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REPORT OF THE EXPERT WORKSHOP TO IDENTIFY OPTIONS FOR MODIFYING THE DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS AND DESCRIBING NEW AREAS

Brussels, 3-5 February 2020

INTRODUCTION

1. The Conference of the Parties to the Convention on Biological Diversity, at its fourteenth meeting, adopted decision 14/9, in which it requested the Executive Secretary to identify options for modifying the description of ecologically or biologically significant marine areas (EBSAs), for describing new areas, and for strengthening the scientific credibility and transparency of this process, and to submit them to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for consideration.
2. Pursuant to the above request and with generous financial support from the Government of Belgium and the Government of Germany, the Secretariat of the Convention on Biological Diversity convened the Expert Workshop to Identify Options for Modifying the Description of Ecologically or Biologically Significant Marine Areas and Describing New Areas in Brussels, from 3 to 5 February 2020.
3. The meeting was attended by experts from Antigua and Barbuda, Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil, Canada, Colombia, Croatia, Egypt, The Gambia, Georgia, Germany, Greece, Guinea, Iceland, Jamaica, Japan, Maldives, Malaysia, Mozambique, Namibia, Pakistan, Peru, Romania, Singapore, Sudan, Slovenia, Tunisia, Turkey, Turkmenistan, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), BirdLife International, Fisheries Experts Group of the IUCN Commission of Ecosystem Management, Global Ocean Biodiversity Initiative, Global Youth Biodiversity Network, International Indigenous Forum for Biodiversity, International Union for Conservation of Nature, United Nations Division for Ocean Affairs and the Law of the Sea, United Nations Environment Programme and the World Wide Fund for Nature. A list of participants is included in annex I.

ITEM 1. OPENING OF THE WORKSHOP

4. On behalf of the Government of Belgium, Ms. Sophie Mirgaux, Belgium's Special Envoy for the Ocean, delivered opening remarks. She highlighted the importance of the future of the EBSA process and pointed out that the purpose of this workshop was to facilitate productive discussions on this issue at the forthcoming meeting of the Subsidiary Body on Scientific, Technical and Technological Advice. She noted that it was important to seize this opportunity to advance discussions on this issue and that the EBSA process needed to take a step forward and build on its significant achievements since the first regional EBSA workshop in 2011. She noted that 2020 was set to be a "super year" for nature, given the upcoming 2020 UN Ocean Conference in Lisbon in June and the negotiations among Parties to the Convention on a post-2020 global biodiversity framework, to be adopted during the fifteenth meeting of the Conference of the Parties (COP 15) to the Convention, to be held in October. She noted that time was running short and that it was important to seize this opportunity to make progress on issues that had thus far proven to be challenging to resolve. She expressed her hope for constructive discussions over the coming three days.
5. Mr. Alexander Shestakov delivered an opening statement on behalf of Ms. Elizabeth Maruma Mrema, Acting Executive Secretary of the Convention on Biological Diversity. He welcomed participants and thanked the Government of Belgium for hosting the workshop and for its financial contribution, thereby making this

workshop possible. He also thanked the Government of Germany for its financial support. He emphasized that 2020 would be an important, busy year, hence the need to prepare for the twenty-fourth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice and the fifteenth meeting of the Conference of the Parties (COP 15). He reflected on the great success of the EBSA process since the adoption of the EBSA criteria at the ninth meeting of the Conference of the Parties, in 2008, and the official launch of the CBD EBSA process in 2010. Fifteen regional workshops had been held since 2011 and 321 areas described through workshops that had covered more than 75 per cent of the ocean. He noted that the work on EBSAs had significantly advanced our understanding of the “special places” in the ocean and provided a sound scientific foundation for Parties and competent authorities to focus their efforts for conservation and sustainable use toward the achievement of global goals for biodiversity and sustainable development. In doing so, he pointed out that the process had also catalysed partnerships and collaborative initiatives and built capacity to enhance the ability of countries to use EBSA information in support of planning and management. He noted, however, that the future of the EBSA process required clear modalities for incorporating new scientific information and adapting to new knowledge and discoveries, and that this week would be an important opportunity to address this need. He expressed his wish that this week would chart a course forward to an even brighter future for the EBSA process.

ITEM 2. INTRODUCTION, BACKGROUND AND PURPOSE OF THE WORKSHOP

6. Under this agenda item, participants were provided with a series of presentations, including presentations on the scientific aspects of the EBSA criteria and the application of the EBSA criteria.

7. Mr. Alexander Shestakov (CBD Secretariat) briefed the participants on the workshop background, objectives and expected outputs.

8. Mr. Joseph Appiott (CBD Secretariat) delivered a presentation on work under the Convention on EBSAs, current modalities for describing EBSAs, and challenges that have emerged in the context of current modalities for the EBSA process.

9. This was followed by a presentation by Mr. Pat Halpin (Duke University) on scientific gaps in areas that have been described as EBSAs under the Convention on Biological Diversity to date.

10. Summaries of the above presentations are provided in annex II.

ITEM 3. ORGANIZATION OF WORK

11. After a brief explanation by the representative of the Secretariat on procedures, the participants were invited to consider the provisional agenda (CBD/EBSA/WS/2020/1) and the proposed organization of work, as contained in annex II to the annotations to the provisional agenda (CBD/EBSA/WS/2020/1/Add.1), and adopted them without any amendments.

12. The Secretariat also explained that the workshop discussions would be led by a facilitator selected by the Secretariat, Mr. David Johnson (Global Ocean Biodiversity Initiative).

ITEM 4. MODALITIES FOR THE MODIFICATION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS

13. The Secretariat provided a brief introduction to this item with respect to potential modalities for the modification of EBSAs, on the basis of the discussion document prepared by the Secretariat to inform the deliberations on this issue (CBD/EBSA/2020/1/INF/4).

