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## Sixty-sixth session

Agenda item 77 (a) of the preliminary list\*

### Oceans and the law of the sea

## Letter dated 30 June 2011 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly

Pursuant to paragraph 163 of General Assembly resolution 65/37 A, we were appointed as Co-Chairs of 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, which was established pursuant to paragraph 73 of Assembly resolution 59/24. In accordance with paragraph 163 of Assembly resolution 65/37 A, the Working Group met at United Nations Headquarters from 31 May to 3 June 2011.

We are pleased to inform you that the Working Group fulfilled its mandate to provide recommendations to the General Assembly as requested in resolution 65/37 A, and have the honour to submit to you the outcome of the meeting, which consists of the recommendations adopted by the Working Group for transmittal to the General Assembly at its sixty-sixth session (sect. I) and a Co Chairs' summary of discussions (sect. II) on key issues, ideas and proposals raised during the deliberations under the various agenda items (see A/AC.276/4).

We request that you kindly circulate the present letter, including the recommendations and the Co-Chairs' summary of discussions (see annex), as a document of the sixty-sixth session of the General Assembly, under item 77 (a) of the preliminary list.

(Signed) Palitha T. B. Kohona  
Liesbeth Lijnzaad  
Co-Chairs

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\* A/66/50.



## Annex

### **Recommendations of 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 and Co-Chairs' summary of discussions**

#### **I. Recommendations**

1. The Ad Hoc Open-ended Informal Working Group, having met from 31 May to 3 June 2011 in accordance with paragraph 163 of General Assembly resolution 65/37 A, recommends 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 the United Nations Convention on the Law of the Sea;

(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;

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

(e) The Secretary-General be requested to convene a meeting of the Working Group in 2012 to make progress on all issues under examination within the Working Group and to provide recommendations to the General Assembly at its sixty-seventh session.

#### **II. Co-Chairs' summary of discussions\***

2. 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") met at United Nations Headquarters, from 31 May to 3 June 2011. In accordance with paragraph 163 of resolution 65/37 A, the Working Group was convened to provide recommendations to the General Assembly.

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\* The summary is intended for reference purposes only and not as a record of the discussions.

3. The meeting of the Working Group was presided over by two Co-Chairs, Ambassador Palitha T. B. Kohona (Sri Lanka) and Liesbeth Lijnzaad (Netherlands), appointed by the President of the General Assembly in consultation with Member States. The Assistant Secretary-General for Legal Affairs, Stephen Mathias, delivered opening remarks on behalf of the Secretary-General and the Legal Counsel of the United Nations. An open-ended Group of Friends of the Co-Chairs assisted the latter in preparing draft recommendations.

4. Representatives from 72 Member States, 20 intergovernmental organizations and other bodies and 11 non-governmental organizations attended the meeting of the Working Group.

5. The following supporting documentation was available to the Working Group: (a) provisional agenda (A/AC.276/L.5); (b) draft format and annotated provisional agenda and organization of work (A/AC.276/L.6); and (c) report of the Secretary-General on oceans and the law of the sea (A/66/70). The Working Group adopted the agenda with amendments (A/AC.276/4) and agreed to proceed on the basis of the format, annotated agenda and organization of work.

6. Based on the discussions in the Working Group, the Co-Chairs, with assistance from the Group of Friends, prepared draft recommendations for consideration by the Working Group. On 3 June, the Working Group adopted the recommendations by consensus. They are contained in section I of the present document.

7. The Co-Chairs prepared the present brief summary of discussions on key issues, ideas and proposals referred to or raised during the deliberations.

### **General considerations**

8. Delegations reaffirmed that marine biodiversity constituted a fundamental component of life in the oceans and on Earth. The environmental importance of marine biodiversity and its contribution to the development of science, better health and food security were highlighted. Many delegations emphasized that the conservation of marine biodiversity and its sustainable use were directly connected to sustainable development and therefore had social and economic relevance. Some delegations noted that anthropogenic threats to marine biodiversity, including as a result of climate change, bottom trawling, ocean noise and shark finning, had continued to increase in areas both within and beyond national jurisdiction. Noting that the 2010 target to significantly reduce the rate of biodiversity loss had not been met, some non-governmental organizations highlighted the finding of the third edition of *Global Biodiversity Outlook* that a number of ecosystems had reached critical points and that, unless strong action was taken, many of them would no longer provide for the needs of present and future generations.

