

Area-based management tools, including marine protected areas

European Union and its Member States

Interventions on 27-29th March 2019

Definitions

[Terms raised in relation to measures such as area-based management tools, including marine protected areas]

(15)

To the EU and its Member States (MS), the main distinction is that while ABMTs are mostly single-sectoral tools for a defined area and which do not have a specific conservation objective, only MPAs (at least at this point), provide for holistic management of all activities/impacts in a particular defined area with a specific conservation objective. For the EU and its MS, MPAs are not to be understood as only marine reserves or no-go/no-take zones, but offering a whole range of different protection levels.

When considering any definition of ABMTs in this discussion, we suggest that consideration should be given to the Convention on Biological Diversity decision regarding Other Effective Conservation Measures.

4. Measures such as area-based management tools, including marine protected areas

4.1 Objectives of area-based management tools, including marine protected areas

(2) **OPTION I:** Regarding paragraph 2, we are happy to consider the elements included in the list in option 1. However, we feel the list is currently a mixture between objectives, tools and standards and will need some cleaning up. This also needs to be made clear in the chapeau which also seems to want to say too much in one sentence.

(a) seems already contained in other sections and seems more a tool to deliver the objectives than an actual objective of enhanced conservation/ sustainable use.

(b) The implementation of UNCLOS obligations is a general obligation and is the underlying aim of this UNCLOS implementing agreement. Hence these obligations should not be under a chapeau of “depending on” and “may include”. We consider that the implementation of other commitments (such as that to establish a coherent network of MPAs under the CBD) might be more of preambular type [text] reference although we are flexible.

(c) Regarding promoting a holistic and cross-sectoral approach to ocean management, we consider this is more of an overall IA objective than a specific ABMT part objective.

(d) We consider the term “described” more factually correct than the term “designated” in this context.

(e) Option A: Establishing a connected network of effective and equitably managed, ecologically representative marine protected areas is a priority for the EU and should be moved up the list. This instrument creates the mechanism which can deliver on previously agreed commitments.

(h) Concerning creating scientific reference areas for baseline research, we are unclear whether this is an objective.

4.2 Relationship to measures under relevant instruments, frameworks and bodies

As a general consideration, we think that it might be more logical to move this section after the section on designation etc, as some of the issues tackled in this section are actually operationalised in the designation process, and in particular the consultation aspects of the procedure. This would ensure more clarity and avoid repetition.

Additionally, we feel this sub-section mixes and possibly duplicates a lot of different concepts: such as not undermining and respect of existing organisations, cooperation (in general? During the procedure?), respect for the rights of coastal States, ...

Consequently, while we consider that there are some very pertinent elements included in this section, we will want to reconsider placement when organising the text of the draft treaty, including whether some elements can be moved to more horizontal/general part of the treaty.

(1) With regard to the concept of not-undermine expressed in para 1), we would also like this paragraph to refer to promotion of cooperation, coordination and coherence, as well as the respect of the competences of existing organisations.

[Promotion of coherence and complementarity in measures related to area-based management tools, including marine protected areas]

The EU and its MS are of the view that a lot of different things are mixed into this sub-section. For us, what should come under a section of coherence should be mainstreaming (promote the objectives of BBNJ in other organisations) + offering a platform/mechanism for cooperation, communication and collaboration for those organisations + (additionally to (not instead of) the MPA designation process) the setting of general standards/guidelines for ABMTs/MPAs. If this concept is to be reflected in the future instrument, we would suggest having a chapeau or introduction which would establish that: Through this instrument States shall: 1. Establish process 2. Promote cooperation.

OPTION I:

(2): On option I paragraph 2, we think this paragraph should cover three ideas:

- Through this IA we are aiming to create a network of MPAs beyond national jurisdiction.
- Then: To this end, States shall promote coherence and complementarity in measures related to ABMT, including MPAs.
- This can be achieved through the global overarching framework for the establishment of a network of MPAs in ABNJ as set out in this part, as well as enhanced cooperation and coordination including between competent international, regional and sectoral organisations

(3) We consider this paragraph is about the measures, whereas paragraph 2 concerns the tools as such, i.e. the MPAs.

The three options under paragraph 3 represent, in our view, three very different situations and are not mutually exclusive.

Option C fits under the mechanism through which MPAs can be established by the COP to complement existing measures, in order to “enhance” them to a full MPA with holistic management.

Option B refers to a similar situation, in that you will have additional measures to those adopted under existing frameworks.

