



A new governance body for the oceans? Focus on MPAs  
Roundtable 12 January 2012, London

Summary Report

The Foundation for International Environmental Law and Development (FIELD) convened the roundtable to consider the ongoing 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 (WG-ABNJ), with a particular focus on the potential for a new global governing body for dealing with marine protected areas (MPAs) in areas beyond national jurisdiction (ABNJ).

The roundtable followed on from FIELD's previous roundtable on "New rules for the oceans" held in July 2011. It brought together representatives of non-governmental organisations, marine scientists and academia, and was held under the Chatham House Rule of non-attribution.

Summary of the discussion

Following a short presentation, participants focused on a set of questions. The following discussion covered a wide range of issues:

1. The need for a new global governance body for the oceans

In general, participants agreed that the lack of a body with a mandate for designating and managing MPAs in ABNJ was a significant barrier to marine environment protection in ABNJ. It was suggested, for example, that the International Seabed Authority could provide a useful model for a new international institution.

The majority of participants stressed the importance of existing initiatives such as the identification of ecologically and biologically significant areas (EBSAs) under the Convention of Biodiversity (CBD). They emphasised the need to improve synergies between the different international processes.

While the creation of an institutional structure or framework with the task to designate and effectively manage MPAs in ABNJ would be desirable, a new governance body may also have certain downsides. Some participants were concerned that it could lead to further fragmentation of the international governance regime and result in a move away from existing attempts at regional cooperation. Accordingly, they felt that, unless it was absolutely necessary, the creation of a new institutional entity should therefore be avoided.

## 2. The role of a new global governance body for the oceans

A new global governance body or structure for the oceans would potentially have to cover all areas of the WG-ABNJ's 'package approach', such as marine genetic resources, sharing of benefits and the transfer of marine technology. It may also have to undertake or approve environmental impact assessments and strategic environmental assessments before any activities are authorised in ABNJ - whether within MPAs or otherwise.

While fisheries organisations tend to focus on stocks, there is a need to deal with ABNJ in terms of space - based on marine spatial planning and an ecosystem approach. It was noted that MPAs are only one part of a series of spatial management tools that are necessary to ensure the effective management of ABNJ. Accordingly, the mandate of a new global body or other institutional arrangement could comprise the designation of specific areas for economic activities or for conservation purposes.

One participant highlighted the current practice of organisations entering into memoranda of understanding between each other with a view to furthering the integrated management of the oceans. A potential role for a new global governance body could be to stimulate this process.

## 3. The role of existing organisations

A number of participants stressed the importance of developing the competency of regional fisheries management organisations (RFMOs) and further embed good practices in their activities and decision making processes. They, for example, often lack 'spatial awareness' and robust conservation objectives.

In addition, the role of EBSAs under the CBD was described as vital in marine biodiversity protection. The jurisdictional scope and overlap of the CBD and the United Nations Convention on the Law of the Sea (UNCLOS) was subject to some debate. In ABNJ the CBD applies to processes and activities carried out under a Party's jurisdiction or control (CBD, Art.4). With respect to the marine environment the CBD is to be implemented consistently with the rights and obligations of States under the law of the sea (CBD, Art.22).

Participants also noted the recent work of certain regional organisations, in particular by the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). They commented that CCAMLR provided a potential model for replication in other areas of ABNJ due to its science-based, precautionary and ecosystem approach for adopting management measures. Similarly, the protocols (e.g. on specially protected areas or integrated coastal zone management) adopted under the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) could be used as a model for other regions of the world.

In order to strengthen marine environment protection efforts, a participant suggested raising the profile of existing institution, and, for example, to create the position of an UN Under-Secretary General for the Oceans.

#### 4. A new 'scientific gateway' to assist in the identification of MPAs

The participants agreed that science had to be at the centre of management decisions relating to the designation of MPAs. The formal establishment or recognition of a scientific body to advise the international community on the creation of a representative network of MPAs in the world's oceans therefore made sense. But whilst certain participants accepted that there may be a need for a new high level panel, others suggested that the scientific bodies under the CBD may already play this role.

A new scientific body could be modelled after the International Panel on Climate Change (IPCC). The designation process under the UNESCO World Heritage Convention was also cited as a good example, and one participant suggested a role for the International Union for Conservation of Nature (IUCN) working in conjunction with the CBD. To create a scientifically sound network of MPAs a holistic approach covering waters under national jurisdiction and ABNJ has to be taken.

#### 5. The need for a new enforcement/compliance/assistance body in ABNJ

Governance regimes only work if they are effectively implemented. Although certain RFMOs are now adopting a stronger approach to compliance, their current measures often lack significant weight. Participants commented that the adoption of comprehensive monitoring, control and surveillance measures and ensuring effective compliance and enforcement was central to resolving governance issues in ABNJ. Some of the required technology, such as vessel tracking and monitoring equipment, is available at relatively low cost.

It was also noted that there is a need for a gradual move away from the principle that enforcement authority rests predominately with the flag state of a vessel to strengthen marine environment protection in ABNJ.

#### 6. The achievability of a new global governance body

Participants noted the political difficulties of agreeing on the creation of any global governance body for ABNJ and a new multilateral treaty under UNCLOS. Negotiations may take a number of years, with effective implementation not following until a number of years afterwards. It was stated that there was not time to wait for the completion of such a process and relying on this processes in isolation would be insufficient. It would also almost certainly result in biodiversity targets under the CBD being missed.

A participant also highlighted the need for a consultation process involving all stakeholders and organisations in relation to any new agreement to ensure that the agreement works in practice. Another participant expressed concern over whether certain organisations might exploit this process.

## 7. An UNCLOS implementing agreement and a new global governance body

The adoption of a new international agreement under UNCLOS would not necessarily result in a new global governance organisation. Provisions on the designation of MPAs in ABNJ could be made operational by reference to existing international organisations and processes such as the CBD, the International Maritime Organization and the International Seabed Authority. Participants noted that, if this approach was adopted, mandates would need to be expanded to facilitate this.

## 8. A focus on Rio plus 20

It was noted that the 'zero draft' for the upcoming Rio+20 Conference in June 2012 incorporated a call for an implementing agreement under UNCLOS to deal with marine biodiversity in ABNJ. Participants agreed that this created a significant 'window of opportunity' to bring matters relating to the conservation and sustainable use of marine biodiversity in ABNJ to the fore.

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