9. The central role played by the General Assembly with regard to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction was underscored. In this connection, several delegations emphasized that the Working Group represented the only forum in which all aspects of marine biodiversity beyond areas of national jurisdiction were dealt with in a format that encouraged open discussion by all stakeholders. The view was expressed that the mandate of the Working Group was limited to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

10. The United Nations Convention on the Law of the Sea was acknowledged as providing the legal framework for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Some delegations noted that the Convention and its implementing Agreements were complemented by other legal instruments, including the Convention on Biological Diversity, the Johannesburg Plan of Implementation adopted at the World Summit on Sustainable Development, the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, and the International Guidelines on the Management of Deep-sea Fisheries in the High Seas adopted by the Food and Agriculture Organization of the United Nations. Several delegations also recognized the importance of the responsibilities entrusted to the International Seabed Authority regarding marine scientific research and the protection of the marine environment.

11. Some delegations expressed satisfaction at the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity and the new Strategic Plan for Biodiversity 2011-2020, adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting.

#### **Panel presentations**

12. Prior to the consideration of the substantive items on its agenda, the Working Group heard presentations from four panellists, followed by a short question and answer period. Presentations were delivered by: Nii Odunton, Secretary-General, International Seabed Authority, on international cooperation and coordination for the conservation and sustainable use of marine biodiversity in the Area; Rama Rao Sankurathripathi, Officer-in-Charge, Coordination Office in New York, World Intellectual Property Organization, on the intellectual property aspects of marine biodiversity beyond areas of national jurisdiction; Lyle Glowka, Senior Legal Advisor, Secretariat of the Convention on Biological Diversity, on the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; and Harlan Cohen, Advisor on Ocean Governance and International Institutions, International Union for Conservation of Nature, on environmental impact assessments and marine protected areas.

**Examination of the scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, including activities of the United Nations and other relevant international organizations, in particular further consideration of the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with the United Nations Convention on the Law of the Sea, taking into account the views of States on Parts VII and XI of the Convention; issues of marine protected areas; and issues of environmental impact assessment processes**

13. Several delegations viewed conservation, sustainable use, including the sharing of benefits derived from such use, and capacity-building and the transfer of marine technology as integral parts of the specific legal regime related to marine biodiversity beyond areas of national jurisdiction. These delegations also stressed that all conservation tools should be examined on their own merits, and expressed

concerns about the adoption of practical or short-term measures without a definition of the relevant legal regime.

14. The need for integrated ocean management and ecosystem approaches to the management of activities related to marine biodiversity beyond areas of national jurisdiction was highlighted by some delegations. In that regard, some delegations drew attention to the role played by regional environmental organizations and regional fisheries management organizations and/or arrangements regarding integrated ocean management. Several delegations were of the view that a range of different bodies and forums with varying responsibilities and sectorally or regionally restricted mandates addressed the protection of marine biodiversity beyond areas of national jurisdiction. Those delegations called for a coordinated cross-sectoral approach which would take into account the cumulative impact of human activities beyond areas of national jurisdiction.

*Marine genetic resources in areas beyond national jurisdiction*

15. Delegations recalled that the United Nations Convention on the Law of the Sea provided the legal framework for all activities in the oceans and seas, including with respect to marine genetic resources beyond areas of national jurisdiction. Several delegations stressed that unregulated access to genetic resources in the Area, which they considered as the common heritage of mankind, and their exclusive exploitation by a few had serious global economic and social implications. Several delegations noted that two different regimes applied to the high seas and the Area, respectively. They also observed that, according to General Assembly resolution 2749 (XXV) and Part XI of the Convention, which they considered part of customary international law, the Area and its resources were the common heritage of mankind. Those delegations emphasized that the common heritage of mankind, including the fair and equitable sharing of benefits, applied to the biological resources of the Area. In this respect, they recognized the importance of the responsibilities entrusted to the International Seabed Authority regarding marine scientific research and the protection of the marine environment.

16. Other delegations pointed out that the principle of the common heritage of mankind only applied to mineral resources of the Area. They were of the view that living resources in the Area were regulated under the high seas regime as set out in Part VII of the Convention.

17. Several delegations recalled that the overall goal of the international community should be the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. They underlined that the “first come, first served” approach existing on the high seas was counterproductive and undermined sustainability. The view was also expressed that a link existed between the common heritage of mankind and the conservation and preservation of the marine environment. In that regard, the common heritage of mankind was not solely about benefit sharing, but just as much about conservation and preservation. Addressing all issues as a “package deal” that would cover measures for both the preservation and conservation of marine biodiversity, including marine protected areas, and the management of marine genetic resources on the seabed, including aspects relating to benefit sharing thereof, was thus proposed.