Option A is different and describes the situation where there are no competent bodies to deal with particular activities, and where consequently measures related to MPAs would need to be established through the framework established under section 3

(4) Regarding paragraph 4, we believe that MPAs that comply with the criteria shall be recognized. We're open to discuss how this can be operationalized.

OPTION II:

(3) Regarding the situation where there is no legal instrument, framework or global, regional or sectoral body to establish ABMTs, including MPAs, the EU and its MS are still considering whether and/or how such a provision could fit in the architecture of the treaty.

[Enhanced cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, with regard to areabased management tools, including marine protected areas, without prejudice to their respective mandates]

(2) **OPTION I:** The coordination and collaboration mechanism in paragraph 2 option 1 would exist side-by-side with the IA-process to create MPAs described in 4.3, but needs further elaboration and would be the platform referred to above. We feel the other options simply reinforce the status quo and are hence not acceptable to the EU and its MS.

[Respect for the rights of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the exclusive economic zone]

(1) We can see merit in having an explicit without prejudice clause in this section, but would want to avoid lengthy debates over this, and its placing at this moment. But we can also consider a more horizontal or general placement when the agreement is drafted.

Option 1 and 2 are both acceptable as propositions. Option 2 is the more elaborate, larger and more general version. Option 1 is more specifically on rights of coastal states, but we can support the thrust.

As a general observation, we would stress that the IA shall be without prejudice to the rights, jurisdictions, freedoms and duties of all States under UNCLOS. With regard to the specific status of coastal States the EU and its MS recognize that the rights of coastal States under UNCLOS over all areas under their jurisdiction should be respected. This includes not only rights relating to the EEZ and continental shelf beyond 200nm, but also, in cases where an EEZ has not been established, with regard to the territorial sea and the continental shelf within 200nm.

(2) It goes without saying that once an area is no longer beyond national jurisdiction, the IA ceases to apply. However, the language requires some clarification or fine-tuning of the terms "that area" and "amended" to make it clear that the geographical scope of such an MPA will be revised to cover only an area which remains in ABNJ.

[Relationship between measures under this instrument and those established by adjacent coastal States, including issues of compatibility]

We support aspects of option 1 and option 2. However we don't think compatibility can be mandatory, "States parties, including potentially affected States should cooperate to promote compatibility of objectives and measures with respect to ABMTs including MPAs established under this instrument. We would like to see this reflected in the text." We support the thrust of option 2 insofar to the reference of the principle of "due regard"

(a) In line with our aim of ensuring that consultations are as inclusive as possible, we would like to include reference to indigenous peoples and local communities with relevant traditional knowledge in those States, as well as relevant global, regional and sectoral bodies.

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

We agree that the IA needs to cover and refer to different types of tools to be future proofed. However, with regard to this section, we see the main added value of the designation procedure as described below in the designation of MPAs.

4.3.1 Identification of areas

(1) We are unsure what is meant by “internationally accepted scientific standards and criteria” and would need more information, especially as we are only listing the criteria in the process described below.

Regarding traditional knowledge, we see this as an additional source of information that will be taken into account where relevant.

(2) OPTION I:

(a) We agree with the idea of having an indicative and non-exhaustive list criteria in the IA. Since such a list is only indicative, we don't think the development of all criteria should be left to the COP (although it might complement the criteria in the future, if deemed necessary), as this is not really necessary and risks slowing down the process. However, we feel like the list proposed is overly long, mixes up numerous concepts, some of which are not necessarily criteria and some of which are overlapping and can be merged. We are of the opinion that inspiration should indeed be drawn from the criteria already described by existing organisations that have established MPAs.

(iii) Special importance for the life history stages of species and (iv) Special importance of the species seem like a duplication.

(v) The importance for threatened, endangered or declining species and/or habitats; needs to be read in conjunction with (iv) as it should not be limited to threatened, endangered or declining species.

(vi) Vulnerability; (vii) Fragility; and (viii) Sensitivity; are usually linked.

(xii) Dependency; the idea is the same as amended xiv “ecological coherence”.

(xiii) Naturalness as such does not mean anything. It is usually used in conjunction with “exceptional”.

(xv) Regarding ecological processes; we are not clear what this refers to.

(xvi) Concerning economic and social factors, we prefer Option B: No text; we consider that economic and social factors are not to be taken into account starting at the proposal stage, but can be taken into consideration as part of the designation process. See comments in 4.3.2.

