

Further work on ecologically or biologically significant marine areas

Non-paper

The Subsidiary Body on Scientific, Technical and Technological Advice

Recommends that, at its sixteenth meeting, the Conference of the Parties adopt a decision along the following lines:

The Conference of the Parties,

Reaffirming Articles **3, 4, 5** and 22 of the Convention on Biological Diversity,¹ as well as its decisions **VIII/24 of 31 March 2006, IX/20 of 30 May 2008, and X/29 of 29 October 2010, XI/17 of 19 October 2012, XII/22 of 17 October 2014, XIII/12 of 17 December 2016, in particular paragraph 3, and 14/9 of 29 November 2018,**

Recalling resolution 78/69 of the General Assembly of the United Nations on oceans and the law of the sea and its preambular paragraphs on the United Nations Convention on the Law of the Sea,^{2,3}

Recalling that General Assembly resolution 70/1 calls for the conservation and sustainable use of oceans and their resources by implementing international law as reflected in the United Nations Convention on the Law of the Sea, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of “The future we want”,

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

Recognizing that the description of ecologically or biologically significant marine areas is an important scientific and technical process that can ~~may contribute~~ **can make a crucial contribution** to the implementation of the Kunming-Montreal Global Biodiversity Framework⁴ and the Agreement 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,⁵

1. *Expresses its appreciation* to the Governments of Belgium, Canada, Germany, Norway and Sweden for their financial support for the organization of the technical and legal expert workshops to review modalities for modifying the descriptions of ecologically or biologically significant marine areas and describing new areas, and takes note of the reports of the workshops;⁶

2. *Extends* the term of the Informal Advisory Group on Ecologically or Biologically Significant Marine Areas, and requests the Executive Secretary to facilitate the work of the Group in line with its terms of reference, as contained in annex III to decision XIII/12 and amended in annex III to decision 14/9;

3. *Stresses* that the modification of descriptions of ecologically or biologically significant marine areas and the description of new areas **meeting the EBSA criteria is strictly a scientific and technical exercise and does** not imply the expression of any opinion whatsoever concerning the

¹ United Nations, *Treaty Series*, vol. 1760, No. 30619.

² United Nations, *Treaty Series*, vol. 1833, No. 31363.

³ **Türkiye dissociates itself from the reference made to the United Nations Convention on the Law of the Sea, to which it is not a party. The participation of Türkiye in the discussions under this agenda item during this meeting cannot be construed as a change in the well-known legal position of Türkiye with regard to the said instrument.**

⁴ Decision 15/4.

⁵ A/CONF.232/2023/4.

⁶ CBD/EBSA/EM/2023/1/3 and CBD/EBSA/EM/2023/2/3.

legal status of any country, territory, city or area **including maritime zones** or of their authorities, or concerning the delimitation of its frontiers or boundaries, **and does not have economic or legal implications that it is strictly a scientific and technical exercise** [and that no action or activity carried out on the basis of the present decision shall be interpreted or considered as prejudicing the position of States on a ~~land or maritime sovereignty claim or dispute~~ **relating to sovereignty, sovereign rights or jurisdiction** or a dispute concerning the delimitation of maritime ~~areas-zones~~];

4. *Requests* the Executive Secretary, subject to the availability of financial resources, in line with paragraph 36 of decision X/29, paragraph 12 of decision XI/17 and paragraph 6 of decision XII/22, to continue to facilitate the description of areas meeting the criteria for ecologically or biologically significant marine areas **in areas beyond national jurisdiction** through the holding of additional workshops;

4bis. Further requests the Executive Secretary to facilitate the participation in the workshops of experts from indigenous peoples and local communities, women and youth organizations, and the use of traditional knowledge;

5. *[Adopts]/[Takes note of]* the modalities for the modification of descriptions of ecologically or biologically significant marine areas and the description of new areas contained in the annex, and requests the Executive Secretary to facilitate the implementation of the modalities;

5bis. Requests the Executive Secretary to facilitate a review of the effectiveness of the implementation of the modalities contained in the annex five years after the adoption of this decision and submit the results of the review for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice;

6. *Invites* Parties, other Governments, competent intergovernmental organizations, indigenous peoples and local communities **with their free, prior and informed consent** and other relevant stakeholders to collaborate in the implementation of the modalities;

[7. ~~*Stresses Notes*~~ the **potential importance of** synergies between the process to facilitate the description of areas meeting the criteria for ecologically or biologically significant marine areas using the modalities **for areas beyond national jurisdiction agreed in the Annex to present decision** and the implementation of the Agreement 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, and invites ~~**Parties to the Agreement and**~~ intergovernmental organizations with competence in marine areas beyond national jurisdiction to actively engage in the development and review of submissions of the modification of descriptions of such areas and the description of new areas, ~~**in line with the modalities, in marine areas beyond national jurisdiction;**~~]

