional support to play an important role in providing a structure for fostering that coordination and collaboration and taking it a step further. The IOC could be charged with utilizing Ocean Biogeographic Information System (OBIS) to develop an international meta-database or clearing house mechanism to facilitate an effective mechanism for accessing information relevant for the conservation a sustainable use of marine biodiversity in ABNJ.

Further, capacity building could include a mechanism to assist developing states in drafting legislation and associated regulatory, scientific and technical requirements on a national or regional level to enable

them to effectively implement various components of an implementing agreement. This could include, as pointed out by the Federated State of Micronesia, how to effectively conduct an environmental impact assessment or participate in a strategic environmental assessment.

In this regard, IUCN is very pleased to co-host a side event with Sasakawa Peace Foundation tomorrow during lunch in CR7 entitled, “strengthening capacity building and technology transfer to empower developing states: a case study on environmental impact assessments.” Lunch will be served in the Vienna Cafe starting from 1 p.m. We look forward to exchanging further ideas with you.

Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Chair's overview of the second session of the Preparatory Committee

1. In its resolution 69/292 of 19 June 2015, the General Assembly decided to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. To that end, it decided to establish, prior to holding an intergovernmental conference, a Preparatory Committee, open to all States Members of the United Nations, members of the specialized agencies and parties to the Convention, with others invited as observers in accordance with past practice of the United Nations, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under UNCLOS, taking into account the various reports of the Co-Chairs on the work of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The Assembly also decided that the Preparatory Committee would start its work in 2016 and, by the end of 2017, report to the Assembly on its progress.
2. Before the end of its seventy-second session, and taking into account the aforementioned report of the Preparatory Committee, the General Assembly will decide on the convening and on the starting date of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee on the elements and to elaborate the text of an international legally binding instrument under UNCLOS.
3. The General Assembly also decided that negotiations shall address the topics identified in the package agreed in 2011, namely the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.
4. By letter dated 4 September 2015, His Excellency Mr. Sam Kahamba Kutesa, President of the sixty-ninth session of the General Assembly of the United Nations, appointed, in accordance with paragraph 1(d) of resolution 69/292, His Excellency Mr. Eden Charles, Ambassador Extraordinary and Plenipotentiary, Deputy Permanent Representative / Chargé d'Affaires a.i. of the Permanent Mission of Trinidad and Tobago to the United Nations, as Chair of the Preparatory Committee.

5. Pursuant to paragraph 1(c) of resolution 69/292, and taking into account official holidays at the United Nations, the second session of the Preparatory Committee was convened by the Secretary-General from 26 August to 9 September 2016. Representatives from 115 Member States of the United Nations, three non-Member States, six United Nations funds and programmes, bodies and offices, 17 intergovernmental organizations, and 23 non-governmental organizations attended the session.

6. In accordance with paragraph 1(e) of resolution 69/292, and given that Mr. Nonomura Kaitaro (Japan) and Mr. Giles Norman (Canada) were no longer in a position to serve as Bureau members, the Preparatory Committee elected Mr. Jun Hasabe (Japan) and Ms. Catherine Boucher (Canada) as members of the Bureau. In light of information received from Japan according to which, in accordance with the agreement reached in the Asia-Pacific Group, Mr. Jun Hasebe would be resigning from his position as a member of the Bureau on 27 October 2016, the Preparatory Committee further elected Ms. Margo Deiye (Republic of Nauru) to serve as member of the Bureau from 28 October 2016 onwards.

7. On 26 August, following opening statements by the Chair and the Assistant Secretary-General for Legal Affairs, the Preparatory Committee adopted the agenda (A/AC.287/2016/PC.2/1) without amendment and agreed to proceed on the basis of the proposed programme of work (A/AC.287/2016/PC.2/L.2).

8. During its plenary sessions, the Committee heard general statements and considered: marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity-building and the transfer of marine technology; and cross-cutting issues. Informal working group sessions were also convened and facilitated as follows: His Excellency Mr. Eden Charles (Trinidad and Tobago)¹ for the Informal working group on marine genetic resources, including questions on the sharing of benefits; Mr. John Adank (New Zealand) for the Informal working group on measures such as area-based management tools, including marine protected areas; Mr. René Lefeber (the Netherlands) for the Informal working group on environmental impact assessments; Ms. Rena Lee (Singapore) for the Informal working group on capacity-building and the transfer of marine technology; and His Excellency Mr. Eden Charles (Trinidad and Tobago) for the Informal working group on cross-cutting issues.

