2nd Session of the Preparatory Committee on Marine Biological Diversity Beyond National Jurisdiction

(BBNJ PrepCom2)

SIDE EVENT REPORT

Creating integration and synergies for conservation use of marine biodiversity of areas beyond national jurisdiction

Date : September 2, 2016

Venue : United Nations Headquarters, NY

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

IUCN

THE SASAKAWA PEACE FOUNDATION

THE OCEAN POLICY RESEARCH INSTITUTE

Creating integration and synergies for conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction:

case study on sustainable fisheries management

September 2, 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: United Nations General Assembly Resolution 69/292 (69/292) has established a Preparatory Committee (PrepCom) for the 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 (ABNJ). One of the key issues that has been under consideration at the PrepCom is how to achieve cooperation, coordination and coherence between the new instrument and existing frameworks. At this side event, sustainable fisheries management will be used as an example for achieving synergies and cooperation for biodiversity conservation and sustainable use.

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 – 1:55: **Presentations on current fisheries practices in the ABNJ**

1:25 – 1:35: Implementation of the FAO Code of Conduct for Responsible Fisheries and the UN Fish Stocks Agreement with respect to protection of marine ecosystems and biodiversity in ABNJ and an overview of RFMO mandates and management strategies for protecting marine ecosystems and biodiversity in ABNJ by Árni M. Mathiesen, (Assistant Director General and Head of FAO's Fisheries and Aquaculture Department)

1:35 – 1:45: RFMOs - Protection of Biodiversity and VMEs, and Role in Cross-Sectoral Cooperation and Coordination by Stefán Ásmundsson (Secretary of the North East Atlantic Fisheries Commission <NEAFC>)

1:45 – 1:55: Role of ICCAT in the Conservation of Biodiversity by Driss Meski (Executive Secretary of International Commission for the Conservation of Atlantic Tuna <ICCAT>)

1:55 – 2:40 **Panel discussion:** The panel will discuss how a new implementing agreement can contribute to sustainable fisheries management. In particular, the panel will address how an implementing agreement can act as a global mechanism and promote coherence among existing regional and sectoral structures and how an agreement can strengthen and enhance the work of existing bodies without undermining them.

Facilitator: David Johnson (Coordinator, Global Ocean Biodiversity Initiative)

Panelists: Árni M. Mathiesen, Stefán Ásmundsson, Driss Meski, Daniel Dunn, Amanda Nickson, Duncan Currie (Globelaw, SPRFMO observer)

Opening Comments:
Impacts of fishing on open-ocean ecosystems and other considerations by Daniel Dunn (Research Scientist, Marine Geospatial Ecology Lab, Duke University)

Tuna RFMOs and BBNJ: Performance, challenges and opportunities by Amanda Nickson (Director, Global Tuna Conservation, The Pew Charitable Trusts)

2:40 - 2:45 **Wrap up by Árni M. Mathiesen (FAO)**

North East Atlantic Fisheries Commission

Stefán Ásmundsson
Secretary of NEAFC

RFMOs

Protection of Biodiversity and VMEs, and Role in Cross-Sectoral Cooperation and Coordination

Side Event
New York, 2 September 2016

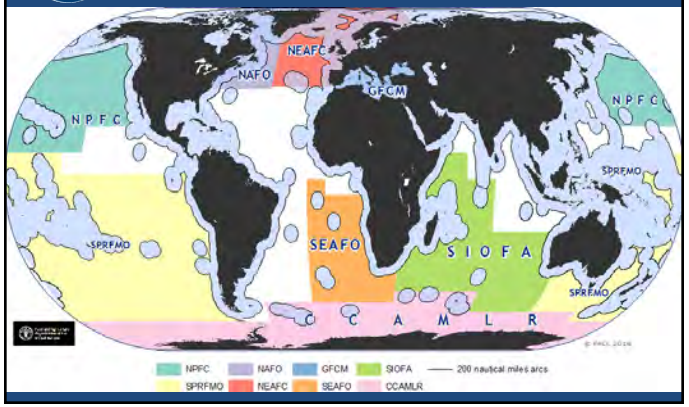
Law of the Sea

- Duty to cooperate in the conservation and management of marine resources is a legal obligation for all States
- The right to fish in the high seas is "subject to", *inter alia* fulfilling the duty to cooperate

Law of the Sea

- Regional Fisheries Management Organisations (RFMOs) are a tool to fulfil this obligation
- Their conservation and management measures are directly legally binding for the RFMO's Contracting Parties and for all Parties to UNFSA, and directly relevant for **<u>all</u>** States

8 General RFMOs



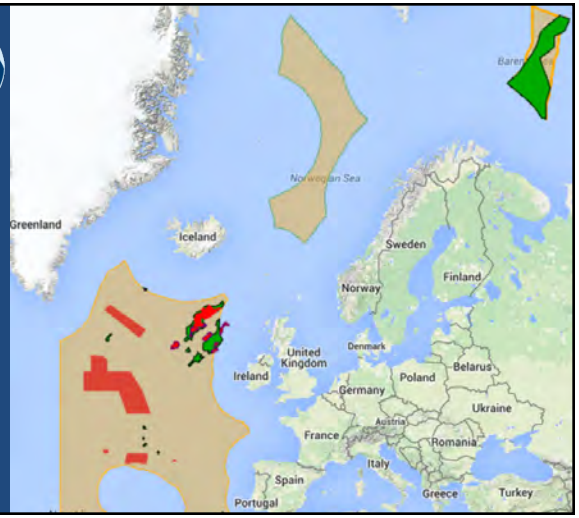
RFMOs

- RFMOs manage the activities of fishing vessels, and associated service vessels
- RFMOs have a unique position regarding monitoring, control and enforcement. No other type of organisation can in a comparable manner ensure the implementation of measures by fishing vessels.

RFMOs – Biodiversity and VMEs

RFMOs have taken significant steps to ensure the protection of biodiversity and the protection of Vulnerable Marine Ecosystems (VMEs), including:

- Prohibiting fisheries targeting specific species and stocks
- Measures relating to bycatches
- Area management to protect VMEs



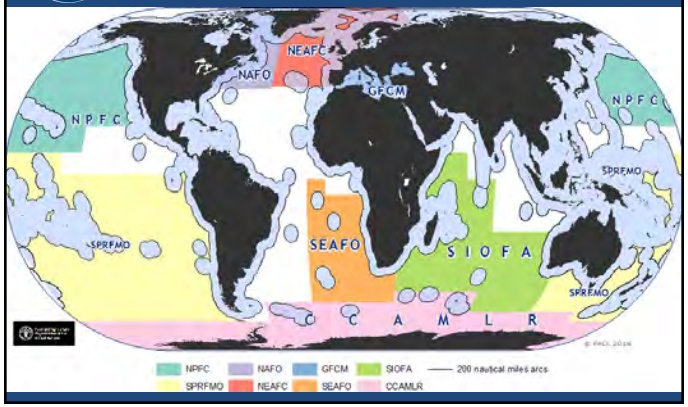
What can we control?