18. It was observed that there had not been much discussion on the regime applicable to marine genetic resources on the high seas. It was suggested that if

there was agreement that the high seas regime applied to marine genetic resources on the high seas, some common ground could be found in relation to the relevant legal framework for their conservation and sustainable use.

19. Several delegations noted the lack of an international body entrusted with the mandate to regulate access to marine genetic resources beyond areas of national jurisdiction. In that connection, the need to explore the various ways to achieve a regulatory framework was also noted. It was underlined that the Working Group was the appropriate forum to discuss issues relating to marine genetic resources beyond areas of national jurisdiction and that such discussion should be conducted within the framework of, and in conformity with, the Convention. The discussions conducted during the eighth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, which focused on marine genetic resources, were recalled as a good basis for a common understanding of the issue, provided that the relevant information was revisited and updated.

20. Several delegations expressed support for considering the sharing of benefits arising from the use of marine genetic resources, and highlighted that different mechanisms of a monetary and non-monetary nature could be used for that purpose. In that context, the indicative list of monetary and non-monetary benefits included in the annex to the Nagoya Protocol was identified as a possible basis for discussions. In addition, several delegations drew attention to the intellectual property aspects of marine genetic resources beyond areas of national jurisdiction, suggesting that the Working Group should consider the issue, in particular with regard to biodiversity in the Area.

21. A reservation was expressed about the suggestion that benefit sharing for marine genetic resources beyond areas of national jurisdiction would lead to greater conservation or sustainable use of marine biodiversity. It was observed, in that regard, that such a regime would impede research and development. Another view was expressed that benefit sharing needed to be performed to allow ample incentive for exploration and development.

22. Efforts aimed at developing and promulgating codes of conduct for research activities, such as the InterRidge code of conduct, were welcomed. The need for such activities to be consistent with the conservation and sustainable use of biodiversity, as well as the need for a balance among environmental protection, freedom of scientific research and sharing of the benefits deriving from the use of marine genetic resources, were also highlighted.

#### *Marine protected areas*

23. A number of delegations noted the fundamental role of area-based management tools, including marine protected areas, in the conservation and sustainable use of marine biodiversity and in ensuring the resilience of marine ecosystems, including beyond areas of national jurisdiction. The importance of those tools as part of a range of management options in implementing precautionary and ecosystem approaches to the management of human activities was highlighted. Several delegations recalled 2012 as an important year for biodiversity, culminating in the twentieth anniversary of the United Nations Conference on Environment and Development and the tenth anniversary of the World Summit on Sustainable Development. They stressed the need to demonstrate progress towards the achievement of the commitments set out in the Johannesburg Plan of

Implementation in relation to the establishment of marine protected areas, including representative networks. The achievement of those commitments was also identified as one of the ways in which article 197 of the United Nations Convention on the Law of the Sea could be implemented.

24. The central role of the General Assembly and the responsibility of the Working Group in developing a framework for marine protected areas beyond areas of national jurisdiction was emphasized. In this regard, the benefit of multilateral cooperation in the context of the Convention on Biological Diversity was also noted. Some delegations highlighted the need to determine the legal basis for the establishment of marine protected areas beyond areas of national jurisdiction. It was observed that marine protected areas should be established in conformity with international law, including the United Nations Convention on the Law of the Sea.

25. The view was expressed that the establishment of marine protected areas should be based on scientific evidence and should not prejudice the rights of States to the rational use of natural resources. The need for improved scientific knowledge was also emphasized. The need for an approach that integrates scientific advice to inform appropriate regional and sectoral management bodies, taking account cross-sectoral and cumulative impacts, was highlighted. Such integration inherently required a spatial perspective.

26. Some delegations emphasized that the establishment of marine protected areas should not follow a uniform methodology, or a “one-size-fits-all” approach. In addition, some delegations underscored that the selection of the most appropriate area-based management tools, including marine protected areas, was case-specific and should remain in the purview of regional management bodies.

27. The need for consultation with and participation of relevant sectors and stakeholders in the establishment of marine protected areas on the high seas was stressed.

28. Several delegations noted that, following the scientific description of ecologically or biologically significant areas or vulnerable marine ecosystems, there was a need to identify and select those areas for protection and to design the management measures accordingly. The gap between the scientific process for description of ecologically and biologically significant areas and the actual identification/designation of such areas was highlighted since no global forum had a formal mandate at present, and existing regional and sectoral forums were facing issues of legitimacy to do so.