9. On 8 and 9 September, the Preparatory Committee considered, in plenary, the issues addressed by it to date, including on the basis of the oral reports from the Facilitators of the Informal working groups and informal documents containing the Chair's understandings of possible areas of convergence of views and possible issues for further discussion (annex I). Owing to time constraints, no plenary discussions could be held on the Chair's understandings of possible areas of convergence of views and possible issues for further discussion regarding cross-cutting issues, which were presented orally. The Committee also considered the Chair's proposed road map up to and for the next session of the Committee.

¹ The Chair facilitated the Informal working group in light of the unavailability of His Excellency Mr. Carlos Sobral Duarte (Brazil).

Road map

10. In accordance with the road map proposed by the Chair and approved by the Preparatory Committee on 9 September 2016, the Chair prepared the present overview of the second session of the Preparatory Committee, which includes the Chair's understandings of possible areas of convergence of views and possible issues for further discussion revised, where applicable, on the basis of discussions held in plenary on 8 and 9 September (see para.9), and the Chair's general observations (annex II).

11. In advance of the third session of the Preparatory Committee, the Chair will prepare and circulate a rolling compilation of proposals for elements of a draft text of an international legally-binding instrument received from delegations by 5 December 2016.² The Chair will also prepare and circulate a non-paper which will provide a structured presentation of issues and ideas reflected in the rolling compilation as well as of possible areas of convergence from the Chair's understandings and those issues and ideas which were extensively discussed during the second session of the Preparatory Committee. The non-paper will be under the Chair's full responsibility and is not meant to preclude delegations from raising issues that may not be addressed in it.

12. At the third session of the Preparatory Committee, to be held in 2017,³ the Chair intends to devote more time to the issues which have emerged at the second session as requiring further discussions, bearing in mind that in accordance with resolution 69/292, negotiations shall address the topics identified in the package agreed in 2011 together and as a whole.

13. Given the need for additional scientific and technical information on some issues, delegations are encouraged to continue organizing side events and workshops featuring expert presentations both prior to the third session of the Preparatory Committee and on the margins of the sessions of the Preparatory Committee.

14. A preparatory meeting will be convened before the third session of the Preparatory Committee.

² Proposals must be sent to doalos@un.org.

³ Dates to be decided by the General Assembly in its annual resolution on oceans and the law of the sea scheduled for adoption in December 2016.

Annex I

Chair's understandings of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working groups

Appendix 1

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on marine genetic resources, including questions on the sharing of benefits

As revised following plenary discussions on 8 September 2016

Possible areas of convergence of views

- Usefulness of agreeing on working definitions of marine genetic resources and other key concepts at the preliminary stage
- Usefulness of drawing on definitions contained in existing instruments
- Guiding principles and approaches constitute a cross-cutting issue
- Benefit-sharing for non-monetary benefits
- The rights of coastal States over their continental shelf should be respected
- Benefit-sharing should/should also/could contribute to conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction
- Benefit-sharing should be beneficial to current and future generations, build capacity to access marine genetic resources of areas beyond national jurisdiction, and not be detrimental to research and development

Possible issues requiring further discussions

- Whether to take into account the distinction between fish used for its genetic properties and fish used as a commodity when developing a definition
- Whether the common heritage of mankind and the freedom of the high seas are mutually exclusive or could apply concurrently in an international instrument
- Whether access to resources *ex situ*/resources *in silico*/genetic sequence data should be included in an access and benefit-sharing regime
- Whether to include derivatives or not in the scope
- Whether to regulate access to marine genetic resources of areas beyond national jurisdiction or not
- Whether to include monetary benefits or not
- Whether to include marine genetic resources of the water column beyond areas of national jurisdiction in a benefit-sharing regime
- Whether to have a benefit-sharing mechanism
- Whether to address intellectual property rights in an international instrument
- Role of traditional knowledge in the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction

Appendix 2

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on measures such as area-based management tools, including marine protected areas

As revised following plenary discussions on 8 and 9 September 2016

Possible areas of convergence of views

- A number of principles and approaches to be taken in the establishment of ABMTs, including MPAs, such as:
 - Transparency
 - ecosystem approach
 - science-based approach
- States have the obligation to protect and preserve the marine environment
- ABMTs, including MPAs, should collectively contribute to the objective of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Possible issues requiring further discussion