14. First, participants discussed potential reasons for the modification of EBSAs.

15. Next, participants discussed and identified potential modalities for the modification of the descriptions of EBSA, with a focus on (a) actors who can propose modification and (b) modalities for the modification process. The discussion on this issue addressed modalities for the modification process with respect to:

- (a) Modification of descriptions of EBSAs within national jurisdiction;
- (b) Modification of descriptions of EBSAs in areas beyond national jurisdiction;

- (c) Modification of descriptions of EBSAs straddling multiple national jurisdictions;
- (d) Modification of descriptions of EBSAs straddling areas both within and beyond national jurisdiction.

16. A summary of the discussion under this agenda item is provided in annex III.

17. The outcomes of the discussion under this agenda item is provided in annex IV.

ITEM 5. MODALITIES FOR THE DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS

18. The Secretariat provided a brief introduction to this item with respect to potential modalities for the description of new EBSAs, on the basis of the discussion document prepared by the Secretariat to inform the deliberations on this issue (CBD/EBSA/2020/1/INF/4).

19. Under this item, participants discussed and identified potential modalities for the description of EBSAs, with a focus on (a) actors who can propose the description of EBSAs and (b) modalities for the description process. The discussion on this issue addressed options for the description of EBSAs:

- (a) In marine areas beyond national jurisdiction;
- (b) In marine areas within national jurisdiction;
- (c) For features straddling multiple national jurisdictions;
- (d) For features both within and beyond national jurisdiction.

20. A summary of the discussion under this agenda item is provided in annex III.

21. The outcomes of the discussion under this agenda item is provided in annex IV.

ITEM 6. CONSIDERATION OF TECHNICAL ISSUES RELATED TO THE APPLICATION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

22. The Secretariat gave a brief introduction to this item with respect to consideration of issues related to international law, in particular the United Nations Convention on the Law of the Sea.

23. Under this item, participants discussed issues related to the United Nations Convention on the Law of the Sea with respect to the consideration of EBSA-related issues by the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties.

24. A summary of the discussion under this agenda item is provided in annex III.

ITEM 7. CLOSURE OF THE WORKSHOP

25. The Secretariat outlined the next steps involved in the consideration of the issues addressed at the workshop in the context of forthcoming meetings of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties, explaining that the workshop outcomes would form the basis for the relevant sections of the pre-sessional document and suggested recommendations to be provided to the Subsidiary Body at its forthcoming meeting.

26. The workshop closed at 5.15 p.m. on Wednesday, 5 February 2020.

Annex I

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Annex II

SUMMARY OF PRESENTATIONS

The Background for the Workshop and Expected Outcomes (by Alexander Shestakov, CBD Secretariat)

Mr. Shestakov outlined the challenges in the current process that call for an approach to modifying the description of ecologically or biologically significant marine areas and for describing new areas. He explained that (a) due to the constant growth in scientific information, there is a need for a way to incorporate new information on EBSA features; (b) there is currently no existing mechanism to revise existing EBSA descriptions contained in the repository; (c) there is no clarity on how to incorporate outputs of other processes; and iv) there is a need for clarity on how to address errors in existing EBSA descriptions. Mr. Shestakov outlined the history of discussions on this issue, which began following a request from the twelfth meeting of the Conference of the Parties. He then explained that the present workshop was necessary because there is an urgent need to find a consensus, as further delay in resolving this issue is detrimental to the EBSA process. He pointed out that the time for discussions on this issue at SBSTTA 24 and COP 15 will be severely limited due to deliberations on the post-2020 global biodiversity framework. He noted that this workshop would focus specifically on the issues of disagreement from COP 14, in the hope of producing text (or various options for text) that can facilitate and advance discussions on this issue at forthcoming meetings of the SBSTTA and COP.

Background and Context on Work Under the Convention on Ecologically or Biologically Significant Marine Areas (by Joseph Appiott, CBD Secretariat)

Mr. Appiott delivered a presentation outlining the background of the workshop in the context of the work on ecologically or biologically significant marine areas under the Convention. He introduced the process for describing EBSAs, beginning with the adoption of the EBSA criteria at the ninth meeting of the Conference of the Parties (COP 9) to the CBD and the call by the tenth meeting of the Conference of the Parties (COP 10) to organize a series of regional EBSA workshops. Since 2011, the CBD Secretariat has convened 15 regional workshops to facilitate the description of areas meeting the EBSA criteria, pursuant to COP decisions X/29, XI/17, XII/22 and XIII/12. So far, a total of 321 areas have been described as meeting the EBSA criteria. These areas have been considered by the CBD COP at its eleventh, twelfth, thirteenth and fourteenth meetings, when it requested that the summary reports on the outputs of these regional EBSA workshops be submitted to the United Nations General Assembly and its relevant working groups. He described the process as expert-driven and “data-rich”, given that each regional workshop has been provided with a wealth of scientific and technical information, presented in up to 100 GIS layers. Mr. Appiott described the components of an EBSA description and explained that after consideration by the United Nations General Assembly, EBSA descriptions are entered in the EBSA repository. Mr. Appiott went on to emphasize that the application of the EBSA criteria is a scientific and technical exercise and that areas found to meet the EBSA criteria may require enhanced conservation and management measures, which can be achieved through a variety of means, including MPAs and impact assessments, for example. He emphasized that EBSAs are not MPAs, nor fishing closures, and that the identification of EBSAs and the selection of conservation and management measures is a matter for States and competent intergovernmental organizations. Mr. Appiott then introduced the EBSA informal advisory group (IAG), which has been mandated to provide scientific and technical advice to the Executive Secretary of the Convention. He then highlighted the practical obstacles involved in modifying EBSAs, pointing out that there is no mechanism to revise EBSA descriptions considered by SBSTTA and COP. Regarding the description of new EBSAs, he pointed out that there is a lack of a process on how to describe new areas through mechanisms other than regional workshops and how to incorporate outputs from national processes.

