

**An Action Plan for High Seas Marine Protected Areas.
Outcome of the Workshop in Malaga, Spain.**

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Abstract

This paper summarises the development within IUCN's World Commission on Protected Areas of its program to establish a global representative system of marine protected areas (MPAs), including on the high seas. This program was and continues to be an integral part of the international program to protect the biological diversity and productivity of the world's oceans, both within and beyond national jurisdiction.

The international workshop held in Malaga, Spain in January, 2003, brought together experts in international law, biophysical and social science and management to develop an action plan aimed at initiating a program to establish high seas MPAs as part of a general program focussing on all the feasible approaches to protecting high seas biodiversity. The workshop, which was funded by the J.M. Kaplan Fund, developed an action plan which is described in this paper. The plan brings together the important international organisations WWF, IUCN, WCPA and Greenpeace to collaborate in addressing the various international fora relevant to high seas protection.

The paper concludes by identifying the next actions planned in this program.

A Brief History of the WCPA Program for High Seas MPAs.

The intellectual genesis of the program by the World Commission on Protected Areas (WCPA- one of the six commissions of IUCN- The World Conservation Union) to establish a representative system of Marine Protected Areas (MPAs) in the high seas was probably the short paper by Garrett Hardin "The Tragedy of the Commons", (1). In it he pointed out that individuals operating in the "commons" normally act so as to maximise their individual benefits over a fairly short period of time, regardless of the effects on the commons. The logic of these actions can be summarised by the phrase "If I don't take it, someone else will!"

In economic markets, these individual benefits are usually returns on investments. Private corporations will generally have an obligation to their shareholders to act similarly, within the constraints of socially acceptable behaviour, and government agencies may have equivalent motivations. It follows that such individuals and institutions have a strong incentive to externalise costs and to internalise benefits as much as practicable. That is to say, they have an incentive to maximise utilisation of the "free" or common resources. In the case of the high seas these common resources are the water, its natural qualities and pollution assimilative capacity, mineral resources, wildlife habitat and the wildlife itself, such as deep-sea corals and fish.

Before and since Hardin's essay there has been sufficient evidence to demonstrate conclusively that these incentives work. Consequently, the usual long-term effects on the commons of the

uncontrolled operation of the free market is that the commons are destroyed. General awareness of this fact, even in the absence of a clear perception of the processes involved, has led to demands by the public, particularly in the past three decades, for the right to participate in decisions affecting the commons, and for governments and other organisations to protect these public properties. The concept of “ecologically sustainable development” flows from this public requirement.

Marine areas are particularly vulnerable to the negative impacts of the uncontrolled operation of the market because they are traditionally considered to be "commons" and development in marine areas is not usually closely controlled. In the high seas, the millennium-long tradition of the “freedom of the seas” has prevailed, making control of human activities even more unpopular and radical. The problems that are apparent in the world’s oceans are fully described in other papers in this conference.

The formal start of the WCPA program on high seas MPAs was arguably the resolution of the 17th General Assembly of IUCN in 1988 which adopted the following primary goal: “To provide for the protection, restoration, wise use, understanding and enjoyment of the marine heritage of the world in perpetuity through the creation of a global, representative system of marine protected areas and through the management in accordance with the principles of the World Conservation Strategy of human activities that use or affect the marine environment.” (2).

This primary goal was repeated in the 19th IUCN General Assembly Resolution 19.46 in 1994. (3)

In 1991 WCPA established 18 working groups covering all the world’s coastal seas. It led to the publication by the World Bank, IUCN and the Great Barrier Reef Marine Park Authority in 1995 of the report “A Global Representative System of Marine Protected Areas”. (4) This publication set out to list all the world’s coastal MPAs and to define the highest priorities for establishing new MPAs in each of the world’s 18 coastal regions. There were insufficient data to enable this to be done for the high seas.

In 1994 the 19th working group was established, addressing the high seas. This last working group worked under difficult circumstances- in the face of powerful opposition from individual nations, absence of information on high seas biogeography and biodiversity and few resources.

Gradually, however, international recognition of the importance of the high seas and the vulnerability of its biodiversity increased. This was reflected in the coming into effect of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994, the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, which came into effect in 2002, the various initiatives under the Convention on Biodiversity and the formation of a series of regional fishing agreements. As well, some countries, notably New Zealand and Australia, have worked hard to convince the world community of the need for protection of the biodiversity of the high seas, with particular emphasis on MPAs as a tool for achieving this. The 2002 WSSD identified 2012 as a target for establishing a representative system of high seas MPAs) and the United Nations General Assembly (December 2002) supported this objective.