- Whether ABMTs, including MPAs, should contribute to rehabilitation and restoration of ocean ecosystems and health
- Usefulness of defining ABMTs and MPAs
- Whether definitions of/use of terms related to ABMTs, including MPAs, should be based on existing definitions, adapted to the context of marine biodiversity of areas beyond national jurisdiction
- The possible need to include a definition of marine reserves
- Further discussion on what combination of elements, including vertical, horizontal, top-down, and bottom-up approaches would be most effective in delivering on the objectives of the mandate.
- Clarification of what participants understand those different approaches to entail
- A new mechanism/process/global framework/instrument would provide for a consultative, integrated approach to ABMTs, including MPAs
- A new mechanism/process/global framework/instrument would provide for a transparent and inclusive approach to ABMTs, including MPAs
- The need/ways and means to foster better and enhanced cooperation and coordination
- The “architecture” of and need for any institutional mechanisms which would need to be established, including the role of a possible conference of parties or other coordinating mechanism
- Procedural and decision-making processes
- An avenue, such as a scientific committee/process, for seeking the necessary scientific input to any policy-making body/to provide the necessary scientific input for policy-making under the new instrument
- States, individually or through relevant organizations/collectively, would make proposals in relation to ABMTs
- Identification and role of stakeholders

- The decision to designate an MPA, especially in areas which adjoin areas under national jurisdiction, should be taken with the consent of neighbouring coastal States and management of the MPA should be entrusted to the coastal States
- The decision to designate an MPA should be taken after a consultation process which seeks to take into consideration the views and concerns of all stakeholders, including any neighbouring coastal States as well as humankind as a whole
- Follow-up and monitoring mechanism
- Principles and approaches needing further discussion include, but are not limited to:
 - Balance between conservation and sustainable use
 - Precautionary approach/principle
 - Cultural value/traditional knowledge
 - Adjacency
 - Special case of SIDS
 - Integrated approach, the multi-sectoral approach as well as adaptive management
 - Inclusiveness
 - Participatory approach
 - Accountability
 - Cooperation, as provided for in article 197 of UNCLOS
 - Liability and the polluter-pays principle
 - Principles referred to in the United Nations Fish Stocks Agreement (e.g. article 5)
 - States as stewards of the marine environment
 - Flexibility
 - Equitable use in the context of intra- and inter-generational equity
 - Cost-effectiveness
- Ways and means to implement the obligation to protect and preserve the marine environment
- The rights of coastal States with respect to their continental shelf should be respected/taken into account

Appendix 3

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on environmental impact assessments

As revised following plenary discussions on 9 September 2016

Possible areas of convergence of views

- EIAs should contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Existing relevant legal instruments and frameworks, in particular UNCLOS, as well as relevant global, regional and sectoral bodies should not be undermined, as stipulated in resolution 69/292
- The need for transparency in the environmental impact assessment (EIA) process, including through involvement of States and relevant stakeholders, and the dissemination of assessment reports
- The reports of environmental assessments should be made publicly available

Possible issues requiring further discussions

- Capacity-building should address the capacity of SIDS, African States and developing countries, including land-locked countries, to participate in and conduct EIAs
- Whether an international instrument should cover activities in areas within national jurisdiction that may have an impact in areas beyond national jurisdiction bearing in mind the need to not undermine State sovereignty
- An international instrument would address EIAs for activities in areas beyond national jurisdiction that may have an impact that reaches an agreed threshold in areas beyond national jurisdiction
- Article 206 of UNCLOS is the point of departure for the discussion on thresholds and responsibility for EIAs, and guidance is needed in an international instrument for the implementation of this provision in areas beyond national jurisdiction
- Whether transboundary impacts should be included, and if so, as a consideration within EIAs or as a separate procedure of Transboundary Environmental Impacts Assessments (TEIAs)
- The role of coastal States and the United Nations in any TEIAs being conducted for activities in areas beyond national jurisdiction that may have an impact in areas within their national jurisdiction
- What thresholds and criteria should be used for identifying activities requiring EIAs
- Whether to use a list of activities requiring EIAs, including for new and emerging activities, or exempt from EIAs, criteria, or a combination of these approaches
- Whether a lower threshold should apply for areas identified as significant
- The EIA process should follow the following procedural steps: screening; scoping; access to information including environmental information; public notification and consultation at the global level, including effective participation of stakeholders and consultation with States/relevant States/relevant States, including adjacent coastal States,

coordination with existing sectoral and regional organizations; independent scientific review of reports at the global level; consideration of reports; and publication of reports

