

## Marine biological diversity beyond areas of national jurisdiction

### *Legal and policy framework*

1. The **United Nations Convention on the Law of the Sea** provides the legal framework within which all activities in the oceans and seas must be carried out, including for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. It is complemented by two implementing agreements, namely the **Agreement relating to Part XI of UNCLOS**, which addresses matters related to the Area, and the **Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**.

2. In addition to **UNCLOS** and its implementing agreements, a number of international instruments at the global and regional levels are relevant to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. At the global level, in addition to the regulations adopted by the **International Seabed Authority** for the protection and preservation of the marine environment in the Area, these include instruments related to: biodiversity, such as the **Convention on Biological Diversity (CBD)**; fisheries, such as instruments adopted by the **Food and Agriculture Organization of the United Nations (FAO)**; point and non-point sources of pollution, such as measures adopted in the context of the **International Maritime Organization**; trade and intellectual property, such as measures considered in the context of the **World Trade Organization** and the **World Intellectual Property Organization**.

3. At the regional level, relevant measures include those adopted by regional fisheries management organizations and arrangements and by regional seas organizations having competence beyond areas of national jurisdiction.

4. Non-binding instruments also provide policy guidance of relevance to marine biodiversity, including beyond areas of national jurisdiction. These include the **Rio Declaration** and Chapter 17 of **Agenda 21** adopted at the 1992 United Nations Conference on Environment and Development, the **Johannesburg Plan of Implementation** (in particular its paragraphs 30-36) adopted in 2002 at the World Summit on Sustainable Development, and the **resolutions of the General Assembly** on oceans and the law of the sea and on sustainable fisheries.

5. Further information on the legal and policy aspects can be found in the relevant **reports of the Secretary-General** (in particular A/60/63/Add.1, A/62/66/Add.2, A/64/66/Add.2 and A/66/70).

### *Work of the General Assembly*

6. In recent years, questions have been raised whether the current framework sufficiently addresses the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. In 2004, the General Assembly established 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 Working Group). In particular, the Working Group was requested (resolution 59/24, paragraph 73) to:

- a) survey the past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;

- (b) examine the scientific, technical, economic, legal, environmental, socio-economic and other aspects of these issues;
- (c) identify key issues and questions where more detailed background studies would facilitate consideration by States of these issues; and
- (d) indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

7. The first meeting of the Working Group was held in New York from 13 to 17 February 2006. Its report is contained in document A/61/65.
8. The second meeting of the Working Group was convened in New York from 28 April to 2 May 2008. At that meeting, as requested by the General Assembly (resolution 61/222, paragraph 91), the Working Group considered:
  - (a) The environmental impacts of anthropogenic activities on marine biological diversity beyond areas of national jurisdiction;
  - (b) Coordination and cooperation among States as well as relevant intergovernmental organizations and bodies for the conservation and management of marine biological diversity beyond areas of national jurisdiction;
  - (c) The role of area-based management tools;
  - (d) Genetic resources beyond areas of national jurisdiction; and
  - (e) Whether there is a governance or regulatory gap, and if so, how it should be addressed.
9. The report of the second meeting is contained in document A/63/79.
10. The third meeting of the Working Group was held in New York from 1 to 5 February 2010. The Working Group was requested to provide recommendations to the General Assembly (resolutions 63/111, paragraph 127, and 64/71, paragraph 146). As requested by the General Assembly (resolution 64/71, paragraph 142), the Working Group, in the context of its mandate, further considered the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with UNCLOS, with a view to making further progress on this issue. It also considered issues of marine protected areas and environmental impact assessment processes. The recommendations of the Working Group address: the strengthening of the information base; capacity-building and technology transfer; cooperation and coordination in implementation; cooperation and coordination for integrated ocean management and ecosystem approaches; environmental impact assessments; area-based management tools, in particular marine protected areas; marine genetic resources; and the way forward. The outcome of the third meeting is contained in document A/65/68.
11. The fourth meeting of the Working Group was convened in New York from 31 May to 3 June 2011 to provide recommendations to the General Assembly (resolution 65/37 A, paragraph 163). The General Assembly encouraged the Working Group to improve progress on all outstanding issues on its agenda. As requested by the General Assembly (resolution 65/37 A, paragraphs 165 and 166), the Working Group, in the context of its mandate, focused, in particular, on the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with UNCLOS, taking into account the views of States on Parts VII and XI of UNCLOS, with a view to making further progress on this issue, as well as issues of marine protected areas and environmental impact assessment processes. The meeting recommended, inter alia, that:

