

## **Rapporteur Report on Session 1.5**

### **On Governance of the High Seas: Protecting marine biodiversity beyond national jurisdiction**

**Chair: Graeme Kelleher (Australia)**

**Organisers: Kristina Gjerde and Carl Gustaf Lundin**

**Moderators: Simon Cripps (Switzerland) and Carl Gustaf Lundin (Switzerland)**

**Presentations by: Graeme Kelleher (Australia) and Carl Gustaf Lundin (Switzerland); Alex Rogers (UK); Tomme Rosanne Young (Germany); Charlotte Breide (Switzerland); Donna Petrachenko (Canada/Australia); Giuseppe Notarbartolo di Sciara (Italy); Henning Von Nordheim; John Croxall (UK); Simon Cripps (Switzerland); Carl Gustaf Lundin (Switzerland); Kristina M. Gjerde (Poland)**

**Rapporteurs: Alison Green and Michelle Grady**

#### **OVERVIEW**

**Aim:** To produce a framework for protecting biological diversity, productivity and sustainable use in the High Seas through the development of a Global Representative System of Marine Protected Area Networks as a major tool.

This meeting was specifically asked to:

- Consider the “*Draft 10 year strategy to promote the development of a global representative system of high seas marine protected area networks*” which, after consultation and agreement, is intended to become part of IUCN’s and WCPA’s strategy; and
- Agree on WPC recommendations to the maximum extent possible.

#### **Number of participants:**

More than 80 workshop participants signed the registration sheet.

#### **Diversity of participants:**

There was a diverse mix of participants from countries around the world, including Argentina, Australia, Brazil, Canada, Chile, Italy, Fiji, Finland, France, Germany, Indonesia, RSA, Monaco, Netherlands, New Zealand, Norway, Palau, Philippines, Samoa, South Africa, Senegal, Seychelles, Spain, Switzerland, Tanzania, Thailand, UK, USA, and Zimbabwe.

Participants represented a wide range of governments, research institutions and non-government organizations.

#### **Number and format of breakout groups:**

There were no breakout groups. The workshop comprised a series of 11 speakers, interspersed with two plenary discussions. The presentations were structured as follows:

***Part I Introduction by Graeme Kelleher and Carl Gustaf Lundin***

***Part II The Challenge***

**1. Making the Case** (presentations)

- **Alex Rogers**, British Antarctic Survey: Values and threats to high seas biodiversity and productivity
- **Tomme Rosanne Young**, IUCN's Environmental Law Centre: Protecting the natural resources of the high seas: relevant policy/legal instruments and options

**2. Updates on recent advances** (presentations)

- **Charlotte Breide**, WWF International High Seas: Bringing large scale zoning conservation planning to the high seas, the Grand Banks Pilot Project.
- **Donna Petrachenko**, Ministry of Fisheries and Oceans, Canada and Dept Secretary of Environment Australia: Results of the Cairns Workshop on the Governance of High Seas Biodiversity Conservation 16-20 June 2003

**3. Opportunities for pursuing action through current legal and institutional mechanisms: how could it look?** (presentations)

- **Giuseppe Notarbartolo di Sciara**, Coordinator, WCPA Mediterranean, Italy: The "Pelagos Sanctuary for Mediterranean Marine Mammals" pioneering the protection of marine ecosystems beyond national boundaries.
- **Henning von Nordheim**, Head of Section/Marine and Coastal Nature Conservation, German Agency for Nature Conservation, Germany: Developing networks of MPAs: experiences in the north east Atlantic and Baltic Sea
- **John Croxall**, British Antarctic Survey: Enhancing cooperative arrangements between regional organizations: experience from the Antarctic Treaty and the Commission for Conservation of Antarctic Living Marine Resources

***III Call to Action***

- **Simon Cripps**, Director, WWF International Endangered Seas Programme: Global ocean governance in the spotlight: a call to action.
- **Carl Gustaf Lundin**, Head, IUCN Global Marine Programme: Overview of draft recommendation 5.23 on protecting marine biodiversity and ecosystem processes beyond national jurisdiction
- **Kristina Gjerde**, Coordinator, IUCN, WCPA, WWF High Seas Marine Protected Areas Project, IUCN Global Marine Programme: Overview of draft ten-year strategy to promote the development of a global representative system of high seas MPA networks.