- Who should be regarded as stakeholders and how should the consultations with stakeholders be conducted
- Whether to develop a list of prohibited activities
- Whether the costs for conducting the EIA should be borne by the proponent of an activity
- Whether, or not, there should be any oversight, or involvement, at the global or regional level in the EIA process? If so, how should this oversight, or involvement, operate? (a) Should it be at the regional or at the global level? (b) At what stage(s) in the EIA process should it occur?
- The stage(s) at which there should be international involvement or oversight, if any, in the EIA processes (notably who should be responsible for deciding that an EIA is required, conducting EIAs, reviewing assessment reports, deciding on the admissibility of an activity, monitoring and reviewing activities)
- Whether an international instrument should include provisions for monitoring and review, and if so whether they should be mandatory or voluntary
- Whether an international instrument should include provisions for compliance and liability
- How would EIAs be reviewed, by whom (organization or State) and how the reviews should be conducted
- The need for a clearing house or central repository for EIAs and strategic environmental assessments (SEAs).
- Whether the function of central repository could be fulfilled by existing bodies or should be assigned to a new body
- What is the specific content of assessment reports
- Whether to include SEAs in an international instrument
- Whether SEAs can be linked to marine spatial planning
- Clarification of the concept, scope and procedural aspects of SEAs, including fiscal policy, taking into account existing definitions and approaches
- The interests of people who have not attained full independence or other self-governing status recognized by the United Nations, or people of a territory under colonial domination
- The territorial integrity and sovereignty of States and their sovereign rights must be respected

Appendix 4

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on capacity-building and the transfer of marine technology

As revised following plenary discussions on 9 September 2016

Possible areas of convergence of views

- Capacity-building and transfer of technology are cross-cutting and vitally important to enable developing States to conserve and sustainably use marine biological diversity of areas beyond national jurisdiction
- Capacity-building, including institutional capacity-building, and transfer of marine technology should be responsive to national and regional needs, priorities and requests, with flexibility to adapt as needs and priorities change
- The IOC Criteria and Guidelines on the Transfer of Marine Technology are useful as a guiding tool for further work on the transfer of marine technology in an international instrument
- Importance of the involvement of relevant stakeholders in capacity-building and transfer of marine technology

Possible issues requiring further discussions

- Whether capacity-building and transfer of marine technology should have a broad and general focus or be specific to the issues identified in an international instrument
- The special needs/specific circumstances/particular circumstances/specific challenges of developing countries, including least developed countries, small island developing States, landlocked developing States, African States, middle-income States and geographically disadvantaged States and States that are highly/particularly vulnerable to climate change need to be considered
- How would capacity-building and transfer of marine technology needs and priorities be reviewed periodically
- If and how to address the issue of intellectual property rights
- Whether and how to address innovation with reference to marine science and transfer of technology
- Definition/meaning/scope of marine technology, and which technology should be transferred and from which category of countries
- Consideration of benefits of transferring particular technologies
- Terms and conditions for capacity-building and transfer of marine technology
- The nature of any funding mechanism and its modalities of operation, including whether it is global and provided on a voluntary or mandatory basis
- If and how a funding mechanism should be established, and its modalities of operation, including whether it is provided on a voluntary or mandatory basis
- If and how to link a capacity-building and transfer of marine technology mechanism with a benefit-sharing regime under an international instrument

- Ways to incentivize capacity-building and transfer of marine technology, including with reference to the private sector
- Whether to establish a clearing-house mechanism for capacity-building and transfer of marine technology, if any, or use existing ones
- What mechanisms are required to follow-up on the results of capacity-building and transfer of marine technology programmes
- How to coordinate capacity and transfer of marine technology activities under an international instrument with existing programmes/mechanisms
- How to coordinate and harmonize capacity-building efforts and transfer of marine technology activities under an international instrument vis-a-vis existing programmes/mechanisms across different partnerships/organizations
- How to enhance cooperation
- The role of partnerships
- Traditional knowledge from indigenous peoples and local communities can provide an important source of capacity-building in connection with the elements of the implementing agreement. Similarly, capacity-building can enable indigenous peoples and local communities to engage in activities relevant to the implementing agreement
- Monitoring, reporting and evaluation should be consistent with other existing instruments
- The work and lessons learned from existing instruments and mechanisms should be built upon or improved. Existing mechanisms should not be undermined or duplicated rather should be strengthened, harmonized and/or simplified

Appendix 5

Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the discussions in the Informal working group on cross-cutting issues