7bis. Requests the Executive Secretary to develop voluntary guidelines on peer-review processes for the description of areas meeting the criteria for ecologically or biologically significant marine areas and other relevant compatible and complementary scientific criteria for review by the Subsidiary Body on Scientific, Technical and Technological Advice;

[Annex

Modalities for the modification of descriptions of ecologically or biologically significant marine areas and the description of new areas*

I. Guidance in the implementation of the modalities

Ante 1. This guidance recognizes that nothing in the modalities shall prejudice the rights, jurisdiction and duties of States under UNCLOS, including in respect of the exclusive economic zone and the continental shelf within and beyond 200 nautical miles.

1. The modification of a description of an ecologically or biologically significant marine area, which can entail a modification to the textual description of the area, a modification to the ranking of the area against the criteria for such areas or a change in the location, ~~shape, depth or size~~ **spatial dimensions** of the area, **or a withdrawal of the area**, may be proposed for any of the following reasons:⁷

(a) ~~Editorial errors in the description;~~

(b) For areas [within and] beyond ~~the limits of~~ national jurisdiction:

(i) Newly available or accessible knowledge, including scientific and **indigenous and** traditional knowledge, on features associated with the area;

(ii) Change in the ecological or biological features of the area;

(iii) Scientific errors identified in the description;

(iv) Changes to the EBSA criteria;

[(c) For areas within national jurisdiction, any of the reasons noted in paragraph 1 (b), as well as any other reason deemed valid by the State or States within whose jurisdictions the modification is proposed];*

2. The modification of an existing description or the description of a new area can only be submitted by the following proponents:

(a) For areas beyond ~~the limits of~~ national jurisdiction, any State or States, individually or collectively, including through competent intergovernmental organizations;

(b) For areas within national jurisdiction, ~~the States or~~ **all** States within whose jurisdictions the modification or description is proposed.

3. Proponents that develop submissions for the modification of an existing description or the description of a new area should consider the following at an early stage:

(a) Collaboration with competent intergovernmental organizations; other relevant organizations; experts; and knowledge holders, including indigenous peoples and local communities, **women and youth** as holders of **indigenous and** traditional knowledge, with their free, prior and informed consent,⁸ in accordance with the United Nations Declaration on the Rights of Indigenous Peoples⁹ and international human rights law;

(b) The need to avoid developing submissions that may raise concerns regarding sovereignty, sovereign rights or jurisdiction;

* An asterisk inserted after a paragraph indicates that there were divergent views on the provisions of that paragraph during discussions at the technical and legal expert workshops.

⁷ The reason for a modification must be provided in the submission.

⁸ “Free, prior and informed consent” refers to the tripartite terminology of “prior and informed consent”, “free, prior and informed consent” and “approval and involvement”.

⁹ General Assembly resolution 61/295, annex.

(c) The need for a strong scientific basis with sufficient information, as well as the importance of transparency;

(d) The **need to take into account** regional dimensions of marine and coastal ecosystems and their ecological and biological features and processes, including regional differences in data availability, as well as collaboration across regions.

4. With respect to any submission for the modification of an existing description or the description of a new area,⁴⁰ any State may formally communicate to the Executive Secretary, at any time, an objection to the inclusion of a description or modification in the repository or the information-sharing mechanism for ecologically or biologically significant marine areas, owing to the existence of a claim or dispute relating to sovereignty, sovereign rights or jurisdiction involving an area included in the submission. In such a case, the submission will not be advanced any further and will not be included in the repository or information-sharing mechanism until a withdrawal of the objection is communicated to the Executive Secretary by the objecting State.¹¹

II. Repository and information-sharing mechanism for ecologically or biologically significant marine areas

5. The repository for ecologically or biologically significant marine areas is to contain:

(a) The descriptions of areas meeting the criteria **for ecologically or biologically significant marine areas** that have been considered by the Conference of the Parties ~~and that the Conference of the Parties has requested the Executive Secretary to include in the repository and to transmit to the General Assembly of the United Nations for its information and relevant processes, as well as to relevant international organizations;~~

[(b) For archive purpose, previous versions of descriptions of ecologically or biologically significant marine areas held in the repository, in cases where the descriptions have been modified, including information on the modalities by which the descriptions were initially included in the repository.]¹²

6. The information-sharing mechanism for ecologically or biologically significant marine areas is to contain:

(ante a) The records of submissions of a modification or description of an area within national jurisdiction for inclusion in the repository for ecologically or biologically significant marine areas and the comments received on such submissions;

