

## Options for Legal Text on a process for the designation and implementation of a representative network of Marine Protected Areas, including Marine Reserves in Areas Beyond National Jurisdiction under the new Instrument

### Greenpeace's rolling submission to the Third Session of the Preparatory Process (PrepCom 3)

March 2017

#### Introduction

This document is part of Greenpeace's **rolling submission** to the Preparatory Process on the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ). Building upon Greenpeace's previous **submissions**<sup>1</sup> and **best practices under existing international instruments** (see footnotes), as well as proposals submitted by delegations as **reflected in the Chair non-paper**, we suggest options for legal text on a process for the identification, designation and management of a representative network of Marine Protected Areas (MPAs), including marine reserves, in ABNJ.

Importantly, Greenpeace believes that the rich exchange of information and views during the previous meetings of the Preparatory Committee have offered States enough elements to advance the discussion on Area Based Management Tools, including MPAs, into an **intergovernmental conference** setting, to be convened **as soon as possible in 2018** in line with the timeline set by General Assembly resolution 69/292.

#### Step 1: Starting Point

##### Definition of Marine Protected Areas (MPAs)

*Suggested text:*

"A designated geographically defined marine area [in areas beyond national jurisdiction] where human activities are **regulated, managed or prohibited** in order to achieve specific conservation objectives including the long-term conservation and resilience of nature."<sup>2</sup>

##### General Duties

*Suggested text:*

1. *State Parties*<sup>3</sup> shall co-operate to protect and preserve the marine environment and maintain and restore the health, productivity and resilience of marine habitats,

<sup>1</sup> For Greenpeace's suggested process see our submission to PrepCom 2 ([http://www.un.org/depts/los/biodiversity/prepcom\\_files/greenpeace2.pdf](http://www.un.org/depts/los/biodiversity/prepcom_files/greenpeace2.pdf)) and views submitted to Chair H.E. Mr. Eden Charles following PrepCom2 ([http://www.un.org/depts/los/biodiversity/prepcom\\_files/rolling\\_comp/Greenpeace-marine\\_protected\\_areas.pdf](http://www.un.org/depts/los/biodiversity/prepcom_files/rolling_comp/Greenpeace-marine_protected_areas.pdf)).

<sup>2</sup> See Convention on Biological Diversity, Art. 2 and IUCN definition at [https://cmsdata.iucn.org/downloads/iucn\\_categoriesamp\\_eng.pdf](https://cmsdata.iucn.org/downloads/iucn_categoriesamp_eng.pdf).

<sup>3</sup> For simplicity sake this document refers to "State Parties", which means "States and other entities".

*ecosystems and biodiversity in areas beyond national jurisdiction.*<sup>4</sup>

2. State Parties *shall pursue co-operation in relation to marine biodiversity beyond national jurisdiction through the processes established under this Instrument to ensure the conservation and sustainable use of such biodiversity.*<sup>5</sup> *In particular: State Parties shall co-operate under the terms of this Instrument in the establishment of effectively and equitably managed, ecologically representative and well-connected systems of Marine Protected Areas, including marine reserves, and other effective area-based conservation measures in the view to meet global conservation targets.*<sup>6</sup>
3. Competent international organizations, whether subregional, regional or global shall co-operate and take all appropriate measures to ensure the effective discharge of their functions and responsibilities to achieve the objectives of this Instrument.<sup>7</sup>

## Step 2: Identification

*Suggested text:*

1. Marine Protected Areas shall be identified according to the procedures in this Article based on scientific criteria already developed under existing global frameworks, including in particular the criteria for the description of Ecologically or Biologically Significant Areas (EBSAs) adopted under the Convention of Biological Diversity.
2. Marine Protected Areas shall be identified as part of an ecologically representative and well-connected global network of Marine Protected Areas including marine reserves and shall contribute to the achievement of one of the following objectives:
  - a. the protection of representative marine ecosystems, biodiversity and habitats at an appropriate scale to maintain their viability and integrity in the long term;
  - b. the protection of key ecosystem processes, habitats and species, including populations and life-history stages;
  - c. the establishment of scientific reference areas for monitoring natural variability and long-term change
  - d. the protection of areas vulnerable to impact by human activities, including unique, rare or highly biodiverse habitats and features;
  - e. the protection of features critical to the function of local ecosystems;
  - f. the protection of areas to maintain resilience or the ability to adapt to the effects of climate change.<sup>8</sup>
3. The Scientific Committee established under the new Instrument shall undertake a regular global review to identify candidate sites for Marine Protected Areas.