As read out by the Chair in plenary on 9 September 2016

Possible areas of convergence of views

- New instrument will take the form of an implementing agreement under the United Nations Convention on the Law of the Sea
- Overall objective of an instrument, consistent with resolution 69/292, would be the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction through the effective implementation of the relevant provisions of the United Nations Convention on the Law of the Sea
- There seemed to be a convergence of views around considering the following as guiding principles and approaches for inclusion in an international instrument:
 - Respect for the balance of rights, obligations and interests enshrined in UNCLOS
 - Incorporation of, and non-derogation from, the relevant principles enshrined in UNCLOS
 - Respect for the law of the sea
 - No undermining of existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
 - Respect for the rights of coastal States over all areas under their national jurisdiction, including their continental shelves beyond 200 nautical miles where applicable
 - Respect for the sovereignty and territorial integrity of coastal States
 - International cooperation and coordination
 - Duty to cooperate
 - Protection and preservation of the marine environment
 - Duty not to transform one type of pollution into another
 - Use of biodiversity of areas beyond national jurisdiction for peaceful purposes only
 - Ecosystem approach
 - Science-based approach
 - Use of the best available scientific information
 - Public availability of information
 - Public participation
 - Good governance
 - Transparency
 - Accountability
 - Intra- and inter-generational equity
 - Capacity-building and technology transfer
 - Due regard for the rights of others
- A distinction should be drawn between principles and approaches
- Definitions should be consistent with those contained in UNCLOS

- Universal participation in the instrument should be sought and participation should be open to all States, regardless of whether they are parties to UNCLOS
- The instrument will be under UNCLOS and, as such, must be consistent with it
- Guidance can be drawn from existing instruments, in particular the United Nations Fish Stocks Agreement, when addressing the relationship of the instrument with UNCLOS
- The instrument should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies
- The institutional arrangements established by an instrument would have to be “fit-to-purpose”, cost-effective and efficient
- Some of the functions to be covered by institutional arrangements under an international instrument include: decision-making, enhancement of cooperation and coordination, information-sharing, scientific advice, and capacity-building and transfer of marine technology
- The institutional arrangement at the global level could include:
 - a decision-making forum
 - a scientific forum
 - a clearing-house
 - a secretariat
- The provisions of UNCLOS relating to the peaceful settlement of disputes reflect a good starting point for consideration of dispute resolution under the instrument
- The need for/relevance of capacity-building and transfer of marine technology

Possible issues requiring further discussions

- Whether the objective of an instrument should also include the following:
 - addressing threats and imminent dangers to the oceans
 - revitalization and recovery of damaged marine ecosystems
 - contribution to poverty alleviation
 - contribution to the mitigation of the effects of ocean acidification and climate change
 - addressing existing legal and implementation gaps
 - promotion of international cooperation and coordination
 - benefit-sharing
 - development of an integrated approach
 - attainment of universal participation
- The following guiding principles and approaches would require further discussion:
 - Common heritage of mankind
 - Freedom of the high seas
 - Equal rights of States, whether coastal or land-locked, in areas beyond national jurisdiction
 - Fair and equitable use of resources
 - Fair and equitable benefit-sharing
 - Stewardship for present and future generations
 - Precautionary principle/approach
 - Adaptive management
 - Flexibility
 - Involvement of relevant stakeholders
 - Role of women

- Incorporation of traditional and local knowledge
- Adjacency and the requirement to consult
- No domination by corporate interests
- Common concern of humankind
- Special interests, circumstances and needs of developing countries, in particular small island developing States, least developed countries and land-locked developing States
- Common but differentiated responsibilities
- Avoiding placing disproportionate burden on small island developing States
- Liability of States for damages to or endangerment of the marine environment
- Polluter-pays principle
- What principles proposed for inclusion are recognized as such under international law
- What approaches are sufficiently well established for inclusion in an international instrument
- How would each proposed principle and approach apply to the various elements of the 2011 package
- How and where to reflect applicable guiding principles and approaches within an instrument
- Which terms need to be defined in an international instrument
- Where in the instrument should specific definitions be included
- Relationship to other instruments and frameworks
 - How to set out the relationship with other instruments in the instrument
 - How best to improve the effectiveness of regional and sectoral bodies, where required
 - Should existing regional and sectoral bodies be accountable to an institutional arrangement established under the instrument
 - How would the instrument address the situation where there is no relevant regional or sectoral body
- Whether the instrument should regulate activities with an impact on biodiversity of areas beyond national jurisdiction
- Whether to build on existing institutions, develop new institutional arrangements or a combination of both
- The relationship of the institutional arrangement with existing regional and sectoral bodies
- Whether there would be a role for the International Seabed Authority
- What form might a decision-making forum at the global level have
- What form might a scientific forum have
- The role of existing scientific and technical bodies and processes
- Should institutional arrangements include a compliance mechanism
- Who would perform the functions of the secretariat
- Whether there would be a role for the Division for Ocean Affairs and the Law of the Sea
- Whether it is necessary to include provisions on responsibility and liability, and, if so, what such provisions should cover
- Whether relevant stakeholders should be required to contribute to a liability fund or post a security bond to access resources covered under the instrument