***IV Conclusion and next steps***

- **Graeme Kelleher**, IUCN WCPA High Seas Working Group Chair: High seas strategy and recommendation and launch of high seas coalition

**Summary of main issues discussed by speakers**

**Graeme Kelleher and Carl Gustaf Lundin: *Introduction***

The high seas is a vast area with limited protection. There are a plethora of relevant international agreements, but gaps in coverage, problems with implementation, and lack of political will are

obstacles to the effective conservation and sustainable use of high seas biodiversity. The need for improved efforts to protect the high seas has been highlighted at the United Nations as well as at several recent conferences and workshops, including the World Summit on Sustainable Development (Johannesburg, 2002). In response to this, a working group was established by IUCN's World Commission on Protected Areas (WCPA) that included several organizations<sup>i</sup>, whose goal is to work through several issues to improve the management of the high seas. This group has been developed a "*Draft 10-year strategy to promote the development of a global representative system of High Seas Marine Protected Area networks*", which has been circulated for discussion regarding proposed amendments to the WPC recommendations.

IUCN sees the protection of the high seas as part of its primary role to strengthen the conservation and sustainable use of the natural resources of the world. It has recently produced a report relevant to this session entitled "*International Ocean Governance. Using international law and organizations to manage marine resources sustainably*" (Kimball 2003).

**Alex Rogers and Donna Petrachenko: *Biodiversity***

Though faced with incomplete scientific understanding of high seas biogeography and biodiversity, what we do know shows that the high seas comprise many unique habitats and species, and biodiversity is very high in some areas. There is also a high degree of endemism and biogeographic variation, making these species particularly vulnerable to extinction. Lack of complete scientific understanding should not be used as an excuse to inhibit international agreements on management.

**Alex Rogers and Donna Petrachenko: *Threats***

The biggest threat to the high seas is fishing, particularly trawling, which causes substantial damage to the seafloor.

Other threats that may be potentially as damaging to these important areas include:

- Historic, military dumping
- Shipping
- Land based sources of pollution
- Military activities
- Transportation of hazardous substances
- Oil and gas industry (to depths of 7000m); where this occurs on the legal continental shelf, it may affect the water column above
- Submarine cables and pipelines
- Bioprospecting and minerals extraction
- CO<sub>2</sub> injection in deep sea
- Marine science
- Global change

Challenges to address these threats include

- Lack of global ocean coordination mechanisms
- Differing mandates and capacity of Regional Fisheries Management Organizations
- Lack of provision for utilising conservation tools, including establishment of MPAs
- Lack of legal framework for bioprospecting on deep seabed beyond national jurisdictions
- Lack of regulation over scientific and commercial research, including resource extraction techniques.

**Graeme Kelleher and Tomme Rosanne Young: *Legal Framework to address threats***

The workshop supports the 10-year strategy. The strategy will use all available mechanisms to achieve its primary goal.

There are many conventions and other international agreements that will play an important role in achieving these goals. Two principal conventions are:

United Nations Convention on the Law of the Sea (UNCLOS): Its provisions require all nations to protect and preserve the marine environment and to cooperate in conserving living marine resources. Its provisions established the International Seabed Authority (ISA), which is designed to control mining activities, which can have ecological effects on the high seas. It could be extended to address the effects of fishing and the establishment of MPA networks on the seabed. One issue will be the degree to which ISA provisions overlap or conflict with regional fishing agreements and other governance mechanisms.

Convention on Biological Diversity (CBD): CBD is considered to be the other most important vehicle for achieving the above goal. The CBD also puts obligations on country members to protect biological resources of the oceans, including the high seas.

