

Summary report on final decisions on marine issues taken at CBD COP 14, Sharm El Sheikh, November 2018

EBSAS

This was by far the most complex and difficult issue in relation to marine biodiversity. Key issues in the negotiations of the final text were related to: (1) UNCLOS; (2) EBSAs within the national jurisdiction; (3) the process needed for describing new EBSAs or modifying existing EBSAs; (4) the use of terms such as “in consultation” versus “in collaboration”; (5) the reference to “coastal” areas and the need to include also “archipelagic” areas; and (6) whether EBSAs proposals had to be sent “for consideration by” or “for information to” SBSTTA and COP. Behind these apparently petty differences was the thorny issue of primacy of the coastal State authority or of the CBD institutions competence in the formal designation of EBSAs in EEZs. After long and difficult negotiations in four contact groups, one friend-of-the-Chair meeting, four Working group meetings and plenary session, the COP finally approved, at the very last minute, a Decision on the EBSAs. In the final Decision CBD/COP/14/L.34 a compromise was found although Turkey, Colombia and Venezuela requested a footnote to be added with reference to UNCLOS noting that, in their understanding, UNCLOS is not the only legal framework governing activities in the seas and oceans. The decision included an Annex of new candidate-EBSA descriptions from regional workshop covering the Black Sea, Caspian Sea and Baltic Sea. The process for modifying the EBSAs already registered in the EBSA repository –a difficult topic since the last COP– remains unresolved. The Decision welcomes the report of the Expert Workshop held in Berlin December 2017 to develop options for modifying EBSA descriptions, describing new areas and strengthening the process. However, the whole ANNEX II containing the various options available for the revision process remains in brackets despite extensive discussions. Following concerns by several parties for not losing the work on revisions done since the Berlin workshop, a new paragraph was added the last minute in the decision requesting the Executive Secretary, subject to available resources, to identify options for the description of new EBSAs and modification of existing EBSAs, noting the ANNEX II of the Decision and considering the ANNEX III on the TORS of the Informal Advisory Group as “amended”. It is to be noted that the amended ANNEX III weakened considerably the mandate of the Advisory Group. While not wanting to block consensus,

several parties, requested that their statements be included in the report. Korea put on record that it requested the secretariat to take into account the ongoing discussion and concerns raised by parties regarding the process of national submissions to the EBSA repository. Singapore also, stressed that the Decision cannot detract from existing state obligations under international law including UNCLOS, and EU, Ghana and Japan emphasized the universal character of UNCLOS. In closing the difficult debate Argentina suggested that the main reason for the difficulties in the discussion was the lack of legal experts in the delegations and encouraged parties to include such experts. South Africa suggested that parties start with modifications of EBSAs (?) in their EEZ first before going to EBSAs across multiple EEZ and in the ABNJ.

This impasse is unfortunate but at the same time may present an opportunity. There are now over 300 EBSAs described in the global oceans with national and regional processes in over 75% of the ocean and the number continue to grow. With the possibility for re-descriptions and additions to repository now stalled, there was discussion in the “corridors” of the contact group about beginning to talk with marine sectors and States about the conservation of areas that have been described and entered in the repository, and develop guidance for ensuring an appropriate level of risk aversion in management of these areas. This would present substantial opportunities for IUCN to take a leadership role in marine and coastal sustainable use of biodiversity blended with full protection where most appropriate, provided there are available resources.

OECMs

For OECMs, the text of the final Decision CBD/COP/14/L.19 was approved largely as agreed at the February Expert Workshop and reviewed at SBSTTA. The approval of the Annexes to the Decision provide a clear pathway forward to ensure that spatial measures applied by sectoral agencies can be considered as OECMs and included in reporting on Target 11. The determination of OECMs should be based on case by case evaluations of individual areas and not simply on the OECM category. The Decision clearly endorses the fact that these evaluations should focus on the *outcomes* of the application of spatial measures (i.e. in-situ conservation as defined in the CBD), and not simply on the type of measure applied and its *a priori* potential conservation effect. A specific area should be considered an OECM appropriate for Target 11 reporting if the area provides benefits to a broad range of biodiversity and not solely to the target species of a

fishery, for example, although of course no area-based measure can benefit *all* types of biodiversity that may be found in a fishing area.