The marine ecosystem is infinitely complex

All we can control are human activities

Fisheries, as a human activity in ABNJ, is already under control – or at least the international legal framework for controlling fisheries already exists and its implementation is growing fast

8 General RFMOs



Human activities in ABNJ

Much more limited than in coastal areas:

- Fisheries
- Navigation (including dumping and other effects of navigation)
- Seabed mining
- Cables and pipelines
- Other?

Human activities in ABNJ

The high seas are not “global commons”

Freedom of the high seas is not absolute, but clearly and explicitly limited

Control of all relevant human activities, on a sectoral basis. Some regional, some global:

- RFMOs, IMO, ISA, Regional Seas Conventions

Cooperation and Coordination

The legal framework already exists for controlling all human activities, and for providing cross-sectoral environmental perspectives

Key questions:

- Do there already exist organisations to carry out the required tasks?
- Do such organisations talk to each other?

Cooperation and Coordination

Initiatives already exist to ensure proper cooperation and coordination

In the North East Atlantic, the RFMO (NEAFC) and the Regional Seas Convention (OSPAR) have already established a “Collective Arrangement”

Cooperation and coordination without amending the respective legal competence

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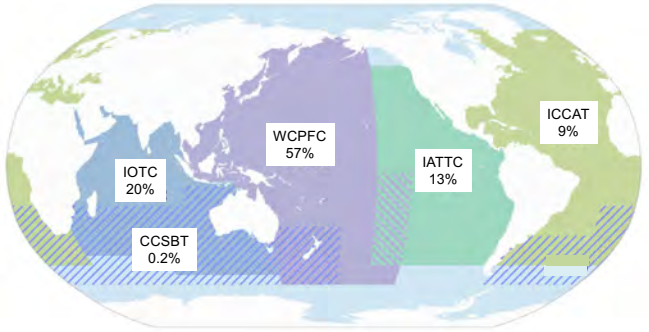
Tuna RFMOs and BBNJ: Performance, challenges, and opportunities

Amanda Nickson
Director, Global Tuna Conservation

September 2, 2016

pewtrusts.org

Tuna RFMOs: Covering the global ocean



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Tuna RFMOs and BBNJ: Reality and Challenges

- Fish Stocks Agreement: RFMOs are the mechanism by which States cooperate to manage global fish stocks
- Extend across 91% of ocean but mandate not comprehensive
- Still largely focused on addressing the development of comprehensive catch systems in a consensus environment
- Ongoing struggle to address biodiversity threats in a timely or comprehensive manner (bigeye tuna, sharks, Pacific bluefin)
- Different approaches to high seas portions of their convention areas
- Fleet dynamics impact political will for high seas measures

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Tuna RFMOs and BBNJ: Opportunities

- RFMOs are sovereign bodies
  - Subject to their own constitutive treaties and have distinct membership
  - Cannot be dismantled or made subject to the control of a new treaty, except by agreement of the parties to the RFMO
- Therefore, a new instrument can complement RFMO work through:
  - Identification and protection of vulnerable habitat for greater overall ecosystem health
  - Magnification/expansion of RFMO measures/protections to other sectors to enhance management of fish stocks
  - Requirement for environmental impact assessments for activities which may impact fish stocks

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Summary

- RFMOs: established mandates that are evolving to address challenges
- A faster pace and more cohesive framework is needed
- Tuna RFMOs could benefit from complementary legal instruments to enhance/support management of tuna stocks and associated species
- A new instrument provides global ratification of regional RFMO efforts

Thank you!

THE IMPACTS OF FISHERIES ON OPEN-OCEAN ECOSYSTEMS

G. Ortuño Crespo & D.C. Dunn
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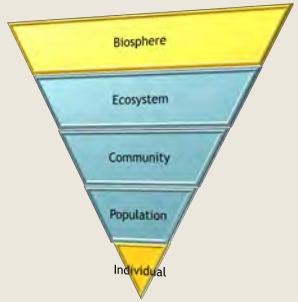
Structure of the presentation

- Why do we need a review of fisheries on open-ocean ecosystem?
- Types of impacts across scales:
  1. Species-level impacts
  2. Community-level impacts
  3. Ecosystem-level impacts
- Why does this matter to the BBNJ PrepCom
- Monitoring, Open Data & Sustainable Use
- References



Why review fisheries impacts on open ocean ecosystems?

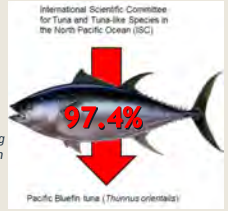
❑ Impacts on coastal ecosystem were well documented < 2000:
- Dayton et al., 1995 & Jennings and Kaiser, 1998
- "…profound effect on almost all components of associated communities and ecosystems."
- "The most sensitive components are rare habitats that serve as nurseries, and species with low reproductive rates."
- Trophic cascades (Estes and Palmisano, 1974; and reviewed across coastal ecosystems, Pinnegar *et al.*, 2000)
- Regime shifts – e.g. coral reefs (de Young et al., 2008)

❑ Impacts on deep-sea ecosystems were known soon after:
- Reviewed by Clark *et al.*, 2016
- "Recovery capacity of the benthos is highly limited and prolonged, predicted to take decades to centuries after fishing has ceased."
- "Declines in faunal biodiversity, cover and abundance."
- "These impacts translate into loss of biogenic habitat."
- Mortality is as high as 100% for fish brought up from great depths; both target and non-target species (Gordon, 2001).