29. Several delegations emphasized the establishment of marine protected areas beyond national jurisdiction in the context of the Commission for the Protection of the Marine Environment of the North-East Atlantic as a successful example. The value of regional cooperation and the lessons to be learned from that experience were suggested for further study and consideration, with a view to learning by doing. It was also suggested that a systematic analysis of the modalities of establishing and managing high seas marine protected areas and other area-based tools should be carried out. This would allow a determination of whether the establishment of a network of marine protected areas could be carried out under existing mechanisms. In this context, a further suggestion was made to designate and implement pilot sites as a means to determine feasibility and effectiveness of existing tools.

*Environmental impact assessment processes*

30. Several delegations highlighted the importance of environmental impact assessments for the conduct of activities beyond areas of national jurisdiction. The intrinsic link between environmental impact assessments and the conservation and sustainable use of marine genetic resources and marine protected areas was noted. Those delegations were of the view that there was a governance gap regarding environmental impact assessments beyond areas of national jurisdiction, noting that article 206 of the United Nations Convention on the Law of the Sea and the provisions stemming from the Convention on Biological Diversity provided the only general framework, together with the regulations of the International Seabed Authority and the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.

31. The development and implementation of procedures to assess the potential environmental effects of activities that may cause substantial pollution of, or significant and harmful changes to, oceans and marine ecosystems, such as fishing, ocean dumping, shipping and mining was proposed.

32. The importance of understanding the cumulative effects of overlapping anthropogenic activities on marine biodiversity beyond areas of national jurisdiction was noted. Moreover, it was stressed that it was necessary to recognize the fundamental role of sectoral activities and to promote integrated, cross-sectoral cooperation, especially at the regional level, as well as integrated scientific advice.

33. It was recalled that the previous meeting of the Working Group, held in 2010, had recommended that the General Assembly recognize the importance of further developing scientific and technical guidance on the implementation of environmental impact assessments with respect to planned activities in areas beyond national jurisdiction, including consideration of the assessment of cumulative impacts. It was observed that, in the formulation of such guidelines, full consideration should be given to the capacity of States to conduct assessments, as well as to the work of other international organizations in this field so as to avoid duplication of obligations and duties. Some delegations acknowledged the role of the Food and Agriculture Organization of the United Nations, the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, the United Nations Environment Programme, the Convention on Biological Diversity, and other organizations and instruments with regard to environmental impact assessments.

34. The view was expressed that the United Nations should take a stronger role in environmental impact assessments, which could include elaborating principles to assist in the implementation of environmental impact assessments on the high seas. The role of the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects, in developing a functional science policy interface on marine issues was also recalled.

35. A suggestion was made to share best practices and build capacity to carry out environmental impact assessments. The inclusion of environmental impact assessment requirements in regional agreements, as had been done in the Protocol on Environmental Protection to the Antarctic Treaty, was also encouraged.

*Capacity-building and transfer of marine technology*

36. Several delegations called for increased capacity-building and transfer of marine technology to improve the participation of developing countries in scientific research in the Area, as well as their contribution towards the conservation and sustainable use of marine biodiversity. They noted that this was the area in which the United Nations Convention on the Law of the Sea suffered from the gravest implementation gap. In this connection, appreciation was expressed for the Endowment Fund of the International Seabed Authority. It was also noted that marine scientific research and transfer of technology must be realized effectively, but should not be an obstacle for the implementation of measures for the protection of marine biodiversity in areas beyond national jurisdiction.

37. Some delegations offered to share their experiences in the development of integrated management policies.

*Other issues*

38. Noting the vulnerability of cetaceans as highly migratory species and the need to avoid undermining the conservation efforts of coastal States, a call was made to elaborate a collective policy, in conformity with the provisions of the United Nations Convention on the Law of the Sea and relevant international laws, to ensure full and permanent protection for cetaceans on the high seas. The proposed policy would include urging States to cease authorizing catches of cetaceans on the high seas by vessels or operations under their jurisdiction, minimizing other threats and supporting the activities of developing States, in particular small island developing States, for the study, conservation and management of cetaceans in waters under their jurisdiction and adjacent areas of the high seas. Some delegations suggested that the Working Group consider this issue. Some other delegations stated the importance of the principle of sustainable use of marine living resources, including marine mammals, regardless of whether the catches were made within or beyond areas of national jurisdiction. The latter delegations stated that measures taken for that purpose should be discussed and adopted through the competent organizations, namely the International Whaling Commission and the North Atlantic Marine Mammal Commission.

