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Development of an international legally-binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction under the United Nations Convention on the Law of the Sea

Written submission by the United Nations Environment Programme (UNEP)

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Regional Seas Programmes and other UNEP Activities Relevant to Marine Biodiversity in Areas beyond National Jurisdiction

I. Introduction

1. The General Assembly resolution 69/292 adopted on 19 June 2015 on “Development of an international legally-binding instrument under the United Nations Convention on Law of Sea on the conservation and sustainable use of marine biological diversity on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction”. In his letter of 18 December 2015, H.E. Ambassador Mr. Eden Charles of Trinidad and Tobago, the Chair of the Preparatory Committee invited the international organizations which “*wish to do so to submit their views on the elements of a draft text of an international legally binding instrument*”.

2. The present document has been prepared in response to the invitation of Chair and aims to provide information on UNEP’s Regional Seas Programme, which may be helpful for items under consideration by delegations participating in the Preparatory Committee. It is also in response to the proceedings at the first meeting of the Preparatory Committee, where several delegations referred specifically to regional seas programmes that are working on the issues related to biodiversity in areas beyond national jurisdiction. In addition, some of the other activities UNEP is undertaking relevant to biodiversity in areas beyond national jurisdiction are equally highlighted.

3. In the above noted General Assembly resolution 69/292, the General Assembly “[R]ecognizes that the process indicated in paragraph 1 above should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies” (operational paragraph 3). The Global Programme of Action for the protection of the marine environment from land based activities (GPA), for which UNEP provides secretariat services, and some of the regional seas programmes under the wider UNEP coordination are considered to fall into respectively the global and regional bodies as referred to in this resolution.

4. The General Assembly resolution 69/245 on oceans and seas, adopted on 29 December 2014 stipulates: “... *that States committed to take action to reduce the incidence and impacts of such pollution on marine ecosystems, including through the effective implementation of relevant conventions adopted in the framework of the International Maritime Organization, and the follow-up of relevant initiatives such as the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, as well as the adoption of coordinated strategies to this end...*”.

5. The second session of the United Nations Environment Assembly adopted in 2016 a resolution on Oceans and Seas (resolution 2/10)¹. In paragraph 9 the Assembly “[E]ncourages the United Nations Environment Programme to continue to participate in the process initiated by the United Nations General Assembly in its resolution 69/292 on the negotiation on the development of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction”.

6. The same session of the United Nations Environment Assembly adopted in May 2016 a resolution on marine plastic litter and microplastics (resolution 2/11)², which clearly identified that plastics and microplastics “are found in all compartments of the marine environment”. Such marine compartments are considered to be also included in the marine environment belonging to the areas beyond national jurisdiction. Another resolution on sustainable coral reefs management (resolution 2/12)³, *inter alia*, calls for national, regional and international initiatives, cooperation and commitments, to conserve and sustainably manage coral reefs, including cold-water coral ecosystems, and mangrove forests. While the vast majority of tropical coral reefs and mangroves ecosystems occur within national jurisdiction there are some tropical coral communities and extensive areas of cold-water coral ecosystems in areas beyond national jurisdiction.

7. At the 15th session of the African Ministerial Conference on Environment (AMCEN) (March 2015, Cairo), the African Ministers agreed on the Cairo Declaration, including the following operational paragraphs:

“8. To reiterate our support for the regional seas programmes in Africa as regional platforms for the implementation of the Africa Integrated Marine Strategy 2050 and Agenda 2063 on Ecosystem-based Management Approaches for marine resources in the exclusive economic zones and adjacent waters;”

“14. to develop a governance strategy, in accordance with the United Nations Convention on the Law of the Sea and regional seas conventions, on oceans and seas in Africa for the effective management of the region’s shared maritime resources and call for a regional conference to address the matter by 2016”.

UNEP is assisting the AMCEN member States to develop a strategy as requested above through the four regional seas programmes.