(Estes and Palmisano, 1974)

Species-level impacts

- Declines in abundance
  - *Pacific bluefin (Thunnus orientalis) has declined by 97.4% (ISC, 2016)*
  - *Southern bluefin tuna (Thunnus maccoyii) spawning stock biomass has declined greater than 90% (CCSBT, 2014)*
  - *Bigeye tuna (Thunnus obesus) has declined by 80% (Harley et al. 2014)*
  - *But see Atlantic bluefin tuna, for potential for recovery*
- Much higher levels of overfishing and overfished stocks in ABNJ
  - *Estimates that straddling stocks are overfished or experiencing overfishing at twice the rate than stocks within national jurisdiction (64% vs 28.8%) (FAO, 2009; FAO, 2014).*
  - *67% of 48 highly-mobile fish stocks managed by RFMOs are either overfished or depleted (Cullis-Suzuki and Pauly, 2010).*



- Bycatch threatens non-target species
  - *Documented declines in >80% Pacific loggerhead and >95% decline in leatherback turtles (2000, 2003)*
  - *All 22 species of albatross & 19 of 21 oceanic elasmobranchs are listed as at least Near Threatened by the IUCN with bycatch cited as the main threat*
    - *But great progress in addressing seabird bycatch in particular*
- Loss of geographic substructure of populations makes them more vulnerable to environmental variability (Berkeley et al., 2004; Ottersen et al., 2006)

Species-level impacts

Impacts of size-based targeting: Stock structure and recruitment

- Selective fishing for adults results in age-truncated fish stocks, which magnify fluctuations in population levels and can contribute to stock collapses (Rochet and Benoit, 2012).
  - *Older age classes in fish populations are more susceptible to fishing pressure (Sibert et al., 2006; Garcia et al., 2012).*
  - *Changes in the age-class structure of many open-ocean populations (Hsieh et al., 2006).*
  - *… making them more vulnerable to fluctuations in inter-annual recruitment rates (Hsieh et al., 2006)*
  - *Decreases in body size can affect trophic relationships, decrease reproductive potential and increase recovery time (Birkeland et al., 2005; Anderson et al., 2008)*
- Reductions in body size may lead to negative effect on population growth rate (Hutchings and Reynolds, 2004):
  - *Reductions in potential fecundity of the population (Denney et al., 2002)*
  - *Smaller egg size*
  - *Increased variance in offspring survival*
- Increased extinction risk
  - *36% of migratory or potentially migratory chondrichthyan fishes threatened with extinction (Fowler, 2014).*

Genetic Diversity

- The steep declines in abundance of many open-ocean taxonomic groups may translate into reductions in genetic variation at the population and subpopulation levels (Allendorf *et al.*, 2008)
- Loss of genetic diversity can increase extinction risk, increase recovery time and decrease adaptability to changing climates (Olsen et al., 2004; Walsh et al., 2006)

Community-level impacts

Trophic Cascades

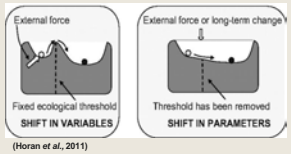
- Removal of top predators leads to mesopredator release and changes in community structure.
  - *increases in the biomasses of lower trophic levels caused by the reduction in abundance of their predators*
- In the Central North Pacific it was demonstrated that the purse-seine fishery reduced the abundance of skipjack tuna, however, parallel declines in bigeye tuna (*Thunnus* obesus), one of its natural predators, resulted in a partial predatory release on skipjack, which reduced the overall impact of fisheries on the community structure (Cox *et al*., 2002).
- proliferation of species of low economic interest for which no fisheries have been created (Carscadden *et al*., 2001; Daskalov, 2002; Walters and Kitchell, 2003)
- Discards can alter foraging behavior and trophic relationships (2007)
- Reduction in mean trophic level.

Non-consumptive effects including

- Changes in prey behavior, growth or development
  - *e.g. foraging relationship between seabirds and tuna in tropical regions, where decreases in density or abundance of tuna may lead to decreases in foraging success for associated seabirds.*

Ecosystem-level impacts

- Transitions between alternative states of the ecosystem, which affect both the system's dynamics and functionality; these are known as *regime shifts* (Scheffer and Carpenter, 2003; Daskalov *et al*., 2007; de Young *et al*., 2008; Beaugrand *et al*., 2015).
- Changes at this level are mostly expressed as bottom-up biophysical changes, often linked to climatic changes: Pacific decadal oscillation, or North Atlantic oscillation (Pershing et al., 2015)
- Top down trophic forcing's (e.g. trophic cascades) can also induce regime shifts in pelagic systems: Black Sea; Baltic Sea; North Sea; Scotian Shelf.
- No evidence from "open-ocean" ecosystems.
- Regime shifts are more likely to occur when the resilience of an ecosystem is reduced by (Folke et al., 2004; Worm et al., 2005; Worm et al., 2006) :
  - *removal of functional groups or trophic levels from a community*
  - *reductions of biodiversity (species richness and density)*



(Horan *et al*., 2011)

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+168 more refs

Monitoring, Open Data & Sustainable Use

- Current levels of monitoring are insufficient to understand many population, community and ecosystem-level effects
- Fisheries manage and monitor an activity, not the ecosystem
  - *Both sectoral and regional governance require support and synergistic interactions to monitor the ecosystem*
- To understand broader and cumulative impacts and ensure sustainable use through well informed EIAs, SEAs and appropriate ABMTs, we need:
  - *Constant trans-sectoral cooperation*
    - Which requires organizations with competence with which to partner
  - *Strong new linkages between sectoral management organizations and existing data warehouses (e.g., OBIS) and ecosystem monitoring programs (e.g. GOOS and DOOS)*
    - E.g. the ISA effort to develop/participate in a new Deep Sea node of OBIS
  - *Increased collaboration with industry and academia*
  - *Open Data underpins all of the above*

Take home messages

- There is strong evidence describing the impacts of fisheries not just on coastal and deep sea ecosystem, but also on the open-ocean.
- Monitoring to identify these impacts is a challenge and extends well beyond monitoring fishing activities.
- Complimentary and supportive measures & structures might include:
  - *Promoting integrated monitoring*
  - *Development of scientific bodies to support regional ocean governance*
    - e.g., ICES as an example of best practice
  - *Providing or identifying a forum for integrated assessments*
  - *Supporting ecosystem monitoring by developing a clearinghouse mechanism and funding GOOS under UNESCO-IOC.*
  - *Providing a means to develop no-take reference zones among other types of ABMTs*

THE IMPACTS OF FISHERIES ON OPEN-OCEAN ECOSYSTEMS

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IUCN PrepCom2 Agenda Item 6, 9/8/2016 PM
Cross-cutting issues: Institutional arrangements

Thank you Mr. Chair.

Regarding the role(s)/function(s) of an institutional arrangement(s) or global mechanism under an international agreement, IUCN would like to recall that in addition to the text on "not undermine" in Res 69/292, the UN General Assembly in A/RES/66/231 has also recognized that "problems of ocean space are closely interrelated and need to be considered as a whole through an integrated, interdisciplinary and intersectoral approach."[1]

IUCN would like to address three points: the benefits of a global mechanism to implement integrated approaches to biodiversity conservation; a possible mechanism for enhancing the capacity of existing bodies and agreements to address biodiversity conservation; and the importance of a common scientific basis for this purpose.