- What, if any, mechanisms for the review of implementation and compliance should be developed
- What, if any, additional mechanisms for dispute resolution should be considered for inclusion in addition to those in UNCLOS
- Should a possible dispute resolution mechanism be developed:
 - Who should have standing to access the dispute resolution mechanism
 - Should the dispute resolution mechanism allow for the issuance of advisory opinions
 - Should the dispute resolution mechanism foresee the creation of a special chamber under the International Tribunal for the Law of the Sea
 - What would be the relationship between a possible dispute resolution mechanism under the instrument and existing dispute resolution mechanisms under regional and sectoral instruments
- Whether the final clauses contained in the United Nations Fish Stocks Agreement could be adapted for the new instrument
- What should be the requirements for entry into force of the instrument

Annex II

Chair's general observations

1. The Chair thanks all delegations for their hard work and constructive engagement during the intersessional period and at the second session of the Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. In particular, the Chair is encouraged by the willingness of delegations to make written submissions to assist the process moving forward, without prejudice to their future positions, and ensure that the Preparatory Committee can deliver on its mandate, as set out in resolution 69/292. In accordance with that resolution, the Preparatory Committee is mandated to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS), taking into account the various reports of the Co-Chairs on the work of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The Chair welcomes the submissions which have tried to identify ways to bridge the gap between different views. The Chair notes that these submissions should not be seen as constituting possible treaty language but as useful bases for concrete proposals of elements of a draft text.

2. The Chair observes that, under the very skilful guidance of the Facilitators, the Informal working groups have continued to serve as a useful mechanism to assist delegations in unpacking the package of issues to be considered by the Preparatory Committee in accordance with resolution 69/292, including by addressing these issues in greater detail with a view to identifying possible areas of convergence and areas requiring further discussions. The Chair welcomes the fact that many delegations were prepared to engage in the discussions with specific ideas of how an international legally binding instrument under UNCLOS might address these issues. Delegations continued to be keenly aware, in particular, of the need to not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. The Informal working groups have also continued to provide a useful mechanism for open, transparent and inclusive discussions.

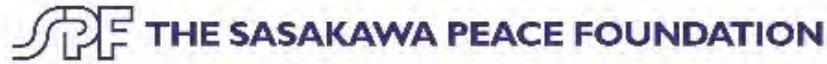
3. The Chair's understandings of possible areas of convergence and issues where further discussions are required, based on Informal working groups' discussions and as revised, where applicable, following plenary discussions, are attached as annex I.

4. Moving forward, the Chair is of the view that discussions will need to intensify to identify ways to bridge the divergent views of delegations regarding the application of the high seas freedom and the common heritage of mankind in relation to marine genetic resources of areas beyond national jurisdiction, including questions on the sharing of benefits. With regard to measures such as area-based management tools, including marine protected areas, the Chair invites greater focus on the modalities for the designation of such

measures, as well as on issues relating to management, monitoring, control and surveillance and enforcement. The Chair is encouraged by the detailed discussions and suggestions on environmental impact assessments and capacity-building and the transfer of marine technology and invites delegations to carry these discussions forward towards concrete proposals for elements of a draft text. The Chair would like to see more discussions on the cross-cutting issues. In particular, the Chair encourages delegations to be more specific in their suggestions, for example concerning how definitions may be addressed in an international legally binding instrument, how governing or overarching principles may be featured in such instrument, or how provisions from other treaties on dispute settlement may be used in the present context. The Chair further invites delegations to give greater consideration to discussions on the scope of an international legally binding instrument.

5. The Chair is encouraged by the willingness of delegations to discuss the future directions for the Preparatory Committee. As the process progresses, the Chair encourages greater consideration and discussions of alternative proposals seeking to bridge different views. The Chair also envisages that most of the third session of the Preparatory Committee would be focused on addressing contentious issues.

6. The Chair is encouraged by contributions made to the trust fund established pursuant to paragraph 5 of resolution 69/292 and encourages further contributions from Member States, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons.



The Ocean Policy Research Institute of the Sasakawa Peace Foundation (OPRI-SPF) Statement to Second Session of the Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

- *Item 6: Development of substantive recommendations on the elements of a draft text of an international legally binding instrument under the United Nations Convention on the Law of the Sea.*
 - o *Informal working group on capacity building and technology transfer.*

Thursday 1 September 2016

Thank you Madam Facilitator. Since it is our first time to take the floor, I would like to echo others in expressing our full confidence in your leadership in guiding this important discussion.

The Ocean Policy Research Institute of the Sasakawa Peace Foundation (OPRI-SPF) is an Ocean Think and Do Tank as well as NGO, that has been actively engaged in capacity building on maritime issues and ocean governance. We would like to make two points in this intervention.