Governments must be urged to ratify these and other important international agreements and treaties. We also need to move forward with and build upon existing legal instruments and consider the development of new instruments. The law and policy “toolkit” includes:

- Existing hard law instruments, which give some authority for natural resource management even outside EEZs. This includes both global instruments (eg UNCLOS) and regional instruments, although it is hard to evaluate what they can achieve outside EEZ.
- New instruments, including bilateral/trilateral agreements and regional and global agreements that can be developed or adapted.
- Contractual instruments such as public/private partnerships between industries, such as extractive industries (e.g. fisheries), and scientists. This may include non-binding codes of conduct.
- Mixed concepts:
  - Conferences of Parties and their resolutions;
  - Work Programs for agreements such as the Convention on Biological Diversity
  - Joint work plans between instruments (eg CBD and Ramsar);
  - Intergovernmental coordinating groups (eg meet through FAO); and
  - Environmental impact assessments requirements and standards

*Opportunities for pursuing action through current legal and institutional mechanisms*

We need to move forward and work out how to implement protection of the high seas.

There are already opportunities for pursuing action through current legal and institutional mechanisms. Some good examples provided include:

- The “Pelagos Sanctuary for Mediterranean Marine Mammals”, which has been established to protect the marine mammals in a vast area of the NE Mediterranean (Giuseppe Notarbartolo di Sciarra). This sanctuary is precedent setting since it is the first sanctuary for marine mammals established by an international agreement of like-minded nations (France, Monaco and Italy) beyond national boundaries. The challenge now is management of the sanctuary.

- The Grand Banks Pilot Project (Canada), which is a good example of learning by testing available regimes (Charlotte Breide). This project provides a good example of applying principles already in place in the EEZ such as zoning (Graeme Kelleher).
- The experience of establishing networks of MPAs in the EEZ in the north east Atlantic and Baltic Sea based on existing MPAs and international conventions: Oslo Paris Convention (OSPAR) and Helsinki Convention (HELCOM). (Henning von Nordheim). The parties to these agreements have recently agreed to establish by 2010 a network of effectively managed MPAs. The OSPAR maritime area covers a vast area, 50% of which is high seas.

There are also good lessons to be learned for HSMPAs in the seas covered by the Antarctic Treaty & CCAMLR where the focus has been on preventing illegal fishing and promoting best practices standards. This has required cooperation between CCAMLR and Regional Fisheries Management Organisations.

**Simon Cripps: *Call to Action***

There is a crisis on the high seas, which needs to be addressed urgently. There is no reason why methods to protect biodiversity should differ within EEZs and on the high seas. HSMPAs do not have to be complete closures, but could involve zoning and multiple uses directed towards specific threats to an area.

We still have a long way to go to achieve our goal of a representative network of protected areas. It has been said that 12% of the world is now encompassed by protected areas. However, less than one percent of the ocean's surface is currently under some form of special protection. As the oceans cover over 70% of the planet's surface, that means that less than 3.8% of the planet's surface is part of a protected area. We cannot leave out the 64% of the ocean's surface that is beyond national jurisdiction.

**Carl Gustaf Lundin: *Overview of Draft Recommendation WPC 5.23 on Protecting Marine Biodiversity and Ecosystem Processes Beyond National Jurisdiction***

Recommendation 5.23 should include provisions regarding the need to promote significant changes to how RFMOs manage high seas fisheries resources and the environment.

Funding is a challenge. Some governments may include high seas MPAs in their management budgets, but others may not be able to. Thus we need to start strategic thinking regarding potential funding sources and the issue of financial sustainability now. Ways to find funding may include charging rent for resource use. Other ways forward include zoning and partnerships.

**Kristia Gjerde: *Overview of draft Ten-Year High Seas Strategy***

The draft Ten-Year High Seas Strategy developed by the WCPA's High Seas Working Group was based on discussions and outputs of recent international meetings and expert workshops, as well as previous publications regarding a global strategy for the conservation of marine biodiversity and a global representative system of MPAs. Outputs have led to the development of a 10-year strategy to develop a global representative system of MPAs networks by 2012.

The 5 Core Components of the Strategy include:

1. Endorse and promote the WSSD Joint Plan on Implementation and goals of HSMPA networks

2. Take immediate and urgent action to protect vulnerable ecosystems and species
3. Utilize all available mechanisms to establish by 2008 at least five high seas MPAS
4. Initiate action to develop criteria and guidelines for establishing, managing enforcing and financing HSMPA networks
5. Cooperate to develop a global framework or “approach” to facilitate the creation of HSMPA networks and improved ocean governance.