II. UNEP Regional Seas Programme

9. UNEP was established as the result of the United Nations Conference on Human Development in 1972 in Stockholm. The Conference recommended that Governments take early action to adopt “effective national measures for the control of all significant sources of marine pollution, including land-based sources, and concert and co-ordinate their actions regionally and where appropriate on a wider international basis” (Recommendation 92). The subsequent meetings of the UNEP Governing Council repeatedly endorsed the regional approach and requested the development of regional action plans for the parts of the ocean where such plans do not yet exist. This was the origin of the UNEP Regional Seas Programme.

¹ http://www.unep.org/about/sgb/cpr_portal/Portals/50152/UNEA2%20RES/10.pdf

² http://www.unep.org/about/sgb/cpr_portal/Portals/50152/UNEA2%20RES/11.pdf

³ http://www.unep.org/about/sgb/cpr_portal/Portals/50152/UNEA2%20RES/12.pdf

10. Starting from the pollution abatement, the Regional Seas Programme⁴ evolved in the last four decades to cover regular monitoring and assessment, land-based and sea-based sources of pollution, Specially Protected Areas and biodiversity, oil spill contingency/recovery plans, coastal habitat management, Integrated Coastal Zone Management, marine litter, and legal and institutional frameworks.

11. To date, the UNEP Regional Seas Programme, under UNEP's coordination, covers 18 regions with more than 146 countries participating in 18 Regional Seas Conventions and Action Plans. Among them, 14 regional seas programmes were established under the auspices of UNEP. These are the Black Sea; Wider Caribbean; East Asian Seas; East Africa; South Asian Seas; ROPME Sea Area⁵; Mediterranean; North-East Pacific; Northwest Pacific; Red Sea and Gulf of Aden; South-East Pacific; Pacific; West, Central and Southern Africa; and Caspian. Seven of these programmes are directly administered by UNEP⁶. The regional seas programme functions through an accompanying Action Plan. In most cases, the Action Plan is underpinned with a legal framework in the form of a regional seas convention and associated protocols on specific issues. Four partner programmes, for the Antarctic, Arctic, Baltic Sea, and North-East Atlantic Regions, respectively, are also members of the Regional Seas Programme and participate in global exchange of lessons and information.

III. Regional Seas Programmes with Areas beyond National Jurisdiction Included in Their Geographic Coverages

12. Among the 18 regions, the following four regions include Areas Beyond National Jurisdiction in the geographic coverage of their respective legal instruments: North East Atlantic, Pacific, Mediterranean and Southern Ocean (Antarctic).

13. In the North East Atlantic, the 1992 OSPAR Convention in Article 1 (a) defines the "Maritime area" as the "*internal waters and the territorial seas of the Contracting Parties, the sea beyond and adjacent to the territorial sea under the jurisdiction of the coastal state to the extent recognised by international law, and the high seas, including the bed of all those waters and its sub-soil, situated within the following limits: (i) those parts of the Atlantic and Arctic Oceans and their dependent seas which lie north of 36° north latitude and between 42° west longitude and 51° east longitude, but excluding: the Baltic Sea and the Belts lying to the south and east of lines drawn from Hasenore Head to Gniben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to Kullen, (2) the Mediterranean Sea and its dependent seas as far as the point of intersection of the parallel of 36° north latitude and the meridian of 5° 36' west longitude; (ii) that part of the Atlantic Ocean north of 59° north latitude and between 44° west longitude and 42° west longitude*". The OSPAR Contracting Parties already agreed on a set of Marine Protected Areas, which are included in the areas beyond national jurisdiction in the convention maritime area.

14. The geographic coverage of the 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific (Noumea Convention) defines the "Convention Area" as "*(i) the 200 nautical mile zones established in accordance with international law of: American Samoa, Australia (East coast and Islands to eastward including Macquarie Island), Cook Islands, Federated States of Micronesia, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia and Dependencies,*

⁴ www.unep.org/regionalseas or www.unep.org/ecosystemmanagement/water/regionalseas40

⁵ The sea area covered by the Regional Organization of Protection of the Marine Environment and the Kuwait Convention.