---

<sup>4</sup> UNCLOS Art 192; 117 and 118. Restoration in [Future We Want](#), UNGA Res. 66/288, Para 158.

<sup>5</sup> Article 8(1) of UN Fish Stocks Agreement (UNFSA).

<sup>6</sup> E.g., [Plan of Implementation](#) of the World Summit on Sustainable Development (WSSD), CBD Aichi Target 11, Sustainable Development Goal 14 (5), and OSPAR 2003/03.

<sup>7</sup> Article 278 UNCLOS on cooperation among international organisations under Part XIV.

<sup>8</sup> E.g., CCAMLR, [Conservation Measure 91-04](#), Para 2 and SPA Protocol, Art. 4.

### Step 3: Proposal

*Suggested text:*

1. A proposal for a Marine Protected Area in ABNJ may be submitted by State Parties, competent international organisations, the Scientific Committee established under the new Instrument, or accredited observers;
2. Proponents listed in subparagraph 1 may submit a proposal for recognition of existing Marine Protected Areas designated under regional or global international agreements and frameworks;
3. Proposals for Marine Protected Areas in ABNJ shall be formulated on the basis of the best available scientific information, follow an ecosystem approach and the precautionary principle and should at a minimum include the following elements:
  - a. spatial boundaries of the proposed area;
  - b. description of the characteristics and biodiversity values of the area and the sensitivity of the species/habitats concerned;
  - c. description of current or future activities that are causing or may be expected to cause damage to the proposed area, either individually or in combination with other threats;<sup>9</sup>
  - d. the specific conservation objective(s) of the area and the necessary level of protection to achieve such objective(s,) including the designation of no-take areas;
  - e. priority elements of a proposed management plan to achieve the conservation objectives, including activities that are restricted, prohibited or managed in the MPA or parts thereof;<sup>10</sup> and
  - f. a plan for the continuous monitoring and research of ecological processes, habitats, population dynamics as well as impact of human activities.
4. Before submission, proponents shall, as far as practicable, undertake consultations with relevant competent organisations and stakeholders.<sup>11</sup>

### Step 4: Consultation

*Suggested text:*

1. A proposal properly submitted under Article [XY] shall be referred to the Scientific Committee, which shall assess the proposal consistently with the ecosystem approach and precautionary principle and the scientific criteria referred to in Article [XY] and make recommendations to the Conference of the Parties.
2. State Parties, competent international organisations and accredited observers shall be invited to submit their views in a timely manner to the Scientific Committee, which shall take them into account.

---

<sup>9</sup> E.g., IMO's Revised Guidelines for the identification and Designation of Particularly Sensitive Sea Areas ([PSSA Guidelines](#)) Para 7.5.1(3)

<sup>10</sup> E.g., CCAMLR, CM 91-04, Para 3 (iii)

<sup>11</sup> E.g., UNFSA, Art 8(6)

3. During the consultation period, State Parties should refrain from authorising or permitting activities under their jurisdiction or control that might undermine the conservation objectives of the proposed area.

## Emergency Measures

*Suggested text:*

1. If a proposed site is under a significant threat of serious harm, the Conference of the Parties, acting upon recommendations from the Scientific Committee or in case of imminent threat, acting intersessionally, shall adopt a measure, based on the best scientific evidence and the precautionary principle, to be applied on an emergency basis.<sup>12</sup>
2. Such measures shall be temporary and must be reconsidered for decision at the next Conference of the Parties following their adoption.

## Step 5: Designation<sup>13</sup>

*Suggested text:*

1. Following the recommendation of the Scientific Committee, a proposed area shall be transmitted to the Conference of the Parties for consideration. The Conference of the Parties shall consider designation of the proposed area, including:
  - a. spatial boundaries;
  - b. conservation objectives and the necessary level of protection to achieve such objectives, including the designation of no-take areas;
  - c. a management plan that specifies the measures applicable;<sup>14</sup> and
  - d. a research and monitoring plan.
2. The designation of the Marine Protected Area should be for an indefinite period. However, its management measures shall be reviewed every 10 years or upon advice by the Scientific Committee, in accordance with Article [XY] to evaluate if the specific objectives of the protected area are being achieved and to evaluate the management and research and monitoring plan.<sup>15</sup>

## Step 6: Implementation

*Suggested text:*

1. Upon designation of a new Marine Protected Area under this Instrument, the Secretariat shall publish information, including its boundaries, objectives, management measures, monitoring and research plan.