(xvii) We are not opposed to the underlying reasoning behind “the adverse impacts of climate change and ocean acidification”, but feel it should either be specifically taken into account when drawing up the management plan, or it should be redrafted along the lines of “vulnerability to climate change” and thus linked with the vulnerability criterion above.

(xviii) Regarding cumulative and transboundary impacts, we are not sure how to understand this as a criterion.

(5) We prefer the no text option II here, as we feel decision-making is more appropriately tackled further down the text in line with the logical flow of the process.

4.3.2 Designation process

Proposals

OPTION I:

(1) Option A: Proposals may be submitted by States parties, individually or collectively. We also believe relevant global, regional and sectoral bodies, as well as civil society should be able to contribute to such proposals.

(3) We have a preference for using the terminology “precautionary principle”, which is important for the EU and its MS. In line with Rio Principle 15 this should be understood as the lack of scientific certainty should not be a reason for postponing the necessary measures.

(4) **Option A:** Regarding required elements of proposals, we feel like one aspect is missing from what needs to be in a proposal: Description of the characteristics and biodiversity values of the area and the sensitivity of the species/habitats concerned (what we want to protect and to what extent it meets the criteria set in the Implementing Agreement). Our comments in this section are to be read in conjunction with our submission of December 2016, as well as the document uploaded to PaperSmart during IGC1.

(d) We are not entirely sure what “standards” refers to in this section.

(e) We prefer (e) to only refer to conservation objectives.

(f) We think (f) should make it clear that this related to the proposed area as such.

(g) We think the information on submissions to the CLCS is important.

(l) As indicated above, we think this is the most appropriate step to refer to socio-economic considerations, as well as the possible interference with other legitimate uses of the sea.

(m) We would like to make clear that, in order to respect the competences and mandates of relevant organisations, at this stage, priority elements for a draft management plan, is referring to very basic elements linked with the identified impacts in the area.

Once inputs are received from the competent bodies by the end of the consultation, this would be transformed into a draft management plan, containing also the possible measures identified by the bodies during the consultation.

(n) Similarly, at the stage of the proposal, the monitoring, research and review plan only takes the form of priority elements, in order for it to be elaborated upon in the course of the procedure.

(p) We prefer Option 2: *No text*. While we are ok with reviewing and updating the MPAs and their attendant measures based on the best available science in line with adaptive management, the EU does not agree with a time-bound MPA.

(q) We do not think that an outline of the process followed to develop the proposal, including consultation is necessary, since the consultation process is already established in the text of the agreement and propose to delete.

(s) We do not understand the need for a proposal to refer to a legal basis. The legal basis will be the IA. We propose to delete.

Consultation on and assessment of the proposal

OPTION I:

(1) We want a very large inclusive, full consultation process. Three main elements: States, (all States, including potentially affected States, including adjacent coastal States) bodies, stakeholders.

(2) Our preference is option A (a) Option 2: “All States, including potentially affected States, including adjacent coastal States”. ;

We believe (b) Relevant global, regional and sectoral bodies; (c) Industry; (d) Civil society; (e) The scientific community; (f) The academic community; can be merged.

We consider that an additional paragraph may be helpful. To add clarity with regard to the consultation process. For the EU and its MS, it would be helpful to clarify what sort of information might be provided by the different actors through the consultation process.

Paragraphs below in italics are taken from the EU and MS December 2016 Submission.

A proposal for the designation of an MPA, containing all the elements required by the Implementing Agreement, should be submitted by the proponent States and circulated to all States (not only States Parties), relevant organisations and stakeholders including civil society representatives thereby launching an initial consultation process. The duration of the consultation process should be established in the Implementing Agreement. This will

allow all States - both the parties to the agreement and non-parties -, as well as relevant organizations and stakeholders, to submit views on the MPA proposal.

Participation

The consultation should be inclusive, transparent and open to all relevant actors, namely:

- *All States, irrespective of whether they are parties to the Implementing Agreement, potentially affected States, including adjacent coastal States;*
- *Relevant global, regional or sectoral organizations;*
- *Civil society, including sectoral stakeholders*

Content

States should be invited to, inter alia:

- i. *submit views on the merits and other aspects of the proposal;*
- i. *provide any further scientific inputs considered to be relevant;*
- i. *identify circumstances that need to be considered by the decision-making body, including the existence of conservation measures in place in areas under national jurisdiction adjacent to the proposed MPA, noting the advantages of complementarity and compatibility across jurisdictions;*
- i. *submit views on whether their rights established under UNCLOS, including the sovereign rights over their continental shelf, could be affected by the proposal.*

The competent global, regional or sectoral organisations will be the ones to identify, propose and subsequently, after the designation, implement measures regarding activities under their remit. This would operationalize the “not undermining” commitment.

