



## Interventions of Delegation of Australia on Area-based Management Tools

*BBNJ meeting, New York, 25 March to 5 April 2019*

### 4.3 Process in relation to area-based management tools, including marine protected areas

#### 4.3.2 Designation process

##### *Proposals*

As Australia has indicated in previous remarks, we support the ability of proposals to be submitted through the process established under this instrument, but this is not the only pathway. So we do not think the dichotomy as it is framed between a global process under Option A and a regional seas process under Option B is necessary. It need not be one or the other.

With respect to paragraph (1), we would support a variation of Option A subparagraph (a) - that proposals for the designation of ABMTs, including MPAs, would be submitted by States parties. We also think this provision could indicate that States parties could submit proposals to this organisation, while recognising the appropriateness of submitting proposals within relevant global, regional or sectoral bodies if those bodies have the relevant mandate. Of course, States parties can collaborate with non-government stakeholders in the development of proposals.

In relation to paragraph (2), we think proposals could be submitted to the Secretariat (Option C) for administrative purposes, and reviewed by a scientific/technical body (Option B). The decision on adopting proposals would be by the decision-making body (Option A), taking into account the advice of a scientific/technical body.

In relation to paragraph (3), we support proposals being consistent with certain principles, including best-available science, the precautionary approach and the ecosystem-based approach.

We support consultation with traditional knowledge holders in the development of proposals, where such knowledge exists, but it may be that this is addressed in other areas of the text, such as that related to consultation.

In relation to paragraph (4), we agree it is important to set out the key elements of proposals, including things like specific objectives, the management measures proposed and geographic area covered.

That said, we would not support some of those things contained in the list in Paragraph (4) Option A, including, among others, the idea in sub-paragraph (s) that there needs to be some kind of separate legal basis for an MPA; or that every proposal requires a duration (sub-paragraph (p), Option 1). We would anticipate that the proposal would contain provisions for review of the effectiveness of the ABMT or MPA to ensure adaptive management.

We also think further explanation is required in relation to the reference to cultural, social and economic values in (b) or socio-economic considerations in (l), and do not support these references.

I will not go through each paragraph, but suffice to say that we think that this section needs to take into account that we are talking about a process for ABMTs, not just MPAs, as others have mentioned. The level of detail and process needs to be tailored to the measure, and not all of the elements contained in the current paragraphs will be required.



Our preference is that key elements are included in the text, but these can be reviewed and updated subsequently if required by a decision-making body as per paragraph (4), Option B.

#### *Consultation on and assessment of the proposal*

We support text in relation to consultation, though not necessarily all of the elements contained in the current Option I.

We agree with the idea that consultation on proposals should be inclusive, transparent and open (paragraph (1)), and also that it should be time-bound (as per paragraph (5)).

We support text in the treaty setting out a general requirement to consult with those whose interests may be particularly affected by proposals, including affected coastal states such as small island developing states, users of the ocean space, or relevant regional, sectoral or international organisations.

We do not see the need to try to make a comprehensive list of all relevant stakeholders for all possible proposals in the agreement. The relevant stakeholders are going to depend on the nature of the proposal and its geographic location. It may be possible for a decision-making body to prepare a list of types of stakeholders. However, this might take the form of guidelines for consultation.

So we are open to a combination:

- (i) A general description, rather than an attempt to capture every type of stakeholder; and/or
- (ii) Guidelines to be developed.

Regarding consultation, we anticipate consultation will occur in several stages. States developing a proposal may well do some initial consultation with stakeholders in developing the proposal, before submitting it through a formal consultation mechanism.

In terms of a formal consultation mechanism under this treaty, we think transparency can be achieved through the circulation of proposals by the Secretariat to States parties (paragraph (3) or by otherwise making proposals publicly available) and by the secretariat making public the contributions received through stakeholder consultation (paragraph (4)).

We also support a provision regarding the need to take stakeholder feedback into account, which is important to ensure stakeholder engagement is robust and effective (paragraph (6)). That does not mean, however, that written responses are needed to address all feedback received.

Regarding paragraph (7), we are leaning towards Option A. We see the role of a scientific/technical body as providing advice to the decision making body as to whether the proposal is based on the best available science. Where detail of the proposal is not sufficient, such a body could also recommend to the proponents that further work be done. However, we do not think it is necessary to be prescriptive about what consultation a scientific body needs to undertake, or to include a requirement for MOUs with other bodies.

In relation to Options B to E, we will give more consideration as to whether such a body would be a standing body or an ad hoc body, or whether we could use other existing institutions to perform that function.



### *Decision-making*

In relation to decision-making, Option I, paragraph (1), we do not see Options A and B as containing elements that are necessarily mutually exclusive. Australia could consider elements from both options rather than endorse one or the other.

We support collective decision-making, by a COP established under the agreement, on adoption of proposals (OPTION I (1) Option A, Options 1 & 2). A provision could specify that such decisions shall take into account the advice of a scientific/technical body.

We support the idea behind some of the elements of Option B, though not the precise wording.

We support a provision recognising that existing bodies have responsibility for taking measures within their own competence.

We also support the decision-making body establishing processes for cooperation and coordination with existing global, regional and sectoral bodies, as well as states.

We will consider further the proposal for a decision-making body of this instrument being able to make recommendations to other bodies about measures that could be taken within their mandates.

In relation to paragraph (2) on modalities for decision-making, we support states making all efforts to achieve consensus. We are prepared to consider further whether it is appropriate to have a mechanism to deal with situations where consensus is not possible, with details to be worked through at a later stage (OPTION I, paragraph (2), Option B).

In relation to paragraph (3), we do not support Option A, which requires adjacent coastal state consent. However, we think the views of affected coastal states, including small island developing states, should be given due weight in the robust consultation mechanisms under the agreement. Therefore we prefer OPTION I, paragraph (3), Option B '*no text*'.

In relation to paragraph (4), we are open to a provision for communication of decisions to impacted bodies (OPTION I, paragraph (4)).

In relation to Option II – we do not support a provision *requiring* decisions to be taken by a regional seas instrument. But at the same time, we should not rule out that one of the objectives of this agreement could be to support the establishment of regional cooperation institutions and mechanisms to establish ABMTs.