

SUBSIDIARY BODY ON SCIENTIFIC,
TECHNICAL AND TECHNOLOGICAL ADVICE
Twenty-fourth meeting
Online, 3 May – 9 June 2021
Agenda item 6

ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS

Draft recommendation submitted by the Chair

The Subsidiary Body on Scientific, Technical and Technological Advice recommends that the Conference of the Parties at its fifteenth meeting adopt a decision along the following lines:

The Conference of the Parties,

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 75/239 on oceans and the law of the sea and its preambular paragraphs on the United Nations Convention on the Law of the Sea,¹

Reiterating the important role of the General Assembly of the United Nations in addressing issues relating to the conservation and sustainable use of biodiversity in marine areas beyond national jurisdiction,

Noting the negotiations under way in the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, following United Nations General Assembly resolution 72/249,

1. *Expresses its appreciation* to the Governments of Belgium and Germany for supporting the organization of the Expert Workshop to Identify Options for Modifying the Description of Ecologically or Biologically Significant Marine Areas and Describing New Areas, and *welcomes* the report of the workshop;²

2. *Endorses* annexes to the present decision addressing modalities for modifying descriptions of ecologically or biologically significant marine areas (EBSAs) and for describing new areas, *encourages* Parties and *invites* other Governments to implement these modalities, while fully respecting the sovereignty, sovereign rights and jurisdiction of States and *requests* the Executive Secretary to facilitate the implementation of these modalities;^{3,4}

¹ Parties to the Convention on Biological Diversity 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.

² CBD/EBSA/WS/2020/1/2.

³ 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 a dispute concerning the delimitation of maritime areas. The description of marine areas meeting the criteria for ecologically or biologically significant marine areas does not imply the expression of any opinion whatsoever concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. Nor does it have economic or legal implications; it is strictly a scientific and technical exercise.

⁴ [Nothing in this document can be interpreted as prejudicing developments under the United Nations Convention on the Law of the Sea.]

3. *Decides* to extend the term of the Informal Advisory Group on Ecologically or Biologically Significant Marine Areas, and *also decides* to include in the terms of reference of the Informal Advisory Group the tasks and responsibilities of a “relevant expert advisory body” in the context of modalities for modifying the descriptions of ecologically or biologically significant marine areas and describing of new areas, as outlined in the annexes to the present decision;⁵

4. *Requests* the Executive Secretary to develop voluntary guidelines on peer-review processes for the identification of areas meeting the EBSA criteria and other relevant compatible and complementary scientific criteria, for the consideration of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties;

5. *Encourages* Parties to take into consideration the scientific aspects of the EBSA process in the deliberations of the Intergovernmental Conference on an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction.

Annex I

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

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

(a) Collaboration with relevant organizations, experts and knowledge holders, including indigenous peoples and local communities, as holders of traditional knowledge, with their prior and informed consent or free, prior and informed consent or approval and involvement, in accordance with national circumstances and legislation;

(b) A strong scientific basis as well as the importance of transparency;

(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.

[2. Any existing EBSA causing concerns of States on a land or maritime sovereignty dispute or a dispute concerning the delimitation of marine areas shall be modified.]

[2. Alt No action or activity taken on the basis of this document shall be interpreted or considered as prejudicing the position of States Parties on a land or maritime sovereignty dispute or a dispute concerning the delimitation of maritime areas. The description of marine areas meeting the criteria for ecologically or biologically significant marine areas does not imply the expression of any opinion whatsoever concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries, nor does it have economic or legal implications. It is strictly a scientific and technical exercise.]

⁵ The terms of reference for the “relevant expert advisory body” will be considered for adoption by the Conference of the Parties at its fifteenth meeting on the basis of a draft prepared by the Executive Secretary, taking into account annex III of decisions XIII/12 and 14/9 on the terms of reference of the Informal Advisory Group on Ecologically or Biologically Significant Marine Areas, in the context of modalities for modifying descriptions of ecologically or biologically significant marine areas and describing new areas, as outlined in the annexes to this recommendation.