The Kaplan Fund and the Malaga Workshop.

While the WCPA HS Working Group had been doing what was possible since 1994 to accelerate the HS MPA program, it was strongly inhibited by the perennial trouble that WCPA has that arises from its membership being volunteers- namely, shortage of resources. In 2002 the WCPA made an application to the Kaplan Fund (a benevolent organisation based in New York) for financial assistance to develop a program for establishing high seas MPAs. This was successful and a small planning grant was provided to design an Action Plan that would lead to attainment of the following objectives for the high seas; to:

- map and highlight, using existing data, the areas of highest biodiversity and biological productivity and of rare or endangered species;
- bring together many of the best scientists and other experts currently working on the issue of deep-sea species research, conservation, and management to implement the action plan to establish an initial precedent MPA and create opportunities for continued expansion of the proposed global representative system of high seas MPAs;
- publicise and draw attention to the imminent threats that weigh on these rare or endangered species;
- identify and promote opportunities for high seas marine protected areas;
- highlight the need for urgent action to protect high seas biodiversity and productivity within the framework of the forthcoming World Summit on Sustainable Development, as well as through any other oceans-related fora within the UN system or outside it; and
- engage with key industry sectors that have the potential to impact on the high seas environment.

A project team was appointed to develop the program and Kristina Gjerde, an international lawyer, was appointed as the Project Officer. The program for designing the Action Plan had two major elements:

1. The production of two background papers- one dealing with international law (5) and the other with high seas biophysics (6); and
2. The conduct of an international workshop to produce a HS MPA Action Plan.

The legal paper was written by Tomme Rosanne Young and the biophysics paper by Dr Susan Gubbay. These papers formed the written intellectual foundation for the workshop, which was held in Malaga, Spain in January this year. The Workshop was organised by a partnership of WCPA, IUCN and WWF.

The main objective of the workshop was to "develop an action plan to promote a system of high seas protected areas to ensure long term protection and wise use of ecosystem processes, biological diversity and productivity beyond national jurisdiction". 38 invited experts in international maritime law, marine science and management, policy and government attended this three-day event.

The following account of the workshop is taken from the report to the Subsidiary Body on Scientific, Technical and Technological Advice (SBBSTA) of the UN Convention on Biodiversity (CBD) written by Kristina Gjerde, Charlotte Breide and Tomme Rosanne Young (7).

The workshop commenced with a morning of presentations to develop a common understanding of the scope and objectives of the workshop and the challenges ahead. The authors of the two commissioned background reports¹ highlighted elements of their reports critical to the development of the action plan with specific focus on seamounts, deep-water coral reefs and hydrothermal vents. The other six speakers provided:

1. a general overview of the state of global oceans governance;
2. a specific proposal for a moratorium on seamount fishing;
3. progress related to high seas marine protected areas from the German and Australian governments and the Secretariat of the Ligurian Sea Cetacean Sanctuary in the Mediterranean (a large component of which is in international waters);
4. progress by scientists and lawyers in Portugal and Ireland to protect fragile coral, seamount and hydrothermal vent ecosystems in national and straddling international waters;
5. work within the scientific community to promote “Unique Science Priority Areas” to protect long-term study sites from other human activities; and
6. a general overview of the neglected “muddy bottoms” by a benthic ecologist.

The workshop then turned to the two major tasks:

- a) Defining the “road map” for HSMPAs by identifying the most important issues and concerns, as well as the interested players and stakeholders, and
- b) Developing the strategies for promoting both individual sites and a representative system of HSMPAs by identifying the mechanisms, gaps, messages, timeframe, opportunities and funding issues.

The first task of defining the “road map” occurred in plenary. This was accompanied by substantial discussion regarding the potential benefits of HSMPAs and the need for improved oceans governance for the high seas in general. For the second task, delegates were divided into four working groups to explore and identify specific categories of mechanisms, including hard and soft law instruments, and new technical and legal approaches from four different perspectives, based on the overarching framework of the United Nations Convention on the Law of the Sea and associated global and regional agreements.

1. Group A Global Instruments and Institutions covered general approaches that might be utilized for creating a coherent framework for HSMPAs, such as the United Nations Convention on the Law of the Sea, the Convention on Biological Diversity, the Convention on Migratory Species, the 1995 United Nations Fish Stocks Agreement on Highly Migratory and Straddling Fish Stocks, and institutions such as the United Nations

¹ “Protecting the Natural Resources of the High Sea: the need for high seas MPAs and possible priority areas suitable for management as MPAs” by Susan Gubbay, PhD.