Review of Ecologically or Biologically Significant Areas (EBSAs) (by Patrick Halpin, Duke University)

Mr. Halpin reported on the results of a scientific gap analysis of the process of regional EBSA workshops under the CBD, as presented in document CBD/EBSA/WS/2020/1/INF/2 (*A Gap Analysis Review of Ecologically or Biologically Significant Marine Areas*). Mr. Halpin began by outlining the scientific reasons

for updating EBSA descriptions, concluding that there is an obvious need for a continuous updating of EBSA descriptions. Mr. Halpin then proceeded to assess the coverage of the global EBSA collection in terms of geographic coverage (national jurisdiction/s or areas beyond national jurisdiction, or combinations thereof; geographic gaps; data gaps), EBSA-classification type (static features, groups of features, ephemeral features, or dynamic features), biogeography (multiple versus single criteria, latitudinal distribution, biogeographic distribution, ecosystem type) and ecological connectivity to help identify potential gaps and trends. This review was based on two approaches: (1) mapping overlays of the existing EBSAs on jurisdictional areas, biogeographic features, habitats and enhanced management status; and (2) a review of each of the EBSA descriptions to identify the type of EBSA, the criteria described, the primary taxonomic features described, the role of endemic species and the role of connectivity used in the individual EBSA description. The review identifies several trends and patterns of coverage globally as well as differences between workshop regions and individual EBSA descriptions.

Annex III

SUMMARY OF DISCUSSION UNDER AGENDA ITEMS 4, 5 AND 6
(not a comprehensive account of all points raised and discussed under these items)

Item 4. Modalities for the modification of EBSAs

Discussions under this agenda item were based on the suggested text provided in CBD/EBSA/2020/1/INF/4, except for the discussion “General Considerations in the Modification of EBSAs and the Description of New EBSAs” and the “EBSA Repository and Information-sharing Mechanism”. It should be noted that much of the discussion was focused directly on textual changes to CBD/EBSA/2020/1/INF/4. As such, the below section only captures a portion of what was discussed under these items and should be read together with the relevant outcomes in Annex IV.

General considerations in the modification of EBSA descriptions and the description of new EBSAs

Although a section on this topic was not included in CBD/EBSA/2020/1/INF/4, this section was added as a result of discussions on the need to draw attention to overarching considerations for the modalities for both modification and description. During the discussions, participants emphasized the importance of collaborating with relevant experts and knowledge-holders, including holders of traditional knowledge, the modification and description of EBSAs, the need for any proposals for modification or description to result from a process that is transparent and with a strong scientific basis and the importance of the regional dimension of EBSAs, especially as all of the existing 321 EBSAs have been described through regional workshops.

EBSA repository and information-sharing mechanism

Although a section on this topic was not included in CBD/EBSA/2020/1/INF/4, this section was included as a result of discussions on the need to understand and clarify the respective roles of the EBSA repository and the information-sharing mechanism, in light of the fact that the modalities for modification and description refer to these two mechanisms.

It was explained that the repository contains the outputs of EBSAs that have been considered by SBSTTA and COP, and that the results of any processes that were not considered by SBSTTA and COP should be included in the information-sharing mechanism. With respect to the outputs of national processes included in the information-sharing mechanism, there was further discussion about whether the exact outputs (i.e., descriptions and shapefiles) should be directly included or whether links to the information on the respective national websites should be alternately provided. It was generally agreed that links to the information should be provided considering the technical challenges of the Secretariat in maintaining files for outputs of processes that may be further updated as well as the need for ownership of the outputs of the processes to remain with the respective countries that conducted the process.

It was also noted that, regardless of the form in which the information is included, a disclaimer regarding maritime boundaries should be included, in the same vein as the disclaimer that is currently used on the EBSA website.

As well, the use and implications of the terms “scientific and technical” was also discussed, as well as the importance of ensuring ensure that other knowledge systems were not alienated and were given due consideration in the EBSA process.

Reasons for modification of EBSA descriptions

It was discussed that this section should focus on having a succinct list of reasons that can clearly capture all feasible reasons for proposing the modification of an EBSA description. The workshop discussed the various scenarios and contexts in which an EBSA would need to be modified, and participants provided some specific examples of real-world cases in which EBSA descriptions are in need of modification. For example, the amount of new scientific data related to birds is quite significant; the number of Important Bird and Biodiversity Areas (IBBAs) has increased, and this data has increasingly been used for the description of EBSAs. It was noted that some EBSA descriptions could be enhanced with the addition of newly available

data and the reinterpretation of existing data, in order to refine and strengthen descriptions and describe new areas. In another example, it was noted that certain descriptions of seamount chains would need revision or even deletion following ground-truthing surveys. Another example noted that some errors are simply typographic, referring incorrectly to the name of a feature—with the substance of the description remaining unchanged.

In order to better reflect the increased availability/accessibility of traditional knowledge, the word “knowledge” was preferred to “scientific and technical information” in order to be inclusive of different types of knowledge systems.

The term “technical” in the phrase “scientific and technical” was removed as it was not totally clear what was meant by this term, which can be interpreted different ways.

Actors who can propose modification of EBSA descriptions

There was discussion about the term “actors” and whether this was the most appropriate terminology to use, with participants highlighting the need to use alternate terminology. Regarding areas beyond national jurisdiction, there was discussion about whether modification should take a regional approach. However, it was noted that such an approach could be unduly limiting.

It was also suggested that NGOs and IGOs should have a role to play in this context. While many participants stressed that it was important to clarify that the proponent must clearly be the State, there was discussion of how best, or whether to, make provision for contribution/collaboration with NGOs. For this reason, a separate paragraph was introduced pertaining to the collaboration of “holders of relevant knowledge”.