⁶ These are the regional seas programmes for the Mediterranean, Caribbean, Western Indian Ocean, West, Central and Southern Africa, East Asia Seas, Northwest Pacific and Caspian Sea.

New Zealand, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Islands, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna, Western Samoa; (ii) those areas of high seas which are enclosed from all sides by the 200 nautical mile zones referred to in sub-paragraph (i); (iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to Article 3". In accordance to (ii) above, the so-called "high seas pockets" are included in the Nouméa Convention coverage (Article 2 (a)).

15. The 1976 Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean defines the "*Mediterranean Sea Area*" as "*the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses*". One of its associated protocols, the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean establishes a list of Specially Protected Areas of Mediterranean Importance (SPAMIs). Article 9 of the Protocol provides the procedure of establishing SPAMIs as follows (Paragraph 1): "*SPAMIs may be established, following the procedures provided for in Paragraph 2 to 4 in: (a) the marine and coastal zones subject to sovereignty or jurisdiction of the Parties; (b) zones wholly or partly on high seas*". A few SPAMIs, including the Pelagos Sanctuary for Mediterranean Marine Mammals, were submitted by multiple Parties corresponding to (b) above.

16. The area covered by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) is defined as the area south of the Antarctic Convergence. The 1980 Convention on the Conservation of Antarctic Marine Living Resources is also applied in the area south of 60°S to which the 1959 Antarctic Treaty applies. The CCAMLR includes MPAs as one part of its approach to marine spatial protection. In 2009, CCAMLR established the world's first high seas MPA, which is the South Orkney Islands southern shelf MPA, covering 94 000 km² in the south Atlantic. In 2011, CCAMLR adopted Conservation Measure 91-04 (CM 91-04) General framework for the establishment of CCAMLR Marine Protected Areas in accordance with Article IX of the Convention.

IV. Regional Seas Programmes which Have Already Undertaken Action Pertaining to Areas beyond National Jurisdiction

17. In United Nations Environment Assembly resolution 2/10, referred to above in paragraph 5, includes in paragraph 13 that it "*[E]ncourages the contracting parties to existing regional seas conventions to consider the possibility of increasing the regional coverage of those instruments in accordance with international law*". As we will elaborate, a number of regional seas conventions had started already a series of activities in relation to this subject.

18. Under the following three regional conventions, parties and member countries started studying the issues related to biodiversity in areas beyond national jurisdiction: (i) Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean; (ii) Abidjan Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region; and (iii) Comisión Permanente del Pacífico Sur (CPPS) covering the South East Pacific.

19. The 7th Meeting of the Conference of Parties of the Nairobi Convention decided in 2012 (Decision CP7/7) on Ecologically or Biologically Significant Marine Areas⁷ encourages the Parties to recognize and describe the Ecologically or Biologically Significant Marine Areas within their exclusive economic zones and areas beyond national jurisdiction, and where possible establish marine protected areas. Although the Ecologically or Biologically Significant Areas under the Convention on Biological Diversity were described, designation of the marine protected areas is underway in response to the second paragraph of this decision. Mauritius and Seychelles concluded a memorandum of understanding on a joint management area of the Mascarene Plateau. In the component of development and testing of a methodology for area-based planning under the project, “Sustainable fisheries management and biodiversity conservation of deep-sea living marine resources and ecosystems in the ABNJ” implemented by FAO and UNEP under the GEF Common Oceans Programme, the Western Indian Ocean relevant to the Nairobi Convention has been selected to be one of the pilot region to test apply a methodology of area-based planning in ABNJ pursuant to the above-noted decision of the Contracting Parties.

20. At the 8th Conference of Parties of the Nairobi Convention, in decision CP8/5: African Union’s Agenda 2063⁸ and the Africa’s Integrated Maritime Strategy 2050⁹, the Contracting Parties took note of the AMCEN’s support for the regional seas programmes in Africa as regional platforms for the implementation of the 2050 Africa’s Integrated Maritime Strategy and Agenda 2063 and further agreed to implement the Cairo Declaration of the 15th Session of AMCEN. The Contracting Parties also requested “*the Secretariat of the Nairobi Convention, in collaboration with Barcelona Convention, Abidjan Convention, Jeddah Convention, with the support of the United Nations Environment Programme, to contribute to the development of an African strategy on ocean governance in the context of the African Integrated Maritime Strategy 2050 and Agenda 2063, invariably such a strategy will include approaches for the management of marine resources in the exclusive economic zones and adjacent waters*”.