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

1. The EBSA repository is to contain:

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

2. The EBSA information-sharing mechanism is to contain:

(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;

(e) Information and experience relating to the application of other relevant and complementary intergovernmentally agreed scientific criteria;

(f) Previous versions of EBSA descriptions that were in the repository, in cases where the descriptions have been modified or removed, including information on the modality by which the EBSA description was initially included in the repository.

*Annex III***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 location, shape and/or size 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 appears in the current description of an EBSA;

(c) Change in the ecological or biological feature(s) of an EBSA;

(d) Scientific error(s) identified in an EBSA description;

(e) Editorial errors in an EBSA description.

Annex IV

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

1. For reasons (a) through (e), the following can submit a proposal⁶ for 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 intergovernmental organization;

(c) In areas straddling within and beyond national jurisdiction(s): the State(s) within whose jurisdiction(s) the proposed area is partially located and any State and/or competent intergovernmental organization for the part of the EBSA that is located in areas beyond national jurisdiction.

2. For reason (e), 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.

Annex V

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

1. In the case of editorial errors in a previous EBSA description:

(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 made for reason (e) is made available to the Subsidiary Body on Scientific, Technical and Technological Advice and to the Conference of the Parties for information.

Annex VI

(merging of previous annexes VI and VIII)

MODIFICATION OF DESCRIPTIONS OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS WITHIN NATIONAL JURISDICTION, INCLUDING EBSAS STRADDLING MULTIPLE NATIONAL JURISDICTIONS

1. For reasons (a) through (d) of annex III and for inclusion in the EBSA repository:

(a) The proposal for modification of an EBSA description is submitted to the Secretariat by [all] the State(s) [within whose jurisdiction(s) the modification is located]/[which are affected by the

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

modification], together with information on the process that produced the proposed modification, including the scientifically sound nationally agreed peer-review process;⁷

(b) The Secretariat disseminates information about the proposed modification through a CBD notification. [If requested by the proponent(s),] the proposed modification will be open for comments by Parties, [Other Governments] [and relevant organizations][and knowledge holders] for a period of three months. The Secretariat sends the comments directly to the proponent(s) for consideration, and the proponent(s) will then have three months to consider adjusting the proposal in response to the comments, as appropriate, and/or to issue a response to any of the comments, if they wish;

(c) The Secretariat also issues notifications biannually regarding the status of all proposals for modifications received by the Secretariat;

(d) The Secretariat compiles a report, including comments received and responses, if applicable, [and, in cases where information based on traditional knowledge is included, any information on consultations with indigenous peoples and local communities, and information on whether such knowledge was obtained with their prior and informed consent or free, prior and informed consent or with the approval and involvement of indigenous peoples and local communities], 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 in the repository. [In preparing the report, the Secretariat may seek the advice of a relevant expert advisory body mandated by the Conference of the Parties];

[(e) As an alternative to paragraph 1(d), and as decided by the proponent, the Secretariat compiles a report to be made available for the information of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties and inclusion in the repository;]

[(f) The previous EBSA description, and the modality by which it was included in the repository, will remain available in the information-sharing mechanism].

12. For reasons (a) through (d) of annex III and for inclusion of the modification in the EBSA information-sharing mechanism;

(a) The modification of an EBSA description is submitted to the Secretariat by [all] the State(s) within whose jurisdiction(s) the modification is located together with information on the process that produced the proposed modification, including the scientifically sound nationally agreed peer-review process;

(b) The Secretariat disseminates information about the modification through a CBD notification;

(c) The Secretariat also issues notifications biannually regarding all modifications 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. Links to information on the modification, which should be supported with best available information and using best practices, are included in the information-sharing mechanism, and are reflected on the EBSA website.]

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.

Annex VII

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

1. For reasons (a) through (d) and inclusion in the EBSA repository:
 - (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, including the scientifically sound peer review;
 - (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 disseminated through a CBD notification, including to relevant global and regional organizations, with a period of three months for public comment. The proponent will then 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. 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 Conference of the Parties may provide advice in the preparation of this report;
 - (d) On the basis of the revised report, the Conference of the Parties decides on 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 Conference of the Parties in the planning of the workshop. Experts who participated in the workshop at which the EBSA were originally described will be involved, if possible, in the review. 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 information-sharing mechanism.