First, while acknowledging the important role of states and regional and sectoral bodies, there are many advantages in establishing a global mechanism for achieving an integrated, interdisciplinary and intersectoral approach.

For example, consistency, coordination, international legitimacy, and, most importantly, the strength of numbers has historically been better achieved through a multilateral organization that includes national representation and adequate administrative and expert support.

More specifically, an institutional framework such as an annual conference of parties could lower the cost of operation and cooperation by enabling States to address issues in a purposive, rational manner, rather than through a sector by sector and often crisis-driven approach.

Such global level cooperation can serve to build trust, improve knowledge, reduce misperceptions, and increase the legitimacy of existing institutions and agreements.

IUCN has provided a submission to the Chair on this topic this morning with a fuller explanation of potential tasks and functions and it should be available soon on the DOALOS webpage

Second, with respect to role of regional and sectoral bodies, IUCN suggested in the context of sectoral ABMTs, the possible development of regional and sectoral biodiversity strategies and action plans. The development of such biodiversity strategies and action plans could be a useful tool, we suggest, to enable these bodies to integrate biodiversity conservation considerations

[1] UN General Assembly resolution A/RES/66/231 (2011) preamble.

into their own management processes. This could build on the provisions on UNFSA Articles 5, 6 and Annex II, CBD Articles 6, 8 and 10 calling for mainstreaming the protection of biodiversity but with the critical strengthening element of global level reporting mechanism. This could strengthen and complement global efforts to development coherent MPA networks.

Third, in our view, the capacity of existing sectoral and regional bodies to integrate biodiversity conservation into their management processes may remain limited if they don't have access to the vast wealth of expertise that may now be found through more recent scientific studies on marine biodiversity abundance, distribution, threats and cumulative impacts. A centralized scientific committee or process, building on the UN Regular Process for the Second World Ocean Assessment, the work of the Intergovernmental Oceanographic Commission and CBD EBSA process could, we hope, merit further consideration.

Thank you Mr. Chair

Food and Agriculture Organization of the United Nations

Second Session of the Preparatory Committee on BBNJ

Side event on creating integration and synergies for conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction: case study on sustainable fisheries management

Presentation on the FAO Code of Conduct for Responsible Fisheries, the UN Fish Stocks Agreement and RFMOs;

Protection of marine ecosystems and biodiversity in ABNJ

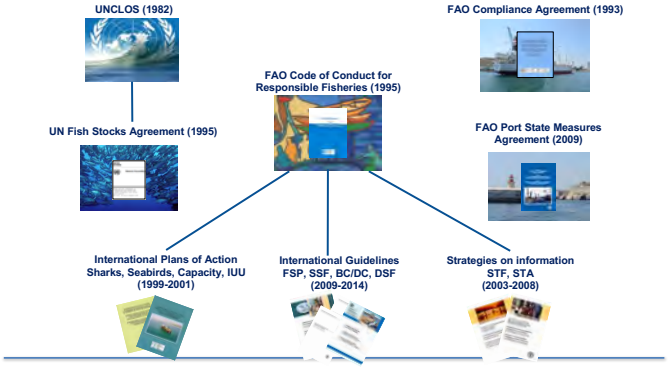
Friday, 2 September 2016

UN Headquarters, New York City, US

Presentation by Mr Árni M. Mathiesen
Assistant Director-General
Fisheries and Aquaculture Department
Food and Agriculture Organization of the United Nations

Food and Agriculture Organization of the United Nations

International instruments for fisheries conservation, management and governance



Food and Agriculture Organization of the United Nations

The Code of Conduct was drawn up by FAO, following a call from the International Conference on Responsible Fishing (1992), to strengthen the international legal framework for more effective conservation, management and sustainable exploitation and production of living aquatic resources.

The Code aims to:

Set out principles and international standards of behavior for responsible practices, **with due respect for the ecosystem and biodiversity**, and recognizes the nutritional, economic, social, environmental and cultural importance of fisheries, and the interests of all those concerned with the fishery sector.

Provide a reference framework for national and international efforts, including the formulation of policies and other legal and institutional frameworks and instruments, to ensure sustainable exploitation of aquatic living resources in harmony with the environment.

Food and Agriculture Organization of the United Nations

Some figures on the implementation of the Code of Conduct for Responsible Fisheries

(figures based on 2015-2016 survey with 115 Countries responding)

- 92% of the Members reported that they have a fisheries policy in place, 64% and 34% percent of which conform fully and partially to the Code, respectively. Of the 36 % of respondents that had a fisheries policy either partially or not at all in conformity with the Code, 81% reported that they were planning to align it with the Code.
- 54% and 40% of the Members reported having national fisheries legislation in full or partial conformity with the Code, respectively. Of the 46 percent that reported either partial or complete inconsistency, 76% indicated that plans are in place to align their national legislation with the provisions of the Code.
- 82% of the respondents, reported that they have fishery management plans in place.
- 78% of the respondents reported having started implementation of the ecosystem approach to fisheries (EAF).

Food and Agriculture Organization of the United Nations

UN Fish Stocks Agreement (1995)

Aims to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks within the framework of UNCLOS

Key elements of the Agreement include:

- Management for the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks in ABNJ;
- The protection of biodiversity in the marine environment;
- The impacts of fishing and other human activities on target stocks and their ecosystems;
- Minimizing impact of abandoned gear and reduction of by-catch;
- The application of the precautionary approach;
- Duties of flag States, port States and cooperation among States; and
- The role RFMO/As.

Food and Agriculture Organization of the United Nations

Global coverage of Regional Fisheries Bodies and other fisheries related institutions

Food and Agriculture Organization of the United Nations

- Over 50 Regional Fisheries Bodies have been established over the years with varying mandates and convention area coverage.
- The convention area of many of them include EEZs and ABNJ.
- The number of contracting parties range from 2 to 50 and most have cooperating non-contracting parties and observers.

The information presented in the charts is based on the responses of 25 RFBs to the 2015 Questionnaire on the Implementation of the FAO Code of Conduct for Responsible Fisheries.

19 RFBs cover both EEZs and ABNJ.

Food and Agriculture Organization of the United Nations

ありがとうございました

Takk

!شكرا

Mèsi

Merci!

Thank you

Obrigado

Gracias

谢谢

Asante sana!