---

<sup>12</sup> E.g., South Pacific Regional Fisheries Management Organisation's [Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean](#) (SPRFMO Convention), Art 20(5).

<sup>13</sup> In order to streamline the decision making process under the new Instrument, we suggest that a voting system should be introduced under its general provisions. Suggested text, building on SPRFMO Convention, Art. 16: "If the Chairperson considers that all efforts to reach a decision by consensus have been exhausted: (a) decisions on questions of procedure shall be taken by a majority of contracting Parties present and voting; and (b) decisions on questions of substance shall be taken by a three-fourths majority of contracting Parties present and voting".

<sup>14</sup> E.g., Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean ([SPA Protocol](#)), Art 7(2)(a).

<sup>15</sup> CCAMLR- CM 91-04, Para 8.

2. State Parties shall take measures and cooperate to ensure compliance by their nationals and vessels beneficially owned, operated or controlled by their nationals, with the provisions of this Instrument and with any measures adopted under the Instrument, and immediately investigate any alleged violation of such provisions and measures by their vessels, nationals and activities under their jurisdiction and control.
3. State Parties shall use their best efforts to ensure the adoption of any measures necessary to further the objectives of a Marine Protected Area designated under this Instrument and to implement any measures applicable to it in accordance with international law by the relevant international and regional organisations to which they are Parties.
4. State Parties shall request non-Parties to this Instrument whose activities, flagged vessels or nationals operate in the Marine Protected Area designated under this Instrument to become Parties or to agree to cooperate fully in the implementation of measures adopted by the Instrument.<sup>16</sup>
5. State Parties shall take measures consistent with this Instrument and international law to deter the activities of vessels flying the flag of non-Parties, which undermine the effective implementation of this Instrument.<sup>17</sup>
6. Nothing in this Instrument shall affect the rights of State Parties to apply additional or more stringent conservation measures to their vessels, nationals or activities under their jurisdiction or control.

## Step 7: Monitoring, Control and Surveillance

### *Suggested text:*

1. The Conference of the Parties shall within a year of this Instrument entering into force establish appropriate procedures for:
  - a. effective monitoring, control and surveillance of activities taking place in ABNJ which may affect this Instrument, including vessel monitoring systems, to ensure compliance with this Instrument and the measures adopted therein.
  - b. information sharing and joint operations between existing MCS systems operated by other international and regional agreements.
2. States Parties shall adopt monitoring, control and surveillance measures and compliance and enforcement schemes in order to provide an appropriate framework for promoting compliance with measures adopted under this Instrument, identify and report to the Conference of the Parties violations by vessels and nationals as well as cases of non-compliance.

---

<sup>16</sup> E.g., SPRFMO Convention Art. 32(3), UNFSA Art. 33.

<sup>17</sup> E.g., UNFSA Art. 33.

## Step 8: Reporting

*Suggested text:*

1. State Parties shall regularly report to the Conference of the Parties and shall encourage international organisations, whether subregional, regional or global, with competence over activities taking place in the Marine Protected Areas proposed or adopted under this Instrument to report the Conference of the Parties on matters including:
  - a. actions and measures that have been undertaken pursuant to Article [XY];
  - b. monitoring, control and surveillance undertaken pursuant to Article [XY] and the data obtained under the research and monitoring plan;
  - c. threats, issues and other matters relevant to the conservation and management of marine biodiversity in areas beyond national jurisdiction.Such reports shall be made publicly available.<sup>18</sup>
2. Other international organisations and interested stakeholders shall be encouraged to communicate and cooperate with the Conference of the Parties on matters relevant to this Instrument.
3. The Conference of the Parties shall establish reporting mechanisms and procedures within a year of the entry into force of this Instrument.

## Step 9: Review

*Suggested text:*

1. Every 10 years or more frequently upon advice by the Scientific Committee, the Conference of the Parties shall review the effectiveness of the measures adopted pursuant to Article [XY] in meeting the objective of the area. The Scientific Committee shall make recommendations prior to each review.
2. The Conference of the Parties shall review the effectiveness of the provisions and operation of the Instrument, assess and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions and operation in order better to address any continuing problems in the conservation and management of marine biodiversity beyond national jurisdiction. The review shall be undertaken at least every five years.<sup>19</sup>

## Step 10: Compliance

*Suggested text:*

1. A Technical and Compliance Committee shall be established, which shall:
  - a. monitor and review the implementation of, and compliance with measures adopted under this Instrument and provide advice and recommendations to the Conference of the Parties;
  - b. provide such other information, technical advice and recommendations as it considers appropriate or as may be requested by the Conference of the

---

<sup>18</sup> E.g., SPRFMO Convention, Ar. 24(2) and Protocol on Environmental Protection to the Antarctic Treaty ([Madrid Protocol](#)) Art. 17.