“Protecting the Natural Resources of the High Seas: Relevant policy and legal instruments and options for a strategy to protect priority areas and promote a system of MPAs”, by Tomme Rosanne Young, J.D.

Informal Consultative Process on Oceans and the International Seabed Authority. The group also covered sector-specific approaches to promoting biodiversity conservation through HSMPAs for fishing, seabed mining, food security and scientific research.

2. Group B Global Fisheries Instruments and Institutions covered international and regional fisheries related agreements, codes of conduct and opportunities for engaging the fishing and seafood industries, and developed a sub-action plan specific to protection of the biodiversity of seamounts, cold water corals, hydrothermal vents and other sensitive deep-water habitats from fishing activities.
3. Group C Regional Arrangements and Legal Framework covered regional agreements and institutions by developing a road map for establishing HSMPAs through regional mechanisms, with specific sub-action plans for the North East Atlantic and Mediterranean.
4. Group D Potential Priority Sites/Opportunities developed examples of a framework/template to enable, facilitate and assist in the establishment and implementation of a HSMPA on a site-specific basis. The sub-action plans developed for six different sites were purely indicative and not conclusive, as each such action plan will need to be tailor made to suit the particular objectives, circumstances, resources and requirements of the identified area. It must also suit initiators such as scientists, governments, industry and other stakeholders and interested parties involved. Available legal mechanisms and geographical location must also be taken into account.

Main Conclusions of the Malaga Meeting:

The diverse group of internationally recognised experts in scientific, legal and institutional issues relevant to the conservation of high-seas biodiversity proposed three priority actions.

- ❖ **Networking:** An essential first step is the establishment of expert networks among key international and intergovernmental organizations, governments, scientists, non-governmental organizations and the media to build support for high seas biodiversity conservation;
- ❖ **International Recognition of the Concept of High Seas Marine Protected Areas:** Identification and use of opportunities to highlight the need for concerted action within the UN system, other international fora and the international community as a whole;
- ❖ **Designation of First High Seas Marine Protected Areas (HSMPAs):** the establishment of one or more HSMPAs as “test cases,” to build experience with the practicalities of design, implementation and enforcement should be given urgent attention.

To support the activities identified above, the experts suggested the development of the following tools and supporting research:

Information, Networking and Awareness:

To facilitate information exchange and access, the experts recommended the establishment of an interactive website devoted to collecting and making available the most up to date scientific, management, policy and legal information. Other elements include focused research, policy analyses, broad-based consultations and engagement with key industry sectors. The UN Informal Consultative Process may also have a valuable role in developing this process.

Legal Support:

To facilitate the establishment of HSMPAs, the experts recommended a process that would include: review and policy analysis of relevant existing legal frameworks for high seas conservation and governance; recommendations to harmonize and coordinate existing international, regional and national laws and policies; identification of legal gaps and the necessary action to be taken to fill those gaps; identification of options for an overall legal framework for HSMPAs including the use of existing legal instruments and the development, where necessary of new regimes; and focused international consideration for options for seamount protection.

Technical and Scientific Support:

To support development of a technical basis for identification, selection and management of HSMPAs, the experts recommended that activities be undertaken to: urgently establish baseline studies of marine biodiversity in representative deep-sea ecosystems; draft assessment methods and criteria for determining the suitability of potential sites for designation as HSMPAs; develop draft guidelines for establishing HSMPAs; and develop a GIS database on potentially important biodiversity/productivity areas.

Public relations / promotion:

To enhance support for international co-operation to protect and sustainably use high seas biodiversity, the experts recommended programs for education, training and capacity building at the regional and national level, including assistance with the identification of potential areas that could be candidates for High Seas MPAs and development of policies to promote the use of MPAs in the context of ecosystem-based management.

Examples of other aims or objectives for HSMPAs discussed:

In addition to the overall objective of conservation and sustainable use of high sea biodiversity and productivity through marine protected areas, the experts noted that marine protected areas could have other values, including protecting important long-term scientific study sites and protecting historic and archaeological sites pursuant to UNESCO Underwater Cultural Heritage Convention.

Areas for immediate urgent action while developing global network:

In light of the emerging and increasing threats to the high seas, the experts urged immediate action to manage and conserve vulnerable ecosystems as requested by the UN General Assembly in its 12 December 2002 Resolution on Oceans and the Law of the Sea, and to improve implementation of the legal framework for oceans governance.