Спасибо

Role of ICCAT in the Conservation of Biodiversity

BBNJ II Side Event: Organized by
Ocean Policy Research Institute, Sasakawa Peace Foundation
IUCN

Driss Meski
ICCAT Executive Secretary
(September 2016)

ICCAT CICTA CICAA

GENERAL OVERVIEW OF ICCAT

International Commission for the Conservation of Atlantic Tunas:

- Convention signed in Rio de Janeiro, 1966
- Entry into force in 1969
- Amended in 1984 and 1992

Competence:

- Tunas and tuna-like species (30+)
- Atlantic Ocean and adjacent seas

Objectives:

- Maintain the stocks at level which will permit maximum sustainable catch for food and other purposes

Contracting Parties and Cooperators

50 contracting parties and 4 cooperating non-contracting parties/entities/fishing

UNITED STATES	1967		TRINIDAD & TOBAGO	1999
JAPAN	1967		NAMIBIA	1999
SOUTH AFRICA	1967		BARBADOS	2000
GHANA	1968		HONDURAS	2001
CANADA	1968		ALGÉRIE	2001
FRANCE (St-Pierre et Miquelon)	1968		MEXICO	2002
BRAZIL	1969		VANUATU	2002
MAROC	1969		ICELAND	2002
KOREA Rep. of	1970		TURKEY	2003
CÔTE D'IVOIRE	1972		PHILIPPINES	2004
ANGOLA	1976		NORWAY	2004
RUSSIA	1977		NICARAGUA	2004
GABON	1977		GUATEMALA	2004
CAP-VERT	1979		SENEGAL	2004
URUGUAY	1983		BELIZE	2005
SÃO TOMÉ E PRINCIPE	1983		SYRIA	2005
VENEZUELA	1983		St VINCENT & THE GRENADINES	2006
GUINEA ECUATORIAL	1987		NIGERIA	2007
GUINÉE REP	1991		EGYPT	2007
UNITED KINGDOM (O. territories)	1995		ALBANIA	2008
LIBYA	1995		SIERRA LEONE	2008
CHINA, People's Rep. of	1996		MAURITANIA	2008
EUROPEAN UNION	1997		CURAÇAO	2014
TUNISIE	1997		LIBERIA	2014
PANAMA	1998		EL SALVADOR	2014

Cooperating non-contracting parties/entities/fishing:

- Bolivia, Chinese Taipei, Suriname and Guyana

How to become an ICCAT member

ICCAT may be joined by:

- Any government that is a member of the United Nations (UN);
- Any government that is a member of a Specialized Agency of the UN;
- Any inter-governmental economic integration organization constituted by States that have transferred to it competence over the matters governed by the ICCAT Convention.

To become a Contracting Party, **an instrument of adherence to the International Convention for the Conservation of Atlantic Tunas must be deposited** with the Director-General of the Food and Agriculture Organization of the United Nations (FAO). **Membership becomes effective on the date that the instrument is deposited.**

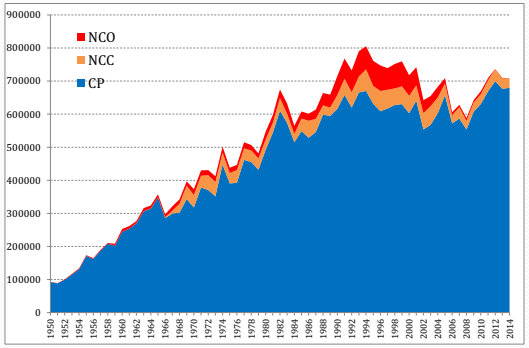
Cooperating status:

- ICCAT can also grant the **special status of Cooperator**. Cooperators have many of the same rights and obligations as Contracting Parties have.
- The procedures and criteria for attaining this status are laid out in the 2003 Recommendation by ICCAT on Criteria for Attaining the Status of Cooperating non-Contracting Party, Entity or Fishing Entity in ICCAT.

Additional info available at: http://iccat.int/en/Membership.htm.

ICCAT CICTA CICAA

Total annual catches in the Conventional Area (MT)



CP – Contracting Party; NCC – Cooperating Party, Entity or Fishing Entity; NCO – Other Non-contracting Parties

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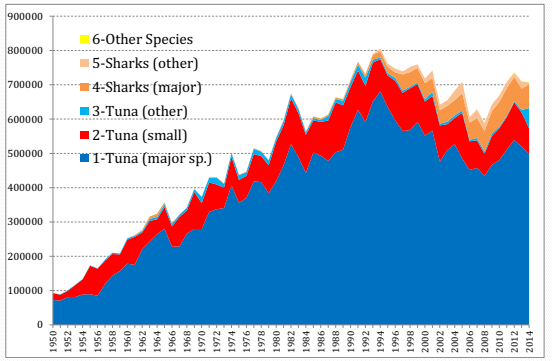
ICCAT CICTA CICAA

Total annual species catches in the Conventional Area (MT)



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ICCAT CICTA CICAA

ICCAT Organigram

International Commission for the Conservation of Atlantic Tunas

Secretariat

- **STACFAD** Standing Committee of Finance and Administration
- **Panels**
  - 1.Tropical tunas
  - 2. Temperate tunas, North
  - 3. Temperate tunas, South
  - 4. Other species
- **SCRS** Standing Committee of Research and Statistics
  - Species groups
  - SC – Statistics
  - SC – Ecosystems
- **COC** Standing Committee of Research and Statistics
- **PWG** Permanent WG for the Improvement of Statistics and Conservation Measures

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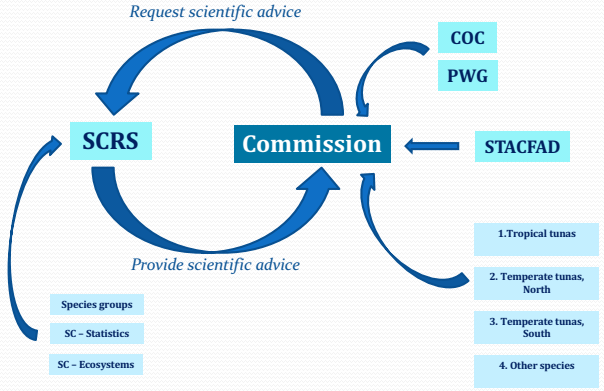
ICCAT CICTA CICAA

ICCAT Organigram



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ICCAT CICTA CICAA

Science & Management

SCRS directly responds to questions raised by the Commission

SCRS makes available at all times the most complete and current statistics concerning fishing activities in the Convention area

SCRS advises the Commission on the need for specific conservation and management measures, based on the different activities carried out:

- Conducting stock assessments;
- Development and implementation of plans for special international cooperative research programs, the objectives of which are to improve the collection of data and biological knowledge on species history traits, and which are essential parameters for the stock assessments;
- Monitoring issues related to by-catch and the ecosystem.