21. The Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region (Abidjan Convention) decided in 2014 at the eleventh meeting of its Conference of the Parties “*to set up a working group to study all aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction within the framework of the Abidjan Convention [...]*” (Decision CP. 11.10 on the Conservation and Sustainable use of the Marine Biodiversity of the Areas Located beyond National Jurisdictions)¹⁰. Based on this decision, the Secretariat of the Abidjan Convention has invited the Partnership for Regional Ocean Governance (PROG) to

⁷ “1. to urge the Contracting Parties to participate in the process of recognising and describing, within the context of Convention on Biological Diversity and in partnership with the relevant United Nations agencies, ecologically or biologically significant marine areas within their exclusive economic zones and areas beyond national jurisdiction as an approach to management of marine and coastal ecosystems. 2. to request the Secretariat, in partnership with the Secretariats’ of the Convention on Biological Diversity, Convention on Migratory Species, Convention on International Trade in Endangered Species, International Maritime Organization, Food and Agriculture Organization, Inter-Governmental Oceanographic Commission of UNESCO and other partners, to support Contracting Parties to participate in the process of recognising and describing ecologically or biologically significant marine areas, and where feasible, establish marine protected areas”

⁸ Relevant documents can be found in <http://agenda2063.au.int/>

⁹ <http://pages.au.int/maritime/documents/2050-aim-strategy-0>

¹⁰ UNEP (DEPI)/WACAF/COP.11/9/Rev1

(<http://cop11.abidjanconvention.org/media/documents/Report/COP11%20-%20Final%20Report%20En.pdf>)

provide support in launching and operationalizing the Working Group, including by organizing a first scoping workshop held in 2015 which finalised the terms of reference and work programme of the Working Group. Based on the terms of reference and work programme of the Working Group, the next meeting of the Working Group is expected to move towards implementation of the agreed action.

22. In 2012, the VIII Meeting of Ministers of Foreign Affairs of the Permanent Commission for the South Pacific adopted the Commitment of the Galapagos for the XXI Century. In this Ministerial declaration, particularly Chapter VIII on Projection of CPPS towards the Pacific Basin, the Ministers *“strongly request the strengthening of the projection of the CPPS towards the Pacific Basin, especially through an active approach to countries within the Latin American Pacific and to extend its reach towards those countries and organizations in the West Pacific. This in order to establish alliances, to develop joint projects and exchange of experiences on maritime issues, such as the impacts of climate change and the integrated evaluation of the marine environment at global level promoted by the United Nations, among others”*. Further in paragraph 20, they *“promote the coordinated action of Member States regarding their interests on living and non living resources in marine areas beyond national jurisdiction as well as the search for alliances to tackle common challenges with coastal States of the West Pacific”*. In the component of development and testing of a methodology for area-based planning under the project “Sustainable fisheries management and biodiversity conservation of deep-sea living marine resources and ecosystems in the ABNJ” implemented by FAO and UNEP under the GEF Common Oceans Programme, the Southeast Pacific has been selected to be one of the pilot regions to test and apply a methodology of area-based planning in ABNJ pursuant to the above-noted Ministerial Declaration. Discussion is ongoing in establishing a working group to study the issues of biodiversity in areas beyond national jurisdiction under the framework of the PROG, further to the ongoing work of the CPPS in developing national and regional integrated ocean governance policies, which was supported by the PROG.