The draft strategy elaborates on these core components and provides specific steps to achieve these ends. The Strategy calls on governments, international and regional bodies, non-governmental organizations, scientists, business and industry leaders, media and civil society to work together through a formal coalition and informal networks. Fundamental elements of all strategy steps include: education and awareness raising; capacity building; stakeholder engagement; scientific, socio-economic and legal research; accompanied by financial support and mechanisms to ensure financial sustainability. Those in support of the long term protection, conservation and sustainable use of high seas biodiversity and productivity are invited to join the coalition.

### **Summary of main issues discussed in plenary discussions**

**IUCN Council, Philippines:** How can we deal with ballast water (particularly invasive species) and land based pollution?

Donna: There is an IMO convention under development for ballast water dumping but it still calls for open ocean ballast water exchange on the high seas. This needs to be addressed.

Carl: Also technical solutions are being developed to treat ballast water. Mechanisms already exist to address land-based sources, but they need to be better implemented.

### **Sylvia Earle, Conservation International**

Correction: 30,000 seamounts applies to the Pacific, and 20,000 to the rest of the world.

Will climate change have impacts on methane hydrates?

Alex: Methane is a greenhouse gas, and there is concern that if the ocean warms up there may be release of methane from these hydrates. If that happens it will dramatically increase global warming.

### **Ralph Payet, Ministry of Environment, Seychelles**

Different countries approach management with differing legal approaches. Are there good examples we can look to?

**Carl:** Some nations are more focused on fishing, while others are more focused on conservation, which has affected their legal approach. So there are lots of different issues and approaches. Very complex.

**Ralph Payet, Ministry of Environment, Seychelles:** Where do high seas MPAs fit into national priorities?

**Tomme:** Very few countries have conservation strategies that extend into the high seas.

**Donna:** If you bring the high seas under the umbrella of conservation, sustainability and economic agendas, countries are more eager to make it a priority.

**Simon Cripps:** Is surveillance and enforcement really the major challenge? Isn't it really political will? If the will is there, a range of areas can be enforced.

**Tomme:** Enforcement tools are very expensive (e.g. satellite tracking; chasing on the high seas). We're still watching to see what will happen next in response to enforcement on the high seas. The Viarsa incident is a great step forward, and we need to see the response to that.

**Carl:** Enforcement costs are coming down dramatically and transponders are a good mechanism that will soon be on all vessels. Radar and satellites can cover large areas and determine which vessels are where, and can monitor compliance. There is still room for improvement.

**Claudio Campagna, Wildlife Conservation Society & National Research Council of**

**Argentina:** In a few years, many countries may be able to expand their jurisdiction over their continental shelf to 350 miles. If they are able to do that, a good proportion of the high seas will be under national jurisdiction.

Charlotte: The expansion of jurisdiction over the 350 miles is limited to seabed resources off the continental shelf, and does not necessarily extend to the water column. UNCLOS does not give an automatic jurisdiction over the continental shelf. After ratifying UNCLOS, countries have 10 years to make a submission.

**Clive Wilkinson, Global Coral Reef Monitoring Network:** Many threats were mentioned, but it appears that only one or two are real threats. Can we rank the threats? We know that fishing is very important, followed by pollution. Are the rest that important?

**Donna:** I agree that fishing is the major threat and we need to take urgent action in areas under threat from such activities, particularly from bottom trawling on seamounts. In order to rank other threats, further research is clearly needed on other issues (e.g. historic dumping of munitions, such as in the North Sea).

**Margo Jackson, NOAA National Marine Sanctuaries Program, USA:** Some Defense Departments have problems with putting lines on maps that may restrict their activities.

**Carl:** There are several strategies to deal with this resistance. There are two trends currently working against each other: recent concerns over security threats and the need to protect these areas. However, these two trends could be complimentary. We need to reach out to Defense Departments to show that they can make a positive contribution to conservation through enforcement without compromising their security concerns. Most of the navy's activities focus primarily on the surface and most of what we need to protect is in deep water.