(a) A process be initiated, by the General Assembly, with a view to ensuring that the legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction effectively addresses those issues by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS;

(b) This process would address the conservation and sustainable use of marine biodiversity in 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, and environmental impact assessments, capacity-building and the transfer of marine technology;

(c) This process would take place: (i) in the existing Working Group; and (ii) in the format of intersessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the Working Group; and

(d) The mandate of the Working Group be reviewed and, as appropriate, amended, with a view to undertaking the tasks entrusted by the recommendations.

12. The outcome of the meeting is contained in document A/66/119.

13. The **United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea** (the Consultative Process) has also addressed several issues of relevance (see **table**). Several General Assembly resolutions on oceans and the law of the sea and on sustainable fisheries also provide relevant policy guidance.

14. The General Assembly has expressed its concern at the adverse impacts on the marine environment and biodiversity, in particular on vulnerable marine ecosystems, of a number of human activities, such as over-utilization of living marine resources, the use of destructive practices, physical impacts by ships, the introduction of alien invasive species and marine pollution from all sources, including from land-based sources and vessels. The Assembly has also reaffirmed its role relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, noted the work of States and relevant complementary intergovernmental organizations and bodies on those issues, including the CBD and the FAO, and invited them to contribute to its consideration of these issues within the areas of their respective competence. Over the years, the General Assembly has called for a number of measures such as:<sup>1</sup>

- developing national, regional and international programmes for halting the loss of marine biodiversity, in particular fragile ecosystems;
- developing and facilitating the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal and land use and watershed planning, and the integration of marine and coastal areas management into key sectors;
- considering ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts, cold water corals and hydrothermal vents and certain other underwater features within the framework of UNCLOS;

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<sup>1</sup> See, for example, resolutions 57/141, 58/240, 59/24, 60/30, 61/222, 62/215, 63/111, 64/71 and 65/37A.

- investigating how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction; how existing treaties and other relevant instruments could be used in this process consistent with international law, in particular with UNCLOS, and with the principles of an integrated ecosystem-based approach to management, including the identification of those marine ecosystem types that warrant priority attention; and to explore a range of potential approaches and tools for their protection and management;
- capacity-building in the field of marine scientific research, in particular, taking into account the need to create greater taxonomic capabilities;
- enhancing cooperation, coordination and collaboration relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction; and
- addressing impacts on marine ecosystems within and beyond areas of national jurisdiction, in conformity with international law, including the UNCLOS and other applicable instruments, taking into account the integrity of the ecosystems concerned.

15. With particular reference to high seas fisheries governance, the General Assembly has called for a number of measures to ensure responsible fisheries in the marine ecosystem, such as:<sup>2</sup>

- regulating bottom fishing activities which would have significant adverse impacts on vulnerable marine ecosystems;
- taking action immediately, individually and through RFMO/As, and consistent with the precautionary approach and ecosystem approaches, to implement the 2008 **International Guidelines for the Management of Deep-sea Fisheries in the High Seas** of the FAO in order to sustainably manage fish stocks and protect vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, from destructive fishing practices, recognizing the immense importance and value of deep sea ecosystems and the biodiversity they contain;
- cooperating to collect and exchange scientific and technical data and information related to the implementation of the measures called for in the relevant General Assembly resolutions to manage deep sea fisheries in areas beyond national jurisdiction and to protect vulnerable marine ecosystems from significant adverse impacts of bottom fishing; and
- cooperating and making efforts to establish, as appropriate, RFMO/As competent to regulate bottom fisheries in areas beyond national jurisdiction where there are no such organizations or arrangements.

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<sup>2</sup> See, for example, resolutions 61/105, 63/112, 64/72 and 65/38.