<sup>19</sup> E.g., UNFSA Art. 36 and SPRFMO Convention, Art. 30(1).

- Parties relating to the implementation of and compliance with the provisions of this Instrument and the measures adopted under this Instrument; and
- c. review the implementation of cooperative measures for monitoring, control, and surveillance and enforcement adopted under this Instrument and provide advice and recommendations to the Conference of the Parties.<sup>20</sup>

2. A submission may be made to the Technical and Compliance Committee by a State Party, by an international organization, whether subregional, regional or global, with competence in areas relevant to the Instrument or by an accredited observer.

3. Based on the review of all information provided in the submissions under paragraph [2] or any other relevant information, the Technical and Compliance Committee each year shall issue a report identifying non-Contracting Parties that have failed to discharge their obligations under international law to co-operate with this Instrument, in particular, by not taking measures or exercising effective control to ensure that their vessels or nationals do not engage in any activity that undermines the effectiveness the Instrument, including the conservation objective of MPAs established under this Instrument.<sup>21</sup>

4. Based on the recommendations from the Technical and Compliance Committee, the Conference of the Parties should decide upon one of the following measures:<sup>22</sup>

- a. Provide advice and facilitate assistance to individual States, including non-Parties, or international or regional organizations regarding the implementation of this Instrument and the measures adopted under the Instrument;
- b. Make recommendations to a State, including non-Parties, or international or regional organizations about appropriate measures to bring about full compliance with this Instrument, including the measures adopted under the Instrument;
- c. Request the State concerned to submit an action plan, including a time schedule, to the Technical and Compliance Committee regarding the achievement of compliance with this Instrument, including the conservation objectives of MPAs adopted under this Instrument and to report on the implementation of this action plan;
- d. Issue a declaration of non-compliance; or
- e. Take such other non-judicial, consultative or other responsive measures designed to achieve full compliance with this Instrument.

5. The Technical and Compliance Committee may also submit a report to the Conference of the Parties on relevant developments between the sessions of the Conference of the Parties.

6. Where exceptional circumstances so warrant or where available information clearly shows that the Party or non-Party concerned continues to diminish the effectiveness of measures adopted pursuant to this Instrument, and/or the ecosystem or any of its components under protection is under serious threat, the Conference of the Parties may

---

<sup>20</sup> E.g., SPRFMO Convention, Art 11.

<sup>21</sup> E.g., International Commission for the Conservation of Atlantic Tuna (ICCAT), [resolution 03-15](#) concerning trade measures, Para 2.

<sup>22</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Decision I/7 on Review of Compliance, Para 37.

immediately decide on action, including, as appropriate, the imposition of trade-restrictive measures consistent with their international obligations. Before making such a decision, the Conference of the Parties should request the Party or non-Party concerned to discontinue its wrongful conduct and should provide them with a reasonable opportunity to respond.<sup>23</sup>

7. The compliance procedure described in this Article shall be without prejudice to Article [XY] of the Agreement on the settlement of disputes.

8. In order to enhance synergies between this compliance procedure and compliance procedures of other international organizations, whether subregional, regional or global, relevant to the functioning of this Instrument, the Technical and Compliance Committee may communicate with the relevant bodies of those organizations, including with recommendations as appropriate.

**For more information, contact:**

Sofia Tsenikli, Senior Political Strategist  
[Sofia.Tsenikli@greenpeace.org](mailto:Sofia.Tsenikli@greenpeace.org)  
+30 6979443306

Veronica Frank, Political Advisor  
[veronica.frank@greenpeace.org](mailto:veronica.frank@greenpeace.org)  
+351 935371683

**greenpeace.org**

---

<sup>23</sup> ICCAT Rec. 03-15, Para 7 and 10. Non-discriminatory trade restrictive measures should be taken as a last resort where other measures have proven unsuccessful to prevent, deter and eliminate any act or omission that diminishes the effectiveness of conservation and management measures under the Instrument