**Karen Sack, Greenpeace Australia:** The legal footsteps you are proposing are small and slow and yet issues are happening now. If these issues are not addressed in the near future, there will soon be very little left. Have any meetings come up with concrete steps that can be taken now? For example, the proposal to declare the entire marine environment south of 60°S (Antarctic marine environment) as an MPA?

Tomme: We are talking about steps we can take right now. I wish you luck in declaring any area a complete conservation area. CBD was in negotiation for 8 years, and the UN Fish Stocks Agreement was in negotiation for even longer. The process of treaty negotiation can take a long time, and you don't always get what you want. We need to take smaller steps that are available now. If we wait for something that dramatic to be adopted, it may take a much longer time and we may not get what we want.

Charlotte: What we are trying to develop is a workable, watertight solution that the international community can work with.

**Callum Roberts, University of York, UK:** I was interested to hear that bilateral and trilateral agreements can be used to start the process of establishing a HSMPA. But won't these agreements be undermined if we don't have control over vessels using flags of convenience?

Kristina: The goal of elimination of flags of convenience is a necessary step, but it is a long process. We also need action now to require a genuine connection between ships and the country where that ship is registered, so those countries are able to enforce environmental laws for conservation. There are other ways to control these vessels including port state control. For example, ports can refuse cargos unless the vessel can demonstrate that the fish were caught legally and sustainably while on the high seas.

**Participant from West Africa**

Some countries are extending their management activities over large marine ecosystems, while other nations still don't even know what's out there (West Africa). The danger is that the whole process is lopsided and developing nations will be left out of this initiative, and there will be a big grab for these unmanaged areas.

Carl: This is something the global community needs to grapple with, and is a challenge to all of us. We need to seek out developing countries interested in this and find an equitable solution.

**Sarah Chasis, Natural Resources Defense Council**

Can we get more of the 10-year strategy into the recommendations? We should recommend an immediate Call to Action: the UN General Assembly should be urged to adopt a moratorium on deep water trawling on seamounts and other vulnerable deep sea habitats. We have a petition on this subject that was developed by scientists, which we would like you all to sign.

Alex: This document was put together by deep sea scientists at a recent deep sea biology symposium, and was signed by some of the most respected scientists in this field. It will add weight to the petition if others sign it here today.

**Storm Fitzmaurice, Zimbabwe**

The 10-year strategy calls for five new HSMPAs over the next five years. What size do you think they should be?

Kristina: I would leave that up to the scientists.

Simon: It will depend on what you are trying to protect. No one size fits all. If the MPA is for fisheries management, it will depend on the size of the fishery and stocks.

**Michelle Grady, Whale and Dolphin Conservation Society**

This is not just a legal issue. Lack of an overt legal position should not stop us. We should recognize the high seas track record of regional agreements such as OSPAR. Ultimately, political and management flexibility is needed. The Convention on the Conservation of Migratory Species (CMS) is ready to achieve high seas MPAs. The presentations by Giuseppe Notarbartolo di Sciara and Henning von Nordheim demonstrate that we can do it.

**Henning von Nordheim:** There is a clearer legal system in EEZs to enforce fisheries regulations. On the HS, there are no strong regulations and we need better guidelines on how to control fishing effort in restricted areas. When these areas are identified, we need to be aware that it may attract additional fishing effort.

Carl: We need to make sure that enforcement methods are in place before we tell people they can't fish in those areas.

**Jen Enemark, Wadden Seas Secretariat, Denmark:** We need a multilateral approach. Some countries have not ratified key global agreements such as UNCLOS and CBD, and the UN Convention on Climate Change (UNFCCC). This congress should call on these countries to ratify these agreements.

**Stefan Lutter, WWF North East Atlantic Program:** Some regional seas conventions have the most information about adjacent high seas areas and the capacity to manage them. But we don't

have a global instrument enabling these conventions to manage human activities in these areas. What action can we take at the UN level to enable regional bodies to manage and enforce measures at the regional level?

Kristina: We may need to better implement and build on existing international law. For example, the paper by Tullio Scovzzi we handed out here calls for a new agreement to implement UNCLOS on the high seas, both with respect to fishing activities not covered by the UN fish Stocks Agreement, and to help enforce regulations specific to high seas MPAs.