Annex VIII

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

1. For reasons (a) through (d) and inclusion in the EBSA repository:
 - (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, including the scientifically sound peer review;
 - (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) On the basis of those proposals, the Secretariat prepares a report on the proposals that is disseminated through a CBD notification, including to relevant global and regional organizations, with a period of three months for public comment. The proponent(s) will then have three months to adjust the

proposal in response to the comments, as appropriate. 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 EBSAs were originally described may provide, if relevant, advice in the preparation of this report;

- (d) On the basis of the revised report, the Conference of the Parties decides on one of the following:
 - (i) Request inclusion of the modification(s) in the repository;
 - (ii) If further analysis and review of the proposals 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 Conference of the Parties to provide advice in the planning of the workshop. Experts who participated in the workshop at which the EBSAs were originally described will be involved, if possible, in the review process. 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(s), and the modality by which it was included in the repository, will remain available in the information-sharing mechanism.

Annex IX

PROPONENTS 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 and/or 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, including traditional knowledge holders, in the development of proposals.

Annex X

(merging of previous annexes XI and XIII)

DESCRIPTION OF ECOLOGICALLY OR BIOLOGICALLY SIGNIFICANT MARINE AREAS WITHIN NATIONAL JURISDICTION, INCLUDING EBSAs STRADDLING MULTIPLE NATIONAL JURISDICTIONS

1. For inclusion in the EBSA repository:
 - (a) The proposal is submitted to the Secretariat by the State(s) within whose jurisdiction(s) the proposed EBSA is located, using the EBSA template, together with information on the process that produced the proposal, including the scientifically sound nationally agreed peer-review process;⁸

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.

(b) The Secretariat disseminates the proposal through a CBD notification. [If requested by the proponent(s),] the notification will be kept open for a period of three months for comments by Parties, [other Governments][and relevant organizations][and knowledge holders] on the proposal. The Secretariat sends the comments directly to the proponent(s) for consideration, and the proponent(s) will then have three months to consider adjusting the proposal in response to the comments, as appropriate, and/or to issue a response to any of the comments, if they wish;

(c) The Secretariat also issues notifications biannually regarding the status of all proposals for new EBSAs received by the Secretariat;

(d) The Secretariat compiles a report, including comments received, [and in cases where information based on traditional knowledge is included, any information on consultations with indigenous peoples and local communities, and information on whether such knowledge was obtained with their prior and informed consent or free, prior and informed consent or with the approval and involvement of indigenous peoples and local communities], 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 preparing the report, the Secretariat may seek the advice of a relevant expert advisory body mandated by the Conference of the Parties];

[(e) As an alternative to paragraph 1(d), and as decided by the proponent, 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 inclusion in the repository];

(f) As an alternative to paragraph 1(a)-(e), and in line with 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. For new areas proposed within national jurisdiction, the proponent(s) will be the State(s) in whose jurisdiction(s) the area is proposed.

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

(a) The description is submitted to the Secretariat by [all] the State(s) within whose jurisdiction(s) the proposed EBSA is located, together with information on the process that produced the proposed modification, including the scientifically sound nationally agreed peer-review process;

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

(c) The Secretariat also issues notifications biannually regarding all descriptions of 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 the information on the description, which should be supported with best available information and using best practices, are included in the information-sharing mechanism and are reflected on the EBSA website.]

Annex XI

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

1. For inclusion in the EBSA repository:

(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, including the scientifically sound peer review;

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

- (c) The Secretariat also issues notifications biannually regarding all 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 on 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 the Conference of the Parties 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 disseminate the report through CBD notification with a period of three months for public comment. The proponent will then have three months to adjust the proposal 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 with decision X/29, paragraph 36, 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. Description of new EBSAs should be supported with the best available information.

Annex XII

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

1. For inclusion in the EBSA repository:
 - (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 all 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 on 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 the Conference of the Parties to provide advice in the planning of the expert workshop. The output of the expert 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 disseminate the report through CBD notification with a period of three months for public comment. The proponent will then have three months to adjust the proposal 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 with decision X/29, paragraph 36, 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. Description of new EBSAs should be supported with best available information.