39. Several delegations emphasized the role of scientific knowledge as a basis for sound decision-making. In this connection, the improved scientific understanding of marine biodiversity was called for. While a suggestion was made not to rush into specific solutions before conclusive and empirical scientific knowledge was gathered, several delegations emphasized that the need for further study should not be used as a reason to postpone the examination of the main aspects of biodiversity, namely conservation and sustainable uses, including the sharing of benefits to be derived therefrom.

40. The view was expressed that scientific cooperation should be undertaken in a manner compatible with the United Nations Convention on the Law of the Sea, including through the utilization and publication of results in order to further promote research in deep and open oceans, which were the lesser known regions.

41. Several delegations observed that gathering information on the activities that were currently undertaken beyond areas of national jurisdiction was essential. Those delegations noted, in particular, the lack of information voluntarily provided to the

Secretary-General as to activities regarding micro-organisms, in particular those of the seabed and ocean floor beyond the limits of national jurisdiction and the geo-morphological formations therein, such as polymetallic sulphides.

**Indication, where appropriate, of possible options on and approaches to all aspects under examination within the mandate of the Working Group, taking into account, in particular, section X of General Assembly resolution 65/37 A**

42. It was generally recognized that the status quo was not a sustainable situation, nor an acceptable option. Many delegations called for the elaboration of a comprehensive legal regime, through an implementing agreement to the Convention, that would take into consideration all aspects related to marine biodiversity beyond areas of national jurisdiction, including conservation, sustainable use and equitable sharing of benefits thereof, capacity-building and transfer of marine technology. It was highlighted that all elements needed to be addressed at the same pace. Several delegations stated that an implementing agreement would enable more effective application of existing tools, such as marine protected areas and environmental impact assessments, as well as new tools, particularly on access and benefit-sharing mechanisms for marine genetic resources. An implementing agreement would also set out general modern principles of conservation and sustainable management. A suggestion was made that the General Assembly should establish an intergovernmental committee mandated to formalize the work of the Working Group. The view was expressed that, alternatively, a conference under the auspices of the United Nations could be convened in order to promote effective implementation of the United Nations Convention on the Law of the Sea.

43. Some delegations did not see the need for an implementing agreement, noting that the existing legal framework was sufficient to address the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. In this respect, the main challenge was the need for enhanced implementation of the existing rules and instruments. It was observed that seeking clearer focus on individual threats and enhancing implementation of existing instruments was not the status quo, and an implementing agreement should only be discussed if current threats to marine biodiversity beyond areas of national jurisdiction were not being addressed by existing instruments. Other delegations reiterated that, before any consideration of an implementing agreement, more work needed to be done to identify existing gaps. It was pointed out that the lack of a regime covering the exploitation of marine genetic resources was one such gap.

44. The view was expressed that it should be recognized that, before giving consideration to establishing other forums, the Working Group was still able to perform necessary and useful work. However, it was noted that the scope of the Working Group was too broad and that it could become a more productive body by narrowing the breadth of topics discussed. In that regard, area-based management tools, such as marine protected areas and marine genetic resources, were identified as possible areas of focus. Several delegations suggested that the agenda of the Working Group be amended.

45. A suggestion was also made to move the work of the Working Group forward through a targeted workshop, or set of workshops, comprised of States and competent intergovernmental bodies, working informally and on a “without prejudice” basis, with a view to considering the full range of options for addressing

the issues under discussion and generating a clearer understanding of areas of agreement and disagreement. It was noted that, in such workshops, all future options would be open for consideration, including an implementing agreement or alternative actions to be taken in the absence of such an agreement. It was put forward that these workshops would produce reports that would be circulated to all Member States and be provided for the next meeting of the Working Group. The two main themes suggested for consideration by the workshops were marine genetic resources and conservation and management tools for areas beyond national jurisdiction, notably marine protected areas and environmental impact assessments. A number of delegations commented on the need to determine whether the workshops would be formally convened by the General Assembly or informally convened by States.

46. Other delegations called for intersessional work to explore options and to allow for the adoption of practical measures at the next meeting of the Working Group.

47. It was pointed out that, while a consensus solution was being developed, immediate action to allow for information sharing, capacity-building and transfer of marine technology should also be considered.

48. With regard to marine genetic resources, it was highlighted that discussions should focus on the regulatory mechanisms for the use of marine genetic resources, including the fair and equitable sharing of the benefits deriving from such use. Some delegations believed that the Nagoya Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture could serve as a basis for developing benefit-sharing arrangements.