There was discussion about whether another set of proponents should be defined for EBSAs that straddle within and beyond national jurisdiction. Some participants felt that this third case was required, whereas others felt it would complicate matters.

Participants noted the deletion of the clause “without prejudice to developments under the United Nations Convention on the Law of the Sea” from this sub-section, in the understanding that such points would be placed elsewhere in the eventual SBSTTA recommendation and COP decision on this issue.

Modification of EBSA descriptions in areas within national jurisdiction

On this issue, several Parties expressed caution about “internationalizing” national processes and that governments should have the right to modify descriptions in their waters. It was, however, pointed out that the process currently involved in getting an EBSA description into the repository is already an international process, and that it is therefore logical that a process to modify a description that already went through an international process would have to proceed in the same way. In this respect, some Parties maintained that SBSTTA and COP should retain the authority to oversee/scrutinize all modifications, as they initially approved the EBSAs.

The difference between the EBSA repository and the information-sharing mechanism was also discussed, in that the former contains descriptions that have been considered by SBSTTA and COP, whereas the latter have not (see more on this subject under “EBSA Repository and Information-sharing Mechanism”).

One Party also reminded participants that the EBSA process is about scientific and technical description: not about management or implementation, while another reminded participants that the EBSA process is global in nature, and that jurisdictional issues should not be relevant here.

Following the discussion, this section was split into two tracks or “end-points” for modifications that are to be included in either (a) the EBSA repository or (b) the EBSA information-sharing mechanism. In the case of modifications aimed at inclusion in the repository, the participants discussed means to ensure that Parties and relevant stakeholder have the opportunity to provide input and also that all Parties are regularly updated on proposed modifications. In the case of modifications aimed at inclusion in the information-sharing mechanism, discussions included a focus on the need for national processes producing such modifications to be transparent and scientific, and that they also gave due consideration to different knowledge systems.

References to the EBSA Informal Advisory Group (IAG) was replaced by reference to a “relevant advisory body”, because participants pointed out that the future of the IAG was not known, as the extension of its mandate is subject to COP decision.

Modification of EBSA descriptions in areas beyond national jurisdiction

There was a question as to whether modification of EBSAs beyond national jurisdiction could take place without the need for a workshop. There ensued a discussion of the merits of the workshop process, which was promoted due to its robust, focused, layered approach, whereby a large group of experts with different areas of expertise work together for an extended period. It was argued that this value added, also in terms of capacity-building, would be sacrificed if provisions for workshops were not maintained.

Differentiating between minor and major modifications was also suggested, as was using the IAG as an intermediary to decide on what is minor and what is major, with minor modifications not requiring a workshop. Participants were cautioned against using the IAG as a solution, as it was meant to be temporary body. Furthermore, it was noted that devising definitions for major and minor could be very complicated and that the issue is already dealt with by the discussions on “reasons for modification” with the provision of having a simplified modality for non-substantive modifications.

There was discussion too around the number of modifications required to trigger an expert workshop—some agreed with this approach but questioned the number selected (15). It was noted that the average number of EBSAs described in a workshop is 23 (median 20/21). Some also noted that number selected could comprise a combination of modifications and new proposals. Others questioned the idea of using a number as a basis for triggering a workshop, suggesting that the IAG, SBSTTA and/or COP could act as arbitrator to decide if a new workshop is needed. Others suggested using a given time frame (periodicity) rather than basing the approach on a prescribed number of proposals. Some noted the need for flexibility in this regard. It was pointed out that having SBSTTA or COP review the proposals would result in a significant waiting period—up to four years—before modifications could be finalized and entered in the repository. Concern was expressed that this process could lead to lengthy delays to request an expert workshop and then to consider the output of the workshop. The final proposal was to avoid using either a number of modifications or a time period as a trigger, but to “fast-track” the process by ensuring that the Conference of the Parties has to power to decide on one of two approaches: to include the modification in the repository or to convene an expert workshop.

It was also noted that a two-month period for public comment/peer-review was too short, and it was replaced by a three-month period.

There was support for archiving original EBSA descriptions in the repository.

Modification of EBSA descriptions in areas straddling multiple national jurisdictions

Many participants emphasized that, as the original EBSAs straddling multiple jurisdictions were described collaboratively by multiple Parties, it is important that those same Parties are involved in any subsequent modifications. However, concerns were expressed by some Parties about this being a requirement and whether Parties should have the right to modify portions of EBSAs within their own jurisdictions.

Others, however, emphasized that the unified character of the EBSA should be maintained, especially as modifications in only a portion of an EBSA may also have implications for the rest of the EBSA. There was concern expressed about modifying only portions of straddling EBSAs, as this could lead to a confusing situation by which an EBSA, and subsequent modifications, may exist in multiple forms in the repository and information-sharing mechanism.

The workshop did not have sufficient time to produce an agreed modality for this case.

Modification of EBSA descriptions in areas straddling marine areas within and beyond national jurisdiction

Similar to the discussions on EBSAs straddling multiple national jurisdictions, there were differing perspectives about, for EBSAs straddling within and beyond national jurisdiction, whether Parties should be

able to unilaterally modify portions of EBSAs in their jurisdiction without requiring any consideration by SBSTTA and COP for modifications bound for the information-sharing mechanism.

Others, however, emphasized that the unified character of the EBSA should be maintained, especially as modifications in only a portion of an EBSA may also have implications for the rest of the EBSA. There was concern expressed about modifying only portions of straddling EBSAs, as this could lead to a confusing situation by which an EBSA, and subsequent modifications, may exist in multiple forms in the repository and information-sharing mechanism.

The workshop did not have sufficient time to produce an agreed modality for this case.