Major characteristics:

- Transparency regarding:
  - Participation and access to data;
  - Results available on the web;
  - Advice on the state of the stocks and management by consensus.
- Assessments based on fishery data availability and quality.

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ICCAT CICTA CICAA

Activities in relation to conservation of biodiversity

Framework

- ICCAT has adopted several Recommendations and Resolutions that address by-catch species and encourage work towards an Ecosystem Approach to Fisheries Management (EAFM)
- Case studies on ecosystem management are being investigated (e.g. Sargasso Sea)
- SCRS Strategic Research Plan 2015-2020 includes elements of an EAFM plan
- The Sub-committee on Ecosystems is specifically tasked with studying and evaluating the impacts of fisheries on the environment and biodiversity

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Activities in relation to conservation of biodiversity

ICCAT management aims

- **Target species**:
  Maintaining populations of tuna and tuna like species at levels that would maintain the maximum sustainable catch for food and other purposes.
- **Unwanted catches**:
  Minimize the catch of non-target species (e.g. sea birds, turtles and mammals)
- **Trophic relationships:**
  Maintain the trophic balance for species that are affected by fishing
- **Habitats**
  Support the maintenance of essential habitats for target species and associated species

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Activities in relation to conservation of biodiversity

- All major stocks are assessed and managed with the aim of ensuring sustainability
- Ecological risk assessments
  - shark species -> improved shark management
  - sea birds -> adopted mitigation measures
  - sea turtles -> ongoing
- Closed areas to protect spawning stock of tropical tunas
- Closed seasons for fishing Atlantic Bluefin tuna
- Extensive research on FAD fishing and impacts of FADs on bycatch populations
- Initial studies on Ecosystem modelling

t-RFMOs

- Checking each organization philosophy on EAFM, successes and difficulties developing and EAFM framework

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Other relevant developments

Since the last performance review carried out in 2008, many other developments have taken place in ICCAT, including:

- Multi-annual management plans for bluefin tuna and tropical tuna species
- Regional observer programmes for bluefin tuna and at-sea transhipment of all species
- Adoption of minimum standards for port inspection
- Implementation of an electronic catch documentation scheme for bluefin tuna (eBCD)
- Establishment of an Atlantic-wide research programme for bluefin tuna GBYP) and an Atlantic Ocean Tropical tuna Tagging Program (AOTTP)
- Work is underway on Harvest Control Rules and Management Strategy Evaluation (MSE)

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IUU - the fight continues

Since the beginning of this century, ICCAT has been making ever greater efforts in its fight against Illegal, Unregulated and Unreported activities.

Cooperation with other RFMOs, combined with a suite of MCS measures has helped to reduce this scourge.

Mindful of the dangers, ICCAT reviews its policies on IUU regularly, and adopts additional measures wherever a loophole is detected.

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ICCAT CICTA CICAA

ICCAT and the International arena

ICCAT has competence in the Atlantic Ocean and adjacent seas for tuna and tuna-like species. This area is covered by other RFMOs for many other species, each RFMO having its own speciality.

ICCAT cooperates with many other international organisations, both within the Atlantic and beyond, for information exchange and for the joint implementation of measures (e.g. ROP transhipment, joint meetings with ICES)

ICCAT conservation and management measures cover both EEZs and High Seas, and are hence compatible with both local and wider-ranging RFBs.

ICCAT conservation and management measures are considered international law, and become transposed into the domestic legislation of the Contracting Parties

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ICCAT strengths

- Establishment of MCS tools
- Adoption of allocation criteria
- Consensus decision making process
- Regular performance evaluation
- Transparency and inclusiveness
- Scientific based management approach
- Coordination and cooperation with other Organisations

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For more information visit the ICCAT webpage:
www.iccat.int

or contact the ICCAT Secretariat:
info@iccat.int

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Summary Report

Side Event by OPRI-SPF and IUCN
at the United Nations

Creating integration and synergies for conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction:

a case study on sustainable fisheries management

Introduction

On September 2, 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]

The side event was entitled, "Creating integration and synergies for conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction: case study on sustainable fisheries management." The program is included in the reference documents.

Objective

The objective of this side event was to provide information to those attending the Second PrepCom on how cooperation, coordination and coherence between the new instrument and existing frameworks can be achieved. At this side event, sustainable fisheries management was used as an example for achieving synergies and cooperation for biodiversity conservation and sustainable use. Achieving synergies is a critical factor that the PrepCom is tasked to address in a recommendation to the United Nations General Assembly on the draft text of a legally binding agreement under UNCLOS. Countries participating in the PrepCom process are interested in how to operationalize the concept of "synergy" so that the existing obligations and organizations will not be "undermined" by a new implementing agreement.[2]

Presentation summary

The first segment of the side event focused on the existing policies and practices of the UN Food and Agriculture Organization (FAO) and regional fisheries management organizations (RFMOs). Below are highlights of the presentations. PowerPoint presentations are included in the reference documents.

1 UNGA Res. 69/292.

2 UNGA 69/292 specifically states, "the process...should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies."

Mr. Hiroshi Terashima, President, OPRI-SPF, gave the welcome. In his speech, Mr. Terashima stated, "among marine living resources, fish stocks are among the most important for our daily lives and economies." He explained that the goal of the side event is to provide the PrepCom participants with information and understanding of the various RFMOs' ongoing initiatives concerning marine living resources that can be used during the delegates' deliberations.

Kristina Gjerde, Senior High Seas Advisor of IUCN, provided the introduction. Ms. Gjerde introduced the speakers and spoke about the need for achieving coordination and cooperation via a new implementing agreement for enhanced ocean governance in the high seas. In particular, she emphasized that coordinated and coherent action at all levels will be needed to address the inter-related nature of the ocean and to achieve an integrated, inter-disciplinary and inter-sectoral approach to ocean conservation while not undermining the existing relevant legal instruments and frameworks per the requirements of the UNGA resolution.