Examples of other aims or objectives for HSMPAs discussed

- Protecting important long term study sites as “Unique Science Priority Areas”
- Protecting historic and archaeological sites pursuant to UNESCO Underwater Cultural Heritage Convention.

Actions Since Malaga

The first action taken following the Workshop was the appointment of the Executive Committee of the High Seas Working Group established under the banner of the WCPA. Its membership and functions are:

- Graeme Kelleher (WCPA) to continue as nominal Working Group Leader (WGL);
- Carl Gustaf Lundin (Head, Global Marine Program, IUCN) to be Deputy WGL, liaising with IUCN;
- Charlotte Breide (Senior Legal Advisor, High Seas, WWF) to be Deputy WGL, liaising with WWF;
- Alex Rogers (British Antarctic Survey) member, liaising with other bio-physicists.
- Simon Cripps (Director, Endangered Seas Program of WWF International)- member;
- Kristina Gjerde- member, liaising with other lawyers and policy experts and continuing her role as Coordinator of the Kaplan funded project;
- Alan Hemmings (IUCN Antarctic Advisory Committee)- member, liaising with IUCN Antarctic program;
- Charlotte de Fontaubert (Ocean Campaign Director, Greenpeace USA)- member, liaising with Greenpeace;
- Bud Ehler (Vice-chair, Marine, WCPA)- member, liaising with WCPA, Marine; and
- Tomme Rosanne Young (Senior Legal Officer, IUCN Environmental Law Centre-ELC)- member, liaising with ELC.

This EC brings together organisations that have serious interest in high seas biodiversity and productivity. It is expected that the resultant coordination will greatly expand the productivity of those organisations. Each member has been encouraged to set up his/her own subsidiary working group to pursue the objectives of the Action Plan.

The IUCN, WCPA and WWF have now submitted an application to the Kaplan Fund to allow the Action Plan to be pursued over the next 18 months.

The Next Steps

The next eighteen months, from June 2003 to December 2004, will be critical to achieving the four objectives that IUCN, WCPA and WWF propose to pursue with the support of the Kaplan Fund in association with committed governments and government organisations:

- A global agreement/resolution to secure effective protection and management of seamounts
- International agreement to pursue development of a legal framework for high seas biodiversity conservation, including a global, representative system of HSMPAs
- Demonstration of the feasibility of establishing and implementing HSMPAs through promotion of pilot projects in one or more regions
- Establishment of a powerful coalition of governments, intergovernmental organizations, scientists, managers, key industry sectors, NGOs and the media to promote the above

three objectives in the short term, and a sustainable regime for oceans governance beyond national jurisdiction in the long term.

As detailed in the Malaga Workshop action plans, a series of eight events over the next 18 months provide a crucial platform around which to build international consensus for action:

1. The United Nations Informal Consultative Process June 2-6, 2003
2. This High Seas Biodiversity Workshop, 17-20 June 2003
3. IUCN WCPA World Parks Congress (WPC), September 2003
4. New Zealand, Australia and FAO Conference on Governance and Management of Deep Seas Fish Stocks, 1-4 December 2003 Queenstown, New Zealand
5. United Nations General Assembly (UNGA), Late 2003
6. The Convention on Biological Diversity (CBD) Conference of Parties (COP) March 2004
7. The United Nations Informal Consultative Process June 2004
8. United Nations General Assembly, Late 2004.

The IUCN WCPA World Parks Congress (WPC), September 2003 provides an outstanding opportunity to gain endorsement of and commitment to the Malaga Action Plan and seek new partners for the high seas coalition. IUCN WCPA has asked the Executive Committee of the High Seas Working Group to plan a plenary session on HSMPAs to present the results of the Malaga Workshop, elicit commitments to further action and launch the High Seas Coalition. This is a rare opportunity. The WPC occurs only every ten years and establishes the foundation for action on protected areas world-wide for the next ten years. The event brings together experts from all countries, from both governments and non-government organizations.

Our plan is highly dependent on receiving further financial assistance. If that is not obtained, the financial constraints under which all voluntary NGOs such as WCPA operate will preclude the extent and intensity of cooperative action that will be necessary to achieve the aims of our Action Plan. Nevertheless, we shall continue to do what we can, in collaboration with other people, organisations and governments, such as those of Australia, Canada, Germany, Italy, Monaco, New Zealand and the United Kingdom, who share our vision of ecologically sustainable use of the high seas.

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