Item 5. Modalities for the description of EBSAs

Discussions under this agenda item were based on the suggested text provided in CBD/EBSA/2020/1/INF/4, except for the discussion “General Considerations in the Modification of EBSAs and the Description of New EBSAs” and the “EBSA Repository and Information-sharing Mechanism”. It should be noted that much of the discussion was focused directly on textual changes to CBD/EBSA/2020/1/INF/4. As such, the below section only captures a portion of what was discussed under these items and should be read together with the relevant outcomes in annex IV.

Actors who can propose description of an EBSA

There was discussion on the roles of intergovernmental organizations and non-governmental organizations in proposing new EBSA descriptions. Participants noted that NGOs and IGOs have access to information that may not be available at the national level and that these organizations have provided extremely valuable input to the EBSA process thus far, and that their input is fundamental. However, some felt that their role should not be on the same level as States, with the suggestion that the wording be kept more flexible for Parties in terms of how they wish to work with organizations. The discussions arrived at having provisions for Parties being able to propose EBSA descriptions anywhere in ABNJ and within their respective national jurisdiction, as well as competent intergovernmental organizations having the right to propose EBSA descriptions in ABNJ.

Language was also added to encourage those who propose descriptions to work with holders of relevant knowledge in the development of proposals.

Similar to the relevant section under the modalities for modification, there was discussion about the term “actors” and whether this was the most appropriate terminology to use, with participants highlighting the need to use alternate terminology.

Participants also discussed the importance for the regional aspect of the process, to support States that have less access to the necessary data, though it was noted that the regional approach is not always appropriate, such as in cases where important information may also be held by Parties and organizations outside of a given region.

Description of EBSAs in areas within national jurisdiction

Similar to the modality for modification of EBSAs within national jurisdiction, discussion focused on the need to have two separate end-points for the description of new EBSAs: one modality for those directed towards the EBSA repository (proposals considered by SBSTTA and COP) and another for the information-sharing mechanism.

Some raised concerns regarding description of EBSAs in areas subject to jurisdictional conflicts and that there is a risk in including the results of processes in such areas on any CBD website, including the information-sharing mechanism. Many emphasized the need to use appropriate disclaimers for such issues wherever possible. Many also stressed the need for proposals focused on the information-sharing mechanism to still be made public, even if SBSTTA and COP would not have the mandate to “consider” such proposals.

Similar to the discussion and provision under the modalities for modification of EBSAs and the section on the repository and information-sharing mechanism, it was generally agreed that links to the information

should be provided considering the technical challenges of the Secretariat in maintaining files for outputs of processes that may be further updated as well as the need for ownership of the outputs of the processes to remain with the respective countries that conducted the process.

Description of EBSAs in areas beyond national jurisdiction

Participants first wished to reflect the process for the modification of EBSAs in ABNJ here as well. However, several participants countered that the process of developing new descriptions is necessarily more robust and intensive than modifying an existing description and that a fast-track option like the one in the modification modality would not be appropriate for the description of new areas.

Furthermore, in view of the significant benefits provided by regional EBSA workshops, a provision to also describe EBSAs through regional workshops, as per the existing process, was also maintained.

Description of EBSAs for features straddling multiple national jurisdictions

Two separate paths were set out and discussed: one to the EBSA repository and another to the information-sharing mechanism, as per other modalities as noted above. After discussing the scenarios for such a modality, participants were comfortable to reflect similar modalities for those for description of EBSAs in national jurisdiction.

Description of EBSAs for features both within and beyond national jurisdiction

It was clarified that the only proponent eligible to propose the description of an EBSA here is the State(s) within whose jurisdiction(s) the proposed area is partially located. It was pointed out that not all regions have relevant regional bodies, however. Aside from this, participants were comfortable to reflect the same modalities for describing EBSAs in ABNJ, as noted in the relevant previous section.

Item 6. Consideration of Technical Issues Related to the Application of the United Nations Convention on the Law of the Sea (UNCLOS)

Under this item, discussions focused on references to UNCLOS and UNCLOS-related issues in the SBSTTA recommendation and COP decision on EBSAs, as this has previously been a major area of discussion at previous meetings of SBSTTA and COP. As deliberations on these issues has previous taken up a significant amount of time at SBSTTA and COP, this agenda item provided an opportunity to make progress on these discussions with the aim of potentially reducing the time needed for these discussions at SBSTTA and COP.

Discussions focused in particular on (a) references to UNCLOS in the preambular paragraphs of the SBSTTA recommendation and COP decision and the concerns of non-Parties to UNCLOS, (b) language regarding the fact that the SBSTTA recommendation and COP decision should not prejudice the position of State Parties on a land or maritime sovereignty dispute or to a dispute concerning the delimitation of maritime areas, and (c) language acknowledging that nothing in the workshop report, or the SBSTTA recommendation and COP decision, nothing in this document can be interpreted as prejudicing developments under UNCLOS.

Participants were reminded that nothing in this workshop, whether statement made during the meeting or the workshop report, would imply commitment or agreement of the respective governments and organizations of workshop participants on these issues at SBSTTA 24 and COP 15. Many participants noted that they would need to further consult with their respective governments before being able to agree on such language at SBSTTA and COP.

With respect to language regarding in the preambular paragraphs regarding UNCLOS, it was noted that agreement on this issue in COP 14 was found through inclusion of footnotes acknowledging the non-Party status to UNCLOS of some CBD Parties.

Some noted the possibility to use the most updated language from the UN General Assembly resolution.

Some of the UNCLOS non-Parties presented language for a footnote that acknowledged their non-Party status to UNCLOS and the fact that some Parties consider it not to be the only regulatory framework governing activities in the ocean.

The participant from the government of Colombia also requested inclusion of the following statement in the workshop report:

“Colombia, as a mega-diverse country, is committed to the conservation, protection and sustainable development of the oceans, through the implementation of policies, plans and programmes that indicate the national, regional and global importance of the issue. In addition, the country has a solid institutional framework for coastal marine issues, guided by an integrated vision, where the sea, the coast and its resources become fundamental elements of its actions.