(ante abis) Submissions of a modification or description of an area within national jurisdiction for inclusion in the information-sharing mechanism for ecologically or biologically significant marine areas and the comments received on such submissions;

(ante ater) The records of submissions of a modification or description of an area beyond national jurisdiction;

(a) Links to national processes and their related scientific information pertaining to areas meeting the criteria for ecologically or biologically significant marine areas, and other relevant compatible and complementary nationally agreed scientific criteria in national jurisdiction that were provided by the State concerned as information for the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties;

⁴⁰ ~~Irrespective of whether the description is developed during workshops held pursuant to a decision of the Conference of the Parties or through the modalities in the present annex.~~

¹¹ A record of the fact that a submission was received and objected to will be included in the information-sharing mechanism, regardless of whether the objection is withdrawn or not.

¹² ~~Paragraphs 5 (b) and 6 (c) reflect alternative options for where that paragraph should be placed.~~

(b) Reports of the regional workshops convened by the Secretariat of the Convention on Biological Diversity to facilitate the description of ecologically or biologically significant marine areas;

[(c) For archive purpose, previous versions of descriptions of ecologically or biologically significant marine areas held in the **information-sharing mechanism repository**, in cases where the descriptions have been modified, including information on the modalities by which the descriptions were initially included in the **information-sharing mechanism repository**.]¹²

(d) Guidance related to the application of the criteria for ecologically or biologically significant marine areas and the use of information contained in the descriptions of such areas;

(e) Other relevant scientific and technical information and other forms of knowledge, including, **where appropriate**, the **indigenous and** traditional knowledge of indigenous peoples and local communities, with their free, prior and informed consent, **where appropriate**, related to areas described as meeting the criteria for ecologically or biologically significant marine areas;

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

III. Modalities for the modification of descriptions of ecologically or biologically significant marine areas and description of new areas meeting the EBSA criteria

A. Modification for editorial errors

~~7. In the case of editorial errors in a description of an ecologically or biologically significant marine area, the Secretariat, after being informed by a State, is to issue a notification to provide information regarding the editorial error and the revision needed, and, subsequently, to implement the modification, three months after the issuance of the notification. A footnote is to be added to the modified description to indicate that an editorial change was made, and when. A report on modifications made to address editorial errors is to be submitted by the Secretariat to the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties, for information.~~

B. Modification of the description of EBSAs or description of new areas meeting the EBSA criteria within national jurisdiction

Inclusion in the repository for ecologically or biologically significant marine areas¹³

8. The submission¹⁴ of a modification or description of an area within national jurisdiction for inclusion in the repository for ecologically or biologically significant marine areas must be provided to the Secretariat together with information on the process by which the submission was developed, including any scientific peer-review process, and, in cases where information based on **indigenous and** traditional knowledge is included, any information on consultations with indigenous peoples and local communities conducted with their free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and, **where appropriate**, the Mo'otz Kuxtal Voluntary Guidelines.¹⁵ The proponent may also use the following options with respect to the development of the submission:

¹³ An inclusion under the present section entails consideration of the submission by the Conference of the Parties and its subsidiary bodies.

¹⁴ To be included in the repository, the submission must be prepared in the template for ecologically or biologically significant marine areas and include a map clearly indicating the area that is being modified or described.

¹⁵ Decision XIII/18, annex.

(a) The proponent may request the Secretariat to issue a notification, for information purposes, regarding its intent to submit a description or modification before the submission is developed;

(b) The proponent may also choose to develop or refine a draft submission at a workshop on ecologically or biologically significant marine areas held pursuant to a decision of the Conference of the Parties before submitting it to the Secretariat.

9. Upon receipt, the Secretariat includes the submission **initially** in the information-sharing mechanism for ecologically or biologically significant marine areas and issues a notification to provide information on the submission and communicate its inclusion in the mechanism. The submission will be open for a period of six months for comments by Parties, other Governments, ~~and~~ relevant organizations, **and other stakeholders** which are then transmitted to the proponent by the Secretariat.

10. Upon receipt of such comments, which will be posted in the information-sharing mechanism, the proponent may do one of the following:

(a) **Address Respond to** the comments, if any, and, if necessary, provide a revised version of the submission to the Secretariat, **recognising that a State may make a modification to a description of an ecologically or biologically significant marine area within their national jurisdiction for any of the reasons noted in paragraph 1;**

(b) Not address the comments and not proceed further, **with the submission remaining in the information-sharing mechanism;**

(b)alt **Maintain the submission as provided to the Secretariat and Not address not respond to** the comments. ~~and~~ **The submission will** not proceed further **to the repository, and will remain in the information sharing mechanism;**

(c) Request the Secretariat to remove its ~~original~~ submission from the information-sharing mechanism.