Urgent actions prompted by the Decision are: (1) the development sector-specific guidelines for best practices for establishing OECMs by particular sectors and area managers, and (2) the creation of a process and library for tracking OECMs as they are reported for Target 11. The IUCN (through the WCPA and IUCN-CEM-FEG) has been very active in preparations for the OECM Decision. In particular the February 2016 workshop on OECMs was co-sponsored by the IUCN along with the CBD Secretariat and Canada and Norway. The two key Background Papers for that workshop were drafted by a Task Group set by WCPA for OECMs in general and by members of the CEM-FEG specifically for fisheries. Most of the aspects of both Background Papers were carried directly into the final Decision language.

OTHER MATTERS RELATED TO MARINE AND COASTAL BIODIVERSITY

The draft decision CBD/COP/14/L.24 was adopted after little discussion on paragraph 1.c on cold water ecosystems, with an addition by Canada to add *'noting in particular the finalizations of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean'*. A second significant amendment was on the reference to the International Seabed Authority (ISA) in paragraph 3, not simply welcoming the draft regulations on explorations of marine resources. This was proposed by the EU. The second amendment is of greater importance as the activities undertaken within ISA's jurisdiction are still controversial and not as precautionary as the IUCN advises for Deep Sea Mining. Consequently, "noting" the draft regulations was considered better than "welcoming" the Authority, without caveats. At some point IUCN can and should bring up the point in the final decisions on marine debris from the ocean and coastal zones. IUCN has and is continuing to do much work on this topic so a future addition to the text should be welcomed to give context to the work of a few Nature-Based Solutions (NBS) programmes. The same can be said in relation to Deep sea mining and marine underwater noise, both of which are already or upcoming serious threats to marine biodiversity.

Lastly, IUCN's CEM Fisheries Expert Group is explicitly mentioned in this decision – welcoming its cooperation with the UN's Food and Agricultural Organisation with relation to reporting on Aichi Target 6.

OTHER NOTABLE DEVELOPMENTS

- Jihyun Lee, current head of the marine and coastal programme at CBD is resigning and moving to head the Environment Department at the International Seabed Authority. This should have important and positive implication especially for the future of deep sea mining.
- The rights of indigenous peoples were a constant cross-cutting point at the conference. In fact Canada announced that their Nature Fund will be devoting a major part to areas managed by indigenous peoples.

SIDE EVENTS ORGANIZED OR PARTICIPATED

1) FEG organized two side events:

- on OECMs (see agenda [here](#) and presentations upon request).
- on Target 6 (see agenda [here](#) and presentations upon request).

2) FEG (Jake Rice) participated also in the panel of one of the themes during the Ocean Voices Day related to fisheries (see agenda [here](#))

3) FEG (Jake Rice and Despina Symons ??) also actively participated in the following side events organized by the CBD Secretariat:

- **SOI challenge:** This event, organized jointly by the CBD Secretariat, FAO, UNEP, Korea and Sweden, informed Parties and stakeholders on the outcomes of the 2nd meeting of the Sustainable Global Dialogue. The common vision was discussed as well as the need for increase cooperation between regional seas organizations and regional fisheries bodies. At the end of the meeting it was highlighted that the SOI initiative would need additional funding for it to continue in the years to come.
- **UN Oceans:** The event titled “*Coordination for achieving global goals for marine biodiversity*”- *Aichi Targets and Beyond*” was jointly organized by the CBD Secretariat, FAO and UN DOALOS. The event stressed the need for

continuation and collaboration between all UN agencies for achieving the Aichi Targets and beyond.