Árni M. Mathiesen (Assistant Director General and Head of FAO's Fisheries and Aquaculture Department) gave a presentation entitled, *Implementation of the FAO Code of Conduct for Responsible Fisheries and the UN Fish Stocks Agreement with respect to protection of marine ecosystems and biodiversity in ABNJ and an overview of RFMO mandates and management strategies for protecting marine ecosystems and biodiversity in ABNJ*. Mr. Mathiesen opened the discussion by giving a short history of the various instruments and guidance documents that have been issued with the goal of conservation and management of the ocean. He then gave background information on the Code of Conduct for Responsible Fisheries (Code of Conduct), adopted by more than 170 members of the FAO in 1995. The Code of Conduct is a set of principles and voluntary recommendations for conservation and sustainable use of fisheries so that there is sufficient fish for present and future generations. The FAO provides technical support and the governments are to implement the recommendations via fisheries policies and domestic legislation and through their membership in RFMOs. The goal of the Code of Conduct is for all countries engaged in fisheries activities to achieve long-term sustainable use of fisheries resources as a means of assuring resource conservation, continued food supplies and alleviating poverty in fishing communities. Mr. Mathiesen stressed that cooperation among countries in all aspects of fisheries is the central theme of the Code and that there have been significant improvements made on the status of some of the over-exploited fish stocks over the past 20 years. Over 50 Regional Fisheries Bodies have been established with varying mandates and convention area coverage and many convention areas include EEZs and marine ABNJ. The number of contracting parties range from 2 to 50 and most have cooperating non-contracting parties and observers. However, he said that there remains more work to be done and lack of resources and lack of political will have made it difficult to ensure that conservation and management measures are fully implemented by all governments via strong policies and regulations.

Stefán Ásmundsson (Secretary of the North East Atlantic Fisheries Commission <NEAFC>) gave a presentation entitled, "*RFMOs - Protection of Biodiversity and VMEs, and Role in Cross-Sectoral Cooperation and Coordination."* Mr. Ásmundsson said that UNCLOS has a legal requirement to cooperate in

the conservation and management of marine resources and emphasized that the RFMOs are a tool in fulfilling such obligation. Further, because RFMOs manage the activities of fishing vessels and associated service vessels, they are in a unique position to monitor, control and enforce regulations of fishing activities. Mr. Ásmundsson said that the legal framework already exists under UNCLOS for controlling all human activities on the high seas, and for providing cross-sectoral environmental perspectives. He said that the questions we need to ask ourselves are whether or not there are existing organizations to carry out the required obligations and whether or not such organizations collaborate. Mr. Ásmundsson said that there are on-going initiatives to ensure proper cooperation and coordination in the North East Atlantic, such as the "Collective Arrangement" signed by the RFMO (NEAFC) and the Regional Seas Convention (OSPAR). However, Mr. Ásmundsson concluded by stating that the new agreement could stimulate various organizations to sit down together to further their cooperation, which can be useful to accomplish the goal of marine biodiversity conservation.

Driss Meski (Executive Secretary of International Commission for the Conservation of Atlantic Tuna <ICCAT>) gave a presentation entitled, "*Role of ICCAT in the Conservation of Biodiversity*." Mr. Meski gave the background of ICCAT[3], which has the objective to maintain the stocks at level which will permit maximum sustainable catch for food and other purposes. He further explained the procedure for becoming an ICCAT member and how ICCAT is organized, focusing on the Standing Committee of Research and Statistics (SCRS), which focuses on science and conservation and management of fish stocks.

[3] ICCAT has 50 contracting parties and 4 cooperating non-contracting parties/entities/fishing.

In particular, Mr. Meski said that SCRS makes available at all times the most complete and current statistics concerning fishing activities in the Convention area. SCRS also advises the Commission on the need for specific conservation and management measures, based on the different activities carried out. Mr. Meski then discussed the various activities for achieving an ecosystem approach to fisheries. He concluded by discussing the strengths of ICCAT, which includes adoption of monitoring, control and surveillance tools, a science-based management approach and coordination and cooperation with other organizations.

Opening comments

Led by Dr. David Johnson, the panel discussed how a new implementing agreement could contribute to sustainable fisheries management. In particular, the panel addressed how an implementing agreement could act as a global mechanism to promote coherence among existing regional and sectoral structures and how an agreement could strengthen and enhance the work of existing bodies without undermining them.

Dr. Johnson opened the panel discussion by setting the stage with the remark that we are all in agreement of the validity of the role of RFMOs and that they will continue to manage fisheries. He introduced the three additional panel members and requested further comments before opening the floor to specific questions that were designed to address the theme of the panel discussion.

Daniel Dunn (Research Scientist, Marine Geospatial Ecology Lab, Duke University) gave a presentation entitled, *Impacts of fishing on open-ocean ecosystems and other considerations*. Dr. Dunn opened the presentation by stating that he agrees with Mr. Ásmundsson that RFMOs should manage fisheries. Then, he presented the three different levels of impacts of fisheries activities on open-ocean[4] ecosystems: species-level, community-level and ecosystem-level. Dr. Dunn explained that it is important to review the impacts of fisheries on the open-ocean because there has been a decline in the abundance of fish stocks and also that there are much higher levels of overfishing and overfished stocks in the open-ocean in ABNJ than in national waters. He further explained that bycatch during fishing activities threatens non-target species and that the loss of geographic substructure of populations can make fish stocks more vulnerable to environmental variability. Dr. Dunn said that, at the species-level, some of the reasons for concern stem from the fact that selective fishing for adults can result in age-truncated fish stocks, which magnify fluctuations in population levels and can contribute to stock collapses. Further, steep declines in the abundance of many open-ocean taxonomic groups may translate into reductions in genetic variation at the population and subpopulation levels, leading to increase in extinction risks, longer recovery time and less resilience in adapting to climate change stressors. Dr. Dunn stated that, at the community-level, trophic-level impacts can arise due to fisheries. For example, removal of top predators can lead to mesopredator release and changes in community structure or proliferation of species of low economic interest for which no fisheries have been created. However, Dr. Dunn emphasized that the current monitoring practices are insufficient to understand many population, community and ecosystem-level impacts from fisheries activities. He said that enhanced cooperation and collaboration are necessary in making not only fisheries data but other relevant information available. Such collaboration could be accomplished by developing scientific bodies to support regional ocean governance and providing a forum for integrated assessments. Specifically, Dr. Dunn recommended supporting ecosystem monitoring by developing a clearinghouse mechanism, funding the Global Ocean Observing System under UNESCO's Intergovernmental Oceanographic Commission, and providing a means to develop no-take reference zones among other types of area-based management tools.