49. The view was expressed that the meeting should focus on the conservation of and the status of research on marine genetic resources; potential additional criteria or guidelines for related marine scientific research; and opportunities for capacity-building and training programmes. The need to consider, *inter alia*, the latest science on marine genetic resources, the possible development of a global standard for access and the definition of what constitutes a benefit was also stressed.

50. As for marine protected areas, the proposal was made that discussions on this topic should consider identification of the competent body for the designation and management of marine protected areas beyond national jurisdiction; legal effects arising from such a designation with respect to third parties; identification of the objectives to be pursued as well as the activities to be allowed and those to be prohibited or restricted within the designated areas; identification of the means of implementation as well as of the enforcement periods for each area; consideration of the distribution of marine protected areas with a view to ensuring the conservation of migratory species; consideration of vulnerable marine ecosystems and related populations; adoption and implementation of integrated approaches for the protection and preservation of biological diversity; identification of threats to marine ecosystems, taking into account the need to protect species that are not currently regulated by any existing mechanism; consideration of mechanisms of coordination among States and intergovernmental organizations to identify ecologically and biologically significant areas that could be designated as marine protected areas; and financial schemes. It was also noted that other existing mechanisms could be considered within the framework of the International

Maritime Organization, in particular the designation of particularly sensitive sea areas.

51. The view was expressed that international efforts should focus on the identification of areas requiring enhanced protection through the use of the scientific criteria for identifying ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats and the scientific guidance for selecting areas to establish representative networks of marine protected areas, including in open-ocean waters and deep-sea habitats, developed in the context of the Convention on Biological Diversity, as well as the International Guidelines for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organization of the United Nations. Satisfaction was expressed at the progress made in developing the consistent criteria used in those instruments to identify ecologically or biologically significant areas and vulnerable marine ecosystems.

52. It was also suggested that experience with marine protected areas beyond areas of national jurisdiction, including lessons learned, be reviewed. The need to consider how to transparently establish, monitor and measure the effectiveness of such areas was highlighted.

53. The view was reiterated that marine protected areas needed to have clearly delineated boundaries; a strong causal link between the harm being addressed and management measures, which should be flexible and adaptive; and implementation, compliance and enforcement measures consistent with international law as reflected in the United Nations Convention on the Law of the Sea, including respect for the sovereign rights of coastal States over their continental shelves. It was suggested that bilateral or multilateral agreements to establish such areas could be entered into.

54. Several delegations suggested that environmental impact assessments and strategic environmental assessments, which were already used by regional fisheries management organizations and regional seas organizations, should be used globally, incorporating cumulative impacts. Reference was also made to the process established in paragraph 119 of General Assembly resolution 64/72 concerning the impact of bottom fisheries on vulnerable marine ecosystems. It was proposed to deepen understanding of ongoing and projected activities in areas beyond national jurisdiction that may cause significant and harmful changes to the marine environment. It was stressed that exchange of information on how States were meeting the obligations under the United Nations Convention on the Law of the Sea to assess the potential effects of those activities should be enhanced. There was also a need for considering available opportunities for the international community, within the Working Group or other sector-based forums, to enhance the implementation of such obligations.

55. Some delegations called for increased efforts with respect to the establishment of new regional fisheries management organizations and the strengthening of existing organizations. It was also noted that the mandates of existing regional fisheries management organizations should be updated.

56. The view was expressed that coherent and coordinated regional efforts across agencies were imperative for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. In this connection, the view was

expressed that better coordination of regional and international processes should be achieved to identify priority areas. The need for a cross-sectoral approach was also considered necessary in view of the multiplicity of existing international bodies and forums that dealt with marine biodiversity.

**Identification of key issues and questions where more detailed background studies would facilitate consideration by States of these issues**

57. Several delegations observed that there would always be issues that required further study. However, this should not delay action, particularly in the application of the precautionary approach to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. In this regard, they suggested removing from the agenda of future meetings of the Working Group the item on identification of key issues and questions where more detailed background studies would facilitate consideration by States of these issues. Other delegations highlighted the importance of discussions on this topic, considering that the further the work of the Working Group progressed, the more there would be a need to address complex technical questions arising from the issues under examination.

58. The Co-Chairs of the Working Group proposed that the Secretary-General be requested, in cooperation with competent international organizations and bodies, to prepare an inventory of existing instruments relevant to marine biodiversity beyond areas of national jurisdiction. However, owing to lack of time, the Working Group did not consider this proposal.