Hence, competent global, regional or sectoral organizations should be invited to, inter alia:

- i. *submit views on the merits and other aspects of the proposal;*
- i. *provide any further scientific inputs considered to be relevant;*
- i. *identify circumstances that need to be considered by the decision-making body, including the existence of measures adopted by the organization for the area in question or for an area adjacent to it and the advantages of complementarity and compatibility between existing and future measures;*
- i. *identify measures, within their competence and remit to achieve the conservation objectives complementary to those which may be adopted by individual States Parties.*

Civil society representatives should be invited to, inter alia:

- i. *submit views on the merits and other aspects of the proposal;*
- i. *provide any further scientific inputs considered to be relevant;*
- i. *identify circumstances that need to be considered by the decision-making body.*

Upon conclusion of the consultation process, the proponent State(s) shall take into consideration the inputs received during the consultation, before submitting a final proposal for an initial consideration of State Parties to the Implementing Agreement. It might be necessary to repeat the consultation process before the proposal can be finalized, in the event that significant issues emerge during the consultations. The contributions made during the consultation process should be made public by the Secretariat.

(5) We support that in principle, the consultation period shall be time-bound, but, as a practical consideration, this should respect the procedures of competent organizations and instruments”. We acknowledge that this will probably result in prolonging the consultation process substantially. However, we consider this to be necessary.

(6) In the event that significant issues emerge during the consultations which require substantial amendment of the original proposal, the consultation process might need to be repeated before the proposal can be finalized. This should be reflected in paragraph 6.

(7) **Option A:** In our preferred option A, we think the scientific/technical body should consult, if necessary with relevant bodies.

Decision-making

OPTION I: To the EU and its MS this seems to be the most logical placement of provisions regarding decision-making in line with the chronological sequence of the procedure.

We prefer Option 1, Option A, option 2, with the explicit mention of the management plan, taking into account the scientific advice or recommendations, while respecting the competence of relevant bodies to adopt management measures for activities under their remit.

We think that it should be clear that the decision making body can either adopt the proposal as submitted, adopt the proposal after amendments or reject the proposal.

(2) and (3) Option A: Regarding paragraphs 2 and 3, the EU is of the opinion that all efforts should be exhausted to reach consensus, and is open to further discussing options if/when such a consensus cannot be reached.

(4) We are of the opinion that it is important to add to this paragraph that the final decision should be made publically available by the Secretariat.

4.4 Implementation

OPTION I: Our comments and suggestions below try to reflect the concepts, as well as associated terminology that we have proposed in the process under section 4.3.

(1) We suggest to use the term “decisions” instead of “measures” as the decisions taken by the COP will be wider than merely measures (including management plan and research and monitoring plan).

(3) We consider that “States parties shall promote the adoption of measures within competent bodies” is too weak. This language should be made stronger and should emphasize the obligation of conduct on States. For example along the lines of “Shall work in a manner that aims to deliver”

(4) In paragraph 4, we stress that States are able to adopt stricter measures.

(6) We remain to be convinced that a provision concerning disproportionate burden such as in paragraph 6 is relevant in this specific part.

4.5 Monitoring and review

OPTION I: (1) We think it should be spelled out that States parties can report individually or collectively on the implementation of relevant elements of the COP decisions on MPAs, specifically on the achievement of the objectives in accordance with the adopted management plan. We see “collectively” as including through existing organisations. We consider that the reports should be made publicly available and this should be reflected in the text.

(2) We believe there should be some kind of follow up mechanism to assess whether the conservation objectives of the MPA have been achieved. The implementation of the research and monitoring plan is of particular relevance in this respect.

(4) For paragraph 4, we have a preference for option B, adding the precautionary principle and the ecosystem approach. In the chapeau of this paragraph, we see merit in mentioning that the review process should set into action the same process for review as for the original designation as we believe it is important to have the large consultation also for the review.

OPTION II: (2) Option A: We consider that the IA cannot bind international organisations that are not a party to it. And thus do not favour option 2, paragraph 1. This needs to be reflected in the formulation of paragraph 2, option A, which could be redrafted to state that we are “inviting” relevant organisations “to report”.