Firstly, capacity building requires long-term commitment and dedication. As references were kindly made by some delegations, our Institute for over 20 years has been providing scholarships to master's students from developing countries at the World Maritime University (WMU). Since its inception, over 550 scholarships have been provided. Touching upon the issue of brain drain, we would like to point out that building a strong alumni network is crucial. Our Institute maintains and updates a database of alumni, and also organizes face-to-face reunions in various ways. This global network

of professionals is an excellent pool of human resources, networking, mutual learning, and a base of international cooperation. We would like to repeat that after solid academic training experience, follow-up is also key.

Secondly, in order to pursue the goal of capacity development on BBNJ, as stated by a number of delegations, it is crucial to have participation and commitments from multiple stakeholders ranging from governments, IGOs, NGOs, the academia, the business sector, philanthropic organizations, and so on. The coordination and cooperation among these organizations, bringing in their competences, resources, and networks, will be an essential part of effective capacity development for the conservation and sustainable management of BBNJ.

In this regard, I would like to introduce an example of a platform for collaboration and project implementation. Recently, aiming to reorient ourselves as a Think & Do Tank, we proposed and established the Islands and Oceans Network (IO-Net) at SIDS 2014 as a collaborative network for organizations and individuals to voluntarily coordinate and collaborate their efforts for *Better Conservation and Management of Islands and their Surrounding Ocean Areas*. At the moment, I am glad to see that governments, universities, business people, and volunteers, both from the Pacific island States and international society, and including international and regional organizations, have expressed their interests and willingness to take part in this endeavor, based on the spirit of collaboration, partnership and innovation. I hope this example will help further your deliberations.

We all have to play our part in advancing capacity building efforts, and I would like to reiterate the importance of broad and active participation at all levels.

Thank you madam facilitator.

Statement provided by Mr. Hiroshi Terashima, President, the Ocean Policy Research Institute of the Sasakawa Peace Foundation (OPRI-SPF).



SUMMARY REPORT

OPRI-SPF and IUCN Side Event at the United Nations

Strengthening capacity building and technology transfer to empower developing states: a case study on environmental impact assessments

Introduction

On September 1, 2016, Ocean Policy Research Institute at Sasakawa Peace Foundation (OPRI-SPF) and International Union for Conservation of Nature (IUCN) co-hosted a 1.5 hour lunch time side event at the United Nations Headquarters in New York City. This event was held during the second Preparatory Committee established by the United Nations General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The Preparatory Committee (PrepCom) was established to make recommendations on the elements of a draft text of an international legally binding agreement under UNCLOS on the conservation and sustainable use of marine biological diversity in ABNJ. The negotiations are to address in particular, “together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity building and the transfer of marine technology.”¹

¹ UNGA Res. 69/292.

Reference documents are available at the end of this report.

Objective

The objective of this side event was to provide information to those attending the Second Prep Com on how capacity building and technology transfer on environmental impact assessments (EIA) can empower developing states to achieve conservation and sustainable development in marine areas beyond national jurisdiction. Capacity building and technology transfer is one of the elements that the Prep Com is tasked to address in a recommendation to the United Nations General Assembly and all countries participating in the Prep Com process are interested in how to operationalize the concept.



Mr. Terashima, President, OPRI-SPF

Presentation summary

The panel described some of the best practices of EIAs based on their experiences and research, both scientific and legal, and highlighted some of the needs from a small-island developing State perspective. Below are the highlights of the presentations. PowerPoint presentations are included in the reference documents.

Mr. Hiroshi Terashima, President, OPRI-SPF gave the welcome. Mr. Terashima stressed that the role of individual States to implement the treaties and agreements in the international space of the ocean is fundamental and critical. He argued that all States, including developing States and small Island States, must have the capacities to implement them, and must coordinate and collaborate in their efforts, or the

conservation and sustainable development of BBNJ will not be achieved. He further said that active promotion of the transfer of marine technology is needed to ensure effective implementation.



Kristina Gjerde, Dr. Yoshihisa Shirayama and Alison Swaddling

Kristina Gjerde, Senior High Seas Advisor to IUCN gave the introduction. Ms. Gjerde introduced the speakers and spoke about the need for conservation of biodiversity in a changing ocean as the ocean continues to suffer from degradation due to various stressors including climate change, ocean acidification and deoxygenation. She also spoke about the sustainable development goals and the need for implementing the goals/indicators and in doing so, that we must enable international cooperation for capacity development.