For this reason, Colombia recognizes the valuable contribution made by this workshop of experts in generating guidelines for changing the description of marine areas of biological or ecological importance. However, in the most respectful manner, the Colombian Government would like to remind that it is not a Party to the United Nations Convention on the Law of the Sea and considers that this instrument is not the only regulatory framework under which all activities in the oceans and seas must be carried out.

The constructive spirit that guides our country in matters of oceans and the law of the sea is based on the firm conviction that all nations have a commitment to protect the sea and its resources, while a sustainable future depends largely on it. Colombia hopes to have the opportunity to continue contributing and reviewing the results of this Workshop from a technical perspective in future meetings, such as the 24th session of the Subsidiary Body of Scientific, Technical and Technological Advisory of the Convention.”

There was further discussion on this footnote, with some expressing concerns regarding the need for such a footnote and that this may unnecessarily politicize these discussions. Some also expressed concern regarding the length and detail of the footnote.

Participants noted the need to make reference to Article 22 of the Convention text, which addresses the relationship of the Convention to other international conventions.

Participants further discussed possible language to clarify the footnote text.

Preambular paragraphs:

“Reaffirming Article 22 of the Convention as well as decisions X/29, XI/17, XII/22, XIII/12 (in particular paragraph 3) and 14/9 of the Conference of the Parties on ecologically or biologically significant marine areas,

Recalling United Nations General Assembly resolution 72/73 on oceans and the law of the sea and its preambular paragraphs on the United Nations Convention on the Law of the Sea”*

Footnote:

**Colombia, Peru, Turkey and Venezuela (Bolivarian Republic of), which are not a Party to the United Nations Convention on the Law of the Sea, 1982 reaffirm that the United Nations Convention on the Law of the Sea is not the only legal instrument governing all of the activities carried out in the oceans and seas. Their participation in this conference does not affect their status or rights, nor can it be interpreted as their tacit or express acceptance of the provisions of the United Nations Convention on the Law of the Sea.*

There were differences of perspectives among participants on the formulation of the above language.

Discussions then moved to the inclusion of a “non-prejudice” paragraphs. The following text was proposed:

“No action or activity taken on the basis of this document shall be interpreted or considered as prejudicing the position of State Parties on a land or maritime sovereignty dispute or to a dispute concerning the delimitation of maritime areas.

Nothing in this document can be interpreted as prejudicing developments under the United Nations Convention on the Law of the Sea”

Some participants expressed concern that such language brings in an unnecessary political element to these discussions. Others noted that such language is important to ensure that political concerns can be addressed so as not to politicize the further discussions. Participants also noted that noting in the workshop report can be interpreted as prejudicing developments under the United Nations Convention on the Law of the Sea, and further that no action or activity taken on the basis of the report can be interpreted or considered as prejudicing the position of State Parties on a land or maritime sovereignty dispute or to a dispute concerning the delimitation of maritime areas.

Participants were split with regards to the need for such paragraphs.

Annex IV

OUTCOMES OF THE WORKSHOP DISCUSSIONS UNDER AGENDA ITEMS 4 AND 5

The following sections are the result of discussions under agenda items 4 and 5, with subsequent revisions by the Secretariat for clarify and editorial reasons. Participants emphasized that, as this was an expert workshop, the below sections do not pre-empt the position of their respective governments and organizations on this issue during the discussions at SBSTTA and COP.

GENERAL CONSIDERATIONS IN THE MODIFICATION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS AND THE DESCRIPTION OF NEW AREAS

1. Those who develop and submit proposals for the modification of EBSAs and the description of new EBSAs are encouraged to consider:

- (a) Collaboration with relevant experts and knowledge-holders, including holders of traditional knowledge;
- (b) The importance of transparency as well as a strong scientific basis;
- (c) Regional dimensions of marine and coastal ecosystems and their ecological and biological features, including regional differences in data availability, as well as collaboration across regions.

REPOSITORY AND INFORMATION-SHARING MECHANISM FOR ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS

1. The EBSA repository contains:

(a) Descriptions of areas meeting the EBSA criteria that were considered by the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties, and which the Conference of the Parties has requested the Executive Secretary to include in the repository and transmit to the United Nations General Assembly and its relevant processes as well as relevant international organizations.

2. The EBSA information-sharing mechanism contains:

- (a) Links to national processes and information pertaining to areas meeting the EBSA criteria and other relevant compatible and complementary nationally agreed scientific criteria within national jurisdiction that were provided as information for the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties;
- (b) Reports of the CBD regional workshops to facilitate the description of EBSAs;
- (c) Guidance related to the application of the EBSA criteria and the use of EBSA information;
- (d) Other relevant scientific and technical information and other forms of knowledge related to areas described as meeting the EBSA criteria; and
- (e) Information and experience relating to the application of other relevant and complementary intergovernmentally agreed scientific criteria.

REASONS FOR MODIFICATION OF DESCRIPTIONS OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS

1. Reasons for the modification of an EBSA description (which can entail a modification to the textual description of the EBSA, a modification to the ranking of the area against the EBSA criteria and/or a change in the shape of the EBSA) are:

- (a) Newly available/accessible knowledge, including scientific and traditional knowledge, on features associated with an EBSA;

- (b) Change in the information that was used to describe an EBSA;
- (c) Change in the ecological or biological feature(s) of an EBSA;
- (d) Scientific error(s) identified in an EBSA description;
- (e) Modification(s) to the EBSA criteria, guidance in the application of the EBSA criteria or the template¹ used to describe EBSAs;
- (f) Editorial errors in an EBSA description.