A document entitled “*Suggested amendment to or elements for finalizing the Durban Accord: proposed by China*” was handed to the Chair by a person who did not identify himself. This was passed on to the IUCN Secretariat dealing with the Durban Accord.

## CONCLUSIONS

### **Main Findings & Recommendations**

The WSSD Call for Action explicitly included the high seas in its target of a global representative system of MPA networks by 2012. This and other outputs from international fora provide a good foundation for further action. If there ever has been a time to act to protect the high seas, it is now. There was agreement that the “*Draft 10 year strategy to promote the development of a global representative system of high seas marine protected area networks*”, after finalization, will provide the framework for achieving a global representative system of MPA networks in the high seas.

It was proposed that the UN General Assembly should be urged to adopt a moratorium on deep water trawling on seamounts and other vulnerable deep sea habitats as a matter of urgency. A petition was circulated which was developed at a recent deep sea biology symposium, and has been signed by some of the most respected scientists in this field. This petition was signed by a majority of those attending the workshop.

The workshop came to two explicit conclusions, which were not challenged by anyone in the session:

1. That recommendation 5.23 should include the aims of five pilot HSMPAs by 2008 and a global representative system of HSMPA networks by 2012.
2. That recommendation 5.23 should have as an attachment the Executive Summary of the “*Draft 10 year strategy to promote the development of a global representative system of high seas marine protected area networks.*”

There was general agreement that the existing coalition consisting of IUCN, WCPA, WWF, Greenpeace and some governments and scientific experts should be expanded to a global coalition. This coalition should work to achieve protection of the biological diversity, productivity and sustainable use of the high seas, with the global representative system of MPA networks being a principal tool.

The coalition must push for all governments to ratify important international agreements and treaties, particularly the UNCLOS and the CBD. As well, there is significant potential for improving governance of the high seas through working to make the provisions of different international and regional legal instruments compatible and complementary.

The UN General Assembly should be urged to adopt a moratorium on deep water trawling on seamounts and other vulnerable deep sea habitats as a matter of urgency.

Two impending meetings, the December 2003 conference on the management of deep seas fish stocks in New Zealand and the March 2004 Conference of Parties to the Convention on Biological Diversity in Kuala Lumpur, should be used to promote the goals of this workshop.

### **SESSION OUTPUTS AND FOLLOW-UP ACTION**

The recommendations that will follow from this workshop are critical. The workshop endorses the 10- year strategy. A further workshop will be held at 1700hrs Friday 12 September 2003 (Room 2BH) to finalise the wording of the Executive Summary of the 10-year strategy for inclusion as part of Recommendation 5.23. These recommendations will be fed into the formal process in the following sessions:

- Drafting session 1800hrs Friday 12 September 2003
- Drafting session 1500hrs Saturday 13 September 2003
- High Seas MPA Session 1200hrs Tuesday 16 Room 21C

The existing coalition between IUCN, WCPA, WWF, Greenpeace and some governments and scientific experts must be expanded and push for important governments to ratify important international agreements and treaties.

**See Session Output – IUCN, WCPA and WWF. Ten Year High Seas Marine Protected Area Strategy: A Ten-Year Strategy to Promote the Development of a Global Representative System of High Seas Marine Protected Area Networks, Summary Version, as Agreed by Marine Theme Participants at the 5th World Parks Congress, Durban, South Africa (8-17 September 2003).**

### **Papers Submitted**

IUCN, WCPA and WWF 2003 Draft 10 year strategy to promote the development of a global representative system of high seas marine protected area networks. Consultative Draft 1 September 2003.

Scovazzi, T. 2003 Marine protected areas on the high seas: some legal and policy considerations. Papers presented at the World Parks Congress Governance Session “Protecting Marine Biodiversity beyond National Jurisdiction”. Durban, South Africa, 11 September 2003.

### **For Further Information**

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<sup>i</sup> IUCN, WWF, WCPA, Greenpeace, IUCN Commission on Environmental Law, IUCN Antarctic Advisory Committee, and several leading scientific experts.