11. If **comments were received and if** the proponent decides to ~~address~~ **respond to** these comments and provide a revised version of the submission to the Secretariat, the Secretariat will transmit the submission to the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties for their consideration. The proponent may also request that the submission be discussed at a workshop on ecologically or biologically significant marine areas held pursuant to a decision of the Conference of the Parties before it is submitted to the Subsidiary Body.

11bis. The Subsidiary Body can then choose one of the three following options:

(a) send the submission to COP for consideration;

(b) request an expert workshop to further review the submission;

(c) send the submission back to the proponent.

12. **If the Subsidiary Body decides to transmit the submission to the Conference of the Parties for consideration,** The Conference of the Parties decides whether to request the Executive Secretary to include the submission in the repository for ecologically or biologically significant marine areas. A record of the submission remains in the information-sharing mechanism, regardless of whether it is included in the repository or not.

*Inclusion in the information-sharing mechanism for ecologically or biologically significant marine areas*¹⁶

13. The submission¹⁷ of a modification or description of an area within national jurisdiction for inclusion in the information-sharing mechanism for ecologically or biologically significant marine areas must be provided to the Secretariat together with information on the process by which the submission was developed, including any scientific peer-review process, and, in cases where information based on **indigenous and** traditional knowledge is included, any information on consultations with indigenous peoples and local communities conducted with their free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and, **where appropriate**, the Mo' otz Kuxtal Voluntary Guidelines. The proponent may also use the following options with respect to the development of the submission:

(a) ~~The proponent may request the Secretariat to issue~~ **The Secretariat issues for information purposes**, a notification regarding its intent to submit a description or modification before the submission is ~~developed-provided to the Secretariat~~;

(b) The proponent may also choose to develop or refine a draft submission at a workshop on ecologically or biologically significant marine areas held pursuant to a decision of the Conference of the Parties before submitting it to the Secretariat.

14. Upon receipt, the Secretariat **issues a notification to provide information on the submission and communicate its inclusion in the information-sharing mechanism and, after six months,** includes the submission in the information-sharing mechanism ~~and issues a notification to provide information on the submission and communicate its inclusion in the information-sharing mechanism~~. The ~~proponent may request that the~~ submission **will** be open for comments by Parties, other Governments and relevant organizations for a period of six months, in which case the Secretariat will transmit any comments received to the proponent.

15. Upon receipt of such comments, which will be posted in the information-sharing mechanism, the proponent may do one of the following:

- (a) Maintain the submission as provided to the Secretariat;
- (b) Address the comments and provide a revised submission to the Secretariat for inclusion in the information-sharing mechanism;
- (c) Request the Secretariat to remove its original submission from the information-sharing mechanism.

C. Modification of descriptions of EBSAs or description of new areas meeting the EBSA criteria beyond national jurisdiction

16. The submission¹⁸ of a modification or description of an area beyond national jurisdiction must be provided to the Secretariat together with information on the process by which the submission was developed, including any scientific peer-review process, and, in cases where information based on **indigenous and** traditional knowledge is included, any information on consultations with indigenous peoples and local communities conducted with their free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and, **where appropriate**, the Mo' otz Kuxtal Voluntary Guidelines.

¹⁶ An inclusion under the present section does not entail consideration by the Conference of the Parties or its subsidiary bodies **[and cannot apply to the descriptions of ecologically or biologically significant marine areas considered and endorsed by COP held in the repository]**

¹⁷ To be included in the information-sharing mechanism, the submission must contain geographical coordinates and a map clearly indicating the area that is being modified or described.

¹⁸ To be included in the repository, the submission must be prepared in the template for ecologically or biologically significant marine areas and include geographical coordinates and a map clearly indicating the area that is being modified or described.

17. Before ~~providing a developing a~~ submission, the proponent may request the Secretariat to issue, **for information purposes**, a notification regarding its intent to submit a description or modification.

18. The Secretariat includes a record of the submission, as received, in the information-sharing mechanism of ecologically or biologically significant marine areas and disseminates information about the submission through a notification. The submission is open for comments by Parties, other Governments, competent intergovernmental bodies—~~and~~—relevant organizations **and other stakeholders** for a period of six months.

19. The submission, as well as any comments received in response to the notification, are provided for discussion at a workshop on ecologically or biologically significant marine areas held pursuant to a decision of the Conference of the Parties, the outputs of which are submitted to the Subsidiary Body and the Conference of the Parties for their consideration.

20. The Conference of the Parties decides whether to request the Executive Secretary to include the submission in the repository of ecologically or biologically significant marine areas. A record of the submission remains in the information-sharing mechanism, regardless of whether it is included in the repository or not.]