V. Other UNEP Activities Relevant to Biodiversity in Areas beyond National Jurisdiction

23. UNEP launched the Partnership for Regional Ocean Governance, in January 2015, together with the Institute of Advanced Sustainability Studies and the Institut du développement durable et des relations internationales. This partnership placed an initial emphasis on the regional approach to biodiversity in ABNJ and started assisting two regional seas programmes, namely the West, Central and Southern Africa (Abidjan Convention) and the South East Pacific (CPPS). For the former, PROG supported the establishment of a Working Group on ABNJ under the Convention. For the latter, PROG supported the organization of a work on integrated ocean policy within which the issue of ABNJ was discussed.

24. Under UNEP’s Montevideo Programme IV for the Development and Periodic Review of Environmental Law, which forms a broad strategy for the international legal community and UNEP in formulating the activities in the field of environmental law for the decade commencing in 2010, areas beyond national jurisdiction are specifically included in relation to encouraging the development of legal instruments of water resources. UNEP’s current mid-term review process of the Montevideo Programme IV consulted experts on this topic and determine to still being an important topic to work on in the years to come.

25. In 2015, UNEP organised an international environmental law seminar on “Laws to promote environmental sustainability of oceans and seas” in Panama City. Among the results¹¹, some conclusions are cited below:

“15. Biodiversity in areas beyond national jurisdiction: (c) there needs to be coordination of the international law community’s efforts to address areas beyond national jurisdiction; for the time being different legal regimes apply, several sectoral organizations have competence and there is no overall cross-sectoral coordinating mechanism for management.

16. Living marine resources in areas beyond national jurisdiction: (a) There has been a steady increase in the percentage of stocks fished at biologically unsustainable levels; and Illegal, unreported and unregulated fishing remains a major global threat to the long-term sustainable management of fisheries. (b) Whilst there is arguably a comprehensive international framework for sustainable fisheries there is limited implementation, a lack of consistent interpretation of norms and principles, and inadequate mechanisms for compliance verification.

17. Pollution in areas beyond national jurisdiction: (b) International regulation of marine pollution in areas beyond national jurisdiction is fragmented with a number of international instruments relating to different regions and/or different sources of pollution; a more holistic approach might provide new and better tools to tackle marine pollution. (c) Although there is a regulatory regime under Part XI of the United Nations Convention on the Law of the Sea controlling deep seabed mining in areas beyond national jurisdiction, the regime is based on legal instruments that were negotiated some time ago, and is primarily focused on exploration; there may be scope for further work.”

26. Within the component of development and testing of a methodology for area-based planning under the project, “Sustainable fisheries management and biodiversity conservation of deep-sea living marine resources and ecosystems in the ABNJ” implemented by FAO and UNEP under the GEF Common Oceans Programme, UNEP and the World Conservation Monitoring Centre are reviewing the existing area-based management or planning tools targeting the areas within national jurisdiction from the perspective of the applicability of these tools for areas beyond national jurisdiction.

27. UNEP is addressing the issues of marine pollution which is considered to be one of the threats to the ecosystems in ABNJ. Under the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA), support is being given to countries in addressing three critical pollution source categories as mandated by the Manila Declaration adopted in January 2012: wastewater, nutrients and marine litter. The GPA Coordinating Office (CO) supports the Global Partnership on Marine Litter to help raise awareness and address through broad-based partnership, actions to address the problems associated with plastic debris that is becoming ubiquitous in the world’s oceans. The GPA-CO also supports the Global Partnership on Nutrient Management in the context of addressing nutrient loading in the context of reducing the occurrence and persistence of eutrophic and hypoxic conditions. The Global Wastewater Initiative is another broad-based stakeholder partnership that is supported by the GPA-CO to help foster knowledge sharing and encourage investment in appropriate wastewater treatment technologies to reduce risk to human and ecosystem health.

¹¹ <http://www.unep.org/delc/Portals/119/documents/montevideo/panama-ocean-law-seminar-report.pdf>. 15

28. UNEP is also addressing critical habitat such as highly diverse marine ecosystems such as tropical coral reefs and cold-water coral reef ecosystems, in line with UNEA resolution 2/12. This includes action in relation to climate change resilience, understanding and using ecosystem service values in private and public decision making, data and reporting for ecosystem-based management, and outreach, carried out through the Global Coral Reef Partnership.