Amanda Nickson (Director, Global Tuna Conservation, The Pew Charitable Trusts) gave a presentation entitled, *Tuna RFMOs and BBNJ: Performance, challenges and opportunities*. Ms. Nickson stated that, collectively, the tuna RFMOs cover about 91% of the ocean and they have the responsibility for putting together systems of management to cover fisheries worth $42.5 billion a year. She explained that the UN Fish Stocks Agreement identifies RFMOs as the mechanism by which States cooperate to manage global fish stocks. Such management, however, is still largely focused on addressing the development of comprehensive catch systems in a consensus environment. Ms. Nickson said that there is ongoing struggle to address biodiversity threats in a timely or comprehensive manner (e.g. bigeye tuna, sharks, Pacific Bluefin tuna) and there are different approaches to high seas portions of RFMO's convention areas. Further, fleet dynamics (economic and social drivers of individual fishers' and larger firms' behavior) impact political will for conservation and management measures to reduce fisheries pressures. Ms. Nickson said that RFMOs are sovereign bodies with their own constitutive treaties and distinct membership and hence each

4 Dr. Dunn defined the term "open ocean" as areas beyond two hundred nautical miles (ie. Beyond the exclusive economic zone of coastal States) and for the purposes of this presentation, the areas consisting largely from zero to a thousand meters in depth mainly due to the fact that quantifiable information can be obtained only in such areas.

may have a different mandate and may take a different approach to fisheries management. Therefore, a new implementing agreement can complement existing RFMO activities through various measures, for example, by identification and protection of vulnerable habitat for greater overall ecosystem health and requirement for EIAs for activities which may impact fish stocks. Ms. Nickson concluded by stating that the new implementing agreement provides opportunities. She said that, while some RFMOs have established mandates that are evolving to address challenges such as long term biodiversity conservation, their implementation need to be accelerated and a more cohesive framework is needed. In particular, Tuna RFMOs could benefit from complementary legal instruments to enhance/support management of tuna stocks and associated species. Finally, she said that a new instrument could provide global validation of regional RFMO efforts.

Duncan Currie (Globelaw) provided brief comments. Mr. Currie explained that the role of RFMOs is to address fishing and that their mandates come from the UN Fish Stocks Agreement. He said that the traditional approach to fisheries management when action is needed is for the Convention's decision-making body to stop fishing for a specific species in a specific place for a specific period of time. However, if there is a need to put into place a long-term marine protected area (MPA), this cannot be done under the existing RFMO mandates. Mr. Currie also said that, as Mr. Ásmundsson observed, MPAs will not control climate change. However, as highlighted by Dr. Dunn, MPAs can build resilience against the effects of climate change and ocean acidification. Mr. Currie concluded by saying that, as seen with fisheries activities, there is no organization that exists with a mandate to comprehensively protect and monitor marine biodiversity and that is the reason why we are all working towards an implementing agreement for conservation and sustainable use of the ocean and its biodiversity beyond national jurisdiction.

Concluding remarks

Mr. Mathiesen discussed that the first thing we need to recognize is that we live in a world of sovereign states. The states make decisions and that is why political interest is so important. He said that what we can do is to try to influence those political authorities to ensure that we do good science – research, monitoring – so that we can do good politics, and that we can implement these policies well in the areas where they are needed. Mr. Mathiesen said that if the current system manages to create some kind of a chain of events, we are on a very good path, however, strengthening the policies will take time.

Mr. Mathiesen discussed that it has been 21 years since the UN Fish Stocks Agreement was agreed, and the current system that we are working under was set up. But the system needed to be financed as there is no real financial mechanism. He thinks that the most important step forward to get this chain of events rolling would be to have the resources to do the science, to create the policies and to implement them. Mr. Mathiesen emphasized that we also need to increase our cooperation.

Mr. Mathiesen highlighted that we have the basis for such cooperation in the secretariat's network which meets every other year during the FAO's Committee on Fisheries but he felt that the frequency of the meetings is patently not enough. There is a need to increase the frequency of the meetings and to set a more structured cooperation mechanism. Mr. Mathiesen discussed that RFMOs need to work with the environmental agencies, the regional seas organizations, for example. However, he believes that in his time, he has seen fantastic improvements in the organizations' relationships and he is very, very happy to see that. Mr. Mathiesen pointed to the

work FAO has been doing to promote cooperation in other areas – in the Mediterranean, through review of the UNFSA, among others.

Mr. Mathiesen emphasized that, even though there have been improvements that more is needed. He hoped to get some concrete ideas out of the Sustainable Ocean Initiative Global Dialogue with Regional Seas Organizations and Regional Fisheries Bodies on Accelerating Progress towards the Aichi Biodiversity Targets, in Seoul Korea (26-29 September 2016) for improvements on a short-term and long-term basis. He thinks that if we keep the parameters we have been discussing at this event in mind, then we can reach something constructive and something that improves the present situation. He also discussed that we need also to keep in mind what Dr. Dunn highlighted, that there are new things afoot and we need to prepare for them. Mr. Mathiesen said that possibly, there might be a role there for the implementing agreement if it would take as a point of departure the present system that we have in the RFMOs. He said that such an agreement would definitely strengthen the RFMOs. Mr. Mathiesen concluded by stating that the implementing agreement might be the thing that could leap-frog us into the future when we start to feel the pinch of the limitations to things that we need to do. At the very least, cooperation will help us forward, he said.

Conclusion

This event was very well attended, despite competing events occurring at the same time, indicating a high level of interest on this topic. Achieving synergies, especially in the area of fisheries, is a very important topic for all of the countries. Representatives from the FAO and the fisheries organizations gave key information as to the work being done by RFMOs in terms of fish stocks under their management. The panel addressed how an implementing agreement could act as a global mechanism to promote coherence among existing regional and sectoral structures and how an agreement could strengthen and enhance the work of existing bodies without undermining them. The knowledge shared during the side event was useful during the deliberations during the second PrepCom at the UN. IUCN's intervention on this topic is included in the reference documents.

Reference documents

Program

PowerPoint presentations

Implementation of the FAO Code of Conduct for Responsible Fisheries and the UN Fish Stocks Agreement with respect to protection of marine ecosystems and biodiversity in ABNJ and an overview of RFMO mandates and management strategies for protecting marine ecosystems and biodiversity in ABNJ by Árni M. Mathiesen, (Assistant Director General and Head of FAO's Fisheries and Aquaculture Department)

RFMOs - Protection of Biodiversity and VMEs, and Role in Cross-Sectoral Cooperation and Coordination by Stefán Ásmundsson (Secretary of the North East Atlantic Fisheries Commission <NEAFC>)

Role of ICCAT in the Conservation of Biodiversity by Driss Meski (Executive Secretary of International Commission for the Conservation of Atlantic Tuna <ICCAT>)

Impacts of fishing on open-ocean ecosystems and other considerations by Daniel Dunn (Research Scientist, Marine Geospatial Ecology Lab, Duke University)

Tuna RFMOs and BBNJ: Performance, challenges and opportunities by Amanda Nickson (Director, Global Tuna Conservation, The Pew Charitable Trusts)

Intervention by IUCN

Chair's Summary of the Second PrepCom

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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.