Yoshihisa Shirayama, Executive Director of the Japan Agency for Marine-Earth Science and Technology (JAMSTEC) gave a presentation on the needs for new technology for sustainable use of resources in the ABNJ. Dr. Shirayama introduced the various resources that are of interest in ABNJ (i.e. mineral and biological resources). He emphasized the importance of marine scientific research and development of effective but low-cost equipment (e.g. monitoring systems) so that information necessary for conservation can be obtained at reasonable costs. He believes that innovation will be the key factor in allowing all stakeholders to win.

Robin Warner of University of Wollongong, Australian National Centre for Ocean Resources and Security (ANCORS) gave a brief survey of international requirements for EIAs and best practices for EIAs. Dr. Warner explored the requirements in UNCLOS, the UN Fish Stocks Agreement, the Convention on Biological Diversity, the Environmental Protocol to the

Antarctic Treaty, the Espoo Convention and the Kiev Protocol. She also explained the typical components of EIAs. Dr. Warner also spoke about the existing EIA processes in ABNJ (e.g. deep seabed mining, marine geo-engineering and deep sea bottom fishing). Dr. Warner also explained how a strategic environmental assessment may be conducted and the difference between EIAs and SEAs. This discussion was particularly of interest to the attendees as the Facilitator had asked questions about SEAs to the delegations during an informal working group session.

Sandor Mulsow, Head of the Office of Resources and Environment Monitoring, International Seabed Authority (ISA) gave a presentation on the experience and lessons learned on EIA in ABNJ. Dr. Mulsow explained the EIA process for deep sea mining and explored the rich capacity building programs that are available for ISA contractors as well as various site specific information that is available via work conducted by NOAA. He identified the key areas for capacity building, which are, funding, manpower capabilities and integrated and structured environmental baseline information. Dr. Mulsow also recommended that to implement capacity building, ISA's current structure and programs as well as regional and international cooperation programs could be utilized. He also identified the need for new schemes for international technical cooperation.

Alison Swaddling, Environment Advisor, Geo-Survey & Geo-Resources Unit, The Pacific Community (SPC) gave a presentation on the capacity building/technology transfer needs in terms of EIAs in developing countries. Ms. Swaddling focused on the capacity challenges facing Pacific island countries. The challenges range from human resource shortfalls to weak ability to monitor compliance and enforcement. The risks associated with not conducting proper EIAs includes not only environmental harm but discouragement of sustainable development. Ms. Swaddling said, however, that there are various ways in addressing capacity challenges. Such measures focus on the need for support from developed countries and a focus on

regional organizations as a hub may be an effective way.



Thembile Joyini, Legal Advisor, South Africa

Commentary

Thembile Joyini, Legal Advisor for the Permanent Mission of the Republic of South Africa to the United Nations commented that there is tremendous need in the developing countries to be capacitated. There is a need for scientific expertise and equipment to conduct marine scientific research. His hope is that the agreement can facilitate meaningful capacity-building and technology transfer to achieve the conservation and sustainable use of the marine biodiversity in ABNJ via EIAs.

Conclusion

This event was very well attended, despite competing events occurring at the same time, indicating a high level of interest on this topic. Capacity building and technology transfer is a very important topic for the developing countries as recipient countries and also for the developed countries as donor countries. The presenters gave relevant and helpful information on each of their subject areas that allowed the attendees to further delve into the topic of capacity building and technology transfer, utilizing environmental impact assessment as an example. The knowledge shared during the side event was useful during the deliberations on the floor at the UN as well and both OPRI-SPF and IUCN made interventions regarding this topic. The interventions are included in the reference documents. Further, a draft list of key discussion points that have been provided by DOALOS on the topic of capacity building and technology transfer reflects the points that were part of the presentation. This draft list is also included in the reference documents.

Reference documents

Program

PowerPoint presentations

- **Introduction** by Kristina Gjerde, Senior High Seas Advisor, IUCN
- **Needs of new technology for sustainable use of resources in the ABNJ**, by Yoshihisa Shirayama, Executive Director of the Japan Agency for Marine-Earth Science and Technology (JAMSTEC)
- **A brief survey of international requirements for EIAs and best practices for EIAs**, by Robin Warner, University of Wollongong, Australian National Centre for Ocean Resources and Security (ANCORS)
- **Experience and lessons learned on EIA in ABNJ** by Sandor Mulsow, Head of the Office of Resources and Environment Monitoring, International Seabed Authority (ISA)
- **Capacity building/technology transfer needs in terms of EIAs in developing countries** by Alison Swaddling, Environment Advisor, Geo-Survey & Geo-Resources Unit, The Pacific Community (SPC)

Interventions made on the floor during the Second PrepCom

- Intervention by IUCN
- Intervention by OPRI-SPF

Chair's overview of the second PrepCom

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