PROponents OF THE MODIFICATION OF DESCRIPTIONS OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS

1. For reasons (a) through (f), the following can propose the modification of an EBSA description:
 - (a) Within national jurisdiction: the State(s) within whose jurisdiction(s) the modification is proposed;
 - (b) In areas beyond national jurisdiction: any State and/or competent international organization;
 - [(c) In areas straddling within and beyond national jurisdiction: the State(s) within whose jurisdiction(s) the proposed area is partially located.] WORKSHOP UNABLE TO FIND AGREEMENT ON THIS ISSUE*
2. For reason (f), the Secretariat may propose the modification of an EBSA description.
3. Holders of relevant knowledge may collaborate with the proponents in the development of proposals for modification.

MODIFICATION OF DESCRIPTIONS OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS WITHIN NATIONAL JURISDICTION

1. For reasons (a) through (e):
 - (a) For inclusion in the EBSA repository:
 - (i) The proposal² for modification of an EBSA description is submitted to the Secretariat, together with information on the scientifically sound nationally agreed peer-review process³ or other appropriate validation process that produced the proposed modification;
 - (ii) The Secretariat disseminates information about the proposed modification through a CBD notification with a period of three months for open comment on the proposed modification. The proponent will have three months to adjust the proposal in response to the comments, as appropriate and/or to issue a response to any of the comments, if they wish. The comments and responses related to the proposed modification will be posted on the EBSA website;
 - (iii) The Secretariat also issues notifications biannually regarding proposals for modifications received by the Secretariat;
 - (iv) The Secretariat compiles a report, including comments received, to be made available to the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties for consideration with a view to inclusion of the modification

¹ <http://www.cbd.int/doc/meetings/mar/epsaws-2015-01/other/epsaws-2015-01-template-en.dot>

² A proposal for modification is comprised of a written submission explaining the elements of the EBSA description in potential need of modification and why.

³ Voluntary guidelines on peer-review processes to be developed by the Executive Secretary for the consideration of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties.

in the repository. In compiling the report, the Secretariat may seek the advice of a relevant expert advisory body mandated by the Conference of the Parties;

- (v) The previous EBSA description, and the modality by which it was included in the repository, will remain available in the repository.
 - (b) For inclusion in the EBSA information-sharing mechanism:
 - (i) The proposal for modification of an EBSA description is submitted to the Secretariat, together with information on the scientifically sound nationally agreed peer-review process or other appropriate validation process that produced the proposed modification;
 - (ii) The Secretariat disseminates information about the proposed modification through a CBD notification;
 - (iii) The Secretariat also issues notifications biannually regarding proposals for modifications received by the Secretariat;
 - (iv) The Secretariat compiles a report to be made available to the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties for information, and links to information on the modification are included in the information-sharing mechanism.
2. For reason (f):
- (a) The Secretariat disseminates a notification regarding the proposed modification;
 - (b) The Secretariat implements the proposed modification within three months of issuance of the above notification;
 - (c) A report on modifications for reason (f) is made available to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for information.

MODIFICATION OF DESCRIPTIONS OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS IN AREAS BEYOND NATIONAL JURISDICTION

1. For reasons (a) through (e):
- (a) The proposal for a modification of an EBSA description is submitted to the Secretariat, together with information on the process that produced the proposal for modification;
 - (b) The Secretariat posts information about the proposed modification on the EBSA website and issues notifications biannually regarding proposals for modifications received by the Secretariat;
 - (c) The Secretariat prepares a report on the proposal that is opened for public comment for three months. The proponent will have three months to adjust the proposal in response to the comments, as appropriate and/or to issue a response to any of the comments, if they wish. A revised report on modifications, including comments received, is prepared by the Secretariat and submitted to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for consideration. Experts who participated in the workshop at which the EBSA was originally described as well as a relevant expert advisory body mandated by the COP may provide advice in the preparation of this report;
 - (d) On the basis of the revised report, the Conference of the Parties decides one of the following:
 - (i) Request inclusion of the modification in the repository;
 - (ii) If further analysis and review of the proposal is required, request the Secretariat to convene an expert workshop, subject to the availability of resources, to review the proposed modifications. The Secretariat may seek the advice of a relevant expert advisory body mandated by the COP to provide advice in the planning of the workshop. Experts who participated in the workshop at which the EBSA were originally described will be alerted. The output of the workshop is submitted to the Subsidiary Body on

Scientific, Technical and Technological Advice and the Conference of the Parties for consideration;

(e) The previous EBSA description and the modality by which it was included in the repository, will remain available in the repository.

2. For reason (f):

(a) The Secretariat disseminates a notification regarding the proposed modification;

(b) The Secretariat implements the proposed modification within three months of issuance of the above notification;

(c) A report on modifications for reason (f) is made available to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for information.

MODIFICATION OF DESCRIPTIONS OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS STRADDLING MULTIPLE NATIONAL JURISDICTIONS

The workshop did not have sufficient time to produce an agreed modality for this case.

MODIFICATION OF DESCRIPTIONS OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS STRADDLING AREAS WITHIN AND BEYOND NATIONAL JURISDICTION

The workshop did not have sufficient time to produce an agreed modality for this case.

PROPOSERS FOR THE DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS

1. The following can submit a proposal for the description of an EBSA:

(a) Within national jurisdiction: the State(s) within whose jurisdiction(s) the area is proposed;

(b) In areas beyond national jurisdiction: any State, competent intergovernmental organization;

(c) In areas straddling within and beyond national jurisdiction: the State(s) within whose jurisdiction(s) the proposed area is partially located.

2. The proponents are encouraged to collaborate with holders of relevant knowledge in the development of proposals.

DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS WITHIN NATIONAL JURISDICTION

1. For inclusion in the EBSA repository:

(a) The proposal is submitted to the Secretariat, using the EBSA template, together with information on the scientifically sound nationally agreed peer-review process⁴ or other appropriate validation process that produced the proposal;

(b) The Secretariat disseminates the proposal through a CBD notification with a period of three months for open comment on the proposal. The proponent will have three months to adjust the proposal in response to the comments, as appropriate and/or to issue a response to any of the comments, if they wish. The comments and responses related to the proposal will be posted on the EBSA website;

(c) The Secretariat also issues notifications biannually regarding proposals for new areas received by the Secretariat;

⁴ Voluntary guidelines on peer-review processes to be developed by the Executive Secretary for the consideration of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties

(d) The Secretariat compiles a report, including comments received, to be made available to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties, for consideration with a view to inclusion of the proposed description in the repository. In compiling the report, the Secretariat may seek the advice of a relevant expert advisory body mandated by the Conference of the Parties;

(e) Alternately, and in line paragraph 36 of decision X/29, new EBSAs may be described through a regional workshop convened by the Secretariat, subject to the availability of resources, the outputs of which are submitted for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice and by the Conference of the Parties.

2. For inclusion in the EBSA information-sharing mechanism:

(a) The proposal is submitted to the Secretariat, together with information on the scientifically sound nationally agreed peer-review process⁵ or other appropriate validation process that produced the proposal;

(b) The Secretariat disseminates the proposal through a CBD notification;

(c) The Secretariat also issues notifications biannually regarding proposals for new areas received by the Secretariat;

(d) The Secretariat compiles a report to be made available to the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties for information. Subsequently, links to information on the description are included in the information-sharing mechanism;

DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS IN AREAS BEYOND NATIONAL JURISDICTION

(a) The proposal for an EBSA description is submitted to the Secretariat, using the EBSA template, together with information on the process that produced the proposal;

(b) The Secretariat posts information about the proposal on the EBSA website;

(c) The Secretariat also issues notifications biannually regarding proposals for new areas received by the Secretariat;

(d) On the basis of those proposals, the Secretariat submits a report to the Conference of the Parties, which decides one of the following two approaches

(i) Request the Secretariat to convene an expert workshop, subject to the availability of resources, to review the proposals. The Secretariat may seek the advice of a relevant expert advisory body mandated by COP to provide advice in the planning of the workshop. The output of the workshop is submitted to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for their consideration;

(ii) Request the Secretariat to open the report for public comment for three months. The proponent will have three months to adjust the proposal issue in response to the comments, as appropriate. A report on the proposals is prepared by the Secretariat and submitted to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for consideration.

(e) Alternately, and in line paragraph 36 of decision X/29, new EBSAs may be described through a regional workshop convened by the Secretariat, subject to the availability of resources, , the outputs of which are submitted for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice and by the Conference of the Parties.

⁵ Voluntary guidelines on peer-review processes to be developed by the Executive Secretary for the consideration of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties.

DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS STRADDLING MULTIPLE NATIONAL JURISDICTIONS

1. For inclusion in the EBSA repository:

(a) The proposal⁶ is submitted to the Secretariat, using the EBSA template, together with information on the scientifically sound nationally agreed peer-review process⁷ that produced the proposal;

(b) The Secretariat disseminates the proposal through a CBD notification with a period of three months for open comment on the proposal. The proponents will have three months to issue a response to any of the comments, if they wish, and the comments and responses related to the proposal will be posted on the EBSA website;

(c) The Secretariat also issues notifications biannually regarding proposals for new areas received by the Secretariat;

(d) The Secretariat, compiles a report, including comments received, to be made available to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties, for consideration with a view to inclusion in the repository. In compiling the report, the Secretariat may seek the advice of a relevant expert advisory body mandated by the Conference of the Parties;

(e) Alternately, and in line paragraph 36 of decision X/29, new EBSAs may be described through a regional workshop convened by the Secretariat, subject to the availability of resources, the outputs of which are submitted for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice and by the Conference of the Parties.

2. For inclusion in the EBSA information-sharing mechanism:

(a) The proposal is submitted to the Secretariat, together with information on the scientifically sound nationally agreed peer-review process⁸ or other appropriate validation process that produced the proposal;

(b) The Secretariat disseminates the proposal through a CBD notification;

(c) The Secretariat also issues notifications biannually regarding proposals for proposals for new areas received by the Secretariat;

(d) The Secretariat, compiles a report to be made available to the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties Subsequently, links to the information on the description are included in the information-sharing mechanism;

DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS STRADDLING AREAS BOTH WITHIN AND BEYOND NATIONAL JURISDICTION

(a) The proposal for an EBSA description is submitted to the Secretariat, using the EBSA template, together with information on the process that produced the proposal;

(b) The Secretariat posts information about the proposal on the EBSA website;

(c) The Secretariat also issues notifications biannually regarding proposals for new areas received by the Secretariat;

(d) On the basis of those proposals, the Secretariat submits a report to the Conference of the Parties, which decides one of the following two approaches

⁶ A proposal is comprised of a written submission explaining the elements of the EBSA description in potential need of modification and why.

⁷ Voluntary guidelines on peer-review processes to be developed by the Executive Secretary for the consideration of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties.

⁸ Voluntary guidelines on peer-review processes to be developed by the Executive Secretary for the consideration of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties.

- (i) Request the Secretariat to convene an expert workshop, subject to the availability of resources, to review the proposals. The Secretariat may seek the advice of a relevant expert advisory body mandated by the COP to provide advice in the planning of the workshop. The output of the workshop is submitted to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for their consideration;
 - (ii) Request the Secretariat to open the report for public comment for three months. The proponent will have three months to adjust the proposal issue in response to the comments, as appropriate. A report on the proposals is prepared by the Secretariat and submitted to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for consideration;
- (e) Alternately, and in line paragraph 36 of decision X/29, new EBSAs may be described through a regional workshop convened by the Secretariat, subject to the availability of resources, the outputs of which are submitted for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice and by the Conference of the Parties.
-