

The Convention on Biological Diversity – emerging issues in conservation and sustainable use of high seas biodiversity

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Background

The Parties to the Convention on Biological Diversity have expressed concern over the increased risks to biodiversity in the high seas. This concern was recorded in the recommendations of the recent eighth meeting of the Convention's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). Paragraph 18 of recommendation VIII/3 B of the SBSTTA states that

“SBSTTA

Notes that there are increasing risks to biodiversity in areas beyond national jurisdiction and that marine and coastal protected areas are extremely deficient in purpose, numbers and coverage in these areas;”

However, the Convention has very limited jurisdiction in the high seas. Although the Parties to the Convention recognize that biodiversity in the high seas is under threat, potential practical action under the Convention is restricted due to its scope as defined in Article 4 (see discussion in section 2 of this document). As a result, Parties have called for international collaborative action between relevant conventions, instruments, and institutions, as well as between countries, so that the common goal of providing a mechanism that can be used to achieve conservation and sustainable use of high seas biodiversity may be realized. Marine protected areas were envisioned as one part of a strategy to achieve this goal, and the recommendations of SBSTTA in this regard are discussed in section 3 of this document.

A recent collaborative study between the CBD and the United Nations Convention on the Law of the Sea on the topic of deep seabed genetic resources clarify some of these jurisdictional issues, as well as pointing to existing gaps. The basis for the relationship between the CBD and the UN Convention on the Law of the Sea is established in Article 22 of the CBD, which states that Parties are to implement the CBD “...with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.” This concept is also reflected in recommendation VIII/3, in which SBSTTA recognized that jurisdiction in the high seas is provided for by the UN Convention on the Law of the Sea. However, as pointed out by the results of the joint study between the

two conventions, a legal lacuna exists with respect to commercially oriented activities relating to marine genetic resources in the high seas. This study is discussed in more detail in section 4 of this document.

Provisions of the CBD of relevance to the conservation and sustainable use of high seas biodiversity

Article 4 defines the jurisdictional limits of the Convention, which in the case of components of biological diversity only applies to areas within the limits of national jurisdiction. This would include a country's Exclusive Economic Zone (EEZ), where the EEZ has been declared within the framework of the United Nations Convention on the Law of the Sea (UNCLOS). If a country has no EEZ, the territorial sea is considered to be the limit of national jurisdiction. The Convention does not apply to components of biological diversity in areas that are outside the limits of national jurisdiction.

However, part (b) of Article 4 states that in the case of the effects of processes and activities carried out under the jurisdiction or control of a Contracting Party, the Convention applies everywhere (both in areas within the limits of national jurisdiction and those outside) and would therefore be applicable in high seas areas. One example of such a process covered by the Convention is pollution originating from land affecting high seas ecosystems. The impact of pollution on components of biological diversity located in the high seas would be covered by the Convention. The Convention would however not cover the conservation and sustainable use of components of biological diversity located outside national jurisdiction.

Article 5 also has relevance to the high seas. It states that each Contracting Party shall, as far as possible and appropriate, cooperate with other Contracting Parties, either directly or through competent international organizations in respect of areas beyond national jurisdiction or control, for the conservation and sustainable use of biological diversity. Such cooperation could, among many other things, cover the establishment and maintenance of specific management regimes in the high seas.

In addition, two central concepts of the Convention are particularly relevant to the conservation and sustainable use of high seas biodiversity. These are the ecosystem approach and the precautionary approach.

The Parties recognize the ecosystem approach as a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way (decision V/6). In the management of marine and coastal resources, the use of marine and coastal protected areas (MCPAs) within wider coastal zone management strategies present an effective tool for the

application of the ecosystem approach. Additionally, the ecosystem approach, combined with the obligations under Article 5, could provide a basis for Parties to cooperate in the conservation and sustainable use of high seas biodiversity. Such cooperation might include designating and managing protected areas extending into the high seas, in particular where the high seas area is closely interlinked with or part of the same ecosystem.

Similarly, the commitment under Article 8(a) to "establish a system of protected areas" needs to be interpreted in light of the ecosystem approach. Consequently, this commitment can also be understood to require Parties to consider the establishment and management of their protected area systems not simply in national terms, but where the relevant ecosystem extends beyond national boundaries, in ecosystem or bioregional terms as well. Paragraph 3 of the annex to decision IV/5 further states that protected areas should be integrated into wider strategies for preventing adverse effects on marine and coastal ecosystems from external activities. This clearly indicates the Parties recognition that conservation and sustainable use are complementary objectives under a marine and coastal area management strategy, and that protected areas may serve as a tool to accomplish this.

The precautionary approach is contained in the preamble of the Convention, and is also reiterated in decision II/10 of the Conference of the Parties, which relates to marine and coastal biological diversity. This decision was adopted by the Conference of the Parties at its second meeting in Jakarta in November 1995, and states that:

"The work [of the Convention on conservation and sustainable use of marine and coastal biological diversity] should not be impeded by the lack of full scientific information and will incorporate explicitly the precautionary approach in addressing conservation and sustainable use issues."

Therefore, the precautionary approach provides for a strong argument for action to be taken to ensure the conservation and sustainable use of high seas biodiversity, even though the currently existing data on high seas biodiversity is patchy and uneven in nature.

Outcomes of the eighth meeting of SBSTTA in regards to marine and coastal protected areas

The recent (10-14 March 2003) 8th meeting of SBSTTA considered the issue of marine and coastal protected areas on the basis of the work undertaken by an Ad Hoc Technical Expert Group on this topic. In its recommendation VIII/3, section B, SBSTTA noted that "marine and coastal biodiversity is under rapidly increasing and locally acute human pressure, such that globally, regionally and

nationally marine and coastal biodiversity is declining or being lost. One of the reasons for this threat is the very low level of development of marine and coastal protected areas.” Furthermore, the recommendation noted that the available data indicate that regionally and globally, marine and coastal protected area networks are severely deficient and probably protect a very small proportion of marine and coastal environments. Areas beyond national jurisdiction were identified as one such gap area.

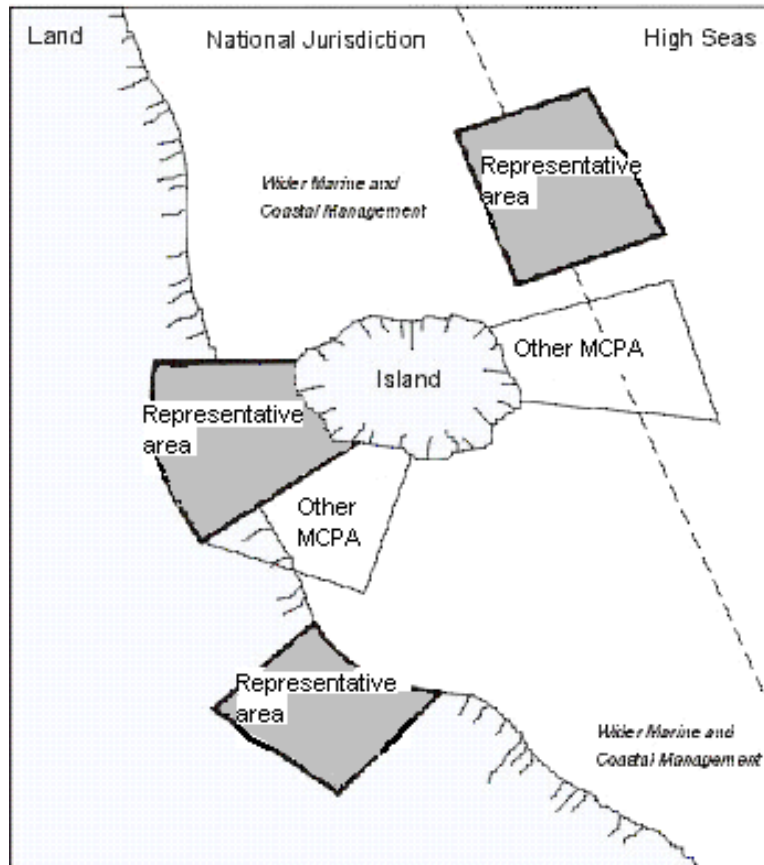
SBSTTA went on to note that marine and coastal protected areas have been proven to protect biodiversity, ensure sustainable use of resources, and manage conflict, enhance economic well-being and improve the quality of life. SBSTTA recommended that the goal of the CBD’s work in this area should be

“The establishment and maintenance of marine and coastal protected areas that are effectively managed, ecologically based and contribute to a permanent representative global network of marine and coastal protected areas, building upon national networks, including a range of levels of protection, where human activities are managed, particularly through national legislation, regional programmes and policies, traditional and cultural practices and international agreements, to maintain the structure and functioning of the full range of marine and coastal ecosystems, in order to provide benefits to both present and future generations.”

SBSTTA agreed that an effective marine and coastal biodiversity management framework would consist of representative areas where extractive uses are excluded, as well as other marine and coastal protected areas, which may allow some extractive uses, but where threats are managed for the purpose of biodiversity conservation and/or sustainable use. The network of such MCPAs would be accompanied by sustainable management practices and actions to protect biodiversity over the wider marine and coastal environment. This framework is essentially an expression of the ecosystem approach, and is depicted in a graphical format in figure 1.

Figure 1

**ELEMENTS OF THE MARINE AND COASTAL
BIODIVERSITY MANAGEMENT FRAMEWORK**



As shown in figure 1, it was envisioned that MCPA coverage could be extended into the high seas area.

Although most of recommendation VIII/3 concentrates on areas under national jurisdiction, SBSTTA noted that there are increasing risks to biodiversity in areas beyond national jurisdiction and that marine and coastal protected areas are extremely deficient in purpose, numbers and coverage in these areas. SBSTTA agreed that there is an urgent need to establish, in areas beyond national jurisdiction, further marine and coastal protected areas, consistent with international law and based on scientific information, including in relation to areas of seamounts, hydrothermal vents, cold-water corals and open ocean. SBSTTA called for international collaboration to identify appropriate mechanisms for the establishment and effective management of marine and coastal protected areas in areas beyond national jurisdiction. In particular, SBSTTA identified the CBD

Secretariat, the United Nations Division for Ocean Affairs and the Law of the Sea, the International Seabed Authority, the IMO, regional seas conventions and action plans, the FAO, regional fisheries organizations, UNESCO/IOC and other relevant organizations as partners in such collaboration.

It should be noted that recommendation VIII/3 as it relates to marine and coastal protected areas is consistent with the Plan of Implementation of the World Summit on Sustainable Development, which set 2012 as the target date for completion of an effectively managed, ecologically representative network of MCPAs within and beyond areas of national jurisdiction.

Outcomes of the eighth meeting of SBSTTA in regards to deep seabed genetic resources beyond national jurisdiction

The commercial exploitation of deep seabed genetic resources beyond the limits of national jurisdiction was a topic of a recent joint study conducted by the Secretariats of the CBD and UNCLOS. The mandate for this study on the conservation and sustainable use of genetic resources on the deep seabed in areas outside of national jurisdiction has its origin in decision II/10 of the Conference of the Parties. The study reviews the provisions of the two conventions as they relate to the topic under discussion.

The study noted that whereas the provisions of the two conventions are complementary and mutually supportive regarding the conservation and sustainable use of marine and coastal biodiversity, an important legal lacuna exists with respect to commercially oriented activities relating to marine genetic resources in the high seas. This lacuna needs to be addressed by the international community, given the increasing importance of the genetic resources in these areas and the threat posed to them by various activities that may be carried out without due regard to conservation and equity principles. The two conventions contain useful principles, concepts, measures and mechanisms that could provide the building blocks for a specific legal regime for marine genetic resources in the deep seabed beyond the limits of national jurisdiction. The common-heritage-of-mankind principle under the United Nations Convention on the Law of the Sea could provide an important underlying conceptual construct for genetic resources of the deep seabed. In addition, the two conventions share certain principles and concepts, such as the responsibility of States for activities under their jurisdiction and control; the ecosystem approach; the establishment of marine protected areas; information exchange, consultation and notification regarding activities; environmental impact assessment; sustainable use; and fair and equitable sharing of benefits. These principles would provide useful tools in addressing conservation and equity considerations in the management of genetic resources of the deep seabed beyond national jurisdiction.

Upon reviewing the study, SBSTTA recommended that the CBD Secretariat, in consultation with Parties and non-parties and in collaboration with relevant international organizations, compile and synthesize information on the status and trends of deep seabed genetic resources. In particular, information is needed on methods to identify, assess and monitor genetic resources of the deep seabed in areas beyond the limits of national jurisdiction, including identification of threats to such genetic resources and the means for their protection, with a view to addressing processes and activities under Article 4 (b) of the Convention. Progress on these endeavours will be reported to SBSTTA, with a view to SBSTTA subsequently preparing recommendations on the issue to the eighth meeting of the Conference of the Parties. SBSTTA also recommended that the Conference of the Parties invite the United Nations General Assembly to call on relevant international organizations to review issues relating to the conservation and sustainable use of genetic resources in the deep seabed beyond the limits of national jurisdiction and to make recommendations to the Assembly regarding appropriate actions. Parties and other states were also invited to identify activities and processes under their jurisdiction, which may have a significant adverse impact on deep seabed ecosystems and species.

Conclusions

The recommendations of the eighth meeting of SBSTTA will now need to be considered by the seventh meeting of the Conference of the Parties, which will take place in late February of 2004. The text of the recommendations quoted here may therefore still be changed before adopted as decisions of the Conference of the Parties. After the meeting of the Conference of the Parties, the focus will turn towards the implementation of the decisions on the national, regional and global levels.

The issues described here are also of importance in the context of the Convention's increasing focus on more effective implementation of its three principles, and the adoption, in the Strategic Plan, of the target "to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level." This target was endorsed by the Hague Ministerial Declaration of 14 April 2002 and by the World Summit on Sustainable Development in its Plan of Implementation. Because an estimated 64% of the world's oceans lie beyond national jurisdiction (WWF, 2003), it is clear that any strategy to achieve a significant reduction in the current rate of biodiversity loss will also need to provide for the conservation and sustainable